

Discharge Upgrade Application Guide

*Prepared by the Yale Law School Veterans Legal Services Clinic
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Are you thinking of applying for a discharge upgrade? Great! A discharge upgrade is one important way to gain access to federal and state veterans' benefits. It is a long process, but for veterans who have post-traumatic stress, the law has changed recently to make it a little easier for you to get a discharge upgrade.

Applying for a discharge upgrade can be done without a lawyer, but you are more likely to be successful if you follow certain steps. This packet explains how to put together your discharge upgrade application, where to send it, and how to make sure it is a strong application before you mail it.

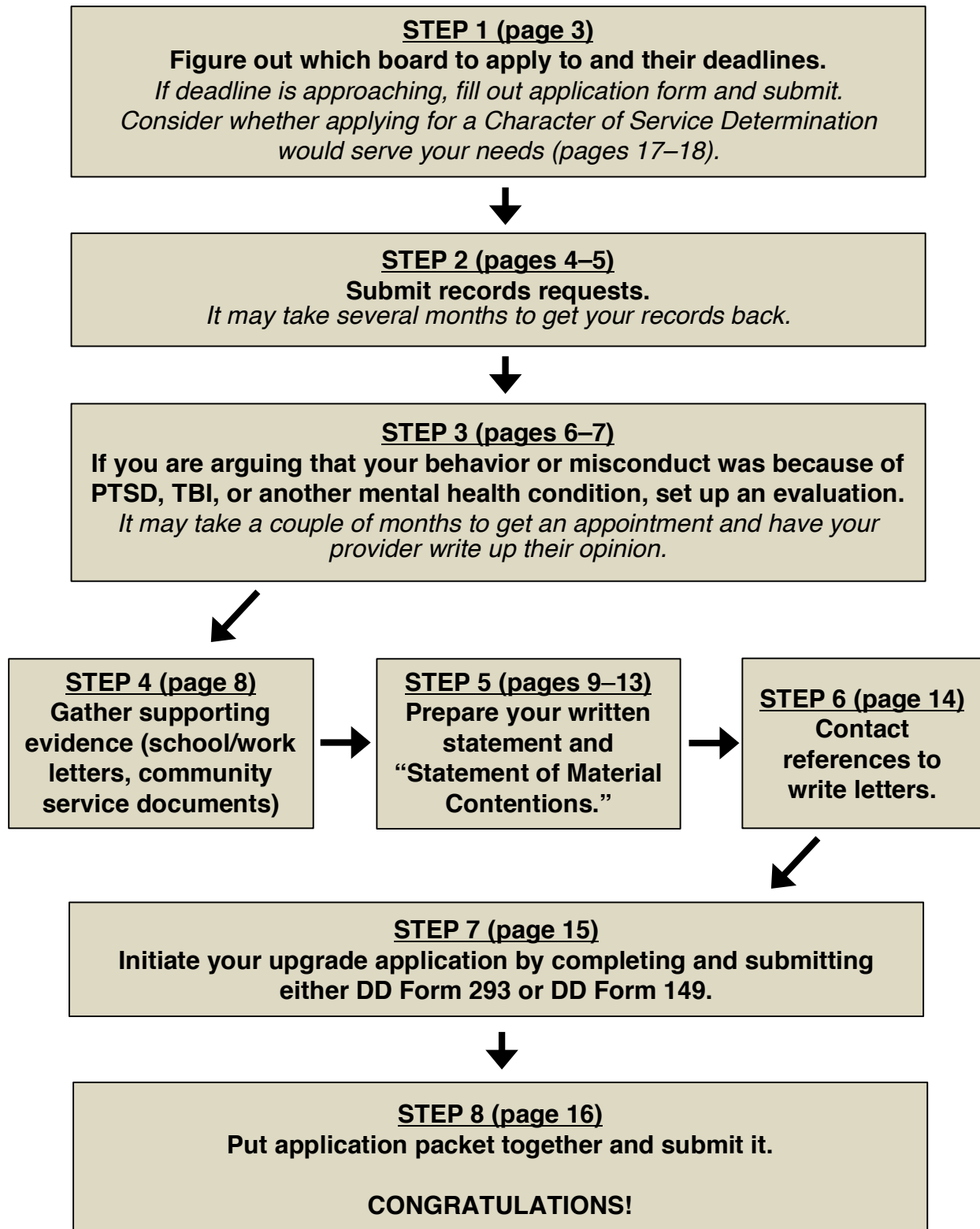
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For more information and resources, go to CTLawHelp.org/dischargeupgrades

Introduction: The Steps of Applying for a Discharge Upgrade

Here is an overview of the steps you need to take to apply for a discharge upgrade and the pages in this packet where you can find more information on each step.



Step 1: Figure Out Which Board to Apply to

For each branch of service, there are two different types of record-corrections boards: Discharge Review Boards and Boards for Correction of Military Records. Each type of board has different powers and limits on what it can do. Depending on your situation, you might be required to apply to only one type of board and not the other. Also, your options for appealing if you lose are different depending on which board you apply to. So, please read this section carefully to understand which board is the best option for you. Below, we've provided more information about these two types of boards to help you understand where you should send your application.

OVERVIEW OF DISCHARGE REVIEW BOARDS (DRBs)

Deadline: You must apply within 15 years of your discharge.

Form needed to apply: DD-293

Purpose: DRBs have the power to upgrade the character of your discharge and to change the reason for discharge on your DD-214.

Limitations: DRBs do not have the power to make your discharge worse, otherwise change your military records, or make decisions about disability or retirement benefits. DRBs are not able to overturn a court-martial's decision. Veterans who were discharged by a special court-martial may only ask the Board to change the character of discharge. Veterans who were discharged by a general court-martial cannot ask the DRB to review their discharge.

OVERVIEW OF BOARDS FOR CORRECTION OF MILITARY RECORDS (BCMRs)

Deadline: You must apply within 3 years of discovering the "error or injustice" that you are asking the Board to fix. The Board can ignore this deadline "in the interest of justice," so you should not let it stop you from applying. If you are arguing that your discharge was related to PTSD, the Board must ignore the deadline.

Note: If you were discharged within the past 15 years, you must apply to the DRB before you apply to the BCMR.

Form needed to apply: DD-149

Purpose: BCMRs have more flexible powers than DRBs. They can upgrade any character of discharge and change any reason for discharge. They can also change re-enlistment codes, change the date of your discharge, remove mistakes in your record, and either add or remove a note of medical retirement.

Limitations: BCMRs cannot make your discharge worse or override a court-martial conviction.

Step 2: Request Your Records

Below is a list of forms you need to complete to obtain your records. Sending in a copy of your records with your discharge upgrade application can support your story about what happened during your service and what you have done since your discharge.

Be sure to keep track of when and where you send requests for records so you know to follow up if you don't hear back.

Standard Form 180

This form is for requesting military personnel and medical records, including your DD-214 (your official discharge form). This form will include important information about the reasons for and character of your discharge. You should include a separate note that you are unable to pay any fees and ask the military or VA to notify you if they are going to charge a fee.

Be sure that records you receive by using this form include **complete** copies of your discharge packet and of NCIS, OSI, CID, or DIS records (if an investigation was conducted).

You should look at the form to figure out where to mail your SF 180. This will depend on your service branch and what records you are asking the military to send you.

DD Form 2870

This form allows disclosure of your medical and dental records from when you served.

Mail your Form 2870 to:

TRICARE West Region
Priority Services Department
PO Box 7074
Camden, SC 29021-7074

or to the local regional office near where you were based.

If you have ever been evaluated or treated at the VA, you should request medical and dental records. If you have not, you do not need to fill out the following two forms.

VA Form 10-5345

This form allows disclosure of your medical and dental records from after you served.

Mail your Form 10-5345 to:

Washington VA Medical Center
Release of Information Office
50 Irving Street
N.W. Washington, DC 20422

VA Form 10-5345a

This form is for you to get your own copy of your medical and dental records.

Mail your Form 10-5345 to:

Washington VA Medical Center
Release of Information Office
50 Irving Street
N.W. Washington, DC 20422

Other records to gather, if applicable (request from the appropriate agency)

- Records from the DRB or BCMR (if you have applied for an upgrade before)
- Military and non-military inpatient medical records
- Brig or stockade records
- Non-VA medical records or mental health evaluations
- Rehabilitation center records
- Trial records
- Educational documents (transcripts, diplomas)
- Post-service police and criminal records
- Documentation of community service

Step 3: If Applicable, Get a Mental Health Evaluation

What is the Hagel Memo?

In September 2014, the Secretary of Defense made it easier for veterans with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) to get discharge upgrades. He issued a memo telling the review boards to be more generous in giving upgrades to veterans whose actions may have been caused by these mental health conditions. This memo applies to conditions diagnosed both during service and after discharge. Even if you do not have a formal diagnosis, symptoms that are related to PTSD and TBI are supposed to get special attention from the boards. Also, if you have already applied for a discharge upgrade in the past and were rejected, the Hagel Memo allows you to reapply.

How does this affect me? What steps should I take?

If you believe that your discharge may have been related to PTSD or TBI, there are several steps you can take to make your application stronger.

1. If you have a diagnosis of PTSD or TBI related to your service, include that diagnosis and information about it with your application.
2. If you do not have a diagnosis, or if the one you have is not very thorough, get an evaluation from a medical professional, preferably from someone who specializes in mental health. Social workers' statements are helpful, but they are generally less successful than a letter from a psychologist, psychiatrist, or doctor. If possible, get a letter from a VA employee and a private doctor. Include any evaluations with your application.
3. Gather other evidence from your history that could show you have had mental health difficulties—notes in other medical records, police records, etc.
4. Ask friends and family to write about how they have seen evidence of your PTSD or TBI—they might have seen you dealing with symptoms or might have noticed that you seem different since you returned from service.
5. Include information in your written statement about the trauma you experienced, how your mental health has been affected, and how your condition has affected your life. See next page for more details.

What should a mental health evaluation say to show the connection between my condition and my discharge?

The review boards are supposed to look for a medical diagnosis of PTSD or TBI related to your service in the military.

- The diagnosis should specify that you had the condition when you were in the service or have language indicating that your mental health problems developed while you were in the military.
- You want the doctor to focus on what your condition was like *while you were in service* and shortly after. This can be tricky, especially if you were discharged a long time ago. But because the board cares about the link between the PTSD or TBI and your discharge, evidence from that time is more important to include than how you are doing now.

Step 4: Gather the Components of Your Application

Below is a checklist of information to include in your application. Overall, you want to tell your story about why you deserve a discharge upgrade and support that story with evidence. These documents will help you do that.

To get your application in front of a Board:

- DD Form 293 (if applying to a DRB) **OR** DD Form 149 (if applying to a BCMR).

Note: Again, if you're very close to the deadline for submitting an upgrade application, you may want to just file this form right away and collect the following documents afterward.

Narratives to support your case:

- A written statement (see pages 9–13) explaining why you think the Board should upgrade your discharge.
- Your “Statement of Material Contentions.” Think of this as an outline of your written statement: identify each topic you want the Board to address.
- Letters of support from colleagues and friends (see page 14). These may include:
 - Character references (supporting your story of good conduct in the military and/or in the civilian community since discharge—these could be letters from friends, employers, or other people who can speak at length about you)
 - Job references
 - Witness statements supporting your story behind your discharge

Evidence to support your case:

- Your complete military record (which you can get by submitting Standard Form 180; see page 4 for more information).
- Health records (medical, dental, mental health, etc.) (see page 5).
- Evidence of **good conduct in the military** (for example, good performance reviews).
- Evidence of **good conduct in the civilian community** since your discharge (awards, achievements, participation in community and charity work, records showing employment, records showing education).
- Evidence of sobriety, if substance use has been a problem for you in the past.

Step 5: Make Your Case: The Written Statement

Note: Submit your written statement at least a month before your hearing, if you have requested one. Submit 5 copies to a DRB and 3 copies to a BCMR, with instructions that one copy be given to each Board member.

Your written statement is where you should explain anything you think is wrong in your record and how you have changed if you have had issues with misconduct or discipline.

You do not need to fit your written statement in the small box on the form. Most applicants write their statement on a separate sheet of paper and write or type “see attached statement” on the form.

LEGAL STANDARDS FOR AN UPGRADE

The Boards will be thinking about certain key words (quoted in bold below) while they look at your application. You do not need to have a lawyer’s help or use complicated arguments to get a discharge upgrade. However, it can be useful to know what the Board is looking for.

Discharge Review Board (DRB)

The DRBs review whether a discharge is “proper” and “equitable.” The board will consider each application on a case-by-case basis. The DRB makes certain legal assumptions that your application must overcome before they will grant you a discharge upgrade. You can directly challenge each assumption by saying, for example, “My discharge was improper” and then explaining why. The requirements for each are important to consider.

The Board will assume that your discharge was “**proper**” unless:

- the military made an “error of fact, law, procedure, or discretion” in deciding your discharge, **and** there is “substantial doubt” that you would have gotten the same discharge if the military had not made the error.
 - The first part means that the military got something wrong with the facts or the reasoning behind your discharge. The second part means that there must be reason to believe, if the mistake had not been made, that you would have received a different discharge.

OR

- there has been a change in policy that requires that you receive a different discharge.
 - This means that you should be able to point to a change in official policy since you were discharged. The new policy needs to apply retroactively (meaning it declares that even things that happened in the past should have followed this new policy).

The Board will assume that your discharge was “**equitable**” unless:

- you were discharged because of policies that are different in important ways from the current policies, **and**
- the current policies are better for veterans who are being discharged, **and**
- there is “substantial doubt” that you would have received the same discharge under the new policies.
 - Is there some better policy in place and do you have reason to believe that policy would have helped you when you were discharged? An example of this might be the Hagel Memo (see page 6), which provides special consideration for servicemembers who show signs of Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI). If you had a documented history of mental health problems or symptoms and were discharged despite those symptoms, you may be able to say that the discharge was “inequitable” under current policies.

Board for Correction of Military Records (BCMR)

BCMRs may correct any record when the fix is necessary to “**correct an error or remove an injustice.**” Each of these possibilities (“correct an error” or “remove an injustice”) allow the BCMR to grant your upgrade if they believe that your discharge was incorrect or unjust. What this means, exactly, depends on your specific circumstances. Some believe that these the BCMRs are looking for similar information as the DRBs, although the law does not define the words it uses.

You should note that discharges that were issued by a special or general court-martial may only be upgraded “**for purposes of clemency**” (meaning they can intentionally forgive a sentence). If you fall into this category, it is especially important to include information about good post-service conduct, including things like holding a stable job, volunteering in your community, and avoiding getting in trouble.

Like DRBs, BCMRs will assume that your original records are correct unless there is enough evidence to show that they should be changed.

TAILORING YOUR WRITTEN STATEMENT TO THE LEGAL STANDARDS

As explained above, the DRBs and the BCMRs use different legal standards to review your application. Based on which Board you’re applying to, you will want to use different key words (bolded below).

For a DRB (which reviews if a discharge is “proper” and “equitable”):

- If you are arguing that your discharge was **improper**:
 - Be sure to write that your discharge was “improper.”
 - Mention any errors made in your discharge process. Explain why your discharge would have been different if these errors had not been made.

- If a relevant military policy has changed since your discharge, mention it, and show why it would require a change to your discharge.
 - *Note: To apply to your case, a new policy must say it applies **retroactively** (meaning it applies to past discharges).*

Example

My Other-than-Honorable discharge was improper because [here, discuss mistakes made in your discharge. For example, if you believe the wrong law was applied to you or that your commanding officer described your behavior inaccurately, describe that here]. I would have received a different discharge status if these errors had not been made. My discharge status should therefore be upgraded to [status you are requesting].

- If you are arguing that your discharge was **inequitable**:
 - Be sure to write that your discharge was “inequitable.”
 - Identify how relevant military policy has changed since your discharge to give service members more rights.
 - Show that there is “substantial doubt” that your discharge would have been the same under the new policy.

Example

My General discharge was inequitable because I was discharged under [Name of Policy] policy, which has since changed. Because [explain why the new policy would have given you a different discharge status], there is substantial doubt that my discharge would have been the same under this policy. My discharge status should therefore be upgraded to [status you are requesting].

Note that you can argue that your discharge was **both** improper **and** inequitable; you don’t have to choose one or the other. If you do argue both, be sure to separate the two topics and still use both the word “improper” and the word “equitable”; this way, the Board has to respond to both claims.

For a BCMR (which corrects “errors” and removes “injustices”):

- If you are arguing that **errors** were made in your discharge process:
 - Be sure to write that your discharge process involved “errors.”
 - Explain the errors made in your discharge process.
 - Show why the outcome would have been different had no errors been made.

Example

My General discharge involved error because [here, discuss the mistakes made in your discharge, like if the wrong law was applied or your commanding officer described your behavior inaccurately]. I would have received a different discharge status if these errors had not been made. My discharge status should therefore be upgraded to [status you are requesting].

- If you are arguing that your discharge has resulted in **injustice**:
 - Be sure to write that your discharge has resulted in “injustice.”
 - Explain the injustice that your discharge status has caused you and how it has affected your life.
 - If a relevant military policy has changed since your discharge to give service members more rights, mention that new policy.
 - Show that there is “substantial doubt” that your discharge would have been the same under the new policy.

Example

My Other-than-Honorable discharge has resulted in injustice. [Here, discuss the injustice and how it has affected your life, like if you were turned down for a job because of your discharge status.]. Furthermore, [New Policy Name] policy has been enacted since I was discharged. Because [explain why the new policy would have given you a different discharge status], there is substantial doubt I would have received the same discharge status under this new policy. My discharge status should therefore be upgraded to [the status you are requesting].

Note that you can argue that your discharge BOTH involved error AND has resulted in injustice; you don't have to choose one or the other. If you argue both, be sure to separate the two topics and still use both the word “error” and the word “injustice”; this way, the Board has to respond to both claims.

Regardless of whether you are claiming that there has been an error or injustice or both, be sure to include a lot of information showing your good behavior since your discharge. For example, you can include information about your education, work history, or involvement in the community, or any other parts of your life. Were you promoted at your job? Have you started a family? Good behavior can take many forms—look at the parts of your life that give you pride and write about them. Try to tell the Board how your good behavior shows that your discharge does not represent you as a person.

Note for veterans with mental health problems, post-traumatic stress disorder, or traumatic brain injury

Besides a formal diagnosis, the review boards are also supposed to consider other evidence that you had problems with mental health when you were in the military. You can try to draw out these problems in your personal statement by pointing to times in your record that show possible struggles with mental health.

The next step is to connect these problems, diagnosed or not, to the events around your discharge. Use your personal statement to express why you believe your mental health problems, PTSD, or TBI, changed your behavior or caused you to not act normally. It may also be helpful to show that you have tried to get treatment for your PTSD, TBI, or other mental health problems. Telling the board how you have improved with proper treatment may help show that you would have received a better discharge if the military had recognized your situation and helped you.

Remember that if you are arguing that your discharge was related to PTSD, the Board must ignore the deadline. So, you should also include the following language in your statement:

Example

The 3-year time limit for the Boards for Correction of Military Records should be waived in this case. According to the 2014 Hagel Memo ("Supplemental Guidance to Military BCMRs/BCNRs by Veterans Claiming PTSD") and the 2016 Carson Memo ("Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military BCMRs/BCNRs by Veterans Claiming PTSD or TBI"), the Board must ignore this time limit in cases involving PTSD.

Step 6: Collect Letters from Others in Support of Your Application

You should submit at least five letters from people who can strongly recommend that you be given a discharge upgrade. (You can send more than five letters, but the Board may not read them all if you do.) Think of these letters like character references: they should be written by people who know you well and can vouch for you.

Brainstorm who you know who could write you a good letter of reference

- Friends
- Family members
- Fellow service members who served with you in the military
- Supervisors or coworkers
- Teachers or classmates
- Pastors, rabbis, or other spiritual leaders

What your letter writers should talk about in their references

- Your character (good qualities like caring about other people)
- Your work, activities, and achievements (in your family, at your job, in your community, in charity work, etc.)
- Whether they have first-hand knowledge of errors or injustices in your record (for example, if they witnessed an event that is not described correctly in the record)
- Think about how to approach your references. How can you explain to them why you want a discharge upgrade? What do you hope they will write about? These questions can help you write your own personal statement too.

Note on PTSD and other mental-health conditions

- If your application mentions that you have PTSD or another mental-health condition, it can be helpful for your letter writers to give examples of times they saw you dealing with your condition. For example, they could write about being with you when you had an anxiety or panic attack, reacted strongly to reminders of your time in service, or told them about nightmares you were having. They could also write about changes that they saw in your mood or behavior after you returned from service.
- Letters from family and friends (“lay people”) discussing your mental health will not hold as much weight as the opinion of a medical professional like a doctor. You should also attempt to get an evaluation from someone who is trained to find signs of PTSD, TBI, or other mental health conditions.

Step 7: Formally Initiate Your Upgrade Application

Once you get your records and look them over, you should file the form that will start your upgrade application (either a DD Form 293 or a DD Form 149; see below for which one you should file). The Boards usually take several months to review applications. You can submit any supporting documents (letters, etc.) after you file this first form, as long as the Board has not yet reviewed your application.

Applicants to the **DRBs** should submit **DD Form 293**.

- The statement of issues (item 6) is especially important. Be sure to include every issue that you want the DRB to address (meaning every reason you think your discharge should be changed).
- If you are close to the DRB's 15-year time limit, to make sure you can make the deadline, you may want to submit this form before you obtain your records or before you fully prepare the rest of your application packet.

Applicants to the **BCMRs** should submit **DD Form 149**.

- If you are close to the BCMR's 3-year time limit and you have already gone through the DRB process, you should try to submit this form right away.

Step 8: Put It All Together and Mail Your Application

Your application is almost done! It is important for your application to be complete and appear professional so that it is processed as quickly and efficiently as possible.

Important steps to remember when completing and mailing your application:

- Save a hard copy for your own records.
- Note the date you mailed your application.
- Write a short cover letter.
 - List your name and all of the contents of your application packet.
 - State that you are applying for a discharge upgrade.
 - There is no need to discuss the reasons for your application in the cover letter. That will be covered in your personal statement.
 - Provide a mailing address and other contact information for yourself.
 - Sign and date the letter.
- Submit 5 copies of your application if you are applying to a DRB and 3 copies if you are applying to a BCMR.
- Make sure that you have included all of the items on the “What to Include In Your Application” Checklist
- Double-check the address for your service’s DRB or BCMR (listed below).

Find which address you should use in the below table, based on (1) your branch and (2) the level of Board you are applying to (DRB vs. BCMR—see page 3 for more info).

	Discharge Review Boards (DRBs)	Boards for Correction of Military Records (BCMRs)
Army	Army Review Boards Agency 251 18th Street South Suite 385 Arlington, VA 22202-3531	Army Review Boards Agency 251 18th Street South, Suite 385 Arlington, VA 22202-3531
Air Force	Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Board for Correction of Air Force Records SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742
Coast Guard	Commandant (CG-133) Attn: Office of Military Personnel US Coast Guard Stop 7907 2703 Martin Luther King, Jr. Ave., S.E. Washington, DC 20593-7907	Department of Homeland Security Office of the General Counsel Board for Correction of Military Records 245 Murray Lane, Stop 0485 Washington, DC 20528-0485
Navy	Secretary of the Navy Council of Review Boards Attn: Naval Discharge Review Board 720 Kennon Ave S.E., Suite 309 Washington Navy Yard, DC 20374-5023	Board for Correction of Naval Records 701 S. Courthouse Road, Suite 1001 Arlington, VA 22204-2490

Alternative Path: Character-of-Service Determination at the VA

A discharge upgrade is not the only way to get VA benefits. You can also ask for a “Character of Service” review from the VA.

What is a Character of Service Determination? How is it different from a discharge upgrade?

A “Character of Service Determination,” or “recharacterization of service,” lets a veteran get benefits that they would otherwise not be able to get due to their discharge status. This is done through the VA. It is separate from the discharge upgrade application process, which is handled by the Discharge Review Board of each service. It may be in your best interests to both apply for a discharge upgrade and request a recharacterization of service.

Note: a successful recharacterization will not change your discharge status.

Who can use this process?

The recharacterization process is for veterans who have an Other-than-Honorable, Uncharacterized, or Bad-Conduct discharge that was not received by a General Court Martial. Veterans who served after 1980 must have served at least two years to be eligible.

Veterans with an Honorable or General-Under-Honorable discharge can already get VA benefits if they meet other criteria.

Veterans with a Dishonorable discharge cannot apply for recharacterization.

How does the recharacterization process work?

When you apply for a benefit you might otherwise not be eligible for, the VA will conduct a review of your service. The VA will then declare you eligible or ineligible for the benefit you requested based on certain standards.

For example, you are ineligible if the VA finds that there was “willful and persistent misconduct.” However, the VA may decide that you are eligible if it finds that:

- any misconduct was “minor” and that your service was “otherwise honest, faithful, and meritorious,” OR
- there were mental health issues that made you act that way (which the VA calls “insanity”).

If this happens, the VA will probably give you access to benefits even though your discharge status has not changed.

Tips and Strategies for the Recharacterization Process

- Apply for a benefit that you would qualify for except for your current discharge status.
 - For example, if you are disabled, you should apply for disability benefits.
- Write a letter explaining why your military record doesn't tell the full story.
 - It may be helpful to bring up PTSD or TBI, if applicable.
 - “My misconduct was not willful...”
 - You can describe any personal problems or stressors that explain your behavior.
 - You can point to commendations or periods of good service
 - “My misconduct was minor....”
 - “My misconduct was over a brief period of time....”
- If you choose to, request a hearing.
 - A hearing is an informal opportunity for you to discuss your story with the VA in person.
 - You can also bring other people, like family or close friends, who can help the VA see your side of things.

Further References

Please see the following excellent resources for more detailed information and assistance.

Connecticut Veterans Legal Center (CVLC) Veterans Discharge Upgrade Manual

- <https://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-20111.pdf>
- **PTSD Supplement:** <https://ctveteranslegal.org/wp-content/uploads/2012/12/Connecticut-Veterans-Legal-Center-Discharge-Upgrade-Manual-November-20111.pdf>

Swords to Plowshares Guide to Upgrading Your Discharge

- <https://www.swords-to-plowshares.org/guides/discharge>

Army Review Boards Agency: Army Discharge Review Board FAQ

- <http://arba.army.pentagon.mil/adrb-faq.cfm>