

**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

July 8, 2020

Good afternoon Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee. Thank you for the invitation to speak today on the important topic of the Department of Veterans Affairs (VA) character of discharge (COD) determination process. With me today is Mr. Garth G. Miller, FACHE, Executive Director, Member Services, from the Veterans Health Administration (VHA).

Overview

VA reviews an individual's military separation characterization when determining eligibility for VA benefits under title 38 of the United States Code (U.S.C.). To be eligible for most VA benefits, the law requires an individual to be a Veteran. In 1944, Congress determined that for a former Servicemember to be considered a Veteran, he or she must have served in the active military, naval, or air service, and been discharged "under conditions other than dishonorable." At the time of the passage of this law, military discharges and the military justice system were vastly different than they are today. Servicemembers charged with an offense under military law did not have a right to qualified legal counsel, and sometimes military commanders discharged Servicemembers in an inconsistent manner. In response to concerns with the military justice system, Congress gave VA limited authority to determine whether a Servicemember was discharged or released "under conditions other than dishonorable," and could be considered a Veteran for VA benefit purposes. With the passage of the Uniform Code of Military Justice in 1950, Servicemembers have been provided significantly more legal rights. Moreover, with the creation of military Discharge Review Boards, as provided in Public Law 95-126, individuals can request direct review of a discharge to the Service department. The Secretary of a military department, acting through a Board for Correction of Military Review, may also change any military record when necessary to correct an error or remove an injustice. However, despite these improved safeguards, VA's authority to make determinations for VA benefits has remained largely unchanged since 1944.

While VA does have authority to determine whether a former Servicemember can be considered a Veteran for benefit purposes, VA's authority is limited by 38 U.S.C. § 5303. This statute lists several kinds of conduct that are a bar to receiving VA benefits.

Examples of statutory bars to benefits include discharge due to conviction by a general court martial, absence without leave for more than 180 days, or as a conscientious objector.

Unless contrary evidence exists, VA generally considers any discharge “under honorable conditions” as satisfactory for purposes of meeting the basic eligibility for VA benefits. This includes separations of honorable, or general under honorable conditions. However, for certain discharges, such as other-than-honorable, or punitive discharges like bad conduct, or dishonorable discharges, VA must make a factual determination as to whether the discharge is “under conditions other than dishonorable” for VA purposes. As part of this determination, VA claims adjudicators review the facts and circumstances surrounding the incidents that led to the undesirable discharge, as reported by the military, as well as any supporting evidence furnished by the claimant or obtained from third parties. Moreover, when making these determinations, VA resolves reasonable doubt in favor of the Veteran and considers any mitigating or extenuating circumstances, such as family issues, or existence of mental health conditions.

If VA determines an individual’s discharge or dismissal to be disqualifying, he or she may still be entitled to treatment at a VA medical facility for disabilities VA determines to be service-connected, unless the individual is subject to one of the statutory bars to benefits specified in 38 U.S.C § 5303. For example, an individual with an “other than honorable” discharge files a claim for disability compensation for a lower back condition. Even if VA determined that the discharge is disqualifying for Veterans status, as long as there was no statutory bar noted, and the lower back condition was incurred during service, VA may provide medical treatment for the condition.

Statistics

VA has completed approximately 35,000 COD determinations in the last 10 years. These determinations were generally completed because a former Servicemember filed a claim for benefits, such as home loan, insurance, or compensation; or the former Servicemember sought medical treatment at a VA facility. Of these requests, approximately 3,500 discharges were considered honorable for VA purposes and thus qualified for the full range of VA benefits. Moreover, while VA determined that approximately 31,500 discharges did not qualify as honorable for VA purposes, of these discharges, only approximately 10,000 were also disqualifying for medical treatment purposes.

Training and Quality

To ensure COD determinations are made accurately and with sensitivity, VA requires all new Veterans Service Representatives receive a mandatory block of training on this topic. In addition, to ensure that refresher training is available as needed, VA has developed five additional separate training modules on COD determinations.

Because of the complexity and relatively low number of claims that require a COD determination, VA has centralized the processing of these claims to four regional offices (Winston Salem, Nashville, Little Rock, and Muskogee). While this strategy maximizes VBA's operational efficiency, more importantly, it enhances the accuracy and consistency of COD decisions.

In 2015, VA conducted a special focused review (SFR) of COD determinations. The purpose of the SFR was to obtain specific information on the national quality of COD decisions. The accuracy rate was found to be 92.3 percent, which exceeded the non-rating accuracy rate of 91 percent in 2015. Subsequent to the SFR, VA updated training materials in 2016. VA also conducted a separate SFR in 2016, which revealed an accuracy rate of 90 percent. This was slightly above the national non-rating accuracy rate at that time.

Rulemaking

While much of VA's discharge review process is required under statute, VA is looking to improve the process where possible. As such, VA is in the process of updating certain regulatory sections on the criteria used to make formal COD determinations through a proposed rule. In drafting this proposed rule, VA has considered the concerns raised by advocates in the Veterans community. Moreover, VA has worked closely with the Department of Defense to ensure that any new proposed rule will be fair and equitable but still provide the military the tools necessary to enforce good order and discipline. VA is currently coordinating with the Office of Management and Budget in its review of the proposed rule pending publication.

This concludes my testimony. I would be happy to address any questions from Members of the Committee.