

**RESTORING HONOR TO VETERANS WITH INVISIBLE INJURIES**

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*"The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of earlier wars were treated and appreciated by our nation." -- George Washington*

**Author's note, added July 2020:**

This report is meant to explain the often misunderstood subject of "bad-paper discharges" and the catastrophic effects that they have on veterans' lives. Although this report was prepared in 2015, the systemic failures and injustice that are discussed within remain virtually unchanged.

The bottom line: the military and VA have stripped hundreds of thousands of veterans of earned benefits, and in many cases, these lifetime punishments are issued as a result of the expression of symptoms of post-traumatic stress disorder and related conditions.

## EXECUTIVE SUMMARY

As a result of the systemic under-diagnosis of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and other service-related physical and mental health illnesses and injuries such as military sexual trauma (MST), thousands of service members have been unjustly discharged from the United States armed forces in a manner that makes them ineligible for veterans' benefits. Due to their physical and psychological symptoms and the nature of their separation from the military, veterans with "less-than-honorable" discharges are often socially isolated from the military and veterans community, and are more likely to be homeless,<sup>1</sup> suffer from substance abuse,<sup>2</sup> go without treatment for physical and mental injuries,<sup>3</sup> become incarcerated,<sup>4</sup> and die by suicide.<sup>5</sup>

Although rules vary by service branch, most enlisted troops who have served fewer than six years can be administratively separated by their commanders without the right to a hearing prior to their discharge.<sup>6</sup> According to data from the Military One Source 2013 Demographics Report, over 40% of active-duty troops fall within this category of having fewer than six years in service.

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<sup>1</sup> Gundlapalli, Adi V., Jamison D. Fargo, Stephen Metraux, Marjorie E. Carter, Matthew H. Samore, Vincent Kane, and Dennis P. Culhane. "Military Misconduct and Homelessness Among US Veterans Separated From Active Duty, 2001-2012." *JAMA* 314, no. 8 (2015): 832.

<sup>2</sup> Tanielian, Terri, and Lisa H. Jaycox. "Invisible Wounds of War Psychological and Cognitive Injuries, Their Consequences, and Services to Assist Recovery: Summary." *Center for Military Health Policy Research*, 2008. doi:10.1037/e527612010-001

<sup>3</sup> Moulta-Ali, Umar, and Sadath Viranga Panangala. "Veterans' Benefits: The Impact of Military Discharges on Basic Eligibility." *Congressional Research Service*, March 6, 2015. <https://www.fas.org/sgp/crs/misc/R43928.pdf>.

<sup>4</sup> Armed Forces & Society Volume 33 Number 3 April 2007 337-350 © 2007 Inter-University Seminar on Armed Forces and Society.

<sup>5</sup> Reger, Mark A., Derek J. Smolenski, Nancy A. Skopp, Melinda J. Metzger-Abamukang, Han K. Kang, Tim A. Bullman, Sondra Perdue, and Gregory A. Gahm. "Risk of Suicide Among US Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation From the US Military." *JAMA Psychiatry* 72, no. 6 (2015): 561. doi:10.1001/jamapsychiatry.2014.3195.

<sup>6</sup> Army Regulation 635-200, 13-8b, [http://www.apd.army.mil/jw2/xmldemo/r635\\_200/head.asp](http://www.apd.army.mil/jw2/xmldemo/r635_200/head.asp)

<sup>7</sup> In 2014, the Department of Defense (DoD) released records indicating that 13% of post-9/11 veterans, roughly 318,000, received a less-than-honorable discharge between fiscal years (FY) 2000–2013.<sup>8</sup> Since January 2009, the Army has separated at least 22,000 combat veterans who had been diagnosed with mental health disabilities or TBI for alleged misconduct, despite reforms intended to halt the administrative separations of veterans suffering from service-related conditions.<sup>9</sup>

All veterans who suffer from service-related physical and mental illnesses, injuries and disorders, who have less-than-honorable discharges should be granted the right to a fair, evidence-based discharge appeal process. This process should fully consider the affected veterans' entire medical history, giving special consideration to diagnoses for conditions which began during the time in service, but were diagnosed after separation. This will allow them to obtain the benefits designed to help returning troops recover and successfully transition back into civilian society. Efforts should be made not only to reform the discharge review process for those who apply to review boards in the future, but also to seek out all of those veterans who are eligible in a way that fully educates them on how to file a successful claim. Veterans who were previously denied relief by the boards under obsolete standards should be made eligible for a new review, and provided the appropriate materials that would help them to file a successful claim.

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<sup>7</sup> Military One Source, 2013 Demographics Report

<http://download.militaryonesource.mil/12038/MOS/Reports/2013-Demographics-Report.pdf>

<sup>8</sup> Carney, Jordain. "The Veterans No One Talks About." National Journal. September 14, 2014. Accessed December 21, 2015. <http://www.nationaljournal.com/defense/2014/09/14/Veterans-No-One-Talks-About?mref=scroll>

<sup>9</sup> Zwerdling, Daniel. "Missed Treatment: Soldiers With Mental Health Issues Dismissed For 'Misconduct'" NPR. December 4, 2015. Accessed December 21, 2015.

<http://www.npr.org/2015/10/28/451146230/missed-treatment-soldiers-with-mental-health-issues-dismissed-for-misconduct>.

## BACKGROUND: WHY DOES THIS HAPPEN?

In an effort to quickly remove service members who maintain a “non-deployable” status due to illness or injury, rather than endure the lengthy process of medical retirement, the military has instead improperly used administrative discharges in a manner that has denied service members the economic, educational, and medical support to which they should be entitled. These administrative discharges typically fall under the broad categories of “preexisting conditions,” “convenience of the government,” or “misconduct,” and have resulted in veterans’ discharge characterizations being below “Honorable.” “Less-than-honorable” discharges limit or eliminate the federal and state benefits available to veterans upon separation from the military,<sup>10</sup> which are critical to their reintegration into society after their service. Instructors at the United States Army Judge Advocate General’s School, wrote in the Winter 2012 issue of *Military Law Review* that “enough data now exist to conclude that *the military has essentially criminalized mental illness in many instances*—and a very predictable type of mental illness at that [emphasis added].”<sup>11</sup>

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<sup>10</sup> Types of military discharges include: Honorable Discharge, General Under Honorable Conditions Discharge, Other Than Honorable (OTH) Discharge, Bad Conduct Discharge, Dishonorable Discharge, and Entry-Level Separation. Honorable, General, OTH discharges and Entry-Level Separations can be issued administratively by military commanders without the service-member having an opportunity to formally appeal the discharge before it is processed. Bad Conduct and Dishonorable discharges can only be issued as a result of a Court Martial. Honorable discharges are the most commonly issued type of discharge for troops who have served a full term of service or are medically retired. Veterans with General discharges are automatically eligible for all VA benefits with the exception of “GI Bill” educational assistance programs. Eligibility for VA benefits for veterans with Other Than Honorable discharges is determined by the “character of service” listed on discharge paperwork. Veterans who receive a Bad Conduct discharge as a result of a General Court Martial, and veterans with Dishonorable Discharges are excluded from all VA benefits, by law. Veterans with OTH and Bad Conduct Discharges as a result of a Special Court Martial can apply for a “characterization of discharge review” through the VA appeals board in order to petition for increased access to benefits. Moulta-Ali, Umar, and Sadath Viranga Panangala. “Veterans’ Benefits: The Impact of Military Discharges on Basic Eligibility.” *Congressional Research Service*, March 6, 2015. <https://www.fas.org/sgp/crs/misc/R43928.pdf>.

<sup>11</sup> Brooker, John W., Major, Evan R. Seamone, Major, and Leslie C. Rogall, Ms. “BEYOND “T.B.D.”: UNDERSTANDING VA’S EVALUATION OF A FORMER SERVICEMEMBER’S BENEFIT ELIGIBILITY FOLLOWING INVOLUNTARY OR PUNITIVE DISCHARGE FROM THE ARMED FORCES.” *Military Law Review* 214 (2012): n. pag. Print.

According to the VA, as many as 20% of Iraq and Afghanistan veterans have experienced PTSD, and up to 30% of Vietnam veterans have suffered from PTSD at some point in their lives.<sup>12</sup>

Veterans with less-than-honorable discharges are often referred to as having received “bad paper” discharges.

The designation of administrative discharges when rehabilitation or medical retirement would have been more appropriate spans all generations of veterans, especially for veterans who served before the diagnosis of PTSD was included in the third edition of the Diagnostic Statistical Manual (DSM-III) by the American Psychiatric Association in 1980.<sup>13</sup> In times of active military conflict when the operations tempo is high, commanders have an incentive to use relatively quick and easy administrative separations to remove non-deployable service members so that they can receive new, deployable troops into the unit. In times when the military is forced to downsize due to congressional budgeting, administrative discharges become a common tool that commanders utilize to help them reach their lower target numbers.

Many commanders and troops, despite counseling requirements and judge advocate general officers (military lawyers) being involved in discharge proceedings, wrongfully believe that less-than-honorable discharges are automatically upgraded to Honorable after a period of six months. Therefore, the assumption is that a punitive discharge is a temporary punishment, and that the veteran will be made eligible for VA benefits without even needing to file an appeal.

This belief is so common that the Army Discharge Review Board has had to address the issue on

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<sup>12</sup> Friedman, Matthew J., MD, PhD. "PTSD: National Center for PTSD." PTSD History and Overview -. Accessed December 22, 2015. <http://www.ptsd.va.gov/professional/PTSD-overview/ptsd-overview.asp>.

<sup>13</sup> Izzo, Rebecca. "In Need of Correction: How the Army Board for Correction of Military Records Is Failing Veterans with PTSD." *The Yale Law Journal* 123, no. 5 (March 2014). Accessed January 31, 2016. <http://www.yalelawjournal.org/comment/in-need-of-correction-how-the-army-board-for-correction-of-military-records-is-failing-veterans-with-ptsd>.

its website by clarifying to potential applicants that “there is no automatic upgrade of a discharge after six months or any other time period.”<sup>14</sup> Troops who believe the automatic upgrade to be true may choose not to defend themselves, seek representation, or seek redress until it is too late. Commanders who believe this to be true may not be able to fully consider the effects on the individual for whom they are recommending a discharge.

The long-term damage done to veterans who are inappropriately discharged is often hidden from their former commanders due to the nature of separation isolating the affected veterans. The Department of Defense (DoD) has a financial incentive to use administrative separations to discharge service members, and to maintain the characterization of discharge for veterans with less-than-honorable discharges, as both medical retirement and regular retirement impose costs on the DoD budget for the lifetime of the veteran. By avoiding the practice of issuing medical or regular retirement, the DoD is completely absolved from the responsibility of caring for the veteran.<sup>15</sup> Veterans who after receiving a less-than-honorable discharge are granted a retroactive medical retirement date may be entitled to backpay that is paid by the Defense Finance and Accounting System (DFAS).<sup>16</sup>

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<sup>14</sup> Army Review Boards Agency. "Army Discharge Review Board." Army Discharge Review Board - Frequently Asked Questions. Accessed December 21, 2015. <http://arba.army.pentagon.mil/adrb-faq.cfm>.

<sup>15</sup> Kors, Joshua. "How Specialist Town Lost His Benefits." The Nation. March 29, 2007. Accessed December 21, 2015. <http://www.thenation.com/article/how-specialist-town-lost-his-benefits/>.

<sup>16</sup> Army Review Boards Agency. "The Army Board for Correction of Military Records - Frequently Asked Questions." Army Board for Corrections of Military Records - Frequently Asked Questions. Accessed December 21, 2015. <http://arba.army.pentagon.mil/abcmr-faq.cfm>.

## TYPES OF REVIEW BOARDS: WHAT MAKES THEM DIFFERENT?

Each branch of the military has two types of review boards that have the ability to upgrade discharges. Each has its own limitations and authorized powers. The Discharge Review Board (DRB) is the first level at which a veteran can appeal, if the veteran has been discharged within the previous 15 years, and without having been discharged due to a general court-martial. The purpose of the review by the DRB is to:

*... determine if the discharge was granted in a proper manner, i.e. in accordance with regulatory procedures in effect at the time, and that it was equitable, i.e. giving consideration to current policy, mitigating facts, and the total record [emphasis added]. The objective of the Army Discharge Review Board (ADRB) is to examine an applicant's administrative discharge and to change the characterization of service and/or the reason for discharge based on standards of equity or propriety...The ADRB is not authorized to revoke any discharge, to reinstate any person who has been separated from the Army, or to recall any person to active duty. Bad-conduct discharges given as a result of a special court-martial may be upgraded only on the basis of clemency.<sup>17</sup>*

At this time, most post-9/11 veterans who have received less-than-honorable discharges are eligible to appeal to the DRBs. The applicant may request from the DRBs a change in reason for discharge, or a change in character of discharge.<sup>18</sup> While the character of discharge — Honorable, General Under Honorable Conditions, Other Than Honorable, Bad Conduct Discharge and Dishonorable Discharge — is what determines eligibility for veterans benefits, the

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<sup>17</sup> Army Review Boards Agency. "Army Discharge Review Board." Army Discharge Review Board - Overview. Accessed December 21, 2015. <http://arba.army.pentagon.mil/adrb-overview.cfm>.

<sup>18</sup> *ibid.*

*reason* for discharge can also have a tremendous impact on the life of the veteran.<sup>19</sup> Reasons for discharge such as “Homosexual Conduct” or “Personality Disorder” can stigmatize a veteran and make it difficult to fully integrate back into civilian life since employers frequently request the veteran’s DD-214 (discharge paperwork) during the hiring process.<sup>20</sup>

The DoD has openly and wantonly violated the civil rights of veterans protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by including mental health diagnoses such as “personality disorder” and “adjustment disorder” as reasons for separation on tens of thousands of DD-214s.<sup>21</sup>

Generations that served prior to Sept. 11, 2001, and those who were discharged as a result of a general court-martial, must apply to the Boards for Correction of Military Records or Board for Correction of Naval Records (BCM/NR).<sup>22</sup>

*The Army Board for Correction of Military Records (ABCMR) is the highest level of administrative review within the Department of the Army with the mission to correct errors in or remove injustices from Army military records...When necessary, advisory opinions are obtained from other Army staff elements. If an advisory opinion is obtained, it will be referred to the applicant for comment before the application is further considered. In some cases, administrative corrections can be made based on the records and advisory opinions without the need for a Board decision. If the application cannot be resolve [sic] administratively, the Board staff will prepare a brief for the Board’s consideration. The Board will render a decision which is final and binding on all Army officials and government organizations [emphasis added]. When*

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<sup>19</sup> U.S. Congressional Research Service. Veterans’ Benefits: The Impact of Military Discharges on Basic Eligibility (R43928; March 6, 2015), by Umar Moulta-Ali and Sidath Viranga Panangala. Text from: Congressional Research Digital Collection; Accessed: December 21, 2015

<sup>20</sup> Ader, :Melissa, Robert Cuthbert, Kendall Hoechst, Zachary Strassburger, and Michael Wisnie. "Casting Troops Aside: The United States Military’s Illegal Personality Disorder Discharge Problem." *Veterans Legal Services Clinic, Inc.*, March 2012. Accessed December 21, 2015. <http://www.vva.org/Ppersonality-disorder-Documents/WhitePaper.pdf>.

<sup>21</sup> Office for Civil Rights Headquarters, U.S. Department of Health & Human Services. (2013, July 26). Summary of the HIPAA Privacy Rule. Retrieved July 03, 2020, from <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

<sup>22</sup> Chu, David S.C., Under Secretary of Defense (Personnel and Readiness). "Discharge Review Board (DRB) Procedures and Standards." *DoD Instruction 1332.28; April 4, 2004 (see Also DTM-10-22)*, April 4, 2004. Accessed December 21, 2015. <http://www.dtic.mil/whs/directives/corres/pdf/133228p.pdf>.



*directed, corrections will be made to the record and related corrective actions will be taken by the responsible Army or government organization. Applicants may request reconsideration of a Board decision within one year of a decision if they can provide new relevant evidence that was not considered by the Board.*<sup>23</sup>

BCM/NRs are the last available level of appeal under the DoD. While they are authorized to retroactively medically retire a veteran — a process that will initiate back pay for lost benefits — veterans are not able to seek damages from the BCM/NRs.<sup>24</sup> The backlog of cases varies, and is currently estimated to be at least 12 months with an additional 3-4 months for DFAS to issue pay adjustments.<sup>25</sup>

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<sup>23</sup> Army Review Boards Agency. "Army Board for Corrections of Military Records." Army Board for Corrections of Military Records - Overview. Accessed December 21, 2015. <http://arba.army.pentagon.mil/abcmr-overview.cfm>

<sup>24</sup> Army Review Boards Agency. "Army Board for Corrections of Military Records." Army Board for Corrections of Military Records - Frequently Asked Questions. Accessed December 21, 2015.

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

<sup>25</sup> *ibid.*

## CORRECTING DISCHARGES: AN UNREASONABLE BURDEN

Correcting a less-than-honorable discharge is typically a multi-year process that often requires the applicant to seek assistance from private doctors and an attorney in order to gather and present evidence of existing service-related disabilities so that he or she can file an appeal.<sup>26</sup>

Retaining a lawyer and hiring doctors to diagnose and treat PTSD and TBI can be cost prohibitive, especially considering that a less-than-honorable discharge negatively impacts employment prospects for the affected veteran, and can eliminate VA access and disqualify them from much-needed disability compensation. As a result of sequestration, DRBs and BCM/NRs only operate in the Washington, D.C. metro area, so veterans, witnesses and lawyers may need to travel in order to participate in a personal hearing.<sup>27</sup> The overall success rate for veterans applying for PTSD-based discharge upgrades at the Army BCMR was as low as 3.7% recently, even among a self-selecting group of veterans who were confident that they had solid evidence to receive a discharge upgrade.<sup>28</sup> For veterans suffering from PTSD and TBI, this difficult process, which more often than not results in a denial of relief, can exacerbate symptoms. This is especially dangerous for veterans who are ineligible to receive treatment for their conditions due to their discharge status.

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<sup>26</sup> Army Review Boards Agency. "Army Board for Correction of Military Records." Applicant's Guide to Applying to the Army Board for Corrections of Military Records. Accessed December 21, 2015.

<http://arba.army.pentagon.mil/documents/ABCMR%20Applications%20Guide%2020141203.doc>

<sup>27</sup> Yale Law School Veterans Legal Services Clinic, "Addressing the Military Correction Boards' Unfair Treatment of Vietnam Veterans with PTSD," on file with author.

<sup>28</sup> Sidibe, Sundiata, and Francisco Unger. "Unfinished Business: Correcting "Bad Paper" for Veterans with PTSD. The Defense Department's Adjudication of Discharge Upgrade Applications One Year Since Its September 2014 PTSD Directive" (2015): n. pag. *Yale Law School, Reports & Manuals*. Veterans Legal Services Clinic, Sept. 2015. Web. 22 Dec. 2015.

DRBs and BCM/NRs are administrative review panels, not investigative bodies, and are permitted to change the characterization of service and/or the reason for discharge based on “standards of equity or propriety.”<sup>29</sup> Until 2014, DRBs were not required to include a mental health professional (or a physician with special training on mental health), even in cases in which combat-related PTSD and TBI were claimed as primary mitigating factors.<sup>30</sup> (This requirement is the letter of the law; explained below.) BCM/NRs are required only to include the *opinion* of a clinical psychiatrist or psychologist when a veteran has been diagnosed with a mental health disorder during his or her time in service, though a mental health professional is not required to be a voting member of BCM/NRs in cases involving mental health illnesses or injuries.<sup>31</sup> For veterans who are diagnosed with a mental health disorder after their time in service, it is unclear if they receive the same protections. This is especially important for those who served before 1980, when the DSM-III first included PTSD as a legitimate diagnosis.<sup>32</sup> Therefore, the vast majority of Vietnam-era veterans could not have been properly diagnosed during their time in service.

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<sup>29</sup> Army Review Boards Agency. "Army Board for Corrections of Military Records." Army Board for Corrections of Military Records - Overview. Accessed December 21, 2015. <http://arba.army.pentagon.mil/abcmr-overview.cfm>

<sup>30</sup> Public Law No: 113-291, Section 521; Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015

<sup>31</sup> 10 U.S. Code § 1552

<sup>32</sup> Izzo, Rebecca. "In Need of Correction: How the Army Board for Correction of Military Records Is Failing Veterans with PTSD." *The Yale Law Journal* 123, no. 5 (March 2014). Accessed December 21, 2015. <http://www.yalelawjournal.org/comment/in-need-of-correction-how-the-army-board-for-correction-of-military-records-is-failing-veterans-with-ptsd>.

## HISTORY OF BAD PAPER: THE VIETNAM ERA

The use of administrative discharges peaked during the Vietnam War, with as many as 560,000 veterans receiving less-than-honorable discharges during that time.

*Three hundred thousand of these were General Discharges, which have no effect on most benefits but carry a grave stigma and often have adverse effects on employment. The remaining 260,000 were "bad paper" discharges -- wither Other than Honorable (also sometimes termed Undesirable), Bad Conduct, or Dishonorable Discharges. These veterans were "simply cut off from any government help at all, and not even eligible for a civil service job."*<sup>33</sup>

Veterans with less-than-honorable discharges are not only cut off from Department of Veterans Affairs (VA) benefits, but also from services provided by other federal agencies and many state-provided benefits. Although unemployment insurance rules vary state by state, many veterans who receive bad paper discharges are excluded from eligibility for unemployment insurance, which further compounds difficulties associated with integrating back into civilian society.<sup>34</sup> Many Vietnam veterans faced discrimination upon their return to the United States due to their participation in an unpopular war, and those who were branded with a less-than-honorable discharge likely faced further difficulties in finding gainful employment.

Although the psychological effects of participation in war have been documented since as early as Homer's *Odyssey*, it wasn't until 1980 that the DSM-III included the nomenclature "Post-Traumatic Stress Disorder" to fully recognize problematic symptoms of returning war veterans as a legitimate illness. Physical and psychological symptoms that were for hundreds of

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<sup>33</sup> *ibid.*

<sup>34</sup> Department of Veterans Affairs. "Office of Public Affairs." *Federal Benefits for Veterans, Dependents and Survivors* -. Accessed December 22, 2015. [http://www.va.gov/opa/publications/benefits\\_book.asp](http://www.va.gov/opa/publications/benefits_book.asp).

years casually referred to with terms such as “soldier’s heart” or “shell shock” suddenly were recognized as mental illness that was no longer the fault of the individual who suffered the lasting effects of war. Doctor Matthew J. Friedman provides an explanation of the effect that the updated DSM had on perception by the medical community of those who have experienced trauma:

*From an historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."*<sup>35</sup>

When the leading diagnostic manual was updated to show that PTSD symptoms were not the fault of the veterans who were psychologically impacted by war, the military should have enacted immediate reforms to administrative discharge proceedings. Unfortunately, it took over three decades for Congress to demand that the DoD execute policies designed to effectively protect troops who were disabled as a result of their service.<sup>36</sup>

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<sup>35</sup> Friedman, Matthew J., MD, PhD. "PTSD: National Center for PTSD." PTSD History and Overview -. Accessed December 22, 2015. <http://www.ptsd.va.gov/professional/PTSD-overview/ptsd-overview.asp>.

<sup>36</sup> Public Law No: 111-84 Section 512; OCT. 28, 2009 National Defense Authorization Act for Fiscal Year 2010

## HISTORY OF IMPROPER DIAGNOSES: THE POST-9/11 ERA

In 2007–2010, congressional investigations and *The Nation* magazine revealed that the U.S. military had illegally used separations based on personality disorder to deny benefits to injured and PTSD-stricken troops.<sup>37</sup> This congressional oversight review revealed that the diagnosis of personality disorder, which is characterized by the military as a preexisting condition, was inappropriate in many cases.<sup>38,39,40,41</sup> Preexisting conditions are non-compensable disabilities for which a service member can not be medically retired, because they are not considered resulting directly from military service. *The Nation* reported that “[T]he military is purposely misdiagnosing soldiers... and it’s doing so for one reason: to cheat them out of a lifetime of disability and medical benefits, thereby saving billions in expenses.”<sup>42</sup> Although the investigation by *The Nation* focused only on the Army, the problem exposed by *The Nation* is endemic to each of the branches of service.

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<sup>37</sup> Kors, Joshua. "How Specialist Town Lost His Benefits." *The Nation*. March 29, 2007. Accessed December 21, 2015. <http://www.thenation.com/article/how-specialist-town-lost-his-benefits/>.

<sup>38</sup> Ader, :Melissa, Robert Cuthbert, Kendall Hoechst, Zachary Strassburger, and Michael Wishnie. "Casting Troops Aside: The United States Military’s Illegal Personality Disorder Discharge Problem." *Veterans Legal Services Clinic, Inc.*, March 2012. Accessed December 21, 2015. <http://www.vva.org/Ppersonality-disorder-Documents/WhitePaper.pdf>.

<sup>39</sup> Government Accountability Office. "Defense Health Care Additional Efforts Needed to Ensure Compliance with Personality Disorder Separation Requirements." *United States Government Accountability Office*, October 2008. Accessed December 22, 2015. doi:10.1007/springerreference\_34767.

<sup>40</sup> Draper, Debra A. "House Committee on Veterans' Affairs." House Committee on Veterans' Affairs. September 15, 2010. Accessed December 22, 2015. <http://archives.veterans.house.gov/hearings/Testimony.aspx?TID=3192&Newsid=2266&Name=+Debra+A.+Draper%2C+Ph.D.%2C+M.S.H.A.>

<sup>41</sup> United States Government Accountability Office. "Defense Health Care: Better Tracking and Oversight Needed of Servicemember Separations for Non-Disability Mental Conditions." *Defense Health Care: Better Tracking and Oversight Needed of Servicemember Separations for Non-Disability Mental Conditions*, February 2015. Accessed January 22, 2015. <http://www.gao.gov/assets/670/668519.pdf>.

<sup>42</sup> Kors, Joshua. "How Specialist Town Lost His Benefits." *The Nation*. March 29, 2007. Accessed December 21, 2015. <http://www.thenation.com/article/how-specialist-town-lost-his-benefits/>.

In light of these revelations and congressional pressure, the Army updated its policy, significantly reducing the number of soldiers diagnosed with and discharged due to personality disorder. Although the Army never admitted that previous diagnoses were improper, discharges due to personality disorder dropped by 75% between 2008 and 2009. Despite this shift, military doctors thereafter began diagnosing more troops with adjustment disorder, which is also characterized as a preexisting condition.<sup>43</sup>

Adjustment disorder symptoms overlap with those of both PTSD and personality disorder; these include fighting, reckless driving, financial irresponsibility, poor work performance, and self-medicating or destructive behavior such as excessive drinking, drug use, or attempting suicide.<sup>44</sup> When service members experience any of these symptoms, commanders can wrongfully interpret these symptoms as willful misconduct by the affected service member, and quickly remove the service member with a punitive or administrative discharge. Rather than attempt to rehabilitate and medically treat veterans as required by military regulations, the military more often finds it cheaper and administratively more convenient to abandon them in their time of greatest need.<sup>45</sup>

In 2006, 1,453 troops were discharged for adjustment disorder from all service branches. By 2009, that number had grown to 3,844 — an increase of 165%.<sup>46</sup> Although there was a change in

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<sup>43</sup> Ader, :Melissa, Robert Cuthbert, Kendall Hoechst, Zachary Strassburger, and Michael Wisnie. "Casting Troops Aside: The United States Military's Illegal Personality Disorder Discharge Problem." *Veterans Legal Services Clinic, Inc.*, March 2012. Accessed December 21, 2015. <http://www.vva.org/Ppersonality-disorder-Documents/WhitePaper.pdf>.

<sup>44</sup> *Diagnostic and Statistical Manual of Mental Disorders: DSM-5*. Washington, D.C.: American Psychiatric Association, 2013.

<sup>45</sup> Kors, Joshua. "How Specialist Town Lost His Benefits." *The Nation*. March 29, 2007. Accessed December 21, 2015. <http://www.thenation.com/article/how-specialist-town-lost-his-benefits/>.

<sup>46</sup> Kennedy, Kelly. "Discharges for Adjustment Disorder Soar." *Army Times*. August 12, 2010. Accessed December 22, 2015. <http://archive.armytimes.com/article/20100812/NEWS/8120325/Discharges-adjustment-disorder-soar>.

the nomenclature associated with certain discharges, the actual practice of inappropriately discharging troops who had suffered psychological impairment during and as a result of their time in service continued. Therefore, many of these troops were administratively discharged after being found “unfit for service due to a preexisting condition,” despite having years of honorable service before their symptoms manifested themselves. Adjustment disorder and personality disorder are considered by the military to be mental health conditions that exist before entry into military service — unlike PTSD and TBI, which are considered to be the result of combat or trauma incurred as a result of military service, and therefore are considered “service-connected” injuries. By misclassifying a service member as having an adjustment disorder or personality disorder, the military was determining that there had been a preexisting condition even if, in fact, the condition developed during the service member’s time in the military and because of events that affected the service member during the course of it.

The implication for medical benefits is significant with regard to discharges related to preexisting conditions: Veterans with service-connected conditions are entitled to VA medical benefits while *service members with preexisting conditions are not entitled to any benefits* for those conditions. As reported in August 2010 in Army Times:

*According to the psychiatric manual used to diagnose mental health issues, the DSM-IV, Adjustment Disorder occurs when someone has difficulty dealing with a life event, such as a new job or a divorce, or after someone has been exposed to a traumatic event. The symptoms can be the same as for PTSD: flashbacks, nightmares, sleeplessness, irritability, anger and avoidance. According to military and Veterans Affairs Department policy, if those symptoms last longer than six months, the diagnosis should be changed to PTSD. With a PTSD diagnosis, a person may be medically retired with an honorable discharge, a disability rating of at least 50 percent, and medical care.<sup>47</sup>*

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<sup>47</sup> *ibid.*



Subsequent to these studies, the Army has recently taken positive steps to protect service members from receiving improper diagnoses of personality disorder, adjustment disorder, or malingering. In an April 2012 memorandum titled “Policy Guidance on the Assessment and Treatment of Post-Traumatic Stress Disorder (PTSD),” Medical Command Chief of Staff Herbert A. Coley instructed Army commanders and medical personnel to carefully screen soldiers with a deployment history for PTSD before branding them with a lesser diagnosis.<sup>48</sup> Following the VA’s recognition of adjustment disorder as a compensable disability, in October 2013, Army Chief of Staff John M. McHugh instructed Army commanders and medical personnel to recommend soldiers receiving a diagnosis of adjustment disorder to a Medical Evaluation Board (MEB).<sup>49</sup> MEBs are specialized boards that can recommend medical retirement for soldiers who have a diagnosis which interferes with their job performance. Medical retirement typically entitles soldiers to a pension and an honorable discharge, which grants full eligibility for veterans benefits.

In keeping with this new protocol, legislation such as “The Servicemembers Mental Health Review Act” sought to review the more than 31,000 discharges received by veterans due to personality disorder or adjustment disorder between 2001 and 2013, to determine whether they were suffering from PTSD.<sup>50</sup>

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<sup>48</sup> Coley, Herbert A., Medical Command Chief of Staff. “Policy Guidance on the Assessment and Treatment of Post-Traumatic Stress Disorder (PTSD)” *OTSG/MEDCOM Policy Memo 12-035; April 10, 2012*, Accessed December 22, 2015. [http://cdn.govexec.com/media/gbc/docs/pdfs\\_edit/042312bb1.pdf](http://cdn.govexec.com/media/gbc/docs/pdfs_edit/042312bb1.pdf)

<sup>49</sup> Kime, Patricia. "Adjustment Disorder May Now Net Disability Pay." *Army Times*. October 11, 2013. Accessed December 22, 2015.

<http://archive.armytimes.com/article/20131011/NEWS/310110027/Adjustment-disorder-may-now-net-disability-pay>

<sup>50</sup> The Servicemembers Mental Health Review Act, H.R. 975, 113th Cong. (2013). This bill did not pass.

However, the bill failed to protect veterans who received those diagnoses of personality disorder or adjustment disorder after having deployed and who were then administratively or punitively discharged with another narrative reason for separation, such as “misconduct” or “convenience of the government.” The bill stated:

*The Government Accountability Office has found that the regulatory compliance of the Department of Defense in separating members of the Armed Forces on the basis of a Personality Disorder or Adjustment Disorder was as low as 40 percent between 2001 and 2007.*<sup>51</sup>

Noting the adverse consequences that the bill sought to remedy, Army Times reported that “Not only are those veterans denied benefits, but the diagnoses also appear on their discharge papers, which can stigmatize them and make it harder to find civilian employment.”<sup>52</sup> By virtue of this legislation, affected veterans would be able to present testimony from psychiatrists and psychologists to the Physical Disability Board of Review to petition for a correction of military records and the benefits of a medical retirement. However, the bill failed to pass in the 113th Congress.

Legislation such as the Servicemembers Mental Health Review Act are a great start. However, as indicated above, it would have failed to aid thousands of PTSD-afflicted veterans who have received the diagnoses of personality disorder or adjustment disorder after having deployed and who have fallen victim to other forms of administrative discharges, such as “misconduct” or “convenience of the government.”

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<sup>51</sup> *ibid.*

<sup>52</sup> Maze, Rick. "Bill Would Review Discharges for Possible PTSD." Army Times. March 6, 2013. Accessed December 22, 2015.

<http://archive.armytimes.com/article/20130306/NEWS/303060347/Bill-would-review-discharges-possible-PTSD>.

It is for this reason that new, more comprehensive legislation should be proposed to clarify that the review procedures should apply equally to all discharged service members who received a diagnosis of personality disorder or adjustment disorder, especially for those whose symptoms became problematic only after having deployed to combat zones. This would also allow service members with either diagnosis to submit testimony from psychologists and psychiatrists that supports a more accurate diagnosis of PTSD or TBI making them eligible for a change of discharge.

## MILITARY SEXUAL TRAUMA: BETRAYAL WITHIN THE BRANCHES

Those who suffer from MST face complex mental, emotional and physical difficulties as a result of hostile actions not by the enemy, but often their own military superiors and colleagues.

Military sexual trauma is defined as:

*... psychological trauma, which in the judgement of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty, active duty for training, or inactive duty for training.*<sup>53</sup>

Sexual harassment is further defined under the same law as “repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.”<sup>54</sup> The victim need not be in uniform, on base or working when the incident occurred in order to meet the VA’s definition; only on military orders. The identity of the perpetrator, whether military, civilian, or foreign national, also does not matter.

MST is incredibly common for military veterans. According to the VA, 25% of women veterans and 1% of male veterans report incidents that meet the criteria for MST.<sup>55</sup> Women in the military are often assumed to be the only survivors of MST; however, because there are so many more men who serve in the military, the figures above reveal that there are a tremendous number of survivors among both sexes. MST is an “experience,” not a diagnosis, and not all service

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<sup>53</sup> Title 38 U.S. Code 1720D

<sup>54</sup> *ibid.*

<sup>55</sup> Department of Veterans Affairs. *Military Sexual Trauma General Fact Sheet*. QuickSeries Publishing, 2015. Accessed December 22, 2015. [http://www.mentalhealth.va.gov/docs/mst\\_general\\_factsheet.pdf](http://www.mentalhealth.va.gov/docs/mst_general_factsheet.pdf).

members who experience MST suffer any symptoms. Some, however, may exhibit symptoms that make a diagnosis such as severe PTSD appropriate.<sup>56</sup>

MST can affect veterans in a variety of ways, ranging from temporary symptoms that do not significantly impact the individual's life, to debilitating and life-altering effects that could qualify a service member for medical retirement if rehabilitation is determined by commanders to not be feasible. According to the VA:

*Although posttraumatic [sic] stress disorder (PTSD) is commonly associated with MST, it is not the only diagnosis that can result from MST. For example, VA medical record data indicate that in addition to PTSD, the diagnoses most frequently associated with MST among users of VA health care are depression and other mood disorders, and substance use disorders.<sup>57</sup>*

What complicates the issue of MST for many survivors is that the traumatizing experience may involve a person or people whom the survivor works with on a daily basis, and as a result, professional relationships may be a source of long-lasting conflict.

The "Department of Defense Fiscal Year 2014 Annual Report on Sexual Assault in the Military" concludes that despite recent improvements, "more must be done to eliminate the crimes that constitute sexual assault and implement culture change."<sup>58</sup> The DoD estimates that only 25% of incidents are reported. The rising rate of reported incidents of MST indicates a growing trust among MST survivors in the system to protect them after reporting crimes; however, studies

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<sup>56</sup> Department of Veterans Affairs. "Disability Compensation for Conditions Related to Military Sexual Trauma (MST)." April 2015. Accessed December 22, 2015. <http://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/MST.pdf>.

<sup>57</sup> Department of Veterans Affairs. *Military Sexual Trauma General Fact Sheet*. QuickSeries Publishing, 2015. Accessed December 22, 2015. [http://www.mentalhealth.va.gov/docs/mst\\_general\\_factsheet.pdf](http://www.mentalhealth.va.gov/docs/mst_general_factsheet.pdf).

<sup>58</sup> Carson, Brad, Acting Under Secretary of Defense. *Department of Defense Annual Report on Sexual Assault in the Military Fiscal Year 2014*. Department of Defense, 2015. Accessed December 22, 2015. [http://sapr.mil/public/docs/reports/FY14\\_Annual/FY14\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://sapr.mil/public/docs/reports/FY14_Annual/FY14_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf).

indicate that service members are still 12 times more likely to suffer from retaliation after reporting an assault than seeing their offenders convicted.<sup>59</sup>

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<sup>59</sup> Darehshori, Sara. "Embattled." Human Rights Watch. May 18, 2015. Accessed December 22, 2015. <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>.

## **DON'T ASK, DON'T TELL REPEAL: INCREASED BURDEN ON REVIEW BOARDS**

As many as 114,000 service members were discharged for being gay between World War II and 2011, when the repeal of the military's "Don't Ask, Don't Tell" (DADT) policy was enacted.<sup>60</sup>

While the repeal of DADT makes most of these veterans eligible for the honorable discharge and correction to the narrative of separation they deserve, the sheer number of veterans whose cases need to be processed dramatically increases the burden of the review boards. Veterans discharged due to their sexual orientation as far back as the 1950s have struggled without access to VA benefits, and as they age, access to health care becomes ever more critical.

Many veterans discharged because of their sexual orientation who are eligible for discharge upgrades may have difficulty finding the necessary paperwork for an appeal, especially after decades of dealing with the stigma and shame associated with their discharge.<sup>61</sup> While bills such as the Restore Honor to Service Members Act of 2015 would codify into law an appropriate level of fairness and consistency for review board applicants impacted by policies that discriminated against troops according to their sexual orientation, it does nothing to streamline the process so that these reviews become automatic for the affected veterans.<sup>62</sup> According to a briefing prepared by the Army Review Board Agency (ARBA), the ARBA's 14 component boards are authorized to have only 132 personnel (116 civilians and 16 military) to process an average of over 22,600

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<sup>60</sup> Burke, Matthew M. "Senate Bill Would Provide Clean Service Records for Discharged Gay, Lesbian Troops." Stars and Stripes. February 12, 2014. Accessed December 22, 2015. <http://www.stripes.com/senate-bill-would-provide-clean-service-records-for-discharged-gay-lesbian-troops-1.26729>

<sup>61</sup> Philipps, Dave. "Ousted as Gay, Aging Veterans Are Battling Again for Honorable Discharges." The New York Times. September 06, 2015. Accessed December 22, 2015. <http://www.nytimes.com/2015/09/07/us/gay-veterans-push-for-honorable-discharges-they-were-denied.html>.

<sup>62</sup> Restore Honor to Service Members Act, S. 1766, 114th Cong. (2015).

cases per year.<sup>63</sup> Without additional funding and manpower, the increase in the caseload for review boards that has resulted from the repeal of DADT will increase backlogs and delays for all veterans who are appealing discharges, including those suffering from PTSD, TBI, MST, and other service-related conditions.

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<sup>63</sup> Army Review Board Agency Brief, pdf. Fiscal Year 2015 brief on file with author and available for download at <http://arba.army.pentagon.mil/Overview.cfm>



## RECENT REFORMS AND ATTEMPTS AT REFORM

The Military Mental Health Review Board Improvement Act became law as part of the National Defense Authorization Act of 2015.<sup>64,65</sup> This law requires that Boards for Corrections of Military Records receive opinions from mental health professionals, and that Discharge Review Boards include mental health professionals in any appeals related to a veteran's PTSD or TBI.

The original House version of the Clay Hunt Suicide Prevention for American Veterans Act (SAV Act), proposed by Congressman Tim Walz included the following provision to address this issue:

*[This Act requires] a board reviewing the discharge or dismissal of a former member of the Armed Forces whose application for relief is based at least in part on post-traumatic stress disorder or traumatic brain injury related to military operations or sexual trauma, to: (1) review the medical evidence from the VA or a civilian health provider that is presented by the former member; and (2) review the case, with a presumption of administrative irregularity, and place the burden on the VA or DOD to prove, by a preponderance of the evidence, that no error or injustice occurred.<sup>66</sup>*

This provision was stripped from the bill before the final version passed because it mandated a review of discharges and was so broad that it might have repercussions outside of the intended discharge review cases, and the resulting Congressional Budget Office score made the bill cost prohibitive. The SAV Act passed after it was reintroduced without this provision in January 2015.<sup>67</sup>

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<sup>64</sup> S. 2217, 113th Cong. (2014). This bill was enacted as section 521 of the National Defense Authorization Act of 2015, Public Law 113-291.

<sup>65</sup> Section 521, Public Law 113-291.

<sup>66</sup> H.R.5059, 113th Cong., as introduced by Congressman Tim Walz (2014). This version failed to pass, and a similar bill of the same name was introduced as H.R.203, the "Clay Hunt SAV Act" in January 2015 without the provision related to discharge review boards. The Clay Hunt Suicide Prevention for American Veterans Act was enacted as as Public Law 114-2 on February 12, 2015..

<sup>67</sup> Public Law No: 114-2, 114th Cong., the Clay Hunt SAV Act (2015).

This provision has since been modified so that it may be able to pass while maintaining the spirit of the original Clay Hunt SAV Act in the new bill S.1567 (114th Congress) by Senator Gary Peters.<sup>68</sup> This bill would accomplish two noble goals that are applicable to today's understanding of the effects of invisible injuries: It would shift the burden of proof in favor of the veteran in cases involving PTSD and TBI; and, it would for the first time provide veterans who are MST survivors the same considerations before DRBs as those who suffer from PTSD and TBI as a result of contingency operations. This bill does not, however, impact the BCM/NRs. As a result, older generations of veterans would not be afforded the same considerations as newer veterans.

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<sup>68</sup> S.1567, 114th Cong., Introduced by Senator Gary Peters. *“This bill addresses medical evidence reviews in the case of: (1) a former member of the Armed Forces who was deployed in a contingency operation and subsequently diagnosed as suffering from post-traumatic stress disorder or traumatic brain injury as a consequence of such deployment, or (2) a former member whose application for relief from the terms of his or her military discharge is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury related to combat or military sexual trauma. Any board of review shall: review medical evidence of the Department of Veterans Affairs or a civilian health care provider presented by the former member; and review the case with a rebuttable presumption in favor of the former member that post-traumatic stress disorder or traumatic brain injury materially contributed to the circumstances resulting in the discharge of a lesser characterization.”*

## RECOMMENDATIONS

The Military Discharge Review Board Reform bill, S.1567 offers an opportunity for the Senate Armed Services Committee to hold hearings and call for investigations into the Discharge Review Process. If the Armed Services Committee determines that further reforms are necessary, S.1567 can be amended accordingly; or new, more comprehensive legislation can be introduced. Veterans who suffer from invisible injuries that are related to their service deserve better treatment than they are currently receiving from the review boards. These veterans should given the opportunity to heal the wounds they suffered as a result of their service. Recommendations for improving the discharge review process are described below.

1. For applicants with a service-related diagnosis of PTSD or TBI, or a reported MST experience, DRBs should review cases with “a rebuttable presumption in favor of the former member that PTSD or TBI [or MST-related condition] materially contributed to the circumstances resulting in the discharge of a lesser characterization,” as outlined in S.1567, 114th Congress. In the interest of fairness and equal treatment for all generations of veterans, this bill should be amended so that it applies not only to the DRBs, but also the BCM/NRs. This would ensure that the change would apply to veterans discharged at any time, and not just those who were discharged in the previous 15 years.

2. Congress should authorize increased staff levels for the review boards agencies to ensure that every veteran applicant is guaranteed the right to due process. Although these are administrative review boards, and not investigative bodies or courts of law, every effort should be made to

ensure that each case is reviewed carefully and thoroughly, so that all evidence presented in the appeal is fully considered.

3. Congress should require that the review boards agencies publish information about the “training on mental health issues connected with PTSD or traumatic brain injury (as applicable), or special training on mental health disorders” that is required for physicians on boards of review. This training is mandated by the Military Mental Health Review Board Improvement Act, which passed as Section 521 of Public Law No: 113-291.

4. Attorneys and veteran service organizations that assist veterans with discharge upgrade appeals should be fairly compensated by the DoD for their services in support of veterans during discharge appeals. The demand for these services far exceeds the supply of available; properly trained attorneys and veteran service officers, and the amount of time these difficult cases take creates a disincentive for lawyers to provide pro bono services to veterans who are in the greatest need of help.

5. Veterans with less-than-honorable discharges who have been exposed to events while in service that could reasonably be expected to cause MST, PTSD, TBI or other service-related conditions, should be granted limited, free access to the VA for purposes related to diagnosing, treating and establishing evidence of service-related illnesses and injuries.

6. Veterans who file for discharge review appeals with service-related illnesses and injuries suggested as mitigating factors, who have not included proof of a diagnosis, should be contacted with instructions on how to be screened by the VA in order to receive a diagnosis.

6. b. The review board agencies should make every reasonable effort to ensure that applicants are represented by veteran service officers or qualified attorneys who offer services at no cost to the veteran for all appeals.

7. The Washington, D.C.-based review boards should be accessible via secure online video at satellite locations so that veterans can appear “virtually” for personal hearings. Many veterans have difficulty articulating a legal argument in writing for the review boards, and their personal testimony can be invaluable for their case. Allowing for virtual appearance before the boards would grant equal access to veterans across the country, as the current boards result in significant travel and lodging costs to the veteran applicant, witnesses and legal representatives when personal hearings are granted.

8. Online “reading rooms” that are utilized by lawyers for research related to the history of discharge appeals and records corrections are not currently meeting federal standards for accessibility and searchability. This drastically increases the costs to attorneys who choose to represent veterans in discharge appeal cases, and discourages lawyers from offering pro bono services. The DoD should immediately work to meet federal website standards so that attorneys and veterans’ representatives can more easily prepare for discharge appeals.

9. Over 114,000 veterans discharged because of their sexual orientation under “Don’t Ask, Don’t Tell” and similar policies are eligible for upgrades, but are forced into the backlog of discharge appeals and corrections of military records. The DoD should create a separate pipeline to upgrade discharges for these veterans so that DRBs and BCM/NRs are not inundated with cases that do not require a close review.

10. In September 2014, former Secretary of Defense Chuck Hagel issued a memorandum instructing BCM/NRs to apply “liberal consideration” to cases related to PTSD for Vietnam veterans. This change should be codified into law in a way that applies equally to veterans of all generations, and also so that the change is made permanent. Although the Hagel memo focused on BCM/NRs, the instruction should also be applied to DRBs.

11. Congress should instruct the DoD to engage in a public outreach campaign, in partnership with veteran service organizations, to make clear all reforms to the discharge review process.

The Armed Services Committee Senate Report 113-176 states:

*The committee expects that boards for review of discharge or dismissal would consider a new application for relief by a former servicemember when the member's prior application was denied by a board whose membership did not include a clinical psychologist or psychiatrist, or a physician with additional training and experience as required by this provision.*<sup>69</sup>

The DoD should actively seek to encourage veterans who were denied relief by the review boards prior to the reforms to reapply under the new standards. The DoD should provide the affected veterans instructions on how to obtain free representation and assistance so that their appeals include all of the evidence necessary for the review boards to make a fully informed decision.

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<sup>69</sup> S. Rep. No. 113th-176 (2014). Print.

## CONCLUSION

Throughout training, recruits new to the military are told inspirational stories about heroic veterans who have lived by the Warrior Ethos, for the purpose of instilling a sense of duty and loyalty to those with whom they serve. Chief among these decorated heroes are examples such as Audie Murphy, who became a hero during World War II for having placed himself in harm's way, time after time, in order to protect his brothers in combat.<sup>70</sup> The Warrior Ethos teaches:

*I will always place the mission first.*

*I will never accept defeat.*

*I will never quit.*

*I will never leave a fallen comrade.*

After returning from war, Murphy “broke the taboo” of speaking about the long-lasting after effects of war — what was termed “battle fatigue” in his time — and what would later come to be known as PTSD.<sup>71</sup> As the most decorated soldier in U.S. history, he recognized that service to our nation continued long after leaving the battlefield. It is time that Congress, the administration, and the military review boards enact reforms to the discharge review process so that they honor the Warrior Ethos — so that *no veteran is left behind*.

The numbers of troops who suffer from invisible injuries who have been separated for misconduct and under other administrative conditions has been rising at an alarming rate as the military downsizes after over a decade of fighting two wars.<sup>72</sup> Thirteen percent of post-9/11

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<sup>70</sup> "THE AUDIE L. MURPHY MEMORIAL WEBSITE." *America's Most Decorated World War II Combat Soldier*. Audie Murphy Research Foundation, 1996. Web. 24 Dec. 2015.

<sup>71</sup> *ibid.*

<sup>72</sup> Philipps, David. "Other than Honorable Series" *Other than Honorable*. Colorado Springs Gazette, 19-21 May 2013, 7 October 2013. Web. 24 Dec. 2015.

veterans, roughly 318,000, fall within this category of troops who are barred from veterans benefits.<sup>73</sup> Research published in the Journal of the American Medical Association has shown that veterans who receive less-than-honorable discharges are more likely to die by suicide.<sup>74</sup> In 2012, the VA released a suicide data report indicating that as many as 22 veterans die by suicide every day in the United States.<sup>75</sup> What makes this figure even more disturbing, is that it was created using data only from veterans who have registered with the VA for services.<sup>76</sup> Veterans who receive other-than-honorable discharges often do not attempt to register with the VA, and according to a report by the Congressional Research Service, those with dishonorable discharges are not even considered veterans.<sup>77</sup>

To ensure that our nation honors all veterans for their sacrifices, Congress should work with the administration to enact immediate, permanent reforms to the military review board agencies, and apply equally to all generations of veterans. All reforms to the review boards should be fully funded, and review boards should authorize additional training and staff so that backlogs do not leave veterans waiting for unreasonable amounts of time for a fair hearing. Congress should keep

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<sup>73</sup> Carney, Jordain. "The Veterans No One Talks About." National Journal. September 14, 2014. Accessed December 21, 2015.

<http://www.nationaljournal.com/defense/2014/09/14/Veterans-No-One-Talks-About?mref=scroll>

<sup>74</sup> Reger, Mark A., Derek J. Smolenski, Nancy A. Skopp, Melinda J. Metzger-Abamukang, Han K. Kang, Tim A. Bullman, Sondra Perdue, and Gregory A. Gahm. "Risk of Suicide Among US Military Service Members Following Operation Enduring Freedom or Operation Iraqi Freedom Deployment and Separation From the US Military." *JAMA Psychiatry* 72, no. 6 (2015): 561. doi:10.1001/jamapsychiatry.2014.3195.

<sup>75</sup> Kemp, Janet, and Robert Bossarte. *Suicide Data Report: 2012*. Washington, DC: Department of Veterans Affairs, Mental Health Services, Suicide Prevention Program, 2013. VA. Department of Veterans Affairs, 1 Feb. 2013. Web. 24 Dec. 2015.

<sup>76</sup> Basu, Moni. "Why Suicide Rate among Veterans May Be More than 22 a Day - CNN.com." *CNN*. Cable News Network, 14 Nov. 2014. Web. 24 Dec. 2015.

<sup>77</sup> Szymendera, Scott D. "Who Is a "Veteran"?—Basic Eligibility for Veterans' Benefits." *Congressional Research Service* R42324 (2015): n. pag. *Crs.gov*. Congressional Research Service, 15 Aug. 2015. Web. 24 Dec. 2015.



in mind that this issue isn't only one of honoring the sacrifices of veterans, but one of the future of our national security.