

# Character of Discharge (COD)

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# References

- 38 CFR 3.12, Character of discharge
- 38 CFR 3.13(c), Conditional discharge
- Stations handling CODs under the BEST Division:
  - Little Rock
  - Muskogee
  - Nashville
  - Winston-Salem
- Milwaukee PMC does own COD decisions

# COD Requirement

A Veteran's COD must be under other than dishonorable conditions to establish eligibility for VA benefits based on that individual's military service.

Service members (SM) who are determined to have been discharged under the regulatory bars described in 38 CFR 3.12(d), are eligible for health care.

**Note:** Veterans who have a Bad Conduct Discharge (BCD) are not eligible for health care under Chapter 17 of 38 USC.

# When COD is at issue

When-

- a claim for VA benefits is received from a SM or other eligible party
- a request for a COD determination has been received from another VA department, a different Federal agency, or a state agency

# COD Process

- Claim received-review shows discharge needs decision
- Issue due process to Service Member
- Review evidence after 60 days and make COD decision
- Send notice letter

# When is COD binding

- The military's characterization of service is binding on VA if the discharge is
  - Honorable
  - Under honorable conditions (UHC) or
  - General\*
- \*general discharge may need an administrative decision based upon the narrative reason for separation

**Exception:** Any character of service listed above is binding on VA, irrespective of the separation reason, unless the separation reason is one listed as a bar to benefits under [38 U.S.C. 5303\(a\)](#).

# COD Decision is Needed

A formal COD determination is required when the discharge is

- an undesirable discharge
- an Other than Honorable (OTH) discharge, or
- a bad conduct discharge (BCD).
- Uncharacterized-Void enlistment or induction
- Uncharacterized-Dropped from the Rolls

# Upgraded Discharges

A discharge may be upgraded by a discharge review board (DRB). Depending on the type of upgrade and the authority under which the discharge was upgraded, the decision may be binding on VA.

\*A Presidential pardon is not considered an upgraded military discharge.

Ref: United States Justice Department FAQ's.

<https://www.justice.gov/pardon/frequently-asked-questions>

# COD Not Needed

It is not necessary to make a COD determination for VA claim purposes

- before the claimant applies to the VBA and places the matter at issue, **or**
- if there is a separate period of honorable service, which qualifies the person for the benefits claimed.

**Note:** If there is any question regarding which period of multiple periods of service qualify a claimant for the benefits he/she is seeking, VA will complete a COD determination (whichever is applicable) before referring the claim to the rating activity.

# Conditional Discharge

38 U.S.C. 101(18) provides that an individual who enlisted or reenlisted before completion of a period of active service can establish eligibility to VA benefits if he/she satisfactorily completed the period of active service for which he/she was obligated at the time of entry.

The provisions of [38 U.S.C. 101\(18\)](#) apply even if

- the subsequent discharge was under dishonorable or OTH conditions, or
- a statutory bar exists for entitlement to benefits for the later period of service.

Development for a conditional discharge must be undertaken, if

- the service was over three years, especially if the discharge dates do not line up to an exact number of years or months, or
- if there is any question about how many periods of service the Veteran enlisted for, or
- the DD Form 214 shows that prior active service exists.

# Statutory Bars under 38 CFR 3.12(c)

- Conscientious objector
- Sentence of a General Court Martial (GCM)
- Resignation by an officer for the good of the service
- An alien during period of hostilities
- Absent Without Leave (AWOL) for continuous period of at least 180 days
- Desertion

# Regulatory Bars under 38 CFR 3.12(d)

- Acceptance of an undesirable discharge to escape \*GCM
- Mutiny or spying
- Offense involving moral turpitude (generally conviction of a felony)
- Willful and persistent misconduct
- Sexual acts involving aggressive circumstances

\*General Court Martial is different than a Special or Summary Court Martial. Review personnel records to determine what type of court martial is involved.

# Additional Info on GCM

Cases in which the facts indicate the service member was sentenced by a GCM or agreed to accept an undesirable discharge (often seen on the DD Form 214 as OTH), in order to escape trial by GCM, are a bar to benefits.

**Note:** The evidence, including that bearing on the facts and circumstances of discharge, **must** show that the service member was sentenced by GCM, not a *summary* court-martial or a *special* court-martial.

# AWOL or UA

If the service department confirms a continuous period of 180 or more days of unauthorized absence (UA) or AWOL (exclusive of periods of imprisonment or confinement) which led to the OTH discharge, and the claimant didn't provide compelling reasons for the absence, then deny benefits.

**Note:** DD 214 "time loss" is not typically continuous.

- the claimant provided compelling reasons for the absence but our decision is ultimately unfavorable, make the issue in the formal decision "Statutory Bar Under 38 U.S.C. 5303(a)" and provide the time period that is barred to VA benefits.

# Willful and Persistent Misconduct

A discharge, including those issued under OTH conditions, for behavior constituting willful and persistent misconduct is considered to have been issued under dishonorable conditions and is a bar to benefits.

## ***Exceptions:***

- A minor offense is not considered willful and persistent misconduct if service was otherwise honest, faithful, and meritorious.
- Insanity is a defense to willfulness of misconduct.

# Health Care

Effective October 8, 1977, under *PL 95-126*, eligibility for health care benefits for any disability incurred or aggravated in the line of duty during active service is extended to any former SM with an OTH discharge, regardless of the date of that discharge.

Consider any claim which requires review of a statutory bar or a COD determination as a claim for health care benefits

# Health Care (cont.)

Eligibility for health care is ***not*** extended to persons discharged

- by reason of a bad conduct discharge (**BCD**),
- under one of the statutory bars described in 38 CFR **3.12(c)**, or
- persons subsequently convicted of a “subversive activity” under 38 C.F.R. 3.903 any time after discharge.

# Insanity

If a SM was determined to be insane at the time of the commission of the act or acts that would otherwise result in an adverse character of discharge, hold that the SM

- was without fault, and
- is not precluded from any VA benefits.

# Insanity

- Insanity is placed at issue in the following ways
- by specific allegation by the Veteran or an authorized representative
- by the VA employee if the evidence indicates the possibility of insanity,  
or
- if suicidal death occurs in service.

# Insanity

Obtain the following information when developing:

- all service and post-service treatment records that are in any way relevant, and
- complete transcripts of any court martial or board proceedings that may be relevant.

After completing development, refer the case to the rating activity to resolve the issue of insanity.

## Rating activity

- prepares a rating decision in which the issue of insanity is the sole issue, and
- routes its rating decision to the development activity to support preparation of an administrative decision

# Notification

After making a final decision provide notice to the claimant

If the decision is unfavorable, advise the claimant of the

- decision's effect on his/her entitlement to VA benefits, and
- procedure for asking the service department that declared his/her COD to review it.

Allows eligibility to medical treatment under [38 U.S.C. Chapter 17](#)

- in addition to the above,
- enclose *VA Form 21-526EZ/527eEZ/534EZ* and
- invite the former service member to claim entitlement to SC for treatment purposes for any specific conditions believed to be related to his/her service.

Questions?