

Applying for a Discharge Upgrade When You Have PTSD

A Supplemental Guide to the Connecticut Veterans Legal Center's Veterans Discharge Upgrade Manual

This guide provides a roadmap for veterans who have Post-Traumatic Stress Disorder (PTSD) and plan to apply for discharge upgrades to the Boards for Correction of Military Records (Boards). The guide focuses on Vietnam veterans, but it contains information that may be of use to all veterans with PTSD. This guide is not exhaustive. For more in-depth information please see the Connecticut Veterans Legal Center's [Veterans Discharge Upgrade Manual](#).

The Yale Law School Veterans Legal Services Clinic (VLSC) prepared this guide after recent changes in Department of Defense policies. On September 3, 2014, Secretary of Defense Chuck Hagel issued a [Memorandum for Secretaries of the Military Departments \(Hagel Memo\)](#). The Hagel Memo sets forth new guidelines that the Boards should follow in deciding whether to grant discharge upgrades to veterans with PTSD.

DISCLAIMER: This guide is intended as an introductory tool for veterans and advocates representing veterans on how to apply to the Boards in light of the Hagel Memo. This guide does not purport to provide legal advice or to give an opinion as to the appropriate course of action in a particular case. Veterans and advocates should always conduct their own research on the best course of action for their particular case and should always check any information contained in this guide against the relevant statute or regulation to ensure its accuracy.

New Policy: The Hagel Memo

The Memo issued by Secretary Hagel should improve how the Boards evaluate applications that raise PTSD. The disorder was not recognized as a medical diagnosis until 1980. Because PTSD was not recognized when Vietnam veterans served, many veterans received undesirable/other than honorable (OTH) discharges as a result of misconduct attributable to undiagnosed PTSD.

Now that PTSD is a recognized diagnosis, some Vietnam veterans have applied to the Boards for a discharge upgrade, but the Boards have summarily denied over 95% of these applications. The Boards have often denied applications because a veteran's records lack evidence of PTSD at the time of service, even though it would have been impossible for a veteran to have been diagnosed with PTSD before 1980.

The Hagel Memo is intended to promote consistency and more consideration in how the Boards handle claims involving PTSD. If properly applied, the Hagel Memo should ease the application process for veterans.

How the Hagel Memo Works

A copy of the complete Hagel Memo is attached at the end of this guide. We encourage you to read it in full. Below, we highlight some significant changes in the new policy.

Under the Hagel Memo, the Boards are supposed to:

- Give liberal consideration to military records that document symptoms of what is now known as PTSD in determining whether a veteran had PTSD during service
- Give liberal consideration to a PTSD diagnosis from a civilian provider
- Give special consideration to a Department of Veterans Affairs (VA) diagnosis of service-connected PTSD
- Consider whether undiagnosed PTSD contributed to misconduct at the time of discharge
- Liberally waive time limits to consider applications or reconsider prior decisions
- Give applications that involve PTSD timely consideration
- Consult Department of Defense mental health professionals to assess a veteran's claim of PTSD

In light of these instructions, it is wise to submit evidence of PTSD along with your discharge upgrade application. That evidence could include a PTSD diagnosis from a civilian provider or from the VA and any other materials that document symptoms of PTSD. The steps outlined below provide a more detailed description of the forms and evidence you should submit with your discharge upgrade application.

NOTE: *You should mention the Hagel Memo in your Brief when you submit your application to the Boards (see more below).*

Required Paperwork for a Discharge Upgrade Application

To apply for a discharge upgrade, you need to collect and submit a variety of records and documents. Some records requests require responses from the military and may take weeks or months to arrive, so we suggest that you file them before you submit your application, as described in the **First Steps** section. You may access the forms online at http://www.law.yale.edu/academics/vlsc_forms.htm; some of the forms are also contained in the Veterans Discharge Upgrade Manual. You may then follow the guidelines under **Second Steps** to prepare and submit your discharge upgrade application to the Board.

NOTE: *In addition to this step-by-step guide, we encourage you to seek out legal help or other advocacy. StatesideLegal.org provides a searchable database of legal services for veterans. You may also find non-lawyer advocates at local veterans organizations.*



Requesting Your Records

01 FIRST STEPS

Two to five months before you file your application, you should request the following records:

 **Military Records**
(SF Form 180)

Use this form to request your military records. You should request your full records and submit to the Board any papers that document your service in Vietnam.

 **Military Medical Records**
(DD Form 2870)

Submit this form to request your medical records from service. Obtaining a comprehensive set of medical records is extremely important because you want to submit any service records that mention symptoms of what is now recognized as PTSD, as these should be liberally considered under the Hagel Memo.

 **VA Records**

Submit a letter to your regional VA office to request any records that the VA has on file. Submit this letter along with Form 10-5345a, described below.

 **VA Medical Records**
(VA Form 10-5345a)

Submit this form to request any medical records the VA has on file. The letter to the VA does not release medical records, so you need to send this form as well as the letter described above.



Once you have received your records, you should send the Board a packet of materials to request a discharge upgrade. None of these materials, besides the DD Form 149, are required, but your application will be stronger if you can submit as many of the following documents as possible.



DD Form 149

This official form lets the Board know you would like a discharge upgrade.



Post-Service Achievements

We recommend that you include any documents that demonstrate your post-service character, such as:

- Education or employment records (e.g., diplomas, evidence of enrollment in classes)
- Records of your volunteer or charity activities (e.g., newspaper stories that feature something you did for the community)
- Proof of clean criminal record or of rehabilitation after criminal conduct
- Regular participation in religious life
- Other demonstrated service



PTSD Diagnosis

Submit any evidence that you have PTSD. Ideally, that evidence would include a letter from a healthcare provider and medical documents describing your PTSD. The letter should diagnose you with PTSD, connect your PTSD to your service in Vietnam, and if possible connect your PTSD to the misconduct that caused your discharge. With the letter, you should submit any medical documents that your provider gives you.

NOTE: *Under the Hagel Memo, this diagnosis can come from a civilian provider. You do not need a military or VA provider to diagnose you with PTSD, though VA records receive special consideration.*

It is not yet clear how the Boards will implement the Hagel Memo. It is possible that a diagnosis may be viewed more favorably if it comes from a doctor rather than a social worker or psychologist. If you cannot get a diagnosis from a doctor, submit any diagnosis you have. If you have PTSD diagnoses from multiple providers, and they do not conflict with each other, submit all.



Preparing Your Discharge Upgrade Application (Cont'd)



Military Service Records

Include records that show your achievements in the military and, if available, any records that might show you suffered from PTSD during service, such as:

- Records of your Vietnam service, including your DD-214
- Any awards or promotions you received
- Medical records that mention a symptom of PTSD, if available

NOTE: *Since PTSD was not recognized until 1980, service records do not need to say “PTSD.” However, they may document symptoms of PTSD.*

Symptoms include intrusive memories, nightmares, flashbacks, distress after flashbacks, reminders of the traumatic event, forgetting details of the traumatic event, negative beliefs about yourself, blaming yourself or others for the traumatic event, negative beliefs about yourself or the world, diminished interest in activities, feeling alienated, lack of positive emotions, aggressive behavior, reckless behavior, hypervigilance, exaggerated startle response, difficulty concentrating, and sleep disturbance.

If your military records do not include any of these references, you can still submit an application. These references are helpful, but are not necessarily required.



Declarations (“Buddy Statements”)

Declarations are letters from friends, family members, co-workers or supervisors post-service, and from fellow servicemembers or superior officers during service. These people should write about your positive conduct during service and post-service, but they should also describe your struggles with PTSD. We recommend you include as many helpful declarations as possible.

The declarations should support the story you tell in your Brief (see below). For example, if you are arguing that PTSD led to your OTH, you might want to include the following:

- Declarations from servicemembers and superior officers that say you were a successful servicemember (e.g., awards you won, promotions you received, positive acts you performed, etc.), but your behavior changed after a traumatic event, consistent with symptoms of PTSD
- Declarations from friends and family who can talk about your good character (e.g., how you love your family, provide for your family, etc.) yet who also noticed changes in your behavior from before and after service, consistent with symptoms of PTSD
- Declarations from co-workers or supervisors who say that you have been a great employee (e.g., examples of tasks you have performed well, promotions/pay raises you have received, etc.)
- Declarations from community members who can discuss your involvement as a community volunteer or as member of your church, temple, synagogue, or mosque



“Brief” (Your Personal Statement)

The Brief is your letter to the Board that ties together all of the documents you submit. In the Brief, you tell the Board why you want and deserve a discharge upgrade and connect your reasoning to the documents you submitted. We recommend that you discuss the following in the Brief, to the extent that each is applicable to your case:

- Positive aspects of your military service (e.g., awards, promotions, etc.)
- Statement of remorse. If true, you should express remorse and take responsibility for the misconduct that led to your discharge, but stress how PTSD and any other mitigating factors contributed to your misconduct.
- Statement of rehabilitation. It is always good to describe any evidence that shows your good character post-service. The Boards want to see that you have acted honorably since leaving the military, despite your struggles with PTSD. You may wish to note any declarations you have submitted that attest to your post-service character.
- Mitigating factors that are connected to the misconduct that led to your discharge. In this section, you can describe your PTSD, when and how you believe you developed it, and how you believe it contributed to your discharge. If true, we recommend you state that your PTSD arose or was aggravated during service, and that it was related to the conduct that led to your discharge, even if there was a delayed onset, as is common with PTSD. If your medical diagnosis and service records show this connection, or if declarations from servicemembers/superior officers discuss PTSD, you should refer to these documents.

NOTE: *We suggest you explicitly state that the Boards, because of the Hagel Memo, should “liberally consider” any PTSD diagnosis you received from a civilian provider and should give “special consideration” to VA determinations related to PTSD.*

Conclusion

We hope this supplement to the Veterans Discharge Upgrade Manual in light of the Hagel Memo helps you prepare an effective discharge upgrade application. Please read the Manual in full for more information. This supplement is meant to highlight the important parts of a discharge upgrade application, but is not exhaustive. For further information and resources, please visit http://www.law.yale.edu/academics/vlsc_ptsd.htm.