



# CLAIMS FOR VA BENEFITS AND CHARACTER OF DISCHARGE

## GENERAL INFORMATION

### Claims for VA Benefits and Character of Discharge

Basic eligibility for Department of Veterans Affairs (VA) benefits depends upon the type of military service performed, the duration of the service, and the character of discharge or separation. VA looks at the “character of discharge” to determine whether a person meets the basic eligibility requirements for receipt of VA benefits under title 38 of the United States Code. Any discharge under honorable conditions satisfies the character of discharge requirement for basic eligibility for VA benefits. Certain types of discharges, along with the circumstances surrounding those discharges, bar an individual from basic eligibility for VA benefits. Other types of discharges require VA to make a character of discharge determination in order to assess basic eligibility for VA benefits.

**Q: What criteria does VA use to determine the character of discharge with respect to eligibility for VA benefits?**

A: A discharge characterized by the military as under honorable conditions is binding on VA and allows for VA to provide benefits if other eligibility requirements are met. If a discharge was not characterized as under honorable conditions, benefits are not payable unless VA determines the discharge was “under conditions other than dishonorable.” By law, certain situations resulting in a discharge under less than honorable conditions constitute a legal bar to the payment of benefits.

**Q: What situations constitute a statutory bar to the payment of VA benefits?**

A: Under the law (38 U.S.C. § 5303), a release or discharge for any of the following reasons constitutes a statutory bar to benefits, unless it is determined that the Servicemember was insane at the time he/she committed the offense that resulted in the discharge:

- sentence of a general court-martial
- being a conscientious objector who refused to perform military duty, wear the uniform, or otherwise comply with lawful orders of competent military authority

Disabilities determined by VA to be related to your military service can lead to monthly non-taxable compensation, enrollment in the VA health care system, a 10-point hiring preference for federal employment and other important benefits. Ask your VA representative or Veterans Service Organization representative about Disability Compensation, Pension, Health Care, Caregiver Program, Career Services, Educational Assistance, Home Loan Guaranty, Insurance and/or Dependents and Survivors' Benefits.



U.S. Department of Veterans Affairs



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- desertion
  - resignation by an officer for the good of the service
  - absence without official leave (AWOL) for a continuous period of 180 days or more, without compelling circumstances to warrant such prolonged unauthorized absence (as determined by VA).
  - requesting release from service as an alien during a period of hostilities, or

This means that if an individual is discharged for any of the above reasons, the law prohibits VA from providing any benefits.

**Q: Are there other situations, in addition to the statutory bars, in which the nature of discharge may prevent payment of VA benefits?**

A: Yes. As established by VA regulation 38 CFR § 3.12(d), an individual's character of discharge is considered to have been issued "under dishonorable conditions" if he/she was released under any of the following circumstances:

- acceptance of an undesirable discharge to escape trial by general court-martial
- mutiny or spying
- an offense involving moral turpitude (generally including conviction of a felony)
- willful and persistent misconduct, or
- homosexual acts involving aggravating circumstances or factors affecting the performance of duty, e.g. child molestation, homosexual prostitution, homosexual acts or conduct accompanied by coercion or assault, and homosexual acts or conduct when a service member has taken advantage of his or her superior rank, grade, or status.

Before making a character-of-discharge determination, VA reviews facts and circumstances surrounding the incident(s) that led to the discharge, as reported by the military, as well as any supporting evidence furnished by the claimant or obtained from third parties. On a case-by-case

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basis, VA determines whether the incidents that led to the discharge may be found to have been “under conditions other than dishonorable,” and thus whether basic eligibility for VA benefits can be established.

**Q: What if the individual in question had more than one period of active military service?**

A: A discharge found by VA to have been issued under dishonorable conditions does not, in and of itself, bar an individual from receiving VA benefits based on a separate period of service which terminated under honorable conditions. In addition, the law provides for basic eligibility for benefits based on completion of the full term of an enlistment even if no discharge was issued at the completion of that period of service due to enlistment or reenlistment. For example, if an individual enlisted for three years, completed the three years and reenlisted for two more years, then received a discharge under other than honorable conditions during the second enlistment, VA benefits may be provided based on the first period of service, even if it is determined that the character of discharge of the second period of service is a bar to benefits. However, disability compensation would be payable only for disabilities incurred during the first period of service, not for disabilities that were incurred during the second period of service.

**Q: Are VA health care benefits available when disability compensation cannot be paid due to a discharge “under other than honorable conditions”?**

A: Yes, in some situations: If an individual received a discharge “under other than honorable conditions,” he or she may still be eligible for treatment at a VA medical facility for disabilities determined to be service connected, unless the individual is subject to one of the statutory bars to benefits specified in 38 U.S.C. § 5303.

**Q: When does VA consider the character of discharge?**

A: VA does not consider character of discharge until it receives a claim for benefits. A claim for benefits may be in the form of a request for medical treatment received at a VA medical facility, or it may be an application for compensation or pension received at a VA regional office. VA cannot make a final decision regarding entitlement to benefits until the character-of-discharge issue is resolved.

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**Q: How is an application for benefits submitted to VA?**

A: An individual may visit a VA medical center to apply for medical treatment or may apply on-line, by mail, or over the phone. If available records do not show a discharge under honorable conditions, the medical center may defer treatment pending a decision by the local VA regional office regarding the character of discharge, although emergency treatment may be provided based on a tentative determination of eligibility.

A claim for compensation for service-connected disabilities is normally submitted to a VA regional office, using an application form. Claimants may apply online through eBenefits, or they may mail the application or personally deliver it to a VA office.

**Q: How are claims involving a character of discharge issue processed?**

A: VA submits a request to the appropriate service department for verification of an individual's character of discharge and facts and circumstances surrounding the incident(s) resulting in the discharge. Simultaneously, VA sends a letter to the claimant asking the claimant to furnish any evidence or statements pertaining to the discharge

When requested Federal and/or private records have been received, or efforts to obtain them have been exhausted, VA reviews all available evidence of record to determine whether the discharge was "under conditions other than dishonorable". VA then documents its determination in a format referred to as an administrative decision.

**Q: How is the evidence obtained?**

A: VA requests relevant service records, to include facts and circumstances surrounding the incident(s) resulting in the discharge, from the appropriate service department. VA concurrently sends a letter to the claimant, which invites him/her to furnish any statements or evidence that may shed light on any extenuating circumstances regarding the other-than-honorable discharge. The claimant typically submits evidence via mail or hand delivers it to a VA office. A claimant may also request a hearing for the purpose of presenting evidence. The hearing is held at a VA regional office.

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VA also offers assistance to the claimant for obtaining third-party evidence. The claimant must provide a signed release of information, the name and mailing address of the third party, and the type of information to be released. While it is still the claimant's responsibility to ensure the evidence is provided, VA will use the release of information and attempt to obtain evidence on behalf of the claimant.

**Q: What does VA consider when determining the character of discharge or whether there is a bar to benefits?**

A: VA reviews military service records, including facts and circumstances surrounding the incident(s) leading to the discharge. VA also considers the following when making its determination:

- \* any mitigating or extenuating circumstances presented by the claimant
- \* any supporting evidence provided by third parties who were familiar with the circumstances surrounding the incident(s) in question
- \* length of service
- \* performance and accomplishments during service
- \* nature of the infraction(s), and
- \* character of service preceding the incident(s) resulting in the discharge.

**Q: Do in-service disabilities, including post-traumatic stress disorder, have any direct effect on VA's determination of the character of discharge?**

A: As stated earlier, VA considers whether an individual was insane when determining whether a statutory bar to benefits exists. When no statutory bar to benefits exists, the impact of disabilities may be considered during the analysis of any mitigating or extenuating circumstances that may have contributed to the discharge.

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