

Applying for a Discharge Upgrade When You Have a Mental Health Condition

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

This guide provides a roadmap for veterans with mental health conditions (including Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) and veterans who have experienced military sexual assault or sexual harassment) who plan to apply for discharge upgrades to the Boards for Correction of Military Records (Boards). Since 2014, the Department of Defense has increasingly recognized the disproportionate barriers faced by veterans with these “invisible wounds” who seek a discharge upgrade. The guide focuses on all veterans, regardless of their time in service, whose mental health condition or sexual assault or harassment experience affected their discharge status. 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) initially prepared this guide in 2014 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. CVLC updated this guide in spring of 2018 after two subsequent changes to DoD policy. On February 24, 2016, Acting Secretary of Defense Brad Carson issued another [Memorandum for Secretaries of the Military Departments \(Carson Memo\)](#). The Carson Memo clarifies the Hagel memo and expands its scope to include TBI as a related condition to PTSD. On August 25, 2017, Acting Secretary of Defense Anthony Kurta issued a third [Memorandum for Secretaries of Military Departments \(Kurta Memo\)](#). The Kurta memo further clarifies the Hagel and Carson memos and expands their scope to include veterans with a variety of mental health conditions and those who experienced sexual harassment and assault. If properly applied, these memos should ease the application process for veterans.

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, Carson, and Kurta Memos. 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. A copy of the complete Hagel, Carson, and Kurta Memos are attached at the end of this guide. We encourage you to read them in full. Below, we highlight some significant changes in the new policy.

New Policy: The Hagel Memo

The Hagel Memo aimed to improve how the Boards evaluate PTSD-based applications. The medical community did not recognize PTSD as a medical diagnosis until 1980. Because PTSD was not a diagnosis when Vietnam veterans served, many veterans received less than honorable discharges as a result of misconduct attributable to undiagnosed PTSD.

Prior to the Hagel Memo, the Boards summarily denied over 95% of applications claiming PTSD often because a veteran's records lacked evidence of PTSD at the time of service, even though it would have been impossible for a veteran to have a PTSD diagnosis before 1980. The Hagel Memo was intended to promote consistency and more liberal consideration in how the Boards handle claims involving PTSD.

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

New Policy: The Carson Memo

Although the Hagel Memo did not limit its guidance to Vietnam veterans, or to cases in which the discharge predated the medical community's recognition of PTSD as a diagnosis in 1980, the only time period mentioned in the memo was Vietnam. To clarify, the Carson Memo directed the boards to apply the liberal and special consideration standards to every petition alleging a PTSD-based discharge upgrade claim.

Under the Carson Memo, the boards are supposed to:

- Waive time limits to consider applications or reconsider prior decisions (as compared to the Hagel Memo, which only directs boards to liberally waive time limits)
- Include TBI as a condition related to PTSD
- Review *de novo* (from the beginning) any decision on a PTSD or TBI-based claim from before the Hagel memo, or any case in which the boards did not apply the Hagel standards

New Policy: The Kurta Memo

The Kurta Memo expands the liberal consideration protections started by the Hagel and Carson Memos, broadening the pool of applicable veterans to those suffering from “mental health conditions” rather than just PTSD or TBI, and including those veterans who were victims of sexual assault or harassment. It also explicitly includes the DRBs, and states that both Hagel and Carson Memo standards apply to the DRBs. Finally, it expands all three memos’ coverage to all discharge characterizations, not just other than honorables.

Under the Hagel Memo, the boards routinely rejected mental health related claims if there was no clinical diagnosis. The Kurta memo makes clear that no diagnosis is necessary to show that a mental health condition led to a veteran’s discharge if other sufficient evidence exists. Significantly, the Kurta Memo directly acknowledges that the misconduct leading to the discharge can itself be evidence of the underlying mental health condition. Furthermore, it states that the veteran’s testimony alone is sufficient to establish that the mental health condition existed at, occurred during, or was aggravated by the veteran’s time in service and should mitigate the discharge.

Under the Kurta Memo, the boards are supposed to:

- Apply the liberal consideration standard to veterans with any mental health condition and veterans who have suffered from sexual assault or sexual harassment
- Apply the liberal consideration standard to all discharge upgrade requests, including changes to the reason for separation, the separation code, and the re-enlistment code
- Not require a formal diagnosis to grant a claim liberal consideration

The Kurta Memo also provides four pages of guidance to boards reviewing discharge upgrade requests. It directs the DRBs and BCMRs to consider four main questions when assessing a mental health related claim:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
2. Did that condition exist/experience occur during military service?
3. Does that condition or experience actually excuse or mitigate the discharge?
4. Does that condition or experience outweigh the discharge?

For each question, the memo breaks down different considerations the board should make. As with the Hagel and Carson Memos, we encourage you to read the Kurta Memo in full before you put together your case

NOTE: *You should mention the Hagel, Carson, and Kurta Memos in your Brief when you submit your application to the Boards (see more below).*

Paperwork to Support Your Application

To apply for a discharge upgrade, you need to collect and submit a variety of records and documents. The steps outlined below provide a more detailed description of the forms and evidence you should submit with your discharge upgrade application. 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. Connecticut Veterans Legal Center is a medical legal partnership providing free legal assistance to qualifying Connecticut-based veterans. Please visit our website: ctveteranslegal.org for more information. StatesideLegal.org provides a searchable database of legal services for veterans. You may also find non-lawyer advocates at local veterans organizations.*



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.



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.



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 mental health condition (including PTSD and TBI), sexual assault, or sexual harassment, as these should be liberally considered under the Hagel, Carson, and Kurta Memos.



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 (for the BCMRs) or the DD Form 293 (for the DRBs), are required, but your application will be stronger if you can submit as many of the following documents as possible.



DD Form 149 or DD Form 293

This official form lets the Board know you would like a discharge upgrade. Use the 149 for Boards for Corrections of Military Records (BCMRs) and the 293 for Discharge Review Boards (DRBs).



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



Mental Health Diagnosis

Submit any evidence that you have a mental health condition. Ideally, that evidence would include a letter from a healthcare provider and medical documents describing your mental health condition. The letter should diagnose you with a mental health condition, connect mental health condition to your service, and if possible connect your mental health condition 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, Carson, and Kurta Memos, this diagnosis can come from a civilian provider. You do not need a military or VA provider to diagnose you with a mental health condition, though VA records receive special consideration. 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 diagnoses from multiple providers, and

they do not conflict with each other, submit all.



Preparing Your Discharge Upgrade Application (Cont'd)



Evidence of Sexual Harassment or Assault

Submit any evidence that you suffered from sexual assault or sexual harassment. Like claims for mental health conditions, this can include sources other than a veteran's service records, including but not limited to records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, STD tests, and statements from family members, friends, and coworkers. Evidence can also include changes in behavior, deterioration of work performance, substance abuse, depression or anxiety, relationship issues, or sexual dysfunction.



Military Service Records

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

- Records of your service, including your DD-214
- Any awards or promotions you received
- Medical records that mention a symptom of a mental health condition, sexual assault, or sexual harassment, if available

NOTE: *Because mental health conditions, sexual harassment and sexual harassment have been historically unrecognized, service records do not need to name the exact condition you claim. However, they may document symptoms of your condition. For example, symptoms of PTSD 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 service members 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 a mental health condition, sexual assault, or sexual

harassment. We recommend you include



Preparing Your Discharge Upgrade Application (Cont'd)

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 service members and superior officers that say you were a successful service member (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 a mental health condition, sexual assault, or sexual harassment 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 a mental health condition, sexual assault, or sexual harassment. You may wish to note any declarations you have submitted that attest to your post-service character.

Conclusion

We hope this supplement to the Veterans Discharge Upgrade Manual in light of the Hagel, Carson, and Kurta Memos 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.