



Option to Upgrade Military Discharge Rating Available to Veterans

Posted on February 18, 2009

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As a veteran myself, it was a natural fit for me to devote my legal practice to assisting members of the military. After my time in the Army JAG Corps, I joined a friend of mine from ROTC to launch a law firm that was founded on the basis of assisting military personnel and veterans in the legal issues they face. We have built our practice on helping veterans in a wide variety of legal matters, including obtaining their employment rights after deployment.

My transition to civilian life after leaving active duty was not a difficult one. But finding one's way after service isn't as simple for some. Especially if they did not receive an honorable discharge.

When you were discharged from the military, you received one of the following designations for the condition of your discharge. If it was an administrative discharge, it was categorized as honorable, general under honorable conditions, or other than honorable conditions. A punitive discharge, meaning that it was the result of a judicial process, would result in either a bad conduct or dishonorable discharge.

Your terms of discharge depend on the level of service you provided or events that transpired while you were in the military and can affect everything from your civilian employment to your education and VA benefits. Especially if your discharge was other than honorable, on bad conduct, or dishonorable.

An other than honorable discharge represents a significant departure from the conduct expected of a servicemember and can be the result of conviction by a civilian court for an offense or engaging in a pattern of misconduct involving many minor offenses.

Bad conduct and dishonorable discharges can only be received through a court martial. What differentiates these two classifications is the seriousness of the crime. For example, conviction on charges of desertion would likely lead to a bad conduct discharge; whereas convictions of murder or rape would be deemed dishonorable.

It should be noted that commissioned officers convicted at court martial can only be "dismissed" from their service. While a different term is applied, the classification yields generally the same results as a dishonorable discharge.

Receiving a discharge lower than a general one can clearly have an adverse affect on your civilian life. However, the discharge you receive when you leave service is not necessarily the discharge you're stuck with for life. While punitive discharges are final, if you received an other than honorable or general discharge, it is possible for you to get that discharge changed.

All veterans are eligible to apply to the Discharge Review Board for an upgrade of their discharge characterization or a change of the reason given for their discharge. In order to have the discharge changed, the Board must find that the original one given was of either an inequitable or improper nature.

Basically, you will need to supply evidence to show the Board that the reason for your discharge was based on an isolated incident that does not reflect your general service or that it was received in error. I frequently advise my clients to obtain records showing signed statements from people with direct knowledge of your military service, such as ranking officers or your chaplain. Also, your own statement establishing why the discharge was improper or inequitable is equally important to those of your witnesses.

It's generally best to allow a bit of time to elapse before applying for a review of your military records. While it is possible for applicants to represent themselves, complex requests can benefit from the guidance of an attorney experienced in the military discharge review process.

Remember that your transition from the military is likely to include some rough patches. However, if you find your discharge is adversely affecting your employment or other aspects of your life, consider filing for a review of your records.

Greg T. Rinckey, Esq. is the managing partner of the law firm Tully Rinckey PLLC. With offices in Albany, NY and Washington, DC, the firm is dedicated to providing superior legal representation to military personnel, veterans, and federal employees throughout the nation in a wide range of legal matters relating to military law and federal employment law. For more information, email Greg at grinckey@tullylegal.com.