

The Military Counseling Service of  
*Vietnam Veterans Against the War*

*Fighting for Veterans. Peace and Justice since 1967*

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# Military & Veteran's Counseling Handbook

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This handbook contains several one-page handouts with basic information on: **GI Rights**, the **UCMJ**, **military discharges**, **PTSD**, **upgrading military discharges** and **VA benefits**. These will be revised as information changes. These handouts are designed to answer some basic questions about the military's "justice" system and get veterans started on obtaining benefits. There are many websites, including government ones, with forms and more detailed information. The Manual for Courts-Martial and the manuals that I use for VA benefits and discharge upgrading try to cover all situations and are thousands of pages long. The laws change every year and I will explain them and help you through the complete process, either by phone, mail or in person.

**VVAW** is one of several cooperating groups trying to help you. For example, when I need to find a military lawyer nationwide I call the Military Law Task Force of the National Lawyers Guild. When I'm working with a GI who is outside of the Chicago area, I may find the doctor or social worker that is needed by calling the GI Rights Hotline (**800-FYI-95GI**.) And I get calls from vets who need discharge upgrade help nation-wide, except San Francisco, where "Swords into Plowshares" helps vets.

## Introduction

My name is Ray Parrish, (USAF, 72-75, Sgt.) and I'm VVAW's one and only GI Counselor. So while you may also be referred to local volunteer lawyers and doctors or vet centers and veteran groups for specific forms or assistance, or a local VVAW member may help me work with you, **you and I will work together**. This is a one-man operation, so don't expect to talk to a receptionist (that's my wife,) or meet in a comfortable office (it's my spare bedroom.) VVAW considers you to be a sister or brother (for some it's child or grandchild) not just another client looking for help.

As a Vietnam-era vet and brat of a WWII & Vietnam veteran and after 28 years counseling GIs, vets and their families, I've accumulated a lot of information and become a good listener. No one has a magic wand that can be waved and make the nightmares go away or get you the benefits or honorable discharge that you deserve. You should believe no guarantees from anyone. However, together we can make sure that everything that can be done to resolve your problem is being done, if you can find the patience to see the process through to its end. **As long as you don't give up, they haven't won.**

**Catch 22:** As the military doctor explains to the GI: If you're crazy I can't send you into combat. Not wanting to go into combat is sane. We only send into combat those who want to go and we arrest those who refuse. You're crazy if you don't think that combat makes you crazy.

As a GI, it was my experience that it's almost impossible to go through an entire day in uniform without violating the UCMJ, even if it was just "disrespectful deportment." While that fact may cause you to watch your behavior, it also means that the officer that is causing you problems is probably violating the UCMJ as well, so complain. Do your job so well that you become "indispensable" and your behavior can "push the envelope" of acceptability. **Don't desert!** If you have to leave duty to avoid a life-threatening situation, **run to the police, media, Congress or a hospital** or me.

Vets seeking benefits and GI's seeking discharge both face mazes of rules and requirements in systems that are supposed to help. I can help you submit properly worded medical opinions to the correct people and help you through the forms, regulations, hearings, doctor interviews and tests. Trust no one who gives you a guarantee. Get second opinions and verify information from any source, including me.

**GI RIGHTS Hotline** provides information on military rights and discharges and trains volunteers to answer calls from their local areas. **1-800-FYI-95GI** (394-9544) [www.girights.org](http://www.girights.org)

**National Network Opposed to Militarization of Our Youth** is a coalition that helps veterans find a place to discuss the militarization of society. **1-215-241-7176**, [NNOMY@afsc.org](mailto:NNOMY@afsc.org).

The **Military Law Task Force of the National Lawyers Guild** makes legal aid referrals and has a web-site with the most up-to-date info and regulations: 619-233-1701 or [www.nlg.org/mltf](http://www.nlg.org/mltf)

### **Deserter Information Points**

Army: 502-626-3711, 12 or 13

Navy: 847-688-2106 or 07

USMC: 703-614-3248

USAF: 210-565-3727

### **Military Families Speak Out**

Since many GI's fear retaliation for voicing their opposition to government policy, their families speak for them through MFSO: [www.mfso.org](http://www.mfso.org), [mfso@mfso.org](mailto:mfso@mfso.org)

[va.vba.gov](http://va.vba.gov) for VA info and forms

<http://boards.law.af.mil> for DRB/BCMR info

VVAW GI Counseling, PO Box 408594, Chicago IL 60640, (773) 561-VVAW, [camiblue@vvaw.org](mailto:camiblue@vvaw.org).

**GI Rights** Military personnel have rights?? As a GI it sometimes seems that you have no rights, but that's not completely true. GI's have rights but they are restricted. In addition to the restrictions, many GI's who legally exercise their rights end up getting punished illegally.

### **GI's have the right to:**

#### **Say and write what they think.**

The right to freedom of speech is restricted. GI's can say and write what they want as long as they are off-duty, out of uniform and they don't imply that their views are the military's. GI's can participate in "political" rallies but only as "spectators." You should be OK if someone else reads your letters at a rally. GI's aren't allowed to participate in electoral politics (working for a party or candidate). And GI's can be punished under the UCMJ if they advocate the violent overthrow of the US government, promote "disloyalty or disaffection" or show "disrespect in language or deportment" to a superior commissioned officer, NCO, PO, WO or President Bush. GI's can print their own publication as long as it's done off base, on their own time, using their own money and equipment. Many commanders interpret the regulations to suit their own purpose and punish GI's who are legally exercising their rights. So, be careful. If you intend to speak out against the War, find some legal advice and community support.

#### **Read what they want.**

GI's have the right to possess one copy of any literature, but GI's need their commander's permission to "distribute" anything. Possessing more than one copy may be seen as an "attempt" to distribute. You could be charged under the UCMJ and the "unapproved" literature may be confiscated.

#### **Petition Congress for redress of grievances.**

GI's can write to any member of Congress to complain about the way that the military is treating them or to express their political opinions.

#### **File a complaint.**

GI's have a right to file a complaint if they have been mistreated by a superior, if command fails to act on a request for medical attention or an early discharge, if their rights have been unlawfully restricted, if they are victims of discrimination or harassment, or if their personal property has been damaged or taken. GI's can file a complaint through the chain of command, through the **Inspector General** or the **Office for Equal Opportunity**, by using UCMJ **Articles 138** or 139, by petitioning Congress or by petitioning the **Board for the Correction of Military Records**. GI's even have the right to report UCMJ violations by another member of the military, but command doesn't have to prosecute them.

In general, it's best to give the command an opportunity to correct the problem before you file a complaint about that problem. In other words, file a written notice to the offender that there is a problem and notifying the offender that an **Article 138** complaint will be filed with their superior if you're not satisfied with their corrective action. Make copies of everything. Use a standard military memo format and give your name, rank, number and duty assignment. Write a statement about the incident, listing witnesses and attach documentation. GI's are supposed to be protected from reprisals if they file complaints with the IG, OEO or Congress, so it's common for complaints to note that you are sending a copy to a member of Congress.

**You have a right and a duty to refuse to obey illegal orders** according to International treaties and the UCMJ. "Following orders" is not excuse for violations. Unfortunately, GI's are being court-martialed both for obeying orders that turned out to be illegal and for disobeying orders that they saw as illegal but now the military won't admit to that. Damned if you do, damned if you don't. If you have to make such a fateful decision, listen to your conscience, so that you can live with yourself later.

## Military “Justice”

**The UCMJ, Uniformed Code of Military Justice**, Articles 77 through 134, lists the military’s crimes and the maximum punishments for each offense. For example: Article 86 says that the maximum punishment for an **Unauthorized Absence** of;

- Less than three days is 1 month confinement and forfeiture of 2/3 pay for 1 month.
- 3 to 30 days is 6 months confinement and forfeiture of 2/3 pay for 6 months.
- Over 30 days is Dishonorable Discharge, 1 year confinement and forfeiture.

**Non-Judicial Punishment**, NJP, (called “Captains Mast” in the Navy, “Office Hours” in the USMC, “Article 15” in Army & Air Force.) Many GIs admit guilt and agree to accept NJP from the commanding officer trying to avoid the more severe punishments of a court martial. Appeals to the CO’s commander that the punishment was too harsh are possible but rarely succeed.

In the Navy you can be put on “bread & water” for 3 days. Otherwise the maximum punishment depends on the commander’s rank. Most of the time it’s:

- “Correctional custody” for up to 7 days, (30 days if CO is O-4 and above)
- Forfeiture of up to 7 days pay, (1/2 pay up to 2 months if ...“...)
- Extra duty for up to 14 days, (45 days if...”...)
- Restriction for up to 14 days. (60 days if...”...)
- Reduction in pay grade depending on ranks of GI and commander.

## Types of Military Courts-Martial

**Summary CM** Judged by one commissioned officer, no lawyers needed

Maximum Punishments;

- Confinement for up to 30 days
- Hard labor without confinement for up to 45 days
- Restriction for up to 45 days
- Forfeiture of 2/3 pay for up to 1 month
- Reduction in grade to E-1
- \*E-4 & up: NO labor/confinement, reduction of only one pay grade.

**Special CM** Military judge alone, 3 members or judge and 3 members (2/3 to convict)

Maximum Punishments;

- Confinement for up to 1 year or
- Hard labor without confinement for up to 3 months
- Forfeiture of 2/3 pay for up to 1 year
- Reduction in pay grade
- Bad Conduct Discharge (BCD)
- If no Judge, lawyers or record kept: confinement & forfeiture up to 6 months, no BCD.

**General CM** Military judge or five members and a military judge

Maximum Punishments: **anything**

## Appeals

The “Convening Authority” who ordered the court martial, reviews and approves or modifies the CM decision. Sometimes the case is reviewed by Judge Advocate or appealed to the service’s Court of Criminal Appeals and the Court of Appeals for Armed Forces.

## Military Discharges

You're out of the military completely when you get a "**discharge**." You may get a "**separation**" from active duty, but still remain in the reserves and subject to recall to active duty, anytime they want you, until you get the final discharge. The military won't recall veterans with discharges for misconduct, conscientious objection, homosexuality, poor performance or disability. The reason for separation is not the same as the "character" of the discharge and both appear on your **DD214**, separation papers.

You'll get an **Honorable Discharge** if you've met military standards during your enlistment and you'll get full veteran's benefits. A **General Discharge** under Honorable conditions costs you some benefits. You are entitled to an Administrative Discharge Board hearing before they can give you a General under **Other Than Honorable** conditions, OTH, which takes away all benefits. Only a Special or General Court Martial can give **punitive discharges**, such as a Bad Conduct Discharge, **BCD**, or a **DD**, Dishonorable Discharge or Dismissal (officers). If Someone Tells You That A General Discharge Will Be "**Automatically Upgraded**" To Honorable After Six Months, They're Lying.

If you fail to report for active duty while still in the **Delayed Entry Program**, DEP, regulations require the military to separate you with no penalties. In the first six months of active duty an **Entry Level Separation**, ELS, for poor performance or conduct can be given. It is neither honorable nor dishonorable, because you haven't been in long enough. If you weren't really qualified for enlistment they can give you an **erroneous enlistment** discharge or a "waiver" and keep you in. A discharge for **defective enlistment agreement** is possible but hard to prove. If you enlisted before you turned 17, or your parents' consent was forged or withdrawn by them you can be discharged for being **under-age**.

A discharge for **Conscientious Objection** is Honorable but hard to get because you have to prove that you would not participate in any war because of moral, ethical or religious reasons. You can get an Honorable discharge for being a **homosexual**, if they don't catch you engaging in homosexual conduct and you don't admit to it. If you prove that your family is suffering from severe financial, physical or psychological problems that only your presence can solve, and a "compassionate reassignment" or TDY closer to home didn't work or wasn't tried you may get an Honorable for **Hardship or Dependency**.

You can get an Honorable discharge for a **Disability** that prevents you from doing military duties, and you may also be eligible for disability benefits. They may also give you an honorable for "Other Designated Physical or Mental Conditions" (**ODPMC**) even if the problem isn't really a disability, such as, seasickness or bedwetting. A discharge for **pregnancy** isn't mandatory, but it's possible, as is a transfer to the reserves and medical leave. Single **parents** can get an honorable discharge if the command is convinced that you will have trouble performing duties, will be absent frequently or be unavailable for "worldwide assignment," but you haven't admitted that it has already affected your performance. An honorable discharge as "**sole surviving son/daughter**" can be yours if, after your enlistment, your sibling, father, mother, son or daughter was in the military and is POW/MIA or was killed or totally disabled as a result of military service.

Honorable discharges for **Unsatisfactory Performance** will be given if you try but simply can't perform up to military standards. If they think that you are intentionally failing to do the job, they can charge you under the UCMJ. Military regulations covering discharges for **Misconduct** allow the military commanders to decide if the character will be honorable, general or OTH, but they first have to try to "rehabilitate" you, and you are entitled to an Administrative Discharge Board hearing. If you're facing a court-martial in which you could get a BCD or DD, you can ask for an Other Than Honorable **Discharge in Lieu of Court Martial**, which they may grant "for the good of the service."

There are a lot of military regulations covering separations and discharges, and mistakes can cost you an Honorable, so, until you've read the regs or have talked to a military lawyer or GI counselor, don't even think that you can imagine the pitfalls hiding in the regs, **and don't sign anything**.

For regulations go to [www.objector.org/helpingout/military-regulations.html](http://www.objector.org/helpingout/military-regulations.html). For help call me or, outside of the Chicago area, call the GI Rights Hotline at 1-800-FYI-95GI.

## PTSD, Post Traumatic Stress Disorder,

The Diagnostic and Statistical Manual, III & IV says that someone may have PTSD if

- The person has been exposed to a **traumatic event** that is “outside the usual range of human experience and that would be markedly disturbing to almost anyone.”
- **The Duration** of the disturbance (symptoms in criteria below) is more than 1 month,
- It causes **significant distress** in social, occupational or other important areas of functioning.

- A. The traumatic event is persistently **re-experienced** in one (or more) of the following ways;
  1. Recurrent and intrusive disturbing **recollections** of the event including images, thoughts or perceptions
  2. Recurrent distressing **dreams** of the events
  3. Acting or feeling as if the traumatic event were **recurring** (includes a sense of reliving the experience, illusions, hallucinations and disassociative flashback episodes, including those that occur on awakening or when intoxicated)
  4. Intense **psychological distress** at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
  5. **Physiological** reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- B. Persistent **avoidance** of stimuli associated with the trauma and **numbing** of general responsiveness (not present before the trauma) as indicated by three or more of the following;
  1. Efforts to avoid **thoughts, feeling or conversations** associated with the trauma
  2. Efforts to avoid **activities, places or people** that arouse recollections of the trauma
  3. **Inability to recall** an important aspect of the trauma
  4. Markedly **diminished interest** or participation in significant activities
  5. Feeling of **detachment or estrangement** from others
  6. **Restricted range of affect** (e.g. unable to have loving feelings)
  7. Sense of a **foreshortened future** (e.g. does not expect to have a career, marriage, children or a normal life span)
- C. Persistent symptoms of increased **arousal** (not present before the trauma) as indicated by 2 or more of the following;
  1. Difficulty falling or staying **asleep**
  2. Irritability or outbursts of **anger**
  3. Difficulty **concentrating**
  4. **Hypervigilance**
  5. Exaggerated **startle response**

## Treatment

Combat related PTSD is unique to each person’s experience and personality but the problems seem to come in a mixture from two sources; memories of life threatening experiences and memories of what the veteran witnessed and did in the struggle to survive. Helping veterans deal with and control the anxiety and depression (fear and guilt) is best left to professional therapists. In addition to treatment, medical records and opinions from mental health professionals are critical to getting a discharge upgraded or obtaining VA benefits.

If going for treatment isn’t possible, anything is better than nothing, even sitting around a local Legion hall and talking about your experiences. If you want to do more, start your own “rap” group. There are even PTSD workbooks for individuals to work alone. You can ask the local rape trauma hotline for a list of trauma therapists. And, of course, suicidal and homicidal plans or behavior require an immediate call to 911 and emergency treatment.

## Discharge Upgrading

You should view the effort to get the character or reason for your military discharge changed as a battle. The enemy is the system that discharged you. Your strategy is to choose the most appropriate arguments to make and where to make them. Your ammunition is the evidence that you submit. If you're saying that you're not guilty then you have to prove it. If you're guilty, but you think that the punishment was too harsh or the law wasn't followed in your discharge process, you have to present a detailed argument and submit evidence.

Each service has a **DRB**, Discharge Review Board, and a **BCMR**, Board for the Correction of Military/Naval Records. Each board has different application forms, rules and powers. The DD 293 is the DRB application and the BCMR uses the DD 149. You can attach as many documents as necessary and you have up to 25 pages to present your arguments. Because the BCMR doesn't allow personal hearings and the DRB's do, most veterans take their cases to the DRB first. **Take advantage of this hearing**, it's the most important thing that you can do to make the upgrade more likely. DRB's can change the **character** of discharge, the **RE** code and the **reason** for discharge, except changing the reason to "physical disability." Only the BCMR, not the DRB, can review a discharge over **15 years old** or upgrade a Bad Conduct Discharge, BCD, or Dishonorable Discharge, DD, given in a **General Court Martial**. Only the BCMR, not the DRB, can change the reason for discharge to physical disability, or revoke a discharge and **reinstate** a veteran to active duty.

You can argue that your discharge is "**inequitable**." That means that it's "unfair" because it was too severe for the offenses that you committed. The Boards can determine that under "current standards" you shouldn't have been given a bad discharge. You could argue that the command didn't give enough weight to your previous good record, awards and decorations. You could argue that abuse or discrimination or that family or medical problems impaired your ability to serve.

You can argue that the discharge was "**improper**." That means that they didn't follow the correct procedure when they discharged you. Perhaps they didn't do enough to "rehabilitate" you first. Perhaps you weren't given proper legal advice or were previously denied a discharge for other reasons. Perhaps the command didn't complete or process the forms correctly. Perhaps they violated rules during the Admin. Discharge Board hearing.

Start by getting your military records using the Standard Form 180 (SF 180.) Ask for "complete personnel and medical records including the case separation file and court martial transcript." First write up your story about what happened. Next try to make a list of all evidence that proves your story is true. Go over your story and make sure that you use to all of the pieces of evidence. If you see that you need more evidence to prove critical points that you make in your story, explain why evidence is unavailable.

If medical opinions say that your **Post Traumatic Stress Disorder** caused the misconduct that earned you an **OTH**, General Discharge under Other Than Honorable conditions, or a **BCD** from a Special Court Martial, you may be able to get a **medical discharge**. Present the medical evidence to both boards. Ask the DRB for a change in character, and the BCMR for a change in reason. The same evidence can then be used to get "service connected" benefits and treatment priority from the VA.

Your odds of success improve with every document that you attach. Some Veterans Service Organizations provide help with this, but you have to look hard. Using a Discharge Upgrade manual or the "Reading Rooms" of previous BCMR or DRB decisions gets your odds above 50%. Lawyers cost but they can make the difference in difficult cases or if this is your second, or third try. We don't yet have any lawyers who are willing to help, but ask.

## VA Disability Claims

The first thing I want to tell you is that the sooner you file your claim the more money you will get when you win, no matter how long that it takes. This because the VA will pay starting the first of the month following the month in which a claim is filed. The “claim” need only be a letter giving your name and address, listing the problems and saying that they are service connected or that they have made you totally disabled. You can submit the completed application within a month of that first “claim.”

If you are totally disabled, **file for both Social Security and the VA non-service connected (NSC) Pension**. NSC Pension is a financial need based program for “war time” vets who are totally and permanently disabled by medical or mental disorders that weren’t caused by military service. Qualifying vets will get monthly checks from the VA to make up the difference between what you get from all other sources, a set “Maximum Annual Income limit,” which changes every year. If they discover that you hid income, the VA will withhold checks until they recoup the “overpayment.”

**Service connected (SC) Compensation** is paid based upon a “percentage” of disability caused by each service-connected problem and the amount is not reduced because of your other income. This “degree of disability” is determined by comparing the conditions and symptoms shown in your medical records against a “rating schedule.” The schedule gives separate ratings for nerve, muscle and bone damage and impairment. The percentages are then combined to get a total that determines how much you are then paid. The law grants service connection if medical evidence proves that the symptoms were present within a year of military discharge. Some conditions can be service connected if symptoms show up within a certain period of time after discharge. Other conditions can be service connected with enough individual-specific evidence.

**Medical opinions** are crucial to winning claims. In NSC claims, you can submit medical reports from doctors seen for your Social Security disability claim and vice versa. Congress has ruled that service connection must be granted for certain problems if there is proof that the **symptoms** showed up within a specified period of time (usually one year) after your discharge. It doesn’t matter how long it takes for the doctors to confirm a diagnosis. When trying to prove service connection for other conditions, be sure to tell the doctor that they don’t have to be 100% certain that the problem is service connected, only 51% sure. Veterans are given the “**benefit of the doubt**” if the doctor thinks that the condition “is as likely as not” to have been caused by or present during military service.

You should sign up with one of the **Veterans Service Organizations** to represent you in your VA claim. Some groups do better work than others, and performance varies from state to state, so ask other vets. “Shop around” and interview several service reps. before deciding. You don’t have to join the vet group, and you can change your representation if you are dissatisfied with their work. Submit evidence or appeals through them and they’ll make a copy for their file. Lawyers can’t charge more than \$10 to help with VA claims until you’ve exhausted VA appeals and can go the US Court of Appeals for Vet. Claims.

The VA handles most claims “routinely” that is, slowly, no matter how anxious you may feel. The VA will “**expedite**” a claim only if you submit evidence of financial crisis, and a letter of support from Congress will help. **Use me as a consultant**, but I won’t be your official representative for VA claims. Since many Veterans Service Organizations discourage their overloaded representatives from confrontation with the VA, you might need someone like me working with you and your VSO rep. If you do nothing else, file the claim, always reply to letters from the VA and don’t miss any appeal deadlines.