



VA BENEFITS WITHOUT THE DOD DISCHARGE UPGRADE:

THE VA'S CHARACTER OF DISCHARGE REVIEW PROCESS

— BY: CATHY MARCELLO —

We are all too familiar with the arduous process of upgrading a less than honorable discharge that occurred before and during the policy known as “Don’t Ask, Don’t Tell” (DADT). Estimates suggest that at least 14,000 LGBTQ service members were kicked out under DADT and only 1,242 have since been upgraded to honorable. A recent CBS News piece entitled, [“Vets kicked out for being gay still fighting for honorable discharges years later,”](#) highlighted veterans who have fought for over a decade to upgrade their discharges without success. Further complicating the process for many former service members, is that their discharge doesn’t explicitly say “homosexual conduct” but instead is hidden behind other terms used to push service members out, such as “willful misconduct.”

Ironically, behaviors viewed as “willful misconduct” were often related to the

psychological stressors of abuse, rejection, and life in the closet. While the White House and members of Congress have recently vowed to look into the backlog, the VA has a system in place that already takes into account extenuating circumstances that may have led to a less than honorable discharge so that veterans in need of services and deserving of benefits can get them - it’s called the VA Character of Discharge (COD) Determination review.

The Veterans Benefits Administration (VBA) is working collaboratively with the Veterans Health Administration (VHA) to increase awareness for Veterans with Other than Honorable Discharges (OTH), seeking to educate on eligibility for benefits and services, despite the COD assigned at separation. Despite this effort, many still need to be made aware they may be eligible for benefits. Below the VA answers questions about the process.



Q&A

Q: What is the VA doing to assist Veterans with OTH discharges that might have occurred under DADT?

A: Even with a less than honorable discharge, a former service member may be able to access some VA benefits through the character of discharge (COD) review process. When they apply for VA benefits, the VA will review their record to determine if their service was “honorable for VA purposes.”

Q: What are the benefits/limits of a VA character of review upgrade

A: Too often, Veterans are either told incorrectly or self-select away from the VA, thinking that an OTH discharge makes them ineligible for VA benefits and services. Yet, in many instances, they may still be found eligible to receive healthcare and/or benefits.

It is important to note that COD determinations made “for VA purposes” only do not change individuals’ official records provided by their branch of service, such as their DD-214. However, a former service member can ask for a VA COD review while at the same time applying for a discharge upgrade from the Department of Defense (DoD) or the Coast Guard. You can learn how to apply for a discharge upgrade using the VA Upgrade Wizard.

As a result of the COD determination being “for VA purposes” only, the GI Bill is not included in the benefits restored.

Q: What is the process for a character of discharge review? How should a veteran get the process started and completed?

A: VA only considers COD once it receives a claim for benefits. A claim for benefits may be in the form of:

1. A request for medical treatment received at a VA medical facility,
2. An application for compensation or pension received at a VA regional office or online at va.gov.

VA can only make a final decision regarding entitlement to benefits once the COD adjudication is resolved.

An individual may visit a VA medical center to apply for medical treatment or may apply online, by mail, or over the phone. For more information, visit:

- ♦ [Other Than Honorable \(OTH\) Discharge. \(va.gov\)](#)
- ♦ [How To Apply For VA Health Care | Veterans Affairs](#)

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 COD, although emergency treatment may be provided based on a tentative determination of eligibility.

A claim for compensation for service-connected disabilities or pension can be submitted online, by mail, in person, or through an accredited VA representative. For more information, visit:

- ♦ [How To File A VA Disability Claim | Veterans Affairs](#)
- ♦ [Apply For Pension Benefits | Veterans Affairs \(va.gov\)](#)

Once VA receives a claim for benefits, and it



- appears a COD determination is needed:
1. 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.
 2. Simultaneously, VA sends a letter to the claimant asking the claimant to furnish any evidence or statements pertaining to the discharge.
 3. The claimant typically submits evidence via mail or hand delivers it to a VA office.

4. A claimant may also request a hearing for the purpose of presenting evidence. The hearing is held at a VA regional office.
5. 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.
6. VA then documents its determination in a format referred to as an administrative decision.

COD REVIEW AT A GLANCE

- ✓ Make a claim
- ✓ When you get a quick response noting your less than honorable discharge, request an Administrative Review
- ✓ Request a hearing (this allows the you to speak about why the discharge was wrong)
- ✓ Provide evidence of extenuating circumstances
- ✓ The benefits will be backdated to the original claim date
- ✓ Work with your local Veteran Service Officer as a team; they can help you navigate the process

Q: What evidence is needed/helpful to provide?

A: The claimant can furnish any evidence or statements pertaining to the discharge, such as witness statements and evidence that shed light on the extenuating circumstances.

Q: How long does the process take?

A: In FY 2023, as of COB 05/04/2023, the average days to complete a COD claim is 233.3 days.





“A SPEEDIER WAY TO BENEFITS.”

Q: At what rate does the VA grant access to benefits for Veterans with OTH discharges after a review?

A: Over the past three years, VA’s eligibility determination rate for OTH Veterans has been above 72% in granting Veterans access to benefits and/or healthcare.

Q: What else should Veterans should know about this process?

A: VA continues to encourage Veterans to apply, no matter what, and let the VA determine eligibility. In addition to education and increased awareness, VBA continues to work on expanding access and is currently reviewing regulatory bars to benefits through rulemaking. Work on regulation updates is ongoing.

Suppose a former service member needs mental health services related to PTSD or other mental health problems linked to their service (including conditions related to an experience of military sexual trauma). In that case, they may qualify for VA health benefits immediately, even without a VA Character of Discharge review or a discharge upgrade.

Use Your Local VSO as a Resource

If this process sounds daunting, remember that you’re not alone. Your local Veteran Service Officer (VSO) can walk you through the process. Consider them a member of your team; they can provide input on what evidence might help in your particular case and can provide the DOD administrative records the VA has collected on your case so that you will be able to speak to what’s in them.

Less than honorable discharges related to a service member’s gender or sexual identity deserve to be upgraded more promptly. This VA COD review does not right the wrongs done, but represents a significantly speedier avenue to benefits while we wait for the DOD discharge upgrade process to improve.

For more information, please visit [Applying for Benefits and Your Character of Discharge - Veterans Benefits Administration \(va.gov\)](#) and [Other Than Honorable \(OTH\) Discharge. \(va.gov\)](#). ★



Cathy Marcello (she/her) is an ally, an Army brat and veteran spouse. She currently works as a program director at Modern Military Association of America’s MilPride Program. MilPride works to support the LGBTQ children of military families. She is passionate about advocating for LGBTQ youth and creating a world where trans kids are loved and safe. She has a BA in Archaeology and Anthropology and has been coordinating projects and leading volunteers in the nonprofit world for many years.

