THE AMERICAN VETERANS AND SERVICEMEMBERS SURVIVAL GUIDE

For American veterans, servicemembers and their families

THE AMERICAN VETERANS AND SERVICEMEMBERS SURVIVAL GUIDE

★★★★

HOW TO CUT THROUGH THE BUREAUCRACY AND GET WHAT YOU NEED— AND ARE ENTITLED TO

By Veterans for America

With a foreword by Bobby Muller

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A Note to Our Readers

One key feature of this book is one you already know. You're reading the book on your computer screen. Two of the authors of this book were among the authors of a 1985 national bestseller, *The Viet Vet Survival Guide*. The earlier book was published on paper, in the traditional manner. This book is an e-book, published on the Web site of its sponsor, Veterans for America (VFA). Publishing online allows for updating as needed, not just when a new edition might come out in a matter of years. Further, VFA can publish additional chapters as needed. Publishing online also enables VFA to provide the book not in bookstores at a substantial price, but rather without charge to those who have served their country and to their family members and friends.

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Project Management

Craig Kubey has co-managed the project, editing all material in the book (occasionally after David Addlestone has done a preliminary edit), prompting collaborators, co-authoring the introduction, writing other "front matter," and co-authoring the "Basic Survival Skills" chapter.

David F. Addlestone has co-managed the project, recruiting and later following up with the experts who have become our collaborators; writing the chapters on veterans in the criminal justice system and on correcting military records; co-authoring the subchapter on PTSD and the chapter on the Uniform Code of Military Justice; and outlining the book.

Foreword

By Robert Muller
President
Veterans for America

I spent a year in the Kingsbridge Veterans Administration hospital, located in New York City, learning how to live life as a paraplegic confined to a wheelchair. I had been shot in Vietnam, where I served as a Marine infantry officer.

My ward was the focus of a cover story in *Life* magazine which portrayed the conditions within the veterans hospital as a "medical slum." We had a lot of national media attention, congressional hearings, and a lot of promises. The despair, lack of proper care, and general indifference from the hospital and the Veterans Administration finally became too much for my closest friend to take. He committed suicide, as did several of the other vets I knew. They had been beaten down by a bureaucracy that didn't respond to their needs, and they were too overwhelmed to battle on.

I knew then that if I didn't fight the "system," it would eventually overwhelm me. So I began to fight back for myself and for others who needed a voice and an advocate. I'm still fighting for basic justice to this day.

It's a hard and bitter lesson that all too often, despite honorable service and real sacrifices, one has to fight the military itself or the Department of Veterans Affairs (the successor to the Veterans Administration), the two largest agencies in our government, to get earned and needed benefits and

services. After leaving the hospital, I went to law school, because I was convinced that I was simply too uneducated as to my rights and entitlements as a combat casualty from America's war.

What I discovered is that there is a lot to learn about the law, both in substance and procedure. In my subsequent work assisting military personnel, veterans, and their family members, I came to appreciate the benefit of having been trained in legal work and the need to relentlessly "work" the system. It was amazing what you could do if properly informed and had competent counsel. I also became aware of how many deserving people were denied assistance for failure to properly pursue their entitlements, due to either their own mistakes or those of inadequately trained veterans service representatives (with crushing caseloads) from veterans organizations or from various state and county offices whose job it was to assist them.

Years later, when I founded a national veterans service organization (Vietnam Veterans of America), I insisted that all the claims work we did on behalf of veterans was overseen by an attorney. We also led the fight to allow veterans to have attorneys represent them and to have access to a court of law to appeal agency decisions.

Good information is critical to accessing the programs and benefits that are available to active military, guard, reservists, veterans, and their family members. That's why we have put together this "Survival Guide."It is a current and very useful guide to what you are entitled to and how to get it. We can provide you with this basic information. You have to provide the time and energy to go after these services and benefits. I've seen far too many people give up on confronting the challenges these mammoth agencies put up. We hope that with this guide you'll be better informed and better able to prevail in the quest for justice.

Bobby Muller is the founder and President of Veterans for America, which is sponsoring this book. After graduating from Hofstra University in 1968, he served in combat in Vietnam with the Marines. As a lieutenant, he was a combat infantry officer. In April 1969, Muller was leading an assault when a bullet severed his spinal cord and left him paralyzed from the chest down.

His service in Vietnam and his injury changed his life forever. During rehabilitation at the VA hospital in the Bronx, Muller experienced first-hand the neglect, frustration, and inadequate care faced by numerous Vietnam veterans. In the aftermath of this experience, he began fighting for fair

treatment for Vietnam veterans by enrolling in law school at Hofstra. Later he served as legal counsel for the Eastern Paralyzed Veterans Association. In 1978 he founded Vietnam Veterans of America. In 1980 he founded the Vietnam Veterans of American Foundation, which later was renamed Veterans for America.

In 1991, Muller co-founded the International Campaign to Ban Landmines, which received the Nobel Peace Prize in 1997.

For Muller's full VFA biography, please visit www.veteransforamerica.org/about/who-we-are/bobby-muller/

Introduction

There are nearly 24 million American military veterans and approximately 1.5 million active-duty servicemembers. An additional 650,000 men and women voluntarily serve in the various state national guards and the services' active reserve components, and are therefore subject to call-up to active duty. Thousands of others have had their active-duty commitments involuntarily extended or been recalled from the Individual (inactive) Ready Reserve after serving their obligated enlistments. Nearly 1.7 million servicemembers have served in the Southwest Asia theater (especially Iraq and Afghanistan). Veterans and their families account for nearly one-third of the population of the United States.

The wars in Iraq and Afghanistan are increasingly costly in deaths, wounds and illnesses. Recent statistics show a military death count of more than 4,500. Those who have been wounded, been injured or become ill exceed 75,000. Some 320,000 (20 percent of troops deployed) already have suffered a traumatic brain injury (TBI). Some 300,000 (18 percent of troops deployed) already have suffered from Post-Traumatic Stress Disorder (PTSD).

For 300 million Americans, World War II ended in 1945, the Vietnam War ended in 1975 and other wars ended in various other years over the long history of our country. One day, Americans will believe that the wars in Iraq and Afghanistan ended in a particular year.

But for a large fraction of the men and women who served in past wars and who serve today, the wars are not over. Many, many veterans carry with

them the physical scars of battle or the psychological trauma of witnessing disturbing acts, mostly in combat. Many will never fully heal.

Servicemembers and veterans who are serving or have served in the current wars have special problems not recognized in earlier conflicts. Many have been killed or injured by new types of improvised explosive devices (IEDs, usually roadside bombs). Others have been killed or injured by suicide bombers.

They often have been inadequately equipped. The situation became so absurd that often family members of servicemembers felt forced to purchase and ship them the body armor the military was not providing. Still, servicemembers often had to drive Humvees without adequate armor plating. Many have been asked to do jobs for which they have not been adequately trained.

Many in the "regular" military and the National Guard and Reserves have had their tours extended or been called back for a second, third or even fourth tour. Each deployment, of course, increases the servicemember's exposure to death, injury, disease and family stress. (55 percent of servicemembers are married; more than 100,000 women and more than 16,000 single parents have served in the current wars.)

Although it is the veterans and servicemembers of Iraq and Afghanistan who today hold the headlines, compelling problems remain for veterans of every era. Things have pretty well settled down for the "Class of '46," the veterans of World War II, most of whom were discharged one year after the end of the war. And, sadly, most veterans of that war have now died of old age or other causes. (A veteran who was 20 in 1946 is 81 today—if he or she has survived.) According to VA statistics, of 16,112,566 who served in World War II, only 3,242,000 survive. (All statistics of this type are for those who served anywhere during the war; it does not mean that a particular member of the military served in a particular country or in combat. For the Vietnam Era, for instance, only about one in three who served in the military was stationed in Vietnam.)

For the Korean War, 5,720,000 served and 3,086,400 are still living. For the Vietnam War, those who served total 8,744,000 and those surviving are 7,286,500. Those serving in the first Gulf War (Desert Shield and Desert Storm) numbered 2,322,000 and those still living are 2,260,000.

So Vietnam Era vets are still very much around. They are the largest group since Korea. And their problems (and this is not to minimize those problems of any other era of veterans) have been devastating. Many

continue to suffer from the often disabling and disfiguring injuries of combat, from the physical ravages of the herbicide known as Agent Orange and from the psychological damage known as Post-Traumatic Stress Disorder (PTSD). More than 59,000 died during the war or from injuries sustained there. More than 153,000 were wounded.

As two of the authors of this book noted in a late-1980s court brief, Viet Vets (those who served in-country):

- Fought in jungles against a native revolutionary army. Success was measured not by territorial conquest but by body count.
- Unlike in other wars, went to the war zone individually and came home individually. Most Viet Vets were therefore forced to deal with stress by themselves.
- Felt to a greater degree than other Vietnam Era Vets the impact of serving during a war opposed by most of their fellow citizens: those who served in Vietnam were seen as bearing a special responsibility for the war.
- Served in a war that by many measures the United States lost. (This was despite the fact that the U. S. won nearly every battle.) The returning Viet Vet was met not by victory parades but by condemnation or apathy.

The approximately 1.5 million veterans of Iraq and Afghanistan have had characteristics and experiences that are both the same as and different from those of their brothers and sisters from Vietnam. The average combat soldier is 26 (in Vietnam he or she was 19, in World War II also 26). More than at any time except World War II, troops have been called up, from the National Guard and the Reserve and also from the Individual Ready Reserve. This means many soldiers have been jerked out of fairly stable lives, and often more than once. In particular, it means many have been taken from jobs that they will want to regain after discharge. Among those called up, professionals and small business owners have been particularly likely to suffer financial disaster.

One similarity between the Vietnam War and the war in Iraq is that both eventually became highly unpopular in the United States. But another difference is the greater popularity of those who have fought in the current wars. Viet Vets still suffer from having not only fought in an unpopular war but having been to a considerable extent blamed for it. Some of the authors of this book have noted a repeat of veterans problems seen 35 years ago.

For example, there have been large numbers of bad discharges as well as an inadequate or careless administration of veterans educational benefits.

On the good side, military and veterans medicine is much improved. Just as Viet Vets were evacuated to field hospitals dramatically faster than had been the case in World War II (or Korea), evacuations in Iraq and Afghanistan have been accomplished with even greater speed. Once wounds are stabilized, many servicemembers are rushed to U. S. military facilities in Germany for state-of-the-art care. Those needing it also receive improved medical care in the U. S. More than one-third of Iraq and Afghanistan vets have already sought medical care since returning to the U. S.

Once home, servicemembers with medical problems find new difficulties that bring their own trauma. Treatment facilities are limited, especially for TBI (traumatic brain injury, the "signature wound" of the wars in Iraq and Afghanistan) and PTSD (Post-Traumatic Stress Disorder) and especially in areas where National Guard and Reserve troops live. Little is known about TBI, but public pressure has forced DoD and the VA to commit increased resources to it.

In addition, servicemembers awaiting the complex system of separation for medical reasons often have to wait far from home for four to ten months, often without family or organized military support. Disciplinary problems are common among these idle troops, often ending in a bad discharge or inadequate disability rating. The Department of Defense (DoD) has promised to fix these problems, but many doubt its resolve to invest the necessary funds.

Even in the medical improvements can be found problems of the most grave nature. Because medical care is often so fast and effective, many servicemembers are saved who would have died in any other U. S. war. That's the good news and that's also the bad news: thousands survive with injuries horrendous enough that in any previous war they would have been fatal. These include countless disfiguring head wounds. Many will be disabled for life and many will require care for life. Many of the people with severe disabilities have serious difficulty "transitioning" to life back in the United States.

A Contract With Servicemembers And Veterans

In Iraq, Afghanistan, Vietnam, World War II and other wars, the United States has taken men and women into military service and sent them to war. In so doing it took upon itself moral and legal obligations of the most serious nature. But the United States has not fulfilled its duties. It has breached its contract with the men and women who risked—and sometimes ruined—their lives in service to their country.

The federal government has responded to the needs of veterans primarily through the Department of Veterans Affairs (previously called the Veterans Administration, in both cases referred to as "the VA").

Although the VA has always provided vast amounts of assistance to veterans and has even taken some innovative steps to deal with the distinct problems of the veterans of the current wars and Vietnam, respectively, it has not done enough. Many vets say VA assistance has been too little and too late. Too many VA staff members are insensitive to the special needs of certain vets. As of this writing, the VA has a claims backlog of some 600,000 and takes about 180 days to process claims. The VA has become known for inaction, extreme delay and regulations that even lawyers sometimes cannot understand.

For example, it takes approximately four months to process a simple claim for educational benefits leaving the vet to live off credit cards or loans from family. This is less than for more complicated claims, but it's still far too long. In many instances over the past 15 years, Guard and Reservists were given inaccurate information about their eligibility for educational entitlements.

In addition to the federal Veterans Administration, there is a veterans department in almost every state. Among other things, the job of these departments is to assist veterans and their families with VA claims. State agencies vary in size, facilities and quality.

A New, Web-Based Guidebook

In 1985, Ballantine Books in New York published *The Viet Vet Survival Guide*, the only major guidebook ever dedicated to the interests of Vietnam Era veterans. The book became a national bestseller and received strong

endorsements from the media, including "Dear Abby."A veterans newsletter wrote, "If a Vietnam veteran only owns one book, this is the one he should have."

No important guidebook has yet been published to assist the servicemembers and veterans of Iraq and Afghanistan. Into the void come two of the co-authors of *The Viet Vet Survival Guide*, along with approximately 30 other experts on issues regarding servicemembers and veterans.

As with the previous book, the new one is comprehensive and easy to read. Unlike the original, however, this one covers not just veterans but also servicemembers.

Also, instead of being exclusively for veterans of one era, the new book is for veterans (and, as stated, for servicemembers) of all periods. The book gives particular emphasis to servicemembers and veterans of Iraq and Afghanistan, while providing adequate information for vets of all other eras.

The American Servicemembers and Veterans Survival Guide describes in depth the problems of the vet and servicemember (and his or her family), the benefits and services available to him or her (and family) and the veterans and servicemembers issues that will be decided in the next several years. Most important, it helps the veteran and servicemember understand how various agencies work not just in theory but in practice and how he or she can cut through the bureaucracy and confusion and get the benefits and services to which he or she is entitled. The book therefore is a consumer guide for veterans and servicemembers.

We plan to publish 28 chapters. Topics include, among others, frequent call-ups from the Guard and Reserve, getting out of the military, the Department of Veterans Affairs, disability compensation, pensions, medical care, educational benefits, housing benefits, claims and appeals, discharge upgrading, the criminal justice system, employment, reemployment rights, benefits for family members, the special problems of women servicemembers and veterans and domestic relations issues.

One key new feature of the new book is one you know already. You're reading this introduction on your computer screen. The 1985 book was published on paper, in the traditional manner. This one is published on the Web site of our sponsor, Veterans for America. It allows for updating as needed, not just when a new edition might come out in a matter of years. Similarly, we can begin publishing this book not when a whole, long manuscript is in final form, but rather as soon as one or several chapters are

ready. (Similarly, we can publish additional chapters as they become available.) Publishing online, rather than in the traditional manner, also enables us to provide the book not in bookstores at a substantial price, but rather without charge to those who have served their country and to their family members and friends.

PART ONE
Veterans and Their Families

Chapter One
Basic Survival Skills

How to Use this Book

By Craig Kubey and Paul Sullivan

Life is unfair.
—John F. Kennedy

This book will help you survive in the world of the veteran. This world, like the world at large, is not a fair world. Your country asked you to take years out of your life and to risk life itself. But when you came back, it gave you some praise but little comfort. Instead, it gave you the VA.

Though there are other federal agencies that benefit the veteran, and though there are many state programs for veterans, the VA (formerly the Veterans Administration and now the Department of Veterans Affairs, but always called the VA) is more important to most vets than all the rest combined.

But the VA isn't what it should be. It's a bureaucracy. Full of programs that cover enough vets and programs that don't, full of people who care and people who don't, full of prompt responses and endless delays and full of rules, rules, rules.

This part of the book focuses on programs run by the VA. It also deals with programs administered by other federal agencies and the states. These programs—especially those of the VA—can save your life. VA medical care can repair your body. VA educational benefits can put you through school.

VA disability compensation and pensions can pay many of your bills. VA loan guarantees can make it possible for you to buy a home.

But to get the most out of the VA, or the Small Business Administration or the veterans department in your home state, you have to know what you're doing. You have to know the benefits to which you're entitled, the problems you may face and how to solve them and where to go for help.

This book contains all of that. But we—the authors of this book—want you to know how to get the most out of it. We do not suggest that all veterans read every page of this book. For most veterans, that is not a good use of time. We suggest that you look through the table of contents and then carefully read each chapter that you know applies to you or that you think may apply to you. Once the index is available, we suggest you do the same with that. We further suggest that you skim every page of all the other chapters. For one thing, you may very well come across a benefit program or other information that—surprise—can help you. For another thing, you may find something that you will want to pass along to a friend who is a veteran.

Now we want to pass along some information, most of it very important, that applies to most or all the chapters in this book. That way, we won't have to bore you by repeating the same points chapter after chapter (except where critically important to do so).

Qualifying For Benefits

To get benefits from the VA or any other agency, you (or your dependents) must be both eligible and entitled. To be eligible for benefits, you must meet certain general requirements. These may have to do with how long you served, what kind of discharge you received, and whether any disability you have is connected to your military service. To be entitled to benefits, you personally must be approved to receive them.

Most of the time, but not always, if you are eligible, all you have to do to become entitled is to submit a form and wait for approval. But there are exceptions. For instance, *you* may know the facts of your case prove that you should be approved, but the VA may disagree. So you may have to appeal an adverse decision or at least provide more information. Another example is

that you may be eligible for care at a VA hospital, but the nearest hospital may say it doesn't have room for you, at least not right now.

Specific chapters in this part of the book explain how to qualify for specific benefits. But here are some general guidelines:

Type of Discharge

There are important exceptions, but the great majority of programs of the VA, other federal agencies and state veterans departments require that the veteran was separated under "conditions other than dishonorable." You and your dependents are therefore eligible for benefits if you received an honorable discharge, a general discharge or a lower discharge that has been upgraded to honorable or general. You are in almost all cases not eligible if you have a dishonorable discharge or a bad-conduct discharge issued by a general court-martial.

If you have a bad-conduct discharge not issued by a general court-martial or if you have a discharge called "under other than honorable conditions" or what was formerly called "undesirable," the VA (or other agency) may find you eligible (this is especially likely if you were discharged for homosexuality or for minor offenses). The VA (or other agency) will make a determination of "character of discharge," based on the facts of your case: it will decide if you were separated under "dishonorable conditions" or "other than dishonorable conditions."

See Chapter 15, "Upgrading Less-Than-Fully-Honorable Discharges," for a discussion of discharges and how to get a bad discharge upgraded as well as for a chart showing the type of discharge required for specific programs of the VA and other federal agencies.

Type of Service

To be eligible for federal and state veterans programs, you must in almost all cases have had "active service." Active service includes, but is not limited to:

"Active duty"—This includes full-time service in the Army, Navy, Marine Corps, Air Force or Coast Guard and certain other kinds of service.

"Active duty for training"—during which the individual was disabled or died from a disease or injury that occurred or was made worse in the line of duty."Active duty for training" includes certain members of the reserve,

ROTC and national guard on full-time duty, for training purposes, in the armed forces and also includes those traveling to and from duty.

Service in Wartime

The VA pension program requires the veteran to have served during wartime. This does not mean the veteran must have engaged in combat or served in a combat zone (such as Iraq). The vet must only have served during a period officially designated as wartime. The wars in Iraq and Afghanistan have been designated as part of the period beginning on August 2, 1990, during the first Gulf War. So you qualify if you served anywhere—in Iraq, Germany, or Kansas—anytime on or after August 2, 1990. (The dates for the Vietnam Era were August 5, 1964 through May 7, 1975.)

Other Rules

The VA also has rules determining who qualifies as a spouse or child of a veteran. Check with a veterans service representative (also called a "veterans service officer") who works for a veterans organization such as the American Legion, AMVETs, the Disabled American Veterans (DAV), the Veterans of Foreign Wars (VFW), or Vietnam Veterans of America (VVA), or who is employed by a county or state government, or phone a VA Regional Office (VARO) and ask to be connected to a veterans organization service representative.

An easy way to reach a VARO is to call (800) 827-1000; your call will automatically be routed to your nearest VARO (the routing system reflects the area code from which you are dialing). For those who are interested: yes, the VA has "caller ID," so in most cases the agency will know the number from which you are calling.

Another alternative is to look in the "United States Government" listings near the front of your phone book, under "Veterans Affairs."If your area is too small to have VA facilities, call directory assistance for the nearest large city.

A local phone book is also helpful in finding other government agencies, veterans organizations and most anybody else. For state agencies,

look in the blue pages under the name of your state. Another place to look is the Internet.

You can also go to the VA Web site at www.va.gov. Click on "Find a Facility," then click on the down arrow and then on "Benefits Office."You can choose to get your five nearest regional offices (VAROs). Some list only their address; some also list a phone number. If a phone number is not listed, call directory assistance for the city in which the VARO is located. If your interest is not benefits but medical care, select not "Benefits Office" but "Medical Facilities."(The group of relatively informal facilities known as Vet Centers are found under this heading. These centers are mostly for counseling on issues of psychological readjustment to civilian life.)

For certain VA programs, such as educational benefits, there are certain other requirements, such as length of service and a fully honorable discharge (a general discharge is not enough). Requirements you need to meet for educational benefits are found in chapter 7, "Educational Assistance and Vocational Rehabilitation."

Whatever you need from the VA, ideally you will find not just a service rep, but a *good* service rep to assist you with your claim. Ask other veterans for referrals. Once you meet a service rep, ask about his or her general experience as well as experience in the specific areas that concern you. Once you begin working with a service rep, see if you get along. If you don't, consider switching to another one. Fees are not a problem: service reps do not charge.

Dealing with the VA and Other Agencies

Throughout this book we tell you what you can get and how to get it. We tell you what forms to use and sometimes even tell you how to fill them out. But there are some general rules we should include here:

To get forms, call, write or visit a VA Regional Office. Again, you can find a VARO by phoning (800) 827-1000. Forms relating to medical care can also be obtained from a VA medical facility. MOST veterans organizations and their service representatives also have forms. Return most forms to a VA Regional Office; return medical forms to the medical facility where you want to be examined or treated.

Although this book includes some VA forms, at some point they will go out-of-date. So don't print out the ones in this book. Get the latest, full-size

copies available from the VA and fill them out with information relating specifically to your case.

To file an application online for most VA benefits, go to www.va.gov/onlineapps.htm. Once you have filed your application, the VA will send you a form in addition to the one online. If the VA doesn't send you another form, call the VA. (This is important particularly because the date from which you will be paid benefits is the date of your claim.) Again, you can reach the VA at (800) 827-1000. You can write or visit your local VA Regional Office. Forms relating to medical care can also be obtained from a VA Medical Center or VA Community-Based Outreach Clinic. Most veterans service organizations (VSOs) and their service representatives also have forms.

It is important to remember to return the form to the correct agency within the VA. Return benefit and claim forms to a VA Regional Office, and return medical forms to the VA medical facility where you want to get examined or treated. As explained in our chapter about the VA, the VA's hospitals and the VA's Regional Offices operate under two different bureaucracies that have a history of poor communication with each other. One is the Veterans Health Administration (VHA). The other is the Veterans Benefits Administration (VBA).

Rarely is a request for medical treatment considered a claim for benefits. Never assume otherwise. Some veterans have received medical care, thinking that doing so established a claim, only to learn that they still had to apply for benefits. To safeguard your benefits, file your claim at a VARO and have it date-stamped. If you're not near one or otherwise can't file at a VARO or online (see below regarding filing online) but are at a VA hospital (especially if you're near the end of the month, in which case you will lose a month's benefits if you are delayed in filing until the beginning of the next month), file the claim there with the assistance of a veterans service officer (also known as a service representative)—if one is available at the hospital. And be sure to have it date-stamped.

If possible, computer-print or type your information onto the forms. Computer-print or type any additional documents you send to the VA or to anybody else. If that isn't possible, print neatly. Computer-printing, typing and printing are easier to read than handwriting and may make it easier for the VA to process your claim. An added hint: put your claim number on every page so the VA doesn't mix up your claim with someone else's.

Another alternative is to go to the VA Web site at www.va.gov and click on "Apply Online."

If you do not apply online: Before you submit your forms and documents, make photocopies. Photocopy machines may be found in most libraries and post offices as well as at photocopy shops. Staple the original forms to the copies of documents. Keep a copy of the forms and keep the original documents: **never submit original documents**.

If you apply online, the VA will send you one or more forms. If you have a document to submit, attach it to the appropriate form. To be sure you are submitting documents that help, not hurt, your claim, check with your service rep before submitting documents to the VA that the VA has not specifically requested. (For instance, you would not want to submit medical records that can be used against you as evidence of misconduct.) Unless the VA asks for a specific document, you are not obligated to submit all relevant documents. So you should submit only those that help your claim.

You need not personally deliver your forms and documents to the VA. It's fine to mail them. But if you do mail them, send them by certified mail, "return receipt requested." This is simple to do; any post office will help you. Your return receipt will let you know the VA got what you sent. And if you ever need to prove the VA got it, your receipt will be your proof. Keep it with your copies.

Keep the return receipt with your VA paperwork. Because hundreds of thousands of cases are processed each year, the VA loses documents. Keeping your originals and keeping a copy of VA forms often makes the difference between a fast, complete and correct VA decision and a lengthy wait for an incomplete or incorrect one.

In dealing with people at the VA or elsewhere, be confident and assert yourself. Avoid the extremes: don't be timid, but don't scream at people, either, even if they deserve it. (Yes, the VA does call the police and toss out veterans who swear at or threaten VA employees.) You should feel confident because—after reading this book—you will know your rights. You should feel assertive because you answered your country's call to military duty.

Getting Help

In many situations involving your rights as a veteran, you will do better if you get somebody to help you. This is often true if you're applying for benefits, and it's true particularly once you get involved in complicated matters, such as appealing a VA decision or applying for an upgrade of a discharge.

Over and over in this book we will suggest that you get help from a service representative. Who are service reps? They are people who work for veterans service organizations or state or county governments. Some are called "service representatives"; some are called "service officers."For information on which organizations provide service reps, see above. The best way to find service representatives is by contacting the organization for which they work. Use the Internet or the phone book. VAROs can also put you in touch with service reps, many of whom have offices at the VARO or a VA medical facility. (See above on how to find a VARO.) Vet Centers can often advise which service reps are the best.

Some service representatives are terrific. They're bright, knowledgeable, caring and reliable. Some are jerks. This is also true of every other kind of person from whom you may seek help: lawyers, doctors, employees at VA Regional Offices and staff members at Vet Centers.

Don't trust service reps just because they're service reps. And don't trust doctors just because they're doctors. As advice columnist Ann Landers said, "Fifty percent of the doctors now practicing medicine graduated in the bottom half of their class."

Evaluate the people with whom you deal. Do they have experience in the area that concerns you? Do they know what they're talking about? (We may have made a few mistakes in this book, but if your service representative repeatedly tells you things that contradict this book, the service rep is a turkey.) Do they have experience with the type of application or problem you have? Do they have time for you and time to work on your case (and not just at the last minute)?Do they show up when and where they're supposed to? Do they keep good records? Do they have the training, the books and the manuals necessary to do the best possible job? Are they courteous? Do they return your calls?

Shop around until you find somebody who seems well qualified and who seems like somebody with whom you can get along. If you later decide you don't like the person who is helping you, find somebody else.

Most VSOs (veterans service organizations) have more than one service rep at the VA Regional Office, and most VAROs have more than one VSO. If you can't conveniently get to a VARO, you can work with your county service rep. (He or she would usually pass your claim on to an employee of a state veterans agency or of a veterans service organization. An experienced county service officer would generally know who the best available service rep is at a state agency or veterans organization and would know who would present our case at the VARO.)

Many of the service reps may be overburdened because they are helping many more veterans than usual deal with the VA's current "backlog" of hundreds of thousands of unfinished claims already stacked up at VA Regional Offices. The backlog amounts to a crisis. Because of it, it is more important than ever to know how the VA works so you don't face endless delays getting the healthcare and disability payments you need and have earned. As often is the case, being patient and being practical come in handy when dealing with the VA. Nevertheless, in an emergency, a case sometimes can be moved up in line. If you think your case presents an emergency, ask your service rep if it qualifies for accelerated treatment.

Keep in regular contact with your service rep (or attorney), especially when the VA asks you for information or tells you there is a deadline. The VA often forgets to notify service reps (and attorneys), so you should do this so that important deadlines are not missed.

Most of the time, a service representative is the best person with whom to start. Sometimes, however, the best person is someone who works at one of the relatively informal facilities known as Vet Centers (see the section of Chapter 3 about Post-Traumatic Stress Disorder [PTSD]). As mentioned above, you can find one by going to www.va.gov, under "Medical Facilities. Or phone the main VA number, (800) 827-1000. Vet Center employees are often war veterans who can direct you to the appropriate agency within the VA for assistance. Vet Centers often have good listings of state and local services with which they are familiar, and they can point you in the right direction. You can call or go in person.

Or your best bet for help might be a doctor. Or, in some cases, someone in the local office ("district office") of your Member of Congress or one of the state offices of your U. S. Senator (especially if you need a politician to apply pressure on your behalf).

A member of the staff of the elected officials will open a "case" for you and write letters to Federal government agencies on your behalf. **But**

be sure the Member's or Senator's caseworker follows through rather than just making a routine inquiry. Based on our colleagues' decades of lobbying experience in Washington, we know that elected officials like the spotlight when it comes showing they care for the military and veterans. So be sure to follow up with their offices when anything happens (or doesn't happen), so that they can take some of the credit or, as needed, keep pressure on the VA.

Or the best person to help you might be a reporter for a newspaper or TV station. You can call a reporter who has written articles about veterans and ask him or her if he or she knows a good contact for help. If your problem dealing with VA is serious enough, the reporter may even want to write an article about you and how the VA dropped the ball. **Our colleagues' experience over thirty years shows that a well written news article about a veteran, VA hospital or VA Regional Office will prompt fast action from VA headquarters in Washington** or from elected officials who want to take public credit for solving a problem for a constituent.

Or the best person may even be—yes it's true—a lawyer.

Lawyers present problems for everybody, and they present special problems for vets. This isn't all the fault of the lawyers. Ever since the Civil War there has been a law limiting the amount a lawyer can charge a veteran for work relating to veterans benefits. At the end of the Civil War, the limit was $5.

Later it became $10. From 1989 to June 2007 a lawyer could not charge any fee until the veteran lost at the Board of Veterans' Appeals. This, of course, made no sense. But it was the law.

Congress passed a law in late 2006 allowing earlier access to an attorney for the VA claims process. This is explained in greater detail in chapter 3, "Compensation."

The change in the law was effective on June 20, 2007.

Now, fees must only be "reasonable." They can be in the form of a fixed fee, an hourly rate, a percentage of benefits recovered or a combination. Fees that do not exceed 20 percent of any past-due benefits are presumed to be reasonable. But attorneys may charge more than 20 percent.

Attorneys may charge fees for representation they provided after the claimant (the veteran) has filed, with the VARO, a notice of disagreement

(NOD) with respect to the case, provided the NOD was filed on or after June 20, 2007.

The new law eliminates the 1989-2000 prohibition on charging fees before the Board of Veterans' Appeals makes its first "final" decision. The VA is in the process of issuing regulations that, among other things, will include determining which attorneys are eligible to represent veterans in their claims.

The VA can pay attorney fees out of past-due benefits owed to the veteran or the veteran can pay the attorney directly.

If you have low income, are out of work or are in the criminal justice system, you may qualify for free representation by an attorney who works for a legal aid or Legal Services office. You can always hire a lawyer in cases not directly relating to getting benefits, such as when seeking to upgrade your discharge, seeking damages for VA medical malpractice, trying to correct military records or if the VA tries to get money from you due to an overpayment.

It is important to hire an attorney who has experience dealing with the VA. As with choosing a service representative, see if the attorney is qualified and if you get along with him or her.

If you need referral to a local lawyer with experience in veterans matters, contact your local bar association, the Court of Appeals for Veterans Claims Web site at www.vetapp.uscourts.gov/practitioners (lists of attorneys and others who practice there) or the Web site of National Organization of Veterans Advocates (NOVA)at www.vetadvocates.com. The National Veterans Legal Services Program, a non-profit law firm located in Washington, D. C. ,handles cases only before the Court of Appeals for Veterans Claims; its Web site is www.NVLSP.org.

Lawyers often have skills that are helpful to the veteran in complex cases. But some lawyers are unscrupulous or incompetent. So you may very well run into a lawyer who tells you he or she can handle your case even if he or she has little or no idea how to do so, or a lawyer who says he or she has represented many veterans, even though this is not true.

Check into the attorney's reputation, background and experience. If you like a particular lawyer, consult with him or her briefly about your case and then ask for an estimate (preferably in writing) of your chances of success, what you will gain if you win, how much the lawyer will charge you in fees and expenses and when the lawyer expects to be paid. (In most veterans cases, lawyers will work for a contingency fee: they receive a

percentage of your past-due benefits.) If you ask for a firm estimate, you risk making the lawyer angry. If this occurs, you may have to find another lawyer. Don't worry: there are more than a million of them.

In addition to getting help from service reps, the VA itself, veterans organizations and other specialized people and organizations, don't miss the more obvious sources of assistance. In addition to all the other options, your family (especially your spouse) and friends may be of great help to you. For example, they can listen. Also, if you are unable to do certain things (due to physical or psychological disability or for some other reason), family and friends may be able to take care of them for you.

You Can't Have Everything

This book is very complete. This book is very up-to-date. But it could be more complete: the *Veterans Benefits Manual*, written for lawyers and service representatives by the National Veterans Legal Service Program and published by Lexis, is 1,900 pages. (If you want to order a copy, go to www.lexisnexis.com/bookstore.) We wanted to cover all the key points and few of the obscure ones and we wanted to publish a book that was not so long that veterans wouldn't want to read it. So we have left out many details and many exceptions to rules. Some of these details and exceptions may apply to you. That's one reason that we say, over and over, to check with an expert.

Because we can update a Web-based book sooner than we could revise a traditional, printed book, this book will remain more up-to-date than most. Still, on matters critical to you, check with your service rep to ensure that information you have is up-to-date. Another way to stay abreast of veterans issues is to get on the newsletter mailing list at www.veteransforamerica.org. Near the top of the home page, enter your e-mail address under "SUBSCRIBE TO OUR NEWSLETTER."

Get Your Records

When you seek benefits from the VA, the agency usually is concerned mostly about what's in your military service records and what the military doctors who treated you wrote about you. So if you are still in the military, one of the best things you can do is to obtain a full set of your service and

medical records for use later on. You can also request these records after you have been discharged. For details on requesting your records, see chapter 17, "Military Records, Research and Resources."

Be Patient, Be Practical

Dealing with the VA may try your patience even more than the military's infamous "hurry up and wait."Unfortunately, due to under-funding and under-staffing, the VA now takes an average of six months to make an initial decision on a claim. And if you appeal a VA decision, the agency takes about two years more to decide the appeal. You may even have to go to the Court of Appeals for Veterans Claims. (At the court, in most cases free lawyers are available through the Veterans Consortium Pro Bono program, whose Web site is www.vetsprobono.org.) So be realistic and don't expect fast results from the VA. Be practical and figure out how to get by financially until you receive payments from the VA.

Squeak

"The squeaky wheel gets the grease." This is true of wheels and it is true of veterans. Except that squeaky veterans don't get grease. They get increased disability compensation, special devices for the handicapped, discharge upgrades, better medical care and so on and so on.

So squeak. After risking your life and maybe harming your life as a member of the American armed forces, you deserve benefits and other assistance from the VA and other federal and state agencies. If you are denied healthcare or benefits, ask again. If you need something else, ask for what you need, even if it's not standard. Ask again (again). Ask more persuasively. Get advice. Ask somebody higher up. Make phone calls, send e-mails, write letters, make personal visits. Do some research. Know your facts.

Get help from your service representative, or maybe a Vet Center or a doctor or a lawyer or a reporter or a member of Congress.

Be as tough as a military veteran. Hang in there as long as a marathon runner. And be as prepared as someone who has read *The American Veterans and Servicemembers Survival Guide*.

Remember: Sometimes—with appropriate advice from a service rep or lawyer—you can assist importantly in your own case. The more you know, the better the system will work for you. Your improved knowledge and your prompt actions will improve your chances of getting to see a VA doctor soon and they will ensure that your disability compensation covers all of your military service-related medical conditions.

Sound Off! After risking your life and returning home, you have earned and you deserve your government benefits. Ask for assistance, even if you are not sure what to ask for. When Vietnam War veterans flooded the VA with questions and concerns about health problems related to Agent Orange exposure, Congress and the VA were forced to act. It took a while, but now hundreds of thousands of veterans receive free medical care and disability compensation because they acted and the scientific evidence showed the veterans were correct. The same happened when Gulf War veterans complained about chemical warfare agent exposure, experimental drugs and other poisonous exposure.

As you learn more about the benefits you have earned, we suggest you recommend *The American Veterans and Servicemembers Survival Guide* to your friends—those still in the military and those who are veterans—so that their transition from servicemember to veteran is smooth and so that as veterans they receive everything to which they are entitled. Remember, our goal is to reduce the number of veterans falling through the cracks because they don't know about their benefits.

Our legacy with our new book is a tip for the future: You'll get a lot out of your *Survival Guide* by sharing it with others who need to know the basics so that the next generation of veterans faces fewer challenges. (And if you are a civilian who is recalled to active duty, see chapter 24, "National Guard and Reserve Call-Up Issues.")

Next Step

As we have said: After you read this chapter, look in the table of contents and index for parts of this book that apply to your unique situation. Then go to those parts and carefully read them. And when a new subject comes up in a few months or a few years, check the table of contents and the index again. (Please note that we do not anticipate that the index will be available until all chapters are on the Web site.)

Craig Kubey is a lawyer-turned-writer. He attended the University of California, Berkeley and graduated from the University of California, Santa Cruz. After law school at the University of California, Davis, he worked as a legislative assistant to a Congressman in Washington, D. C. Next, he was a staff attorney at a major public interest group; there he co-founded the Equal Justice Foundation, a national public interest organization dedicated to expanding the access of "average" citizens to justice in courts and regulatory agencies.

Including this one, Kubey has published nine books, four of them national bestsellers and three called the best ever published on their subjects. This is his first Web-based book. Six of his books have been collaborations with experts or celebrities. This is his third collaboration on a book for veterans; the others were *The Viet Vet Survival Guide: How to Cut Through the Bureaucracy and Get What You Need—And Are Entitled To* and *Veterans Benefits: The Complete Guide*. The subjects of his other books have included sports legends, self-treatment of back and neck pain and alternative dispute resolution.

Paul Sullivan serves as the executive director of Veterans for Common Sense, a non-profit organization focusing on national security, civil liberties and veterans' issues. Prior to that, Paul worked as project manager (GS-14) at the U. S. Department of Veterans Affairs, where he monitored Gulf War, Iraq War and Afghanistan War veterans' VA benefit use. He resigned in 2006 after being ordered to conceal the escalating impact of the Iraq and Afghanistan wars on the VA. Next, he was director of research and analysis at Veterans for America. Before working at the VA, Paul worked as the executive director of the National Gulf War Resource Center, where he successfully pressed for passage of the Persian Gulf Veterans Act of 1998, a law significantly expanding healthcare and disability benefits for Gulf War veterans. Paul served as cavalry scout with the Army's 1st Armored Division during the invasion of Iraq and Kuwait in 1991. He received a bachelor's degree in political science from the University of West Georgia and a master's certificate in project management from George Washington University. He and his family live near Austin, Texas.

Chapter Two
The Department of Veterans Affairs

By Dennis K. Rhoades

If you plan to take advantage of your rights as a veteran, sooner or later you are going to have to deal with the Department of Veterans Affairs, often called "the VA." Eventually, nearly all of today's 24 million living veterans and their families will interact with the VA for some type of VA benefit during their lifetime. It is therefore critical to know how the VA is organized, so you can go to the right place for assistance the first time.

The full name of the department is the **U.S. Department of Veterans Affairs**, although it is often wrongly referred to by its old name, the Veterans Administration. The VA is a civilian, rather than a military agency, an important fact to keep in mind, since you will find that it often makes decisions such as disability ratings that differ significantly from those of the Department of Defense. The VA is the second largest department in the federal government (the Department of Defense is the largest), with over a quarter million employees and a projected budget of $87 billion for 2008. The VA is headed by the Secretary of Veterans Affairs, who is a member of the President's Cabinet.

The VA is a massive bureaucracy with three major agencies, or "administrations":

- Veterans Benefits Administration
- Veterans Health Administration
- National Cemetery Administration

These agencies have distinctly different missions, with different operating rules and service locations. You will save a lot of time if you apply to the correct agency for the benefits you are seeking. If you're not sure about which agency to contact, you may call the VA's general number, (800) 827-1000, or consult a veterans service organization such as the American Legion, AMVETS, Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), and Vietnam Veterans of America (VVA).

Here's a description of the VA's three agencies:

- **VBA—**the **Veterans Benefits Administration—**provides **non-healthcare** benefits, usually in the form of direct cash payments to veterans for disabilities or educational expenses. VBA's projected budget for 2008 is $45 billion. VBA operates through 58 Regional Offices, often called "ROs," with at least one in every state, plus one in Manila, the Philippines, and one in San Juan, Puerto Rico. Each RO processes paperwork for these types of benefits:
  - Compensation for service-connected disabilities, and pension for non-service-connected disabilities. See Chapter 3, "Compensation," for Service-Connected Compensation payments and Chapter 4, "Needs-Based Pension for Low-Income Veterans or Survivors" for pension payments.
  - Vocational Rehabilitation and Employment (VRE), exclusively for veterans already deemed to have service-connected disabilities. In addition to subsistence, VRE often pays for tuition, books, tools, etc. See Chapter 7, "Educational Assistance and Vocational Rehabilitation."
  - Education. VBA pays for your "G.I" college benefits. Again, see Chapter 7.
  - Loan Guaranty. VBA guarantees a portion of a home loan for a new or existing home, See Chapter 8, "VA Housing Programs."
  - Life Insurance, including VBA's Service-Disabled Veterans Insurance (SDVI) and Veterans' Group Life Insurance (VGLI). VBA also administers the military's life insurance, Servicemembers Group Life Insurance (SGLI), and the

military's Traumatic Servicemembers Group Life Insurance (TSGLI). See Chapter 22, "Active-Duty Family Benefits."
- Specially Adapted Homes, for building, buying, or remodeling a home for service-connected veterans with severe disabilities. See Chapter 8, "VA Housing Programs."
- Automobile Assistance, for buying or adapting an existing car for service-connected veterans with certain disabilities
- Burial Benefits, where VBA pays for a headstone and burial. See Chapter 10, "VA Programs for Veterans' Family Members and Survivors."
- Benefits for Survivors. Again, see Chapter 10.

In order to receive the VBA benefit you need, it is important to complete the correct paperwork. Please contact a service representative from a Veterans Service Organization (VSO), such as the American Legion, AMVETS, the DAV, or Vietnam Veterans of America or a VA Regional Office (VARO) to obtain the right application. The fastest and most reliable way to get the most recent VA forms is to go online at **www.vba.va.gov/pubs/forms/**.

You can also call (800) 827-1000 to speak with a VBA employee, and the VA will mail you the required forms.

You may also apply for some VA benefits online. See "Other Important Facts about the VA" later in this chapter.

- **VHA—Veterans Health Administration—**provides medical, surgical, and rehabilitative care. The projected VHA budget for 2008 is $42 billion. VHA is not your grandfather's old VA hospital with in-patient rooms. Although the VA still operates large hospitals, most veterans receive routine medical care at a local, community-based clinic or at one of many clinics now located inside medical centers. VHA also provides specialized clinics–including clinics for drug and alcohol treatment, prosthetics devices, and sensory aids—as well as pharmacies. As of 2006, the VA operated at nearly 1,300 locations, including:
  - 875 ambulatory care and community-based outpatient clinics
  - 154 medical centers (the term VHA uses for hospitals)
  - 136 nursing homes
  - 43 residential rehabilitation treatment programs

- 206 Vet Centers, which provide readjustment counseling (See note on Vet Centers below under "Other Important Facts about the VA."
- 88 comprehensive home-care programs

In order to be treated for free at a VHA facility, a veteran must be "service-connected" by VBA or be receiving a VBA pension. The important exception to this rule is for veterans who deployed to the Gulf War or to another war zone on or after November 11, 1998. For deployed veterans, VHA offers five years of free medical care for conditions that the veteran asserts are related to military service. When filling out any VHA or VBA application to see if you qualify for free VHA medical care, it is very important to let your service representative know if you ever deployed to a war zone. Another tip: Vet Center readjustment counseling is always free for those eligible (see Chapter 3, "Compensation," under the subchapter on Post-Traumatic Stress Disorder (PTSD).

- **NCA—National Cemetery Administration**—provides burial services for veterans and qualified dependents. NCA maintains 123 national cemeteries. Please note applications for burial benefits are made through VBA**.**
  - Burial at Arlington National Cemetery is handled by the Department of the Army. The web site for Arlington is www.ArlingtonCemetery.org.

What the VA Won't Do

The VA is not all things to all veterans. Here's a sample of what the VA won't do:

- Jobs: Unless you are receiving vocational rehabilitation (see Chapter 7, "Educational Assistance and Vocational Rehabilitation"), the VA doesn't help you find a job. Employment is the responsibility of the Department of Labor and its affiliated state employment security agencies. Learn about that in Chapter 11, "Employment, Self-Employment and the Small Business Administration."
- Unemployment Benefits: the VA does not provide unemployment benefits. If you are unemployed when you are released from active duty, you will probably be entitled to receive cash payments under

the Unemployment Insurance for Ex-Servicemembers (UCX) program, administered by your state. Again, see Chapter 11.

- Businesses: the VA doesn't help you with business loans. Learn about those benefits by contacting the Small Business Administration at www.SBA.gov. For more on the SBA, see (guess what) Chapter 11.
- Personal Loans: the VA doesn't provide you with personal loans or credit. There is an exception where the VA will guarantee a portion of a home loan for qualified veterans; please see Chapter 8, "VA Housing Programs."
- Military Benefits: Please see Chapters 18 through 28 for information about military benefits administered by the Department of Defense (DoD).
- Other Benefits: the VA doesn't provide other federal benefits, such as Social Security. Please see www.govbenefits.gov/govbenefits_en.portal.
- Services for Family Members: In general, the VA does not assist members of a veteran's family, except to the degree that these members are considered dependents for purposes of the dollar amount of benefits received, or if the veteran has died of a service-connected disability. (See Chapter 10, "VA Programs for Veterans' Family Members and Survivors."). The VA will also provide help for veterans' children with spina bifida, or the children of female veterans born with a birth defect. In both cases, the veteran must have served in-country in Vietnam.

Locating a VA facility near you

To locate a VA facility near you, go to this VA Web site: www1.va.gov/directory/guide/home.asp.

The VA's Web site asks you to enter your zip code and select the type of VA facility you want to find, including:

- Medical facilities, such as hospitals, clinics, and Vet Centers operated by VHA
- Benefits offices operated by VBA
- Cemeteries operated by NCA

Other important facts about the VA

You have a limited period of time to apply for some VA benefits: While you may apply for some VA benefits, such as home loans, medical care and compensation, anytime during your life, there are other benefits, such as insurance and education, for which you must make application within a certain period of time after you retire or separate from active duty. Don't assume a benefit will be there for you 15-20 years down the road. Sometimes these time periods can be a matter of months, after which you are no longer eligible for the benefit. These time restrictions are called **delimiting dates**, and you should pay careful attention to them. Directly below is the VA timetable of the delimiting dates for each type of benefit. This timetable is subject to change at any time. It is accurate as of April 14, 2008. To get the absolutely latest timetable, go to www.vba.va.gov/pubs/forms/21-0501.pdf . Because some time limits may change at any time and because some time limits are only a matter of months, **it is important that you frequently check the latest timetable.** This is especially true for veterans seeking education or medical benefits. Please especially note one recent change: the delimiting date for combat veterans seeking medical care has increased from two years to five.

Department of Veterans Affairs

VETERANS BENEFITS TIMETABLE
Information for Veterans Recently Separated from Active Military Service

BENEFITS AND SERVICES		TIME LIMIT	WHERE TO APPLY
Disability Compensation: VA pays monthly compensation to veterans for disabilities incurred or aggravated during military service. This benefit is not subject to Federal or State income tax. Entitlement is established from the date of separation if the claim is filed within one year from separation. Generally, military retirement pay is reduced by any VA compensation received. Income from Special Separation Benefits (SSB) and Voluntary Separation Incentives (VSI) affects the amount of VA compensation paid.		None	Any VA office or call 1-800-827-1000 or file at www.va.gov
Disability Pension: This income-based benefit is paid to veterans with honorable war-time service who are permanently and totally disabled due to nonservice-connected disabilities or who are 65 or older.		None	Same as above
Medical: VA provides a wide range of health care services to veterans including treatment for military sexual trauma, and for conditions possibly related to exposure to Agent Orange, ionizing radiation, and other environmental hazards in the Persian Gulf. Generally, veterans must be enrolled in VA's Health Care System to receive care.		None	Any VA medical facility or call 1-877-222-8387 or file at www.va.gov
Combat Veterans: VA will provide combat veterans free health care for any illness possibly associated with service against a hostile force in a war since the Gulf War or during a period of hostility after November 11, 1998.		Two years from release from active duty	
Dental: Veterans may receive one-time dental treatment if they were not provided treatment within 90 days before separation from active duty. The time limit does not apply to veterans with dental conditions resulting from service-connected wounds or injuries.		90 days from separation	Same as above
Education and Training: Up to 36 months of benefits for:	**Montgomery GI Bill - Active Duty (Chapter 30) OR Veterans Educational Assistance Program (VEAP)**	10 years from release from last period of active duty. Limited extensions available.	Any VA office or call 1-888-GIBILL-1 (1-888-442-4551) or file at www.gibill.va.gov
	OR Montgomery GI Bill - Selected Reserve (Chapter 1606)	14 years from the date of eligibility for the program, or until released from the Selected Reserve or National Guard, which ever occurs first. Some extensions available if activated.	
	OR Reserve Educational Assistance Program (REAP/Chapter 1607)	No time limit as long as individual remains in the same level of the Ready Reserve from which called to active duty. There are exceptions for discharge due to disability or transfer from the IRR to the Selected Reserve.	
Vocational Rehabilitation and Employment: VA helps veterans with service-connected disabilities prepare for, find and keep suitable employment. For veterans with serious service-connected disabilities, VA also offers services to improve their ability to live as independently as possible. Some of the services offered are: job search, vocational evaluation, career exploration, vocational training, education training and rehabilitation service.		Generally 12 years from VA notice to veteran of at least a 10 percent disability rating	Any VA office or call 1-800-827-1000 or file at www.va.gov.
Home Loan: Veterans with qualifying service are eligible for VA home loan services including guaranteed loans for the purchase of a home, manufactured home, manufactured home and lot, certain types of condominiums, or to build, repair, and improve homes. Certain disabled veterans can receive grants to have their homes specially adapted to their needs. Native Americans living on Trust Land may qualify for a direct home loan.		None	Any VA office or call 1-800-827-1000

VA FORM 21-0501 MAY 2007 SUPERSEDES VA FORM 22-0501, MAY 2006, WHICH WILL NOT BE USED.

(Continued on Reverse)

VETERANS BENEFITS TIMETABLE (Continued)

	BENEFITS	TIME LIMIT	WHERE TO
Life Insurance:	**SGLI (Servicemembers' Group Life Insurance)** is low-cost life insurance for servicemembers and reservists. It is available in $50,000 increments up to a maximum of $400,000. SGLI coverage begins when the servicemember enters service or changes duty status.	Coverage continues for 120 days from date of separation, or up to one year if totally disabled at the time of separation from service.	VA Insurance Center or call 1-800-419-1473
	Traumatic Injury Protection under Servicemembers' Group Life Insurance (TSGLI) is a traumatic injury protection rider under Servicemembers' Group Life Insurance (SGLI) that provides for payment to any member of the uniformed services covered by SGLI who sustains a traumatic injury that results in certain severe losses. TSGLI is retroactive for members who sustain a qualifying loss as a direct result of injuries incurred on or after October 7, 2001, through November 30, 2005, in Operation Enduring Freedom or Operation Iraqi Freedom, regardless of whether they had SGLI coverage. TSGLI pays a benefit of between $25,000 and $100,000 depending on the loss directly resulting from the traumatic injury. In order for a veteran to qualify for a TSGLI payment, they must have incurred a qualifying loss as a result of a traumatic event that occurred while they were in the service.	Coverage continues through midnight of the date of discharge, but member/veteran generally has up to two years from the date of the loss to apply for payment.	
	VGLI (Veterans' Group Life Insurance) is lifetime renewable term life insurance for veterans. It is available in increments of $10,000 up to $400,000 but cannot exceed the amount of SGLI coverage in force at the time of the servicemember's separation from service. Premiums are age-based.	Must apply within 120 days of separation, or 1 year and 120 days if proof of good health is provided. Those on the 2-year disability extension are automatically converted to VGLA at the end of the 2-year period.	
	FGLI (Family Group Life Insurance) is life insurance that provides automatic coverage to the spouse and children of servicemembers insured under SGLI. Spousal coverage is available up to a maximum of $100,000, but may not exceed the servicemember's coverage amount. Premiums for spousal coverage are age based. Dependent children are automatically covered for $10,000 for which there is no cost.	Coverage terminates 120 days after servicemember is released from service. Spouse may convert to a commercial policy.	
	SGDVI (Service-Disabled Veterans' Insurance), also called "RH" insurance, is life insurance for service-connected disabled veterans. The basic coverage is $10,000. A $20,000 supplemental policy is available if premium payments for the basic policy are waived due to total disability.	For basic, must apply within two years from date of notification of service-connected disability. For supplemental, must apply within one year of approval of waiver of premiums.	VA Insurance Center or call 1-800-669-8477
	VMLI (Veterans' Mortgage Life Insurance) is mortgage protection insurance available to those severely disabled veterans who have received grants for Specially-Adapted Housing from VA. Maximum coverage of $90,000.	Must apply before age 70.	
Reemployment: The Department of Labor's web site www.dol.gov contains information on employment and reemployment rights of members of the uniformed services.		For military service over 180 days, must apply for reemployment with employer within 90 days from separation. Shorter periods to apply if service is less than 180 days.	Former employer
Unemployment Compensation: The unemployment compensation for ex-servicemembers program is administered by the States as agents of the Federal government. The Department of Labor's web site www.dol.gov contains links for each State's benefits, including the District of Columbia and Puerto Rico.		Limited time	State Employment Office (bring your DD-214)

FOR ADDITIONAL INFORMATION VISIT THE VA WEB SITE AT **WWW.VA.GOV** .

PROTECT YOUR IDENTITY

Your DD-214, *Certificate of Release or Discharge from Active Duty*, contains personal information. Keep it in a safe place. Protect yourself from identity theft. If you decide to file your DD-214 at a public records facility such as a court house or vital statistics agency, you may want to inquire about the level of security in place to limit public access to your document.

VA FORM 21-0501, MAY 2007

As mentioned, the above timetable is subject to change. It may even have changed since our posting of this chaper. It may be critical for you to go to the VBA site if you are to apply on time for your VA benefits. Again, the site is www.vba.va.gov/pubs/forms/21-0501.pdf.

Benefits Briefings While on Active Duty: If you are on active duty and within two years of retirement or one year of separation, you will at some point be offered the opportunity to attend a **Transition Assistance Program**, or TAP, workshop. As described in Chapter 11, on employment etc., these 3½-day workshops are conducted by personnel from the state employment service and focus principally on preparation for employment in civilian life. The last half day of the TAP workshop, however, is set aside for a briefing on VA benefits by personnel from the nearest VA Regional Office (VARO). We strongly encourage you to attend this briefing, because not only will it give you an idea of the lay of the land of benefits, but may also answer any specific questions you have. If you have been out of the service for less than six months, you may be able to attend a briefing on a nearby base or post. You should contact your nearest VARO for information on upcoming TAP briefings and contact information for the military installation at which the briefing is to be conducted.

Applying for VA Benefits Online: The VA maintains a Web site called VONAPP (Veterans On Line Applications), on which veterans may apply for benefits using the Internet. U.S. military veterans and some servicemembers within six months of separation or retirement can apply for compensation, pension, and vocational rehabilitation benefits. U.S. military veterans, servicemembers with at least two years of service, and members of the Selected Reserve can apply for education benefits. VONAPP also has a link to VA Form 10-10EZ, Application for Health Benefits.

VONAPP's Web address is vabenefits.vba.va.gov/vonapp/.

A Special Note about Vet Centers: Although Vet Centers are under the umbrella of VHA, they operate as a semi-independent organization within the VA. Vet Centers are often staffed by friendly and knowledgeable combat veterans who also happen to be psychologists, counselors, and social workers. The Vet Centers are the best place to go for readjustment counseling, as described in Chapter 3, "Compensation," in the subchapter on Post-Traumatic Stress Disorder (PTSD). Vet Centers are good places to ask for informal assistance about navigating through the VA. Although we strongly recommend using a service representative, Vet Center staff consistently provide high-quality walk-in service especially designed for veterans who served in a war zone. Vet Centers were established in 1989 after pressure from Vietnam War veterans who complained about the need for greater community-based psychological counseling in a non-hospital

setting. The Centers are often located in suburban areas, office buildings, and/or small shopping centers. They offer an alternative way to get into the VA system as well as information about other federal, state, and local government and private assistance.

If you or a fellow veteran experiences some of the mental health symptoms described in the PTSD subchapter, the best place to go for prompt counseling may be a Vet Center. The nearest Vet Center can be located at www1.va.gov/directory/guide/home.asp.

Non-Veterans. As discussed above, the VA administers limited benefits for a narrow group of non-veterans. If you are the surviving spouse, parent or child of a veteran, make sure you receive all the benefits the veteran earned on your behalf (see Chapter 10, on programs for family members and survivors). If you are on active duty, or in the National Guard or Reserve, you may qualify for some benefits while still serving, especially a home loan guaranty and education and insurance benefits (see Chapters 7, on education etc., and 8, on housing, for details).

All Politics are Local. The VA and its major administrations are headed by political appointees nominated by the President and confirmed by the U.S. Senate. These political appointees, in turn, supervise the career VA employees who run your local VHA medical facilities, local VBA regional offices, and local NCA cemeteries. The local VA staff wants to look good for their bosses in Washington, and they want to avoid bad publicity.

That means local VA facilities usually respond to outside pressure from veterans groups, Congress, and the press. If there is a serious crisis with your access to medical care or benefits, our experience shows that a well written letter to your Senator, your U.S. Representative, or a local newspaper about a problem with a VA hospital or VA Regional Office will often prompt fast action from VA headquarters in Washington.

Final thoughts about the VA

Although the VA will tell you that its goal is for a "seamless transition" from military service to its civilian health care and benefits programs, you may not find that the system works flawlessly. The VA administers an entire title (section of laws) of the U.S. Code; the VA title takes up several volumes. These volumes, in turn, result in many more volumes of regulations and manual procedures that implement the laws. These

regulations and manual procedures often complicate what may seem to veterans to be a simple process.

In addition, the VA is overwhelmed with hundreds of thousands of disability claims every year, and the system for processing these claims is cumbersome. The VA pays benefits to nearly three million veterans and surviving dependents. The VA treats more than five million patients each year. The amount of paperwork and mail each VA facility processes each day is staggering, and VA employees may lose or misplace some documents. **Always make copies of any document you send to the VA.**

The VA's workload means you should be patient and expect some delays. Keep your cool when dealing with the VA (generally, you will feel better and VA employees will be more likely to help you than if you loudly complain), and make sure your service representative knows the status of your claim and other paperwork. For most veterans, the benefit or care they ultimately receive is worth the trouble and the patience.

Dennis K. Rhoades is a Vietnam veteran who spent 35 years working on behalf of his fellow veterans. He has held positions in the Departments of Veterans Affairs and Labor, the White House, Vietnam Veterans of America and The American Legion. Rhoades was also appointed by U.S District Court Judge Jack B Weinstein to set up and administer the Agent Orange Class Assistance Program, a part of the 1984 Agent Orange Settlement. He retired in 2006.

The editors thank Paul Sullivan for time spent on this chapter when he was an employee of Veterans for America.

Chapter Three Service-Connected Compensation

By Charlene Stoker Jones, Meg Bartley and Ronald B. Abrams, National Veterans Legal Services Program.

Introduction

Not every veteran is entitled to every veterans benefit. You must satisfy certain eligibility requirements before the VA will award you benefits. Certain benefits have special additional requirements. The primary VA benefit programs are service-connected disability compensation and non-service connected disability pension. You may be eligible for service-connected disability compensation if you incurred a disease or an injury or aggravated a pre-existing condition while you were in service. You may be eligible for non-service-connected disability pension if you served during a time of war, are totally disabled from a disability (even one unrelated to military service), and have low income and net worth. Even if you do not qualify for compensation or pension, you may still be eligible for one of the many other benefits programs the VA offers.

A1. General Requirements for VA Benefits

First, you must prove that you are a veteran. If you are found eligible for veterans benefits, your family may also be eligible for certain benefits described in Chapter 10. In deciding whether you are eligible, the VA will review your military department's service records and the conditions under which you were discharged from service. You will need a copy of your military discharge document which is known as the DD 214. The DD 214 provides information on your dates of service and the character of your discharge. If you have any question about whether you qualify for veterans benefits, you should go over your DD 214 with your veterans' service organization representative.

To satisfy the VA's definition of a veteran, you must have had active military service and you must have been discharged or released from service "under conditions other than dishonorable." Most former servicemembers seeking VA benefits can easily satisfy these requirements which are explained further below. If you are concerned that you do not meet these requirements, discuss the specific facts of your situation with your service organization representative or attorney. The rules are complex and contain many exceptions as explained in a later chapter of this book. Your eligibility will depend on the specific facts of your case.

a) Active Military Service Requirement

"Military service" includes full-time service in the U.S. Army, Navy, Air Force, Marines, or Coast Guard. Active military service may also include service with the U.S. Merchant Marines during World War II, commissioned officers of the Public Health Service, and cadets at military academies.

Reservists may also be eligible for VA benefits. Active service for reservists is any period of active duty training during which the reservist was disabled or died from a disease or injury that began during or was made worse in the line of duty. A reservist may also qualify for VA benefits for any period of inactive duty training during which the reservist was disabled or died from an injury (not a disease) that resulted from or was aggravated by military service. Reservists also qualify for certain VA benefits if they suffer a heart attack, cardiac arrest, or stroke during training.

Some VA benefits, for example non-service-connected disability pension, are only offered to veterans who served during a period of war. Congress has designated certain periods as wartime:

- World War I: April 6, 1917, through November 11, 1918; extended to April 1, 1920, for persons who served in the Soviet Union. Service after November 11, 1918, through July 2, 1921, qualifies the veteran for wartime benefits if the veteran also served during the basic World War I period.
- World War II: December 7, 1941, through December 31, 1946 (extended to July 25, 1947, where continuous with active duty on or before December 31, 1946).
- Korean Conflict: June 27, 1950, through January 31, 1955.
- Vietnam Era: August 5, 1964, through May 7, 1975 (in the case of a veteran who served in the Republic of Vietnam the Vietnam era begins on February 28, 1961)
- Persian Gulf War: August 2, 1990, through a date yet to be determined.

The wars in Iraq and Afghanistan are currently included in the open ended Gulf War period. You do not have to be physically present in a combat zone. You just have to have served between the start date and end date of the war.

b) Discharge Requirements

You must usually have an honorable discharge or a discharge under honorable conditions, often called a general discharge, to qualify for VA benefits. The five main types of military discharges are:

- Honorable discharge (veteran almost always qualifies for VA benefits).
- General discharge or discharge under honorable conditions (veteran usually qualifies for VA benefits).
- Undesirable discharge or discharge under other than honorable conditions ("DUOTH") (veteran may, but usually does not, qualify for VA benefits).
- Bad-conduct discharge (veteran may, but usually does not, qualify for VA benefits if this discharge is issued as a result of a special

court-martial, but a veteran will not qualify for VA benefits if this discharge is issued as a result of a general court-martial).

- Dishonorable discharge or dismissal (veteran does not qualify for VA benefits).

If you have an undesirable discharge, discharge under other than honorable conditions, or a bad-conduct discharge, the VA will review the character of your service, looking at all the facts to decide whether the quality of your service, as a whole, was sufficient to qualify for VA benefits. The reason behind the negative the discharge is a very important factor. If the local VA regional office denies benefits based on the character of your discharge, its decision can be appealed to the Board of Veterans' Appeals (BVA) and beyond that, to the U.S. Court of Appeals for Veterans Claims (CAVC). You should obtain an experienced representative to assist you with the VA appeals process if an appeal is necessary.

If you have more than one period of service for which you received one "bad" discharge and one honorable or general discharge, you may be eligible for benefits based on the period of service for which the "good" discharge was received.

c) Bars to Benefits

As mentioned above, if you have an honorable discharge or discharge under honorable conditions, you will satisfy the eligibility requirement for VA benefits that you be discharged under conditions other than dishonorable. Even where you have a discharge under other than honorable conditions, you may still be eligible for VA benefits if the VA adjudicates your "character of service" and by looking at your entire period of active duty and the specific facts of the case, finds that your service was good enough to merit receipt of veterans' benefits.

There are a few other ways that veterans who otherwise are not eligible for VA benefits due to their discharge status may become eligible:

- A discharge may be changed by the Board of Correction of Military Records (BCMR). If you desire to challenge your discharge status, you should seek the assistance of a lawyer experienced in this highly specialized area of the law. If your discharge is upgraded by the

BCMR, the BCMR's decision is binding on the VA in determining your eligibility.

- If you committed an offense that led you to an other than honorable discharge, you may be granted VA benefits if you were insane at the time of the offense. In order to obtain VA benefits under the insanity exception, you must have a medical opinion that you were insane at the time of the offense.
- If you served for more than one period of active duty, and one period of service ended with a disqualifying discharge and the other did not, you are still entitled to benefits based on the period of service that ended with a qualifying discharge. In some cases, the veteran may have terminated an early enlistment to reenlist for an extended period of enlistment time, thereby creating back-to-back enlistment periods. If the second enlistment ends in a non-qualifying discharge, the veteran may still be eligible for benefits if the total number of "good" service years between the first and second enlistment is equal to or greater than his or her original service obligation.

There are some automatic bars to VA benefits. The law describes certain circumstances in which a veteran is not eligible for VA benefits despite the character of his or her discharge. These circumstances include:

- when the former service member was separated from service as a conscientious objector who refused certain orders;
- when the release from active duty was by reason of a sentence of a general court-martial;
- when the servicemember was an officer resigning for the good of the service;
- when the servicemember was a deserter;
- when the servicemember was an alien sought to be discharged in time of hostility;
- when the servicemember had 180 continuous days of absence without official leave ("AWOL") (except when the VA makes a factual determination that there are compelling circumstances that warranted the prolonged unauthorized absence).

A veteran also forfeits his or her right to VA benefits regardless of any honorable service, when the VA determines that the veteran is guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies, or when the veteran is convicted of mutiny or sedition, aiding the enemy, spying or espionage, treason, rebellion, sedition, subversive activities or sabotage.

d) Willfull Misconduct

The VA will not award you benefits for a disability resulting from your own willful misconduct. Willful misconduct is defined as deliberate or intentional wrongdoing with knowledge of or wanton disregard of its probable consequences. For example, a servicemember who is permanently disabled in a car accident caused by his own drunk driving is not likely to receive disability compensation for his injuries. Other potential examples of willful misconduct include alcoholism, drug addiction, venereal disease, violent crime and suicide. This is an area with many exceptions and special rules. A veteran with such a history may still be eligible for VA benefits depending on the specific circumstances involved. If one of these issues is a concern in your case, discuss the details with your service representative. You may still be eligible for VA benefits.

e) Length-of-Service Requirements

There are no minimum service length requirements for many of the most common types of VA benefits including service-connected disability compensation and death benefits. However, since September 8, 1980, you must have completed a minimum period of service to be eligible for certain other VA benefits, including education, burial, and health care benefits. The minimum service required is either 24 months of continuous active duty or the full period for which the veteran was called or ordered to active duty. Hardship discharges and separation or retirement because of a service-connected disability are exceptions to the minimum service requirement. Some specific types of benefits have their own length of service requirements (for example, 90 days of continuous wartime service non-service-connected disability-based pension and 181 days of continuous

service for Vietnam Era education benefits). A BCMR decision on the length of your service is binding on the VA.

f) Eligibility of Family Members

The VA has many benefit programs that directly or indirectly assist the family members of a veteran. A veteran must be eligible for VA benefits in order for his or her family to be eligible for VA benefits. Some veterans receive additional VA benefits (larger compensation payments for example) for their dependent family members including spouses, children and sometimes even parents. If a veteran is alive, his or her family is usually not entitled to VA benefits in their own right–entitlement is through the veteran. If the veteran has died, the surviving spouse and sometimes other family members may be entitled to special VA death benefits. Family members also have to meet certain requirements to be eligible for VA benefits.

Some of the benefits that may be available to family members are dependents' and survivors' education benefits, medical care through the Civilian Health and Medical Program of the VA (CHAMPVA), burial benefits, accrued benefits and a VA home loan guaranty. Some family members of deceased veterans are eligible for monthly payments called dependency and indemnity compensation (DIC). DIC is available to qualifying family members, including spouses, children, and dependent parents, where a main or contributing cause of the veteran's death is a service-connected condition. The death could happen during service or years later from service-connected disability. Where a veteran's death is not service connected, some surviving family members may be eligible for non-service-connected death pension. Death pension is available to surviving spouses and children with limited income and low net worth.

Under some circumstances, the spouse or dependent children of a veteran may ask the VA to apportion or assign some part of the veteran's benefit directly to them. In these cases, the VA divides the veteran's benefits between the veteran and the qualifying family members and sends each their share. Apportionment may happen where the veteran is living apart from his or her spouse, fails to support a dependent family member or is in prison. The VA may also pay benefits directly to a family member who is the fiduciary or guardian of an incompetent veteran.

g) Spouses

To be eligible for VA benefits as spouse or surviving spouse, a claimant must be validly married to the veteran. The husband or wife must have lived with the veteran continuously from the date of marriage to the date of the veteran's death. Temporary separations for health or business reasons are not a problem, as long as the surviving spouse did not intend to desert the veteran. If a permanent separation was caused by the misconduct of the veteran, such as spousal abuse, or if the veteran separated from the spouse without fault on the part of the spouse, the spouse will still be eligible for death benefits.

Common law marriages will be accepted as valid if the state where the claimant was married or resides recognizes common law marriages. In some rare circumstances, the VA may deem an invalid marriage to be valid and treat it as though it were legal. For example, a person who married a veteran without knowledge of a previous legal marriage may receive benefits when the following conditions are met:

- The claimant was married to the veteran at least one year before the veteran's death, or for any length of time if the couple had a child together; and
- The claimant lived with the veteran continuously from the date of marriage until the date of the veteran's death; and
- No other claim has been filed by a surviving spouse whom the VA has already recognized as the veteran's surviving spouse.

In the past, a surviving spouse lost all their VA benefits if they remarried. From November 1, 1990 until October 1, 1998, the remarriage of a surviving spouse ended both entitlement to further benefits and eligibility for VA benefits unless the later marriage was annulled or found to be void. As of October 1998, a surviving spouse may be eligible to have DIC reinstated, or to receive DIC for the first time, if the remarriage ends due to divorce, annulment, dissolution or the death of the second spouse or (where no legal marriage was created) if the spouse stops living with the other person or stops holding him or herself out to be that person's spouse.

h) Children

To qualify for VA benefits as a child of a veteran, the claimant must be a legitimate, illegitimate, or adopted child or stepchild who is:

- Under age 18;
- Over 18, but permanently incapable of self-support because of physical or mental disability incurred before reaching 18; or
- Over 18 but under 23 and pursuing an education at a VA-recognized institution.

VA benefits end if the child marries or enters military service even if the child is under 18 when he or she marries.

i) Dependent Parents

A few dependent parents may be entitled to monthly DIC benefits, service-connected death benefits or to an apportionment of the veteran's VA benefits. Parents must demonstrate financial need by meeting certain income limits for DIC.

A2. Service-Connected Disability Compensation

Service-connected disability compensation is a monthly payment made by the VA to a veteran who has a physical or mental disability that resulted from the veteran's time in military service. As its name suggests, this VA benefit is designed to compensate a veteran for income lost because of a disability related to service.

The amount of compensation you receive depends on how disabled you are. Once the VA determines that you have a service-connected disability, the severity of your disability will be evaluated by the VA using your medical records. The VA uses a detailed evaluation schedule that lists nearly every imaginable disability. For each disability, the rating schedule describes the symptoms a veteran must have to get compensation or to get a higher level of compensation. The VA evaluates disabilities on a scale that

ranges from 0% to 100%. The VA considers a 100% disability rating to mean that you are 100% disabled and unable to work. While you do not receive a monthly payment for a 0% (non-compensable) condition, the fact that a disability is service connected has value. Even a 0% service-connected condition may entitle you to free VA medical care for that condition and preference for some jobs.

Service-connected disability compensation is not based on financial need. You can receive disability compensation even if you have a high income and lots of assets. These monthly benefits are tax-free and with some exceptions are generally not subject to garnishment. The exceptions include claims by the United States, claims against property purchased with VA benefits and military retired pay waived to obtain VA compensation benefits. States can force you to pay court-ordered child support by jailing you until the child support is paid.

To qualify for disability compensation, you must show that you suffer from a disability that was incurred in service or aggravated by service. Generally, you must be able to show three things. First, that you suffer from a current disability; second, that something happened in service that could have caused the current disability; and third, you must show a medical link or connection between the current disability and the thing that happened in service. The VA is legally required to tell you what documents and evidence you need to qualify for benefits. In many cases, the VA is required to help you get the evidence you need. The laws governing VA benefits can be complicated and there are exceptions to every rule. Also, the laws and VA policy frequently change. You should talk to a veteran service organization representative or an attorney experienced in veterans benefits to help you figure out what you need to do to prove your claim. You want to make your best case for an award of disability compensation when you apply.

a) Current Disability

In order to receive disability compensation, you must have medical evidence that you have a current disability. You are not eligible for disability compensation simply because you suffered an injury or had a disease while on active duty. You are only eligible if you have lasting symptoms that result in disability. It is not usually difficult for a veteran who believes that he or she has current disability to prove that he or she actually does. You can

submit your medical records or a statement from your doctor describing your condition. If you do not have a doctor, you can submit a statement describing your symptoms and in most cases, the VA will schedule you for a medical examination. If you do not show up for a scheduled medical examination or fail to cooperate in other ways, the VA may deny your claim.

b) In-Service Disease, Injury or Event

You also will need to show that something, such as an injury, disease or event, happened to you in service that could have caused your current disability. Exactly what you have to show depends on your claim. For example, if your claim is for a disability related to a gunshot wound, you will need evidence that you were shot. If you claim to have a back disability from an in-service motor vehicle accident, you will need evidence of the accident. If you claim post-traumatic stress disorder, you will need to show that you were exposed to a traumatic stressful event.

Many servicemembers do not realize that the cause of the disability does not have to be related to their official duties. You can get service connection for a knee injury that happens after being ordered to jump out of a helicopter during combat and you can get service connection for a knee injury that happens sliding into second base during a weekend softball game. As long as the injury, disease, or event that triggered the current disability happened at some point in time between your beginning and ending dates on active duty, you can get receive service connection for your disability.

In helping you develop your claim, the VA will get a copy of your service medical records. Often an injury or symptoms of disease are documented in a veteran's service medical records. One of the special rules that make it easier to prove service connection is called the presumption of sound condition. The VA is required to presume that you entered service in good condition unless it was otherwise noted on your entrance examination report. Although the presumption can be rebutted with other evidence, if a service medical record shows a medical problem during service or at separation and that problem was not on your enlistment examination, you are more likely to be awarded service connection for a related condition. The presumption of sound condition is discussed more in this chapter with service connection by aggravation.

c) Special Combat Rule

A special rule makes it easier for combat veterans to get service connection for disabilities related to combat. The helpful rule exists because detailed record keeping is not possible in combat situations. The rule is that a veteran's personal statement that something happened during combat can be accepted as proof of what happened even if there are no official service records to corroborate the incident. The statement must be consistent with the circumstances, conditions or hardships of the veteran's service. This means that combat veterans who are trying to prove service connection can use their own statements or statements from others to show that a disability was incurred in or aggravated by combat, as long as those statements do not conflict with service records or other evidence of service.

You have to be a combat veteran to use this special rule. Personnel records or the possession of certain awards and decorations usually, but not always, indicate combat experience and you can submit other evidence. The VA will sometimes overlook a veteran's combat status and neglect to apply this rule.

You also have to be trying to get service connection for a disability related to combat to use the special combat rule. Even if you use the rule to prove that something happened during combat, you still have to show that you suffer from a current disability and a medical link between the thing that happened and your disability.

d) Link Between Disability and Service

Most losing claims for service connection falter on the third part of service connection which is showing a medical link between your disability and the thing that happened during service. Most veterans seeking compensation have a genuine disability and they accurately remember what happened to them during service. The problem comes in proving that the disability came from the thing they remember in service. In some cases, the law will simply assume that your disability is service connected. For example, if you were exposed to radiation and develop a certain type of cancer, the law assumes that radiation caused your cancer. In most cases, however, you will need medical proof that your disability was caused by an injury, disease or event that happened during service.

There are five general theories under which the VA can link a current disability to service: direct service connection, service connection through aggravation, presumptive service connection, secondary service connection and service connection for injuries caused by VA health care.

Direct Service Connection

Direct service connection is the name for the type of service connection where you can show a direct link between a current disability and something that happened during service. Essentially, direct service connection means that an injury, disease or event during your active duty service directly caused a current disability. Direct service connection is most often shown by satisfying three requirements: (1) submitting medical evidence of a current disability; (2) submitting lay or medical evidence of an injury, disease or event during service; and (3) submitting medical evidence that links the current disability to the precipitating injury, disease or event. For example, you could show direct service connection for a left knee disability by submitting to the VA a current left knee diagnosis from your personal doctor, a service medical record of a training accident injuring your left knee, and a letter from your doctor linking the cause of your current left knee disability to the training accident.

You can also get direct service connection by being diagnosed with a chronic disease during service. For example, if you were diagnosed with diabetes while on active duty, you can apply for service connection for diabetes by showing a current disability from diabetes, even if you first apply several years after your discharge. The VA recognizes that diabetes and certain other diseases are chronic or permanent conditions. They may improve or worsen, but they never really go away.

You can also get direct service connection for a disease that is first diagnosed a long time after service if it can be linked directly back to service. The delayed condition does not have to show up during service as long as it was caused by service. For example, you can get service connection for degenerative arthritis caused by a traumatic injury years before if you submit medical evidence linking the degenerative arthritis to the traumatic injury. You could also get service connection for hearing loss by submitting medical evidence that your hearing loss was caused by earlier noise exposure during service.

While there are variations in methods to establish direct service connection, competent medical evidence is almost always required. Some

veterans and their family members struggle to understand that they are not qualified to diagnose a medical condition or determine the medical cause of a disability. You will need medical evidence—usually from a doctor or another medical professional. Often the most important part of a claim for disability compensation is developing the medical evidence needed to support the claim. Your veterans service organization representative or an attorney experienced in veterans benefits can provide valuable help.

Service Connection by Aggravation

Although many claims for service-connected disability compensation are for conditions that began during active duty military service, compensation may also be paid for disabilities caused by the aggravation of an injury or disease that existed prior to service. Aggravation means that the severity of your pre-existing condition or disability worsened beyond what would have been expected in the normal progression of the condition.

The VA is generally required to presume that a veteran entered military service in sound condition. This principle is known as the "presumption of soundness." The presumption does not apply when medical records from the veteran's entry into service note a condition related to the present VA claim. For example, if your entrance examination noted that you had left knee problems at enlistment, you are not entitled to the presumption of soundness for your left knee. You would still be entitled to the presumption of soundness for any other condition that was not noted.

A key issue can be whether the condition was noted when you were examined, accepted and enrolled for service. If the condition was not noted, you may have an easier route to service connection because of certain rules in a servicemember's favor. In order for a condition to be considered "noted", it must actually be shown or observed on examination and then written in the examination report. The VA cannot deny a claim simply by presuming that your condition pre-existed your active duty service. Most often the VA must presume that a veteran entered the military in a sound, healthy condition. The VA may rebut the presumption of sound condition only with both clear and unmistakable evidence that the injury or disease existed prior to service and clear and unmistakable evidence that the disease or injury was not aggravated by service.

If you are seeking disability compensation for the very condition that was noted on your entrance examination, you may still win your claim. You may be entitled to the presumption that your active duty service aggravated

your condition. To win your claim, you will need to show that the underlying disability worsened during your period of service. The worsening must be more than temporary and must be shown through competent medical evidence. To prove aggravation, you should provide documentation of an increase in disability which is often shown in service medical records. You may consider having an expert compare the severity of a condition before service with the severity shortly after service. You do not have show something specifically happened in service that aggravated your disability – only that the disability worsened during your time in service. The presumption of aggravation can be rebutted if the VA makes a specific finding that your increase in disability is due to the natural progress of the disease. Such a specific finding against your claim would have to be supported by medical evidence.

Service Connection by Presumption

Some diseases are presumed service connected if they appear within a certain period of time after service. The allowed period of time is called the presumptive period. Different diseases have different presumptive periods ranging from one year to appearing any time after service. To be eligible under a presumption, you must have served on active duty for at least 90 continuous days. The VA lists chronic 41 diseases that can be presumptively service connected if they appear within one year of separation from service to a degree that is at least 10% disabling:

- Anemia, primary;
- Arteriosclerosis;
- Arthritis;
- Atrophy, progressive muscular;
- Brain hemorrhage;
- Brain thrombosis;
- Bronchiectasis;
- Calculi of the kidney, bladder, or gallbladder;
- Cirrhosis of the liver;
- Coccidioidomycosis;
- Diabetes mellitus;
- Encephalitis lethargica residuals;
- Endocarditis (all forms of valvular heart disease);
- Endocrinopathies;
- Epilepsies;

- Hansen's disease;
- Hodgkin's disease;
- Leukemia;
- Lupus erythematosus, systemic;
- Myasthenia gravis;
- Myelitis;
- Myocarditis;
- Nephritis;
- Other organic diseases of the nervous system;
- Osteitis deformans (Paget's disease);
- Osteomalacia;
- Palsy, bulbar;
- Paralysis agitans;
- Psychoses;
- Purpura idiopathic, hemorrhagic;
- Raynaud's disease;
- Sarcoidosis;
- Scleroderma;
- Sclerosis, amyotrophic lateral;
- Sclerosis, multiple;
- Syringomyelia;
- Thromboangiitis obliterans (Buerger's disease);
- Tuberculosis, active;
- Tumors, malignant, or of the brain or spinal cord or peripheral nerves; and
- Ulcers, peptic (gastric or duodenal).

Any eligible veteran can claim service connection for one of these chronic diseases as long as there is evidence that the disease appeared during service or within the presumptive period. Other diseases will be presumed service connected for veterans who had certain in-service experiences. For example, veterans who were prisoners of war (POWs), who were exposed to mustard gas testing during World War II, who were exposed to radiation in service, or who served in Vietnam are entitled to presumptive service connection for additional diseases if those diseases appear at any time after discharge.

It is easier to be service connected by presumption if you were medically diagnosed with a presumptive disease within the presumptive

period if there is one. If not, you will need to support your claim with evidence. You will need statements from friends or family that they observed symptoms of the claimed condition within the presumptive period. These statements may be evidence to support a conclusion by a medical expert that you had the condition and were disabled by it at least 10% during the presumptive period. You will also need statements from doctors that the symptoms you experienced are those of the disease, and that it is more likely than not that you had the disease within the presumptive period.

Secondary Service Connection

Any physical or mental disability that is caused by a service-connected disability can be service connected itself. This concept is often called secondary service connection. For example, if a service-connected left knee disability puts extra stress on your right knee and causes you to develop a right knee disability as a result, then you can get service connection on a secondary basis for your right knee disability. In addition, if the limited mobility caused by your left knee disability leads you to experience depression, you can also receive secondary service connection for depression. Secondary service connection can also be granted if a service-connected disability aggravates another disability. The worsened disability does not have to be related to service itself. The secondary disability does not have to appear immediately and can show up years after the original service-connected disability.

If you think that a service-connected disability has caused some other physical or mental problem, you should try to get a statement to that effect from a doctor. A medical expert's opinion is necessary for secondary service connection to be granted by the VA.

Another form of secondary service connection applies to certain "paired organs" and extremities. If you have a service-connected disability of one of these paired organs or extremities and a non-service-connected disability of the other, the non-service-connected disability will be treated as if it were service connected as long as it is not the result of willful misconduct. The qualifying disabilities of paired organs or extremities are:

- Blindness in one eye that is service connected and blindness in the non-service-connected eye;

- Loss or failure of one service-connected kidney and the involvement of the other kidney as the result of non-service-connected disability;
- Total service-connected deafness in one ear and total non-service-connected deafness in the other ear;
- Service-connected loss, or loss of use, of one hand or foot and the loss, or loss of use, of the other hand or foot because of a non-service-connected disability; and
- Permanent service-connected disability of one lung evaluated as 50 percent disabling or more, in combination with a non-service-connected disability of the other lung.

Service Connection Based on VA Medical Care

Disability from an injury caused by VA hospitalization, VA medical or surgical treatment, VA exams or VA vocational rehabilitation can be service connected. Aggravation of a pre-existing condition by VA medical care can also be service connected. Eligible survivors can also receive certain VA benefits if a veteran dies because of VA health care. These benefits are often called section 1151 benefits because the law that provides for them is found in section 1151 of title 38 of the U.S. Code (federal law).

Veterans or surviving family of veterans may also be able to file a claim and then sue the government under the Federal Tort Claims Act (FTCA). Under the FTCA, a person who has been injured or the estate of a person who has died because of the actions of a U.S. government employee can sometimes recover money damages for that injury or death.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.

- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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3b. Specific War-Related "Latent" Diseases, Symptoms and Issues Relating to Exposure to Toxic Substances and Environmental Hazards

By David F. Addlestone

Military service is a dangerous job. Despite the obvious perils of war, most veterans were not exposed to combat or other enemy attempts to harm them. Still, a large percentage of support troops (so-called "REMFs," which stands for Rear Echelon Mother F———") in some past combat zones were sometimes exposed to enemy fire, albeit rarely (Vietnam is a good example). Nevertheless, many support troops, as well as combat veterans, face unseen risks that later can cause health problems. Sometimes these health problems do not appear for decades. (Good examples are radiation and Agent Orange exposure).

Some of these health problems are called "latent (unseen or not obvious) diseases" or "debilitating clusters of symptoms" (such as Gulf War Illnesses). Many latent diseases can lead to entitlement to VA compensation and/or health care. Examples are exposure to infectious diseases or other environmental hazards found only in foreign territories; skin cancer brought on by excessive exposure to the sun (common for Naval personnel on ships); loss of hearing due to sustained loud noise; and, yes, even claustrophobia (fear of enclosed spaces) among those who served on submarines.

In the sections that follow, we do not attempt to deal with every single one of the above health problems. We have chosen examples that will give

you an idea how health problems later in life can be related to military service and lead to VA disability compensation and other government benefits. In the sections below, we discuss hazards that have been the focus of widespread public attention or that relate to our most recent conflicts.

In some instances, the science is "not yet in" to a degree that persuades the VA or Congress to grant compensation or medical care. (Nevertheless, as discussed in Chapter 9, "VA Medical Care," the VA seems to acknowledge the dangers of military service by granting most veterans free medical care for several years after service.)

Unfortunately, in instances where medical care is provided (on a priority basis), the VA has failed adequately to inform the affected veterans or their survivors about its availability. (For example, Congress has mandated that veterans who claim Agent Orange-or Gulf War-related health problems are to be given a higher priority in receiving medical care than certain other vets with certain other problems.) Agent Orange and PTSD are prime examples.

Where there is not enough scientific information provided by recognized "experts," (regarding, for example, exposure to depleted uranium used in armor-piercing shells), you should be aware of the current state of medical research. Further, you should know whether the VA or DoD has developed a system to keep track of affected veterans, who may be eligible to seek future entitlement to benefits based on many of the hazards listed below. As medical research progresses in areas discussed in the following sections, we will attempt to post new findings on the Veterans for America Web site (veteransforamerica.org) or update the relevant material (chapters etc.) in the book. Also, the VA has established so-called "registries" of vets who claims to be ill due to exposure to radiation, Agent Orange, and Gulf War hazards. When a claim regarding one of these conditions is made, the VA automatically adds the vet's name and address to the appropriate registry. Vets can also be added to appropriate registries by going to the VA's Web Site (www.va.gov).

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subjects. He is a member of the board of directors of Veterans for America.

1) Nuclear Radiation-Related Diseases

By Charlene Stoker Jones, Meg Bartley and Ron Abrams, National Veterans Legal Services Program

Some servicemembers are exposed to nuclear radiation (often called ionizing radiation by the VA) during the course of their active duty service. For example, a servicemember may work at a nuclear test site, be physically present during a nuclear test, or have served in Japan after World War II. A few of these servicemembers will develop cancer as a consequence of their in-service radiation exposure.

Unfortunately, it is very difficult for an individual servicemember to prove direct service connection for cancer or another disease that he or she believes was caused by in-service radiation exposure. Unlike a gunshot wound, whose effect on bone and tissue can immediately be determined by a physical examination, the effects of nuclear radiation exposure often are not immediately visible. Some of the harmful effects of radiation appear a long time, even years, after exposure. Compelling evidence of a link between radiation exposure and a particular disease is usually obtained slowly over time by a statistical analysis that compares a large number of people with known radiation exposure to a similar group of people without radiation exposure. Individual veterans lack the ability and resources to conduct this type of scientific study. Even where scientific evidence supporting a link is available, such studies do not prove that a particular veteran's cancer came from his or her in-service radiation exposure. In short, it is very difficult for an individual veteran to obtain the medical proof usually necessary to qualify for VA compensation.

Recognizing the difficulty, Congress has passed a law that reduces the burden on some veterans who may have been exposed to nuclear radiation while in service. The law creates a rebuttable presumption of service connection for a radiation-exposed veteran who develops one of the diseases that medical science has associated with radiation exposure. The legal presumption substitutes for the medical evidence normally required to link an in-service injury, disease or event (radiation exposure) to the current

disability (cancer). To be eligible for the legal presumption of service connection, you must show that you have one of certain listed cancers and you must show that you participated in a qualifying radiation-risk activity.

The diseases that may be presumed service connected are the following:

- leukemia (other than chronic lymphocytic leukemia),
- cancer of the thyroid,
- cancer of the breast,
- cancer of the pharynx,
- cancer of the esophagus,
- cancer of the stomach,
- cancer of the small intestine,
- cancer of the pancreas,
- multiple myeloma,
- lymphomas (except Hodgkin's disease),
- cancer of the bile ducts,
- cancer of the gallbladder,
- primary liver cancer (except if cirrhosis or hepatitis B is indicated),
- cancer of the salivary gland,
- cancery of the urinary tract,
- bronchiolo-aveolar carcinoma,
- cancer of the bone,
- cancer of the brain,
- cancer of the colon,
- cancer of the lung,
- and cancer of the ovary.

The last five diseases were added to the list of presumptive diseases in 2002 when new scientific evidence supported their addition. Other diseases may be added in the future. If you were exposed to nuclear radiation, you or your representative should carefully to check to see if your disease has been added to the presumptive list.

In addition to having one of the listed cancers, you must also show that you qualify as a radiation-exposed veteran to receive the benefit of the presumption. You will be considered radiation-exposed if you participated onsite in an atmospheric detonation of a nuclear device, participated in the occupation of Hiroshima or Nagasaki, Japan between August 6, 1945 and July 1, 1946, or were exposed to radiation while a prisoner of war in Japan.

You also may qualify if you were exposed to an underground nuclear test in Amchitka Island, Alaska, were exposed at the gaseous diffusion plants in Paducah, Kentucky; Portsmouth, Ohio; or area K25 at Oak Ridge, Tennessee, or otherwise satisfy the strict requirements. Usually service department records or your personnel records will verify that you participated in a radiation-risk activity, but you may submit other evidence to corroborate your presence including your own personal statement, statements from fellow service members, photographs, letters or any other relevant evidence. The VA is required to consider all supportive evidence when deciding your claim.

If you prove that you participated in a qualifying radiation risk-activity and you prove that you have one of the cancers on the list, then you are entitled to the presumption of service connection for your disease. The presumption of service connection can be rebutted if there is evidence that the disease was not caused by in-service radiation exposure. If the VA can find a potential non-service-connected cause of the disease, the VA may deny the claim. For example, a radiation-exposed veteran who begins smoking after service, smokes for twenty years, and then develops lung cancer, may find the presumption of service connection for lung cancer rebutted by the evidence of post-service smoking.

Even if you do not qualify for the presumption of service connection for nuclear radiation-related diseases, you can still file a claim for disability compensation. You may believe that you were exposed to nuclear radiation even though you did not participate in one of the qualifying radiation-risk activities, or you may believe that your disease was caused by nuclear radiation even if it is not on the list of presumptive diseases. You may attribute a disease to another form of radiation such as microwave radiation, electromagnetic radiation, or solar radiation (skin cancer). In such cases, you will need to support your claim with evidence including medical opinion(s) that prove that it is at least as likely as not that your particular cancer was caused by your in-service radiation exposure. If you file such a claim without any supportive medical evidence, it is possible that the VA will find your claim implausible and take no action to assist you.

There is a special process that the VA must undertake to help a veteran with a disease that may be a result of exposure to nuclear radiation. This process is separate from the presumption of service connection and relates to the development of the claim. It applies when a veteran manifests one of the diseases presumed to be caused by radiation exposure or manifests any

other form of cancer. It also applies to other diseases when the veteran or the veteran's survivor cites to or submits medical or scientific evidence suggesting that the veteran's disease was caused by nuclear radiation. When such a claim is submitted and the veteran or survivor is not eligible for the presumption of service connection, the VA is required to assess the size and nature of the radiation dose that the veteran may have received. The radiation dose estimate and any other relevant information about the veteran's potential exposure may be developed by the Department of Defense. The radiation dose estimate and other information is then sent to the VA's Under Secretary for Benefits. The Under Secretary for Benefits may request an opinion from the Under Secretary for Health or from an outside consultant before making a determination as to whether it is at least as likely as not that the veteran's disease resulted from radiation exposure in service or whether there is no such possibility. During this review, certain factors must be considered including the amount of radiation exposure, sensitivity of affected tissue to radiation-induced disease, gender of the veteran, family history, age at exposure, amount of time between exposure and onset of disease, exposure to other known causes of cancer, and whether there is another potential cause of the disease. This opinion is then sent to the VA Regional Office and the Board of Veterans' Appeals for consideration when the claim is decided.

This development process was created to help veterans obtain supportive evidence, but as a practical matter it usually works against them. Unless a veteran qualifies for the legal presumption of service connection, it is very rare to get service connection for a disease claimed to be caused by in-service nuclear radiation. Usually, the radiation dose estimate prepared by the government is extremely low and it is rare for a VA official to find any possibility that a disease resulted from radiation in service. Usually, the negative evidence generated by the VA is found to outweigh any supportive evidence obtained by the veteran or the surviving family. Veterans and family members are also hampered by the fact that most information about radiation-risk activities is classified. They cannot obtain the data and information necessary to effectively challenge the radiation dose estimate provided by the government or successfully rebut the negative medical opinions obtained by the VA.

For help with a claim relating to nuclear radiation, talk with a service representative or a qualified attorney. Service reps are usually associated with veterans service organizations, such as AMVETS, the American

Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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2) Agent Orange-Related Diseases

By Charlene Stoker Jones, Meg Bartley and Ron Abrams, National Veterans Legal Services Program

Agent Orange was an herbicide sprayed in Southeast Asia and other locations during the Vietnam Era. Exposure to Agent Orange has been related to several types of cancer and other serious diseases. All of the regular ways to obtain service connection are available to a veteran with a disability that he or she believes is connected to herbicide exposure in service. In addition, there is a special rule that creates service connection by legal presumption for some veterans, and in some cases their children, for certain diseases associated with Agent Orange exposure. The rules that apply in Agent Orange cases are particularly complicated because they have evolved over time in response to emerging scientific evidence, laws passed

by Congress, actions taken by the VA, and individual and class action lawsuits. The basic VA rules for obtaining disability compensation for diseases related to Agent Orange exposure are explained below, but the rules continue to evolve. If you believe you have a disability that may be related to your exposure to Agent Orange, you should discuss your case with a service representative or an attorney who is experienced with Agent Orange claims. Service reps are usually associated with veterans service organizations, such as AMVETS, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

For a veteran to be eligible for service-connected disability compensation under the Agent Orange presumption, or for a veteran's surviving family members to be eligible for service-connected death benefits under the presumption, only a few things must be proved. First, you must show that the veteran served in Vietnam during the Vietnam Era or that the veteran was otherwise exposed to Agent Orange. Second, you must show that the veteran developed a disease, or residuals of a disease, that is recognized by the VA as associated with Agent Orange and that the disease became at least 10% disabling. Third, you must show that the disease appeared within any designated time limit. There is no time limit for the appearance of any cancer or other one of certain other diseases recognized as associated with Agent Orange, but a few diseases do have time limits.

Exposure to Agent Orange

To receive the benefit of the presumption of service connection for diseases associated with Agent Orange, you must show exposure to the chemical. If you served in Vietnam during the Vietnam Era, you do not have to show that you actually were exposed to Agent Orange. Your exposure is assumed. The VA will presume that you were exposed to Agent Orange if you served at least one day in Vietnam between January 9, 1962 and May 7, 1975. If you served offshore or in another area, but visited or had duty in Vietnam, you also qualify for the presumption of exposure. Flying over Vietnam in an airplane does not qualify you for the presumption of exposure if the airplane did not land in Vietnam.

Service personnel records or medical records usually will document whether a veteran spent time in Vietnam. You can qualify for the presumption of Agent Orange exposure even if you were in Vietnam only

briefly, but it may be more difficult to prove your presence. The VA has accepted a veteran's testimony describing the circumstances of a brief visit to Vietnam that was not documented in the veteran's service records, but you should try to find other supportive evidence. Records such as morning reports and unit rosters may be helpful, as are letters that were mailed from Vietnam. You may want to review Section 3.8.1.1 of the *Veterans Benefits Manual* by the National Veterans Legal Services Program for further information on alternative evidence of Vietnam service and may want to work with your veterans service representative or lawyer to develop corroborating evidence.

There is an ongoing legal controversy relating to veterans who served aboard ship in waters offshore of Vietnam but never set foot on land in Vietnam. These veterans are sometimes called "Blue Water" veterans and many of them received the Vietnam Service Medal. Due to a now rescinded provision in the VA's manual for adjudicating claims, some of these veterans with the Vietnam Service Medal were awarded service connection for Agent Orange-related disabilities without actually setting foot in Vietnam. Other veterans with similar claims were denied. The U.S. Court of Appeals for Veterans Claims addressed this controversy in the *Haas* case and held that veterans who served in waters offshore from Vietnam are entitled to the presumption of Agent Orange exposure. The VA disagreed with the Court's decision and is now appealing. The VA Regional Offices and Board of Veterans' Appeals are waiting to decide similar pending claims until the legal controversy is settled. The latest developments in the *Haas* case will be posted on the website of the National Veterans Legal Services Program (NVLSP), www.nvlsp.org, as NVLSP is representing the claimant in *Haas*.

Thousands of servicemembers were exposed to Agent Orange in Korea and other places outside of Vietnam, but unlike veterans who served in Vietnam, they may not qualify for the presumption of exposure, with a few exceptions in the case of Korea.. Currently if a veteran is able to prove that he or she was exposed to Agent Orange outside of Vietnam and the veteran has one of the diseases on the presumptive list, the disability will be presumed to be related to Agent Orange unless there is reason to believe otherwise. The difficulty is in proving that the veteran was actually exposed outside of Vietnam. Based on information from the Department of Defense, the VA recognizes that Agent Orange was used at various dates in Korea, Thailand, Laos, and at testing or storage sites around the United States and in Puerto Rico. It may have also been used in Panama and Guam.

If you believe you may have been exposed to Agent Orange during its use, testing, manufacture, storage, or transportation, you are entitled to an Agent Orange physical examination by the VA and your name may be added to the Agent Orange Registry. You may also be entitled to a higher priority for medical care.

Diseases Associated with Herbicide / Agent Orange

After showing that you were exposed to Agent Orange, the next step to qualify for the presumption of service connection is to show that you developed one of certain listed diseases. If you have a disease listed by the VA as associated with Agent Orange, you do not need medical evidence linking your particular disease to service. The legal presumption provides the medical link for you. The cancers that are presumptively service-connected based on herbicide exposure are cancer of the bronchus, lung, larynx, trachea, and prostate; multiple myeloma; Hodgkin's Disease; non-Hodgkin's lymphoma; and chronic lymphocytic leukemia. Many types of soft tissue sarcoma are service- connected by presumption, but not osteosarcoma, chonodrosarcoma, Kaposi's sarcoma, or mesothelioma. Other diseases associated with Agent Orange include Type 2 (adult-onset) diabetes mellitus, acute and subacute peripheral neuropathy, porphyria cutanea tarda, and chloracne. Biological children of veterans who served in Vietnam may also be entitled to benefits, if they were born with spina bifida. Certain other birth defects are recognized if the child's mother served in Vietnam.

It is important to know that the medical names and terminology used for diseases sometimes change over time. Consult with a medical expert to see if your disease is listed under another name. If you develop one of the listed cancers, but it was caused by the spread of an earlier, different cancer that is not presumed service-connected, the VA is not required to grant you service connection under the Agent Orange laws. If you have an "Agent Orange-presumed" cancer and it later spreads to another part of the body, you should be service- connected for the original cancer, and in rating your degree of disability thet VA should consider the disability caused by the original cancer site and all the secondary cancer sites.

Some of the diseases that can be service-connected by the Agent Orange presumption are likely to cause other medical problems. Medical problems or diseases that are caused by a service-connected disability may be service-connected themselves using the legal theory of secondary service

connection. For example, diabetes has many common complications, including arteriosclerosis, hypertension, kidney problems, neuropathy, various eye problems, circulation problems, skin conditions, and depression. You may be able to get secondary service connection for these conditions and a resulting increase in your level of disability compensation if you submit medical evidence from your doctor that associates your secondary conditions to your primary service-connected disability.

Onset of Disease Within the Required Time Period

Most of the diseases and all of the cancers on the presumptive list can be service- connected anytime after service no matter when symptoms first appear. To be presumptively service-connected, chloracne and porphyria cutanea tarda must appear within one year of the date on which the veteran left Vietnam; acute or subacute peripheral neuropathy must appear within months of exposure and resolve within two years after symptoms appear. All presumptive diseases or their residuals must cause a disability of at least 10% within the presumptive period for service connection to be granted.

Some diseases previously had a presumptive time limit which is no longer in effect. For example, until 2002 there was a 30-year time period for cancer of the lung, larynx, bronchus, and trachea to manifest to a degree of disability of 10% or more after a veteran's last day in Vietnam. If you had a claim denied because of a time limit that is no longer in effect, you should file a new claim and cite the change.

Delayed Recognition of Diseases Associated with Agent Orange

It was not until the 1990s that the VA began to recognize that many serious diseases are associated with Agent Orange exposure and began to award Vietnam veterans disability compensation for these diseases. Some diseases were recognized earlier than others. If a veteran or a surviving family member filed a claim for a disease that was not then recognized by the VA as associated with Agent Orange, the claim was usually denied. Thousands of claims that would be granted if filed today were denied in the past by the VA. The *Nehmer* class action lawsuit brought by attorneys from the National Veterans Legal Services Program (NVLSP) resulted in a court order requiring the VA to identify claimants whose claims were previously denied and reevaluate those claims under the new rules. Unfortunately, the VA has been found to be in violation of this court order.

A Vietnam veteran or surviving family member whose claim for VA benefits was previously denied should file a new claim application for the same benefits under the new rules. Those who reapply and are found eligible will be awarded future benefits and may be eligible for retroactive benefits. The effective date for back benefits depends on several variables, including the date the previous claim(s) was filed and the particular date the VA associated the claimed disease with Agent Orange. If you question whether you should be service-connected for an Agent Orange-related disability or whether the VA has assigned you the earliest effective date to which you are legally entitled, consult with your veterans service representative or an attorney. If he or she is not familiar with the intricacies of Agent Orange claims, find another representative who is. You can also visit the NVLSP Web site at www.NVLSP.org for information on reopening Agent Orange claims.

Essentially, some veterans may be able to be paid from a date earlier than the date they filed their claims for service connection based on exposure to Agent Orange. This is because even if a claim is filed more than one year after the effective date of a change in the law, benefits may be authorized for a period of one year prior to the date of receipt of such request.

Vietnam Veterans With a Disease Not Currently Recognized as Caused by Agent Orange Exposure

If you are a Vietnam veteran and your particular disease is not recognized as associated with Agent Orange, you may still be able to get service-connected disability compensation. Even if you do not qualify for the legal presumption of service connection, you can still be awarded service connection by producing medical evidence linking your current disability to service by the methods explained earlier in this chapter. You will need to submit with your claim a statement from your doctor diagnosing you with a medical disability and stating that it is as likely as not that your current disability is related to your Agent Orange exposure. Your claim may be granted. It is likely that the VA will schedule you for a medical examination with one of its own doctors or will obtain an independent medical opinion on whether your disease could be a result of Agent Orange exposure even if it is not on the presumptive list. The VA must consider your claim under direct service connection and examine and weigh all of the evidence. The VA cannot deny a claim for a disability attributed to Agent Orange by

medical evidence simply because the disability is not currently found on the presumptive list.

New diseases have been added to the presumptive list. With ongoing medical research it is possible that additional diseases will be added. Even if your disease is not currently on the presumptive list, it may still be worthwhile to file a claim for benefits as soon as possible. If your disease is later added, you may be more likely to receive retroactive benefits.

Lawsuits Against Manufacturers of Agent Orange

Vietnam veterans and their surviving family members have been filing lawsuits against the chemical companies that manufactured Agent Orange since the late 1970s. The first set of lawsuits resulted in a class action settlement with the chemical companies that created a settlement fund worth hundreds of millions of dollars. Qualifying veterans or their survivors could apply to the fund to receive financial compensation until January 1995. The entire settlement fund has been now been distributed and no funds remain.

Unfortunately, some Vietnam veterans have diseases associated with Agent Orange exposure that did not appear until after January 1995 and they were not able to participate in the class action settlement. Some of these veterans have brought new court cases which are currently in federal district courts or on appeal. The issues in these cases include whether these veterans have lost the right to sue because of the previous class action, whether it would be unfair for these veterans to lose their right to compensation because of the previous class action, and whether the chemical companies are immune to such lawsuits under the "government contractor defense" because they were making a product for the U.S. government to government specifications. If you wish to contact the lawyers who are bringing these lawsuits, please note that they include:

Ernest Cory, Esq.
Cory Watson Crowder & DeGaris, P.C.
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The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

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- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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3) Undiagnosed Illnesses from the Gulf War and Iraq War

By Charles Sheehan-Miles

Shortly after the end of the 1991 Gulf War, tens of thousands of servicemembers reported a variety of symptoms which they believed were related to service in the Gulf. Among others, these included rashes, fatigue, joint point and nausea. Collectively, the media has referred to these issues as "Gulf War Illnesses" or "Gulf War Syndrome," however, there is little evidence that there is any single illness impacting Gulf War and later veterans. Rather, a variety of exposures during the conflict resulted in a variety of illnesses.

This chapter covers, in brief, what some of those exposures were. It will also cover some of the science that is currently known about those exposures, and what related conditions are service-connected for purposes of compensation and pension.

Because Congress has not set an end date to the Gulf War, any veteran who served in the Southwest Asia theater of operations after August 2, 1990 is eligible for benefits. However, this theater does not include Afghanistan, Turkey or a number of other countries where servicemembers have deployed since 2001.

In order to be eligible for compensation for undiagnosed illnesses, you must have served in one of the following areas: Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Symptoms for Undiagnosed Illnesses

Some symptoms which are examples of undiagnosed illnesses include:

- Chronic fatigue
- Fibromyalgia
- Skin disorders
- Headache

- Muscle pain
- Joint pain neurologic symptoms
- Neuropsychological symptoms
- Respiratory problems
- Sleep disorders
- Gastrointestinal symptoms
- Cardiovascular problems
- Abnormal weight loss
- Menstrual disorders

Qualifying illnesses are not limited to this list. In order to be considered chronic, the symptoms must have existed for at least six months, and is measured from the beginning date of the onset of symptoms.

Required Evidence

The veteran applying for compensation for undiagnosed illnesses is not required to demonstrate or prove a link between the illness and service in the Persian Gulf. However, it limited evidence must be shown off the existence of the illness. This can include both the statements of doctors as well as friends or family members. For example, a written statement from a family member documenting sleep problems since service in the Gulf War, qualifies.

If the evidence exists of a non-service-connected condition which could cause the same symptoms, such as alcohol or drug abuse, the VA may use that as grounds for do not.

Additionally, the existence of a diagnosis for the illness, can work against that. For example, if a Gulf War veteran suffers from long-term fatigue and headaches, and that illness is undiagnosed, the new veteran is eligible for compensation. If, however, a VA doctor gives a diagnosis of any kind for these symptoms, the veteran may then be rendered not eligible for compensation. In this circumstance, it actually works against the veteran, to get a clear diagnosis for their illness.

Once a veteran receives a diagnosis, there are two basic options. First, the veteran can seek an alternative medical opinion which indicates that the specific symptoms cannot be clearly attributed to a diagnosable illness. Second, the veteran can seek service-connected compensation for that diagnosis.

The second option can actually be much more difficult, because the veteran then has to prove a big clear medical link between military service

and the illness through the normal channels available to every veteran. Generally, to prove such a link, the veteran must document that the illness began within one year of service.

A third option may come open in the future, which is presumptive service connection due to exposure to specific toxins. Those specific exposures are currently under review by the National Academy of Sciences.

Scientific Reviews of Exposures from the Persian Gulf

For several years the National Academy of Sciences has been reviewing research and studies related to the exposure of US troops to a variety of toxins during the 1991 Gulf War. This research is conducted under an official contract with the Department of Veterans Affairs, and is intended to guide VA in establishing presumptive service connection for specific exposures, including sarin (nerve gas), depleted uranium munitions, anti-nerve agent pills (pyridostigmine bromide), as well as a number of others.

Until recently, the NAS had made no conclusions blinking exposures to specific illness. However, new research reported in the Proceedings of the National Academy of Sciences in March 2008, clearly linked exposure to pyridostigmine bromide and pesticides to specific types of neurological damage.

Because this new research is not part of the official NAS contract, if does not directly impact compensation issues for Gulf War veterans. However, it opens the door that during the next official literature review, NAS may well recommend presumptive service connection to the VA for specific neurological conditions. Stay tuned for more news in this area.

In November 2008, the VA's Research Advisory Committee on Gulf War Veterans Illnesses issued a report which strongly linked exposure to specific toxins and the illnesses suffered by Gulf War veterans, and criticized VA for not spending enough money on research into effective treatments. It is unclear at this time what the impact on policy will be.

Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease)

Amyotrophic Lateral Sclerosis (ALS) is commonly known as Lou Gehrig's disease. A degenerative neurological disorder; the disease kills motor neurons, which causes muscles to degenerate. There is no known cause for the disease, and it is typically fatal within 5 years.

Two studies published in 2003 by Baylor University (sponsored by the VA) and Texas Southwestern Medical Center reported that Gulf War veterans were about twice as likely to be diagnosed with ALS as individuals in the general population.

Though the statistic risk of ALS for Gulf War veterans is much higher than the general population, it is still extremely rare, with less than 100 cases identified amongst all Gulf War veterans.

Unlike undiagnosed illness claims, which are extended to any veteran who served in Southwest Asia since August 2, 1990, veterans who suffer from ALS can only be service-connected if the veteran served in the theater on any date between August 2, 1990 to July 31, 1991.

Charles Sheehan-Miles is the author of *Prayer at Rumayla* and *Republic: A Novel of America's Future* (Cincinnatus Press, 2007) and is currently completing work on his third novel, *Insurgent*. He served in combat with the 24th Infantry Division during the 1991 Gulf War, and was decorated for valor for helping rescue fellow tank crewmen from a burning tank during the Battle at Rumayla. Since then, he has been a regular speaker on issues relating to the Gulf War, ill veterans, and policy in Iraq. He is a former President and co-founder of the National Gulf War Resource Center and has served on the board of the Education for Peace in Iraq Center. Prior to becoming executive director of Veterans for Common Sense in August 2004, he was director of the Nuclear Policy Research Institute in Washington, DC. Since 2006, he has worked with Veterans for America as its director of information technology. Charles lives in Cary, North Carolina with his wife Veronica and their two children.

4) Post-Traumatic Stress Disorder

a) PTSD Explained

(For PTSD compensation claims, see section [b], which immediately follows this section.)

By David Addlestone and Arthur S. Blank, Jr. M.D.

Editor's note: Part of this chapter is based on an earlier work by David Addlestone, which was supplemented and otherwise revised for this book by Addlestone and Arthur S. Blank, Jr., M.D.

Most people think a war ends when the fighting stops and people come home. A lot of war veterans know they're wrong. For hundreds of thousands of vets—and their loved ones—the psychological effects of the war are a part of everyday life. Most of these vets suffer from Post-Traumatic Stress Disorder (PTSD). Some have other war-related psychological problems or a war-related dependence on drugs or alcohol.

For many men and women who served in combat zones in Vietnam, the Persian Gulf, Iraq, Afghanistan and earlier wars, the experience there and on coming home has had a lasting and powerful effect on life. For most vets, the adjustment back to civilian life posed few or no major problems. But for others—perhaps 25 percent or more of vets who served in any war—things haven't gone well. In fact, sometimes things seem to be getting progressively worse. These and other complaints are often heard:

"I can't keep a job."

"I have no skills or training that will get me a decent job."

"Here I am thirty years old and I feel my life is going nowhere."

"I can't stay in a relationship. I've been married and divorced [once or several times] and the same thing keeps happening over and over again—I go so far and that's it."

"I just can't get close to anybody. I don't trust anybody."

"Sometimes I have nightmares about Iraq [or another combat zone] or I wake up in a cold sweat, trembling"

"I'm always tense, wired for something to happen, can't relax."

"I thought when I left Iraq [or another combat zone] I left all that behind me, but things keep coming back—memories, thoughts, feelings, for no apparent reason.

"I've got bad paper and I can't get any help from the VA."

"I feel so dead [or empty] inside, just numb to people and things that happen."

"I started drinking [or taking drugs] over there and now I'm doing the same thing, even though I've been through rehab programs.

"I just don't fit in anywhere in society."

"I look around, and I seem to be the only one who is having these emotional problems."

"During certain times of the year I just seem to lose it, and that's not normal."

"I feel so alone.

"I don't know what's happening to me.

"At times I think I must be going crazy

"How can something that happened one, two, ten, fifteen, twenty years ago still be influencing my life?"

This book does not mean to paint a picture that is entirely grim. As will be explained, the feelings expressed in the quotations just given can be a normal reaction to an abnormal situation, such as war. But when the normal healing process of adjusting to terrible experiences becomes disrupted, a normal stress reaction can worsen, becoming a "stress disorder."

This is not a "mental illness," although mental health workers are trained to deal with PTSD. The disorder can be understood by the vet and corrected. This subchapter will describe this disorder and how to get help.

Psychological Problems

Post-Traumatic Stress Disorder (PTSD) has received much more publicity than all other psychological problems of war veterans combined. This is as it should be.

This part of this subchapter will focus on this disorder. Still, war vets also suffer from other psychological problems. Although this book does not have the space to describe the symptoms of other psychological conditions experienced by vets (both war-related problems and conditions having little or nothing to do with war), information is available elsewhere. VA and private psychotherapists—psychiatrists, psychologists, social workers, nurses, counselors, and others—can evaluate a vet's problems and help solve them. Countless books and articles exist on psychological conditions. The most official source on conditions and their symptoms is the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition adopted by the American Psychiatric Association, which publishes it. People who are not trained in psychotherapy or counseling often misinterpret both their own symptoms and the information in DSM IV and other publications. Therefore, while vets may want to refer to books and articles, they should review the information they read with a trained psychotherapist or counselor.

Post-Traumatic Stress and Post-Traumatic Stress Disorder

"Post-Traumatic Stress Disorder" is a modern term for an old psychological condition. In this century it has been called by names including "shell shock," "combat fatigue," "war neurosis," and "survivor's syndrome." Since

the Vietnam War, it has been called by names including "Vietnam Stress," "Post-Vietnam Syndrome" ("PVS"), "Delayed Stress," and "Post-Iraq Syndrome."

The VA found that last least 25 percent of Viet vets have readjustment problems related to their military experience (these include, but are not limited to, PTSD); similar percentages are appearing in studies of soldiers returning from Iraq and Afghanistan.

PTSD did not "officially" exist—in DSM and at the VA—until 1980. In that year, DSM III recognized PTSD as a disorder that could be diagnosed. And in that year, the VA added PTSD to its list of disabilities that could be rated and for which disability compensation could be paid.

But PTSD, by whatever name, has existed for perhaps as long as people have been exposed to horrifying or shocking events. It has been seen not only in veterans of the Vietnam War and other wars but also among accident and crime victims, survivors of the Nazi holocaust, people who lived near the Three Mile Island nuclear plant when in 1979 it nearly experienced a meltdown, residents of the Mount St. Helens area after the volcanic explosion of 1980, those who were in the Kansas City Hyatt Regency in 1981 when a "skywalk" collapsed, killing and injuring dozens of people, those who were in New York City on September 11, 2001, and those who have witnessed severe vehicular crashes.

PTSD occurs in some people who experience a traumatic event and does not show up in others. It occurs in many people who did not previously have any psychological disorder. In other words, you can be "normal" and then begin to suffer from PTSD.

It is important to distinguish (1) the normal stress associated with the period of recovery from a traumatic event (Post-Traumatic Stress) from (2) a disrupted recovery process (Post-Traumatic Stress Disorder).

Normal stress during recovery typically includes the avoidance (or numbing) of feelings and the avoidance of some activities or relationships. It also commonly involves the repeated, unwanted re-experiencing of the traumatic event through thoughts, memories, or dreams.

In a normal recovery, stressful memories can keep reappearing until they are sealed over or healed (the two are not the same). The healing process is helped by the sympathetic understanding of others, by rational explanations of the event, and by normal progress toward life's goals.

For many veterans, war and the homecoming make it difficult to undergo the healing process (more so with Vietnam vets than Iraq vets, because many of the former were met with indifference or even hostility from their fellow citizens). When the normal process of recovery is delayed by the inability to heal the memories of the traumatic event and if, as a result, the veteran's life and relationships suffer, the process may be said to be "disordered": the vet may have PTSD.

According to DSM IV-TR, PTSD is the experiencing of a certain set of symptoms following a psychologically traumatic event that is generally outside the range of usual human experience. A vet with PTSD generally has one or more *combinations of symptoms*. Though different vets have different symptoms, the symptoms include:

- A psychological numbness, usually directly after the event, and continuing for weeks, months, or even years
- Guilt over surviving when others did not
- Anxiety or nervousness
- Depression or deep sadness
- Nightmares or flashbacks in which the veteran reexperiences the traumatic event
- Jumpiness, especially in response to sounds that remind
- the veteran of the event or of the war in general
- Difficulty developing close relationships with people at work, at home, or in social settings
- Difficulty sleeping
- Difficulty concentrating
- Avoidance of certain memories
- Attempts to calm down by using alcohol or drugs (sometimes called "self-medication")

For some vets the symptoms are mild and infrequent, for others they are strong and frequent. And just because you experienced a traumatic event in a war and have one or more of the symptoms just listed, you don't necessarily have PTSD: you may be dealing with stress in a normal and generally successful manner. Or you may have seen friends killed in combat and may now have anxiety, but your current anxiety may be the result of something other than any wartime experience. (On the other hand, you may have symptoms that you think are not war-related but that really are connected to the war: your mind may be "masking" the painful source of

your feelings.) A trained psychotherapist who is familiar with PTSD is the best judge of whether you have it.

Military experiences that may result in PTSD include, but are not limited to

- Combat
- Combat service as a medic or corpsman
- Close combat support
- Violent acts (done or witnessed) that may be accompanied by guilt. Such acts include the killing or other brutal treatment (e.g.abuse or torture) of civilians—especially women, children, and the elderly — and prisoners
- Confinement as a POW or being kidnapped.
- Medical or nursing duties where serious injuries were common
- Handling the dead in a military mortuary or in a graves registration unit

Post-Traumatic Stress Disorder has sometimes been called "Delayed Stress." This is because PTSD symptoms often appear years after the traumatic event connected with them. A delay may occur for any number of reasons. A veteran at first may have been distracted from the traumatic event by his or her continuing experiences in the war or by experiences directly following his or her service (such as school or marriage). Or perhaps the stress the vet feels as a result of the traumatic event is triggered or compounded by challenges that come later (sometimes long after the war) when he or she takes on the many responsibilities of raising a family. Or the delay may be due partly to a temporary "numbing" or "blocking out" of traumatic memories or feelings.

Although PTSD has been around about as long as violence has been around, it apparently has been more common in wars and other conflicts beginning with Vietnam than among American veterans of any other war. There are many reasons for this.

One is the age of American service members in Vietnam. The average combat soldier in World War II was 26, the average service member in Vietnam was just 19. Soldiers who were 26 had generally completed their adjustment to adult life. Those who were not yet out of their teens, however, had experienced little of life past high school, and were just beginning to become adults. Because they were in the process of change, they were especially likely to feel changed by the events of the war: they

were especially likely to come home "feeling like a different person." Nevertheless, the experience of Iraq and Afghanistan is showing that vets of any age many be susceptible to PTSD.

While soldiers from other wars came home slowly—such as on troop ships—and came home together, veterans since Vietnam often come home suddenly and alone. Many vets were in a combat environment and then, a shockingly short 36 hours later, were sitting in their family's living room; they had had almost no time for "decompression." Coming home alone, veterans cannot talk over their experiences with others who would understand; and, instead of feeling like part of a group, they felt like outsiders.

Also, the Vietnam War and those in Iraq and Afghanistan are by far the most unpopular war in U.S. history. At certain points, the majority of the American public wanted the U.S. out of Vietnam and now that is the case for Iraq. The U.S., and its individual soldiers, were seen by many Americans as the unjustified killers who were defending their homeland. As a result, veterans—already young, already returning by plane a day after combat, and already coming home alone—also came home only to be called "murderers by some of their fellow Americans (more so with Viet vets than more recent ones, though war crimes trials are raising more and more questions among the public). By contrast, the vets of World War II returned to ticker-tape parades at the end of the popular war against Hitler and the bombers of Pearl Harbor.

Nothing said here is meant to diminish the valor of American soldiers in other wars or to ignore the fact that many from WWII saw horrors as bad as anything experienced in later wars, or the fact that veterans of all combat eras have also suffered from PTSD. It is simply to say that because of certain circumstances, Vets beginning with Vietnam are more likely than American vets of any other war to suffer problems of readjustment.

The Treatment of PTSD

Can PTSD be treated? If you have it, can you get better? The experts say yes.

Many of the experts are war veterans who have come out of the Viet Vet self-help movement of the 1970s or have received special training since 1980. They recommend talking with a counselor (at a facility such as a Vet Center, which will be described later). If the condition is severe, they

recommend more intensive treatment. Counseling and other treatment often centers on group discussions. These discussions try to help the vet understand that:

Traumatic events can produce stress symptoms in almost anyone.

It is normal after a traumatic event to have intrusive thoughts, "numbing, rage, grief, and other symptoms. In fact, it would be unusual not to have at least some "psychological aftershocks."

Some who have experienced a traumatic event continue to have significant symptoms years or even decades after the event. (This is most likely if effective counseling has not been provided.).

Following a traumatic event, it is not unusual to fear that one will lose control of some emotions.

Once a vet starts focusing on the traumatic event and his or her symptoms, the symptoms usually get worse before they get better. So it's important to be patient: the worsening is temporary.

PTSD definitely responds to treatment.

Some symptoms may not go away completely or forever.

After all, there are a number of experiences in life, both negative and positive, that a person will never forget.

Though this may be difficult for the vet to believe at the beginning of counseling, there may turn out to be important benefits from having gone through the experiences of the war and from having faced and worked through the resulting problems.

Dependence on Drugs and Alcohol

War veterans don't just have more cases of PTSD than veterans of other wars. They also apparently have more cases of dependence on drugs, and perhaps on alcohol as well. Among the reasons for this are some of the reasons for the high number of PTSD cases: a very young group of soldiers fighting a very unpopular war. Another reason is that drugs were more readily available (and their use was more acceptable) during the Vietnam War than during any previous war involving the U.S. A 1971 VA poll found that five percent of Viet Vets—some 150,000 people—had used heroin since their discharge. (And of course many of these vets started using heroin while in the service.) Abuse of cocaine and other drugs, as well as alcohol, is also widespread among Viet Vets and Vietnam Era Vets. There are reports of drugs entering Iraq from Iran and strong homemade alcohol

is plentiful in Baghdad. Of course, Afghanistan is the world's leading producer of opium.

GETTING HELP

Vet Centers

For vets suffering from PTSD, other psychological problems, or dependence on drugs or alcohol, there has been, since 1979, a system of informal offices known as Vet Centers. For many vets, they are the best place to turn.

In 1979, Congress authorized the establishment of Vet Centers under what was originally known as "Operation Outreach." There are now more than 200 Vet Centers all over the United States and Puerto Rico. We expect that many more will open as the veterans of our current conflicts increase the demand for readjustment assistance. Congress has become very sensitive to the demand. Vet Centers are open to any Vietnam Era Vet—any vet who served in the period from August 5, 1964, to May 7, l975—not just to those who served in Southeast Asia, and to veterans of all conflict zones, such as WWII, Korea, Somalia, Grenada, Persian Gulf I, Iraq, and Afghanistan.

Vets like Vet Centers. It may therefore come as a surprise to readers that Vet Centers are part of the VA. They are. And they aren't. Although they are officially part of the VA, they are located away from VA hospitals and other VA facilities. They are found not in giant, imposing buildings, but (usually) in small, storefront facilities.

Most Vet Centers have a staff of four, including professionals and paraprofessionals. Many staff members are war veterans who previously have not worked for the VA.

Vet Centers have an informal atmosphere. Vets just walk in. Appointments usually are not needed and staff members are able to see most vets shortly after they arrive. Many Vet Centers are open in the evenings. Services are provided without charge.

Paperwork is minimal. The vet's identity is kept strictly confidential. Vet Center client folders are kept entirely separate from the VA medical record system.

To help the vet deal with his or her experience in war and in coming home, Vet Centers provide counseling and other assistance. Counseling is available on a one-to-one basis and in groups. Counseling sometimes involves the vet along with his or her family or other people significant in his or her life. In counseling between a staff member and a vet, discussion

usually focuses on what happened in the war zone, the impact of war experiences on the vet, and how the war continues to interfere with his or her life.

Once in the Vet Center—surrounded by other vets, and benefiting from counseling—the vet often begins to unburden. He or she talks about the war with others who understand, and who accept what he or she says without being frightened and without condemning the vet for his or her statements. In many cases, the vet begins to feel no longer alone or isolated. He or she realizes he or she's not crazy, that his her problems can be worked out, and that he or she need no longer run from these problems.

In addition to dealing directly with the vet, most Vet Centers also offer group settings in which the spouses and friends ("significant others") of vets can learn to understand the effect Vietnam has had on vets. The spouses and friends in many cases find ways to improve their relationship with vets.

Besides helping vets with problems such as PTSD, other psychological conditions, and dependence on drugs or alcohol, many Vet Centers provide other assistance. In emergencies, many help with food, shelter, and clothing. Many also assist with employment and with discharge upgrading. In addition, many Vet Centers answer questions about VA benefits, about how to file a claim for disability compensation, and about Agent Orange.

The help a Vet Center can provide is not limited to the center's four walls. Most Vet Centers have a network of contacts in local, state, and federal agencies. They can therefore help the vet find the agency that can deal with his or her problem and can help the vet find the right person at the agency. Some staff members at some Vet Centers will accompany a vet to a VA hospital or to appointments at other facilities, providing support and, perhaps, cutting red tape. Where appropriate and where vets desire, Vet Centers also refer vets to psychotherapists and other professionals.

Most Vet Centers also offer help to vets who never set foot in their offices. Staff members sometimes visit the homes of vets who are in a crisis. They also contact mental health professionals, law enforcement personnel, veterans groups, civic organizations, and other groups to explain the nature and treatment of PTSD and the struggle some vets are having in readjusting to civilian life. Some Vet Centers also conduct programs for vets in prison. (See Chapter 14, "Veterans in the Criminal Justice System.")

In some areas of the country where Vet Centers don't operate or can't handle the demand for their services, readjustment counseling is provided by groups paid by the VA to deal with the problems of vets. To qualify for assistance from one of these groups—called "private fee contractors"—you must be referred to one by a Vet Center or VA hospital.

This book cannot guarantee that every vet will be happy with every Vet Center, or even that every Vet Center is doing a good job. If you believe a local Vet Center (or private contractor) is not meeting your needs, make your views known. First, talk with the Vet Center team leader. Then, if necessary, check with the nearest post or chapter of a veterans service organization (such as The American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars or Vietnam Veterans of America) to see if the chapter has investigated the center. If not, suggest an investigation. If the organization can't help, complain to the Regional Manager for Vet Centers in your part of the country.

If even that does no good, write to the national Director of the VA Readjustment Counseling Service (which runs the Vet Centers). The addresses of the six Regional Managers and of the Director can be found on the VA Web site, va.gov.

To locate the Vet Center nearest you, call (800) 827-1000 or see the VA Web site. If the list includes no center near you, call the nearest Vet Center on the list and ask whether any new Vet Center has been established near you: the Vet Center system has grown rapidly, and since this book was written, a new center may have opened near you. Also ask the nearest Vet Center on the list whether there is a private contractor in your area.

Special Facilities for PTSD

For years after Vietnam, vets with PTSD and other psychological problems felt that VA psychiatric facilities did not understand them. Until recently, most of these facilities were little better than wards for chronic psychiatric cases and drug and alcohol abusers from earlier eras. At many facilities, vets were not wanted, felt unwanted, and received little useful treatment. Often, treatment consisted of little more than overmedication. Often, the result was violence or other conflicts between patients and against staff (at one facility, patients set punji stick traps for doctors).

Pressure inside and outside the VA has since led to, and continues to lead to, the establishment of outpatient programs designed for vets. These programs focus on PTSD and related readjustment problems.

The programs are too few. They are understaffed. But some are run by psychotherapists who are highly skilled, who are widely respected by vet groups, and who are themselves veterans.

At this writing, it may not be easy to get treatment at these facilities. Most have waiting lists. Also, different directors set different guidelines that determine who is accepted. Many will accept only vets who live in their region of the country.

Outside pressure may help you get in. Sometimes a Vet Center can help you get treatment. If you have been convicted of a crime and a judge has given you a choice between jail and PTSD treatment, you or your attorney may be able to get you admitted to a program by bringing the judge's choice to the attention of a program director or a politician (such as your Member of Congress).

More psychiatric programs for vets are needed. In fairness to the VA, it should be said that it seems finally to be trying in this area. And it must be understood that the VA cannot suddenly create hundreds of centers: there are not yet enough potential staff who are appropriately trained. Progress is being made.

For a list of special VA PTSD facilities, see the VA Web site (again, va.gov). To check on whether a new program has begun in your area, contact your nearest Vet Center or the Chief of Psychiatry at the nearest VA hospital.

If there seems to be strong resistance to establishing a psychiatric program in your area, political pressure can be brought to bear. In some places, posts and chapters of veterans service organizations (examples are above) have waged petition campaigns and have alerted the local media.

You may also want to contact the local media as well as local politicians (particularly your Member of Congress). (A word of caution: don't charge off into a public campaign until you have spoken with a person of authority at the VA. Hear his or her explanation before you start a public debate; otherwise, you may be made to look foolish by an experienced bureaucrat or by the disclosure of facts of which you were not aware.)

Other VA Psychiatric Facilities

If you need the sort of intense inpatient therapy not possible at a Vet Center but there is no special VA PTSD program in your area, all is not lost. Some areas have "unofficial" VA inpatient PTSD programs, such as in the "Mental Hygiene Clinic" at a Day Treatment Center or in a general psychiatric inpatient program. Check with a Vet Center, a service representative associated with a veterans organization (see list above), or the Chief of Psychiatry at the nearest VA hospital.

If there is no official or unofficial specialized program, you still may benefit from treatment as an inpatient or outpatient within the standard VA hospital system. Check with a Vet Center or veterans organization about the quality of care for PTSD and other psychological problems at the nearest VA hos pital. Some hospitals are better in this area than others. And, because of all the attention now being given to PTSD, hospitals that a short time ago did little for PTSD patients are now doing a much better job.

For more information on VA medical care, see Chapter 9, "VA Medical Care."

State and Private Psychotherapy

For psychiatric treatment or any other kind of medical care, vets are not limited to VA programs. VA programs do, however, have at least two advantages. One is that they are free. The other is that in many cases they involve therapists who—because they have dealt with many vets and may be vets themselves— are especially familiar with PTSD and other psychological problems of veterans.

Some states also offer free psychotherapy services. Check with a post or chapter of a veterans service organization (again, examples are above) a Vet Center, your state department of mental health (sometimes called by other names), a community mental health group, or a state veterans department.

Still, private programs and private therapists do exist. In some areas, private, community-based organizations sponsor "rap groups" for vets. Also, in some areas mental health organizations run group therapy programs charging relatively low fees. Of course, there are also countless private psychiatrists, psychologists, social workers, and other psychotherapists. Some of these people are skilled in the treatment of veterans' problems and some don't know the first thing about them (but may, improperly, try to treat them anyway).

To find out whether there are helpful private programs or appropriate private psychotherapists in your area, contact your nearest Vet Center or your nearest veterans service organization chapter or post (examples list above).

Self-Help for Psychological Problems

Vets with serious psychological problems should always seek help from professionals. But vets with serious problems may be able to get partial relief—and vets with minor problems may be able to get substantial relief—by helping themselves. Many people with psychological discomfort—especially anxiety—have found athletics very valuable. Many find that, in particular, endurance athletics—running, swimming, bicycling—can dramatically reduce stress. Some prefer competitive sports, exercise programs, or weight lifting. Other people reduce anxiety and other problems not through sport but through meditation and related techniques. An improved diet can also improve the psychological outlook. Books on all these subjects (some by experts, some by quacks) can easily be found at most any bookstore or at Amazon.com and other Internet book retailers.

Programs to Treat Drug and Alcohol Dependence

The choices for the vet with a drug or alcohol problem are similar to those for the vet with a psychological condition. One option, as indicated, is a Vet Center. See the discussion of Vet Centers earlier in this chapter.

Another alternative are more traditional VA programs. Many VA hospitals have programs for the treatment of drug or alcohol dependence. For general information on VA medical care, see Chapter 9, "VA Medical Care."

As with PTSD, the VA has in some areas of the country arranged with private contractors to provide assistance to vets with drug or alcohol problems. The programs operated by these contractors are known as "community treatment programs."

Again, as with psychological problems, drug and alcohol conditions can be treated by state agencies or privately, by both groups and individuals.

Before choosing which course to take, it's important to get advice on which VA and private programs and individuals in your area are most likely to be helpful in your case. For guidance, visit a Vet Center or contact the nearest chapter or post of a veterans service organization (again, examples

include The American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America).

Social Security Benefits

The Social Security Administration operates the Supplemental Security Income program and the Social Security Disability Program. These programs provide payments to disabled persons If PTSD has interfered with your ability to hold a job, you may qualify for payments from the Social Security programs. You can receive these payments in addition to any VA disability compensation you may be getting. Payments from the Social Security programs may, however, reduce the amount of the VA pension (not VA compensation) for which you may qualify.

Disability Compensation for Drug or Alcohol Dependence

Although the VA provides treatment for dependence on drugs or alcohol, it is difficult to get VA approval for compensation for disability due to dependence. It is possible, however, to receive compensation for the physical results of the abuse of drugs or alcohol if the abuse is directly related to a service-connected disability such as PTSD.

For more information, check with your service rep and see section (b), which directly follows this section. Cases for compensation for drug and alcohol dependence are hard win unless you have a good advocate. See section (b) and Chapter 5, "Explaining the VA Claims and Appeals Process."

Appealing VA Decisions

If you apply for disability compensation on the basis of a psychological disability and receive a denial, think about appealing it to the VA regional office or the Board of Veterans Appeals. You will have an especially good chance of winning an appeal if your claim was based on PTSD. Ask your service representative for advice and see section (b), which directly follows this section, and Chapter 5, "Explaining the VA Claims and Appeals Process."

Suicide

In several highly publicized cases, veterans have committed suicide apparently due to despair over their belief that life would never improve.

Some of these veterans had been to VA facilities and had ended their lives by consuming a month's supply of VA-provided medication. Some had never sought help from the VA.

It is possible for the vet's survivors to receive financial benefits, including Dependency and Indemnity Compensation (DIC). To do so, survivors must establish that the vet's death was service-connected. Also, in some cases, medical malpractice claims (or lawsuits) have resulted in large awards of money damages.

For information on compensation for survivors, see this chapter (3), section A, "Eligibility for VA Benefits"; Chapter 5, "Explaining the VA Claims and Appeals Process," and Chapter 10, "VA Programs for Veterans Family Members and Survivors,"

More important than compensating survivors is avoiding more suicides. It is important to communicate to vets suffering from PTSD or other psychological conditions that these problems can be treated: impossible as it may seem to some veterans, they can—and in almost all cases will—get better. If you know a vet who needs help, be sure he or she gets it.

The VA has established a PTSD hotline, (800) 273-TALK. The VA is hiring suicide-prevention counselors at each of its 153 medical centers. In early 2008, Illinois became the first state to establish a 24-hour hotline for veterans needing help with PTSD. We hope other states will follow.

Web Sites

Two particularly useful sites on PTSD and related issues are www.centerforthestudyoftraumaticstress.org and www.ptsdhelp.net.

Minorities and the Disabled

Minority vets have special problems, many of them relating to psychological readjustment to civilian life. Although much published information about minority vets is about African American vets, it is reasonable to assume that some of what is true about African Americans is also true for members of other minority groups.

African American Veterans

African Americans, vet-for-vet, have many more cases of PTSD than vets in general. According to *Legacies of Vietnam*, a 1981 study commissioned by Congress and prepared by Arthur Egendorf, Ph.D., Robert S. Laufer, Ph.D., and others, nearly 70 percent of African Americans who were in heavy combat in Vietnam suffer some degree of PTSD. The figure for whites was "only" 23 percent. The percentage may be so much higher for African Americans partly because African Americans as a group were more sympathetic than whites toward the Vietnamese people and were more opposed to the war. As a result, they presumably suffered more guilt in connection with the killing and brutalization of Vietnamese soldiers and civilians. It remains to be seen whether similar findings will emerge from subsequent wars.

Studies show African Americans in Vietnam also had special problems behind the lines, where racism against them was much more pronounced than in combat. Due to racism and other causes, African Americans, vet-for-vet, received far more bad discharges than vets in general. And bad discharges sometimes add to psychological problems. Presumably studies on more recent vets will show the same problems for African Americans as those just described.

In addition, African American veterans of Vietnam, depending on the communities to which they come home, even more than whites, returned to a society that made them feel different, made them feel alone. As discussed, Viet vets suffered because of the unpopularity of the war and because they generally came home rapidly from the war zone. But African Americans felt even more alienated than most other vets because, war or no war, they represented a small minority of the society and belonged to a minority group that had always been subjected to racism and discrimination.

What can the minority veteran do about his or her psychological problems and other problems? Mostly, he or she can do the same thing all other vets can do: get help from the same veterans service organizations (again, they include The American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America). Vet Centers, which have many minority employees, and the other facilities mentioned in this chapter can also help. Joining minority veterans groups can make these groups stronger and can help them get more

attention from politicians and the media for the special problems of minority vets.

Hispanic Veterans, Native American Veterans, and Disabled Veterans

Editor's Note: The following material is taken verbatim from The Viet Vet Survival Guide, published in 1985 by Ballantine Books. It was authored by Craig Kubey and several others, including David Addlestone. Kubey and Addlestone have managed the current project and contributed to it as editors and writers. Under the time pressures of this book, which accelerated just before publication, we could not readily locate experts to update the material below. Nevertheless, we believe that while at least a little of it is outdated, most of it remains accurate and valuable today. Much of it is appealingly impassioned.

Therefore, we chose to present it rather than delete it, but with the warning that because it was published 23 years ago, at least a little of it has become inaccurate. The authors of the discussions of Hispanic veterans, Native American veterans, and disabled veterans made critically important contributions to the previous book but were not involved in the current project and cannot be held responsible for any statement that, after preparation of the previous book, became outdated. (Also, the biographical information about them is as of 1985.) Readers should keep in mind that the three parts in question were written not for veterans in general, but for Vietnam veterans. Still, much of each part still has value today.

Hispanic Veterans

By Richard L. Borrego, Assistant Regional Manager for Counseling, Readjustment Counseling Service (the Vet Centers). (Like all other material about minorities and disabled, this bio is from the original, 1985 book.)

In discussing Hispanic veterans, it is important to point out that this is a very heterogeneous population. In this group are Mexican-Americans, Puerto Ricans, Cubans, and Latin Americans. Hispanics may be almost totally submerged into traditional Hispanic culture, or nearly completely assimilated into the predominant Anglo culture.

In spite of this heterogeneity, a majority of Hispanics have had to cope with a triple oppression: poverty, racism, and cultural oppression. Such oppression has resulted in fewer opportunities for good jobs or careers

which require higher education. Military service became the alternative for many Hispanics.

While in Vietnam, Hispanics often served in the infantry. In many cases this was by choice, because of the value Hispanics place on pride and courage.

Upon return from Vietnam, Hispanics found that the triple oppression, coupled with what was often a combat role in the war, complicated their reintegration into society. Generally, human service agencies have not been utilized by Hispanic Veterans to facilitate the reintegration process. There is a need for such agencies to evaluate their services in terms of how to make them more responsive to Hispanics.

Fortunately, the strong family and extended family network among Hispanics provided support for readjustment. Also, many Hispanics have a strong Catholic background and may find peace through their religion.

For some, the survival skills learned in dealing with oppression helped. On the other hand, the added stress of war, and the racism involved in the war, increased anger and the desire to remain isolated from the main culture. Given the war experiences, it is important for Hispanic Veterans to channel their anger into adaptive behaviors as opposed to self-destructive behaviors. This can be done by joining or developing Hispanic Veteran organizations which serve as a forum for the ventilation and resolution of their unique problems.

Such organizations could serve as a link to existing resources such as VVA, the Disabled American Veterans (DAV), and the Vet Centers.

The key to survival for the Hispanic veteran, or for any war veteran, is to reach out to those you feel most comfortable with. For Hispanics, this is often la familia or other Hispanic community resources. In addition, our comrades in arms can provide a supportive role.

Hispanics have traditionally been enthusiastic about meeting the call to duty. In the Vietnam war they served with honor and suffered heavy casualties. Those who returned deserve nothing less than the utmost respect and support in their quest for successful reintegration into "the World."

Native American Veterans

Editor's note: Though the part on Native American vets is repeated verbatim from the previous book, most any reference to "Indian" would today be to "Native American."

By Frank Montour, Chairman, Readjustment Counseling Service (the Vet Centers), National Working Group on American Indian Vietnam Veterans. (Like all other material about minorities and disabled, this bio is from the original, 1985 book.)

The interesting thing about American Indians (Native Americans if you prefer) in Vietnam is that each non Indian vet we in the Vet Centers talk to had an Indian in his unit. That Indian was invariably called "Chief" and usually walked point. But even after spending a year or more with him in Southeast Asia, after coming home, there remained a general feeling of never really having known the Indian dude called Chief, who walked point.

The mysteriousness about Indian vets, unfortunately, is not limited to their service in Vietnam. It seems to prevail, even now, in the VA and other service-providing agencies. The Department of Defense can't tell us how many Indians served in Vietnam. The 1980 Census states 82,000 American Indians are Vietnam Era Veterans but makes no estimate of how many were in Vietnam.

In September 1983, a number of Indian vets, already working in Vet Centers, were pulled together to form the National Working Group on American Indian Vietnam Veterans. It was the Group's charge to find answers to a great many questions concerning service delivery to this unique population.

The Group devised a fairly comprehensive survey questionnaire and distributed it through various Vet Centers and the Vietnam Era Veterans Inter-Tribal Association, the largest national organization of Indian veterans.

The number of completed questionnaires returned was far greater than the Working Group had imagined, including results from some 55 tribes in the U.S. and Canada.

According to the survey, close to 90 percent of the Indian vets had enlisted (many before their 18th birthday, with parental consent). Most chose combat-arms military occupations in the Marines or Army and felt that being Indian helped in securing positions in combat specialty or elite groups. A significant number felt their "Indianness" made them better prepared for Vietnam service. Close to half were counseled, spiritually prepared, or ceremonially protected by their individual tribes before passing into the madness of war. Upon return to their communities, many were counseled, spiritually cleansed, or ceremonially reaccepted as proven

warriors with varying degrees of special status or regard. Very few entered the military for reasons of national patriotism. The reason in most cases was related to tribal or family honor. Most Indians who served in the war have felt sorrow that "other Viet Vets" have been treated so poorly by their own people.

Does the American Indian Vet have service-related problems?

Yes. Even with the special family and tribal support mechanisms remaining intact within the Indian culture, more than half of those surveyed report having dealt with (or continuing to deal with) the same problems of night terrors, sleep disturbances, and the like noted by so many other Viet Vets. But many Indians perceive their combat residuals to be a part of the price one pays to become a warrior.

For various reasons, Indians have not much used Vet Centers, other VA facilities, or the Indian Health Service. IHS facilities are located in or near Indian communities, so why don't Indian vets take advantage of their services?

They do, to some extent, for medical problems. But Indian Vietnam Vets, while reporting the IHS to be more culturally sensitive than the VA, find that when it comes to dealing with warrior issues, such as PTSD, Agent Orange, and veterans benefits, IHS personnel have little specialized insight.

The Working Group has recommended that the two agencies (VA and IHS) form an interagency agreement in the near future. The Group hopes the agreement would allow for joint or shared training, or some other mechanism through which Vet Centers might gain an understanding of the culture of the Indian world while contributing special insights from the problems of Vietnam Vets.

Inter-Tribal Association membership is open to all Vietnam Era Veterans (regardless of discharge status) of all tribes in North America. As of this writing, membership is free and provides a quarterly newsletter highlighting Indian Vietnam Veteran news, announcements, and a calendar of coming events, such as Pow Wows, ceremonials, and unit reunions. To join this organization, drop a note with your name, address, and tribal affiliation to: Vietnam Veterans Inter-Tribal Association; 4111 North Lincoln, Suite 10; Oklahoma City, OK 73105.

Disabled Veterans

By Steven N. Tice, Chairman, Readjustment Counseling Service (the Vet Centers), National Working Group on Physically Disabled Vietnam Veterans. *(Editor's note: Like all other material about minorities and disabled, this bio is from the original, 1985 book. Also, please note that the percentage of WIA [wounded in action] as contrasted to the percentage of KIA [killed in action] is dramatically higher in the current war than in Vietnam.)*

There are special factors associated with Post Traumatic Stress Disorder cases among physically disabled Vietnam veterans. The nature of the war, homecoming, hospitalization, and the rehabilitation process, as well as "living disabled" in America had impact upon and continue to influence the stress recovery process of those who were injured in Vietnam.

Vietnam, with its booby traps and rocket-propelled grenades, its snipers and sappers, lent itself to the likelihood of serious injury. Modern technology, replete with rapid helicopter evacuation by Medevac and corresponding superior emergency medical care, assisted in prolonging lives that in past wars would have ended.

The legacy of Vietnam includes 303,704 wounded American soldiers of whom over half required hospitalization. The Vietnam War created an unprecedented wave of seriously disabled individuals (some seventy-five thousand) in America. The probability of incurring a permanently disabling injury was far greater for soldiers in that war than for previous warriors. In Vietnam G.I.s suffered amputation or crippling wounds to the lower extremities at a rate 300 percent higher than in World War 11.

Once he was stateside, the soldier's hospital experience was focused on the healing of physical wounds. Certainly for those in an emergency condition, this focus seems appropriate. However, as the individual's physical condition improved, a corresponding emphasis on the emotional stress recovery process too often did not emerge.

While the quality of stateside medical care varied, attention to the psychological components of rehabilitation appears to have been minimal. Instead the focus was on physical, vocational and monetary issues. Many veterans failed to receive adequate emotional preparation for living disabled in America.

Some writers attribute to hospitalized warriors an advantage over their unscathed counterparts, who quickly separated and were essentially denied

an opportunity to process their wartime experiences. This popular theory hails disabled veterans as achieving an earlier and often more complete readjustment in large part due to peer support during hospitalization.

Certainly, in the hospital, the camaraderie borne of battle was fortified by the continuing struggle to survive. The primary group was intact; soldiers continued to aid their comrades. This care most often took the form of physical assistance, with those with appropriate working body parts supporting those without.

Impromptu rap groups emerged, but outside of building camaraderie, they completed little work of substance. This is not meant to minimize the value of the hospital relationships. Powerful feelings were expressed. However, little direction was provided by staff, family, or veterans themselves in the processing of those feelings.

Instead, the hospital setting provided the means to deny or numb the emotions associated with combat and recovery. Drugs and alcohol were used, and indeed, sanctioned, to numb physical as well as emotional pain. The attitude changed very little during the ongoing rehabilitation process.

The regimen of rehabilitation is often so intense and prolonged that the veteran's focus becomes preoccupied with the process. It is when this effort is perceived as completed or is interrupted that the veteran may experience psychological distress. It is when the physical "rehab" battle subsides that the unfinished business of emotional stress recovery often emerges. The return to "routine" can be accompanied by the surfacing of unresolved feelings associated with combat and disability.

Physically disabled Vietnam Veterans experienced multiple losses. Comrades were killed in battle; the soldier's belief in his own immortality often was a casualty; and, importantly, individuals lost body parts and/or functioning. Many have not grieved for those losses and carry an untold, unspent sadness through their lives. Anger, both internalized and/or externalized may be a regular dynamic of that life. Frustration is a routine feature of the ongoing rehabilitation process. The injured veteran may experience depression, pain, guilt, dependency, as well as difficulties with intimacy and sexuality. These are often aggravated by the lack of mobility, by isolation, and by substance abuse. While many disabled veterans have worked or are working through these issues others have found the process blocked.

There is a reluctance for the disabled to seek assistance from the temporarily-able-bodied population. The stereotype of the problematic" Vietnam Veteran is heightened by prevailing stigmas surrounding the disabled. Racial, gender and cultural factors increase the probability of prejudgment. Disabled veterans hesitate in drawing any further negative attention to themselves. The result is an atmosphere that discourages the disabled vet from soliciting help when difficulties arise.

Outreach, education and participation are paramount in the healing process. Veteran organizations are important tools for the breaking down of negative public views and for building positive, useful ones. A number of national and local veterans organizations represent specific disabled populations, while Vietnam Veterans of America and other organizations focus on all disabled veterans. The Vet Center program is addressing the issue through a National Working Group on Physically Disabled Vietnam Veterans.

The myth of the "adjusted" disabled Vietnam Veteran prevails today. Although disabled vets have, through personal sacrifice, made enormous strides in the readjustment process, the time to finish the work is now. The task for disabled Vietnam Veterans is to take on the pain of working through the stress recovery process. The task for America is to encourage them to do so.

See the subsection 9 of this chapter, on traumatic brain injury, and subsection 11, on chronic pain.

Spouses

Spouses (usually wives) of veterans sometimes have special problems too. One problem is that their spouses often have problems connected with the war, such as PTSD, illnesses, injuries, and bad discharges. And of course these problems affect the relationships between the vet and his or her spouse and any children. For example, some vets have trouble controlling their impulses and their anger, and, as a result, the spouse or children may suffer physical abuse. Or a vet may find it difficult to share or express feelings, causing his or her spouse or children to feel that the vet has little interest in them or affection for them.

Another problem is that in many cases the veteran returned from the war a seemingly different person from the one who left for the war zone. A third problem for spouses is that their problems are largely ignored: the

problems of vets are often greater and get much more media attention, and as a result many people view the problems of spouses as small.

But the problems are substantial, and the spouses need help. The programs described in this chapter are designed for vets, and some are available only to vets. But some are open to spouses (and some to other family members and friends too). In particular, many Vet Centers and some VA hospitals counsel family members along with vets and also offer counseling and "rap" sessions exclusively for families of vets.

Some spouses are also eligible for traditional VA psychiatric care. Those eligible are generally the spouses of vets who are permanently and totally disabled or who are deceased. For more information, see Chapter 9, "VA Medical Care."

Spouses are also eligible for free care from some state and private mental health facilities. Some Vet Centers can provide information on programs available to spouses.

Of course spouses can also—if they can afford it—get help from psychiatrists, psychologists, and other therapists who are in private practice. Just because their psychological problems have a lot to do with their relationship with another person (a vet), spouses who are suffering should not hesitate to get help for themselves.

Regarding psychological problems and most any other kind of problem having to do with a spouse's relationship with a veteran, veterans groups can sometimes provide assistance. Some posts and chapters of veterans service organizations have special "rap" groups for the spouses of vets.

Bad Paper

Many vets got bad discharges because of PTSD or other psychological problems (or due to use of drugs or alcohol). Bad discharges in many cases prevent vets from getting VA benefits, including disability compensation and medical care (although in some cases vets with other than honorable discharges can get medical treatment). In late 2007 Congress held hearings concerning the alleged abuse by some military commands in discharging servicemembers for "personality disorders" instead of PTSD. Personality disorder-related discharge, even if honorable, very often lead to the loss of VA education benefits and harm a claim for PTSD. See discussions at the Web site of Veterans for America, www.veteransforamerica.org .

If you have a bad discharge, you can try to get it changed. If your bad discharge is due to PTSD, you have a fairly good chance of getting an upgrade—if your upgrade application is supported by evidence. A typical applicant who has a strong chance of upgrade is a veteran who, as a service member, had a good record in war followed by a series of petty offenses during stateside service. Some Discharge Review Boards understand PTSD and are often sympathetic to vets with PTSD who apply for an upgrade.

For more information on bad discharges and on how to get them upgraded, see Chapter 15, "Upgrading Less than Fully Honorable Mililtary Discharges."

Vets in Prison or Charged with a Crime

Some vets are in prison because they committed a crime for reasons relating to PTSD. Others are there for reasons unconnected to PTSD or any other reason related to military service, but still need treatment for the disorder. And still other vets with PTSD have been arrested for a crime but have not yet stood trial. All of these vets may benefit from special legal procedures or special programs for vets with PTSD who have been charged with or convicted of a crime. See Chapter 14, "Veterans in the Criminal Justice System."

Vets with Employment Problems

In some cases Vets who have PTSD have been fired or had other employment problems due to conduct associated with their disorder. In some cases these vets have a right to get their jobs back or to get a better job than they currently have. See Chapter 11, "Employment, Self-Employment and the Small Business Administration" and Chapter 12, "Re-Employment Rights and Associated Rights for Time Spent in Military Service."

A Parting Word

This subchapter on PTSD—and this whole book—is designed to help the veteran. But the book is here to help the vet who deserves help, not the occasional vet who may be trying to get benefits for which he or she doesn't qualify or which he or she doesn't need, and not the occasional vet who may be trying to shirk his or her responsibilities to others and to himself or herself.

These points are especially important to make in a chapter that focuses on PTSD. This chapter will therefore approach its end with a quotation from Arthur Egendorf. Egendorf, a Viet vet, is also the clinical psychologist who began a large study on veterans of the Vietnam War, *Legacies of Vietnam*, which this chapter previously mentioned. Here's what he says:

It's one thing for a vet to speak up about real troubles. It's another thing when guys make themselves out to be sickies to avoid responsibilities to themselves, to people who love them, or to society. Veterans should be warned that fake claims don't work in the long run. Somebody else might fall for it. But you lose self-respect—something we veterans need too much to throw away.

The great majority of vets who claim to have PTSD or other psychological problems are telling the truth, are genuinely suffering, and deserve help from specific programs and from their country at large. This chapter is for them.

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b) Compensation of PTSD Claims and Secondary Disorders Related to PTSD

(See Chapter 3. B. 4. (a), directly above, for a discussion of the non-compensation aspects of PTSD.) For veterans and others who may read only subsection (a) or only subsection (b), some information found in (a) is repeated in (b).

By Charlene Stoker Jones, Meg Bartley and Ron Abrams
National Veterans Legal Services Program

Post-Traumatic Stress Disorder (PTSD) is a recognized psychological disability that sometimes occurs in people who have witnessed an extremely traumatic event. In earlier times, it was called "shell shock." "combat fatigue," "battle fatigue," "war neurosis," or "survivor's syndrome." More recently, in addition to being called "Post-Traumatic Stress Disorder," it has also been called "Vietnam Stress," "Post-Vietnam Syndrome," and "Delayed Stress." It can happen to a veteran who fought in a bloody battle. It also is found in civilians who witnessed a natural disaster. It was seen in the concentration camps of World War II.

PTSD can have debilitating effects on the people who suffer from it. Symptoms include emotional numbing, nightmares, anxiety or nervousness, jumpiness, flashbacks, trouble sleeping, guilt about surviving when others did not, avoiding reminders of the event, social isolation, and the use of alcohol or drugs to "self-medicate" symptoms. Almost every veteran will experience some degree of stress when placed in a combat environment, but the majority of them will not develop PTSD. A diagnosis of PTSD may be made when the duration and intensity of the person's stress response is greater than average and the source of the stress can be identified.

You should know that each branch of the military has programs for PTSD and the Department of Veterans Affairs offers free counseling sessions. It has been estimated that more than one-third of U.S. soldiers receive counseling soon after returning from Iraq and that more than 15% of soldiers returning from Iraq show signs of PSTD. The stigma of mental illness discourages many from seeking help, so the true incidence of the disorder may be much higher.

The essential feature of PTSD is the development of its characteristic symptoms following exposure to a traumatic event, also known as a "stressor." You must have had direct personal experience of an event involving actual or threatened death, serious injury, or other physical harm. You also could have witnessed an event that involved death, injury, or physical harm to another person.

A PTSD claim does not necessarily have to be combat-related. For example, the stressor triggering PTSD could include experiencing or witnessing physical attack, sexual assault, torture, explosion, natural disaster, car or plane crash, ship sinking, or witnessing a dead body or body parts. Other examples could be being held a prisoner of war or working in a grave registration or burn care unit.

To win a PTSD-based claim, you need three things: first, a diagnosis of PTSD; second, evidence of a stressful event occurring during your military service; and third, a medical opinion that connects the diagnosis of PTSD to the stressful event in service. Remember, even if the VA accepts that you have PTSD, it can still deny your claim if it does not accept that your claimed stressor happened. The rules the VA must follow in developing and deciding a claim for service connection of PTSD are complex and you should discuss your PTSD claim with your veterans service representative or an experienced veterans attorney to determine how best to proceed. Service reps are usually associated with veterans service organizations, such as AMVETS, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

A key part of a PTSD claim is identifying and providing the VA with details of a confirmed stressor. The stressor you experienced generally needs to be documented. If your stressor was related to combat with the enemy, your testimony alone should be enough to convince the VA that you experienced the event. The VA should accept your statement when you have a combat-related job description or received a Purple Heart or other combat-related award.

If your claimed stressor is not related to combat, you must provide a detailed description of the stressor and corroborating evidence, or the VA may deny your PTSD claim. The VA will attempt to help confirm alleged stressors, but in order to successfully help you gather evidence of the stressor, the VA needs as much detailed information about the event as possible (where, when, who was with you). The VA will look through your

service records and other service department records to corroborate the stressor experience. Often the VA will accept buddy statements, letters, or other forms of non-traditional evidence to prove that the stressor event happened. Your veterans service organization representative or a qualified veterans attorney should be able to help develop this evidence.

Unfortunately, all too frequently veterans with PTSD are either misdiagnosed with another condition, such as personality disorder or substance abuse, or are diagnosed with PTSD but not service-connected for other conditions related to their PTSD. If you have been misdiagnosed with another condition, it is imperative that the doctor diagnosing you with PTSD explain how PTSD could have been misdiagnosed. Your doctor may need to explain how your current diagnosis of PTSD relates to other disorders. If a veteran "self-medicates" with alcohol or drug in order to lessen the symptoms of PTSD, this should be stated in the claim. It may be possible to get service connection on a secondary basis for alcohol or drug addiction or another disorder that is a result of the primary disability, PTSD. Service connection for a death by suicide may be available if evidence shows the death resulted from PTSD. Sometimes survivors can apply for death benefits based on a veteran's suicide due to PTSD.

Important

In some cases, veterans are not diagnosed with PTSD because they have another condition that masks the problems caused by PTSD. Veterans (especially of Iraq and Afghanistan) who suffer from the residuals of Traumatic Brain Injury (TBI) should be checked by a mental health expert for mental conditions secondary to the TBI. It is possible that veterans suffering from TBI also have secondary PTSD and depression. If you suffer from symptoms of PTSD or depression, you should seek medical treatment and should obtain a medical opinion linking the mental disability (or disabilities) to the TBI. (Some signs of depression are loss of interest in normal daily activities and feeling sad, helpless, or hopeless.)

Evidence of a Stressor

In February 2008, the VA announced that a veteran who is diagnosed with PTSD while on active duty will no longer be required to provide

additional evidence corroborating the in-service stressor to have PTSD recognized for VA compensation purposes. This change in how PTSD claims are handled should make the claims process fairer and speed up the adjudication of PTSD claims. While we wait for the VA to provide details on how this change will be implemented, it is important to remember that the announced change applies only to servicemembers diagnosed with PTSD while on active duty. While corroborative evidence that the in-service stressor actually occurred may no longer be required in some situations, the identification of a stressor event does remain a requirement for a diagnosis of PTSD under the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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5) Desert-Borne Diseases Relating to Service in Southwest Asia

By Charles Sheehan-Miles

A small number of returning veterans from Southwest Asia have been diagnosed with various desert-borne diseases. DoD and VA have identified the following conditions as potential risks to those serving in Southwest Asia:

- Viral Hepatitis A and E, typhoid fever and diarrheal diseases, such as dysentery
- Malaria, West Nile fever, Crimean-Congo fever and dengue fever from mosquito and tick bites
- Tuberculosis
- Leptospirosis from swimming, wading, or other skin contact with contaminated water.
- Rabies from direct animal contact
- Leishmaniasis (very rarely) from sandfly bites.

Treatment and/or compensation for these illnesses is handled through the normal programs of VA.

6) Adverse Reactions to Anthrax and Other Inoculations

Since the 1991 Gulf War, a number of military personnel and veterans have reported adverse reactions to the mandatory anthrax vaccine. This issue has been significantly controversial: many veterans believe that the vaccine or contaminants in them are responsible for illnesses they suffered following service, yet the official investigations conducted by DoD, VA and the National Academy of Sciences stating that no scientific link has been found between the vaccine and health problems.

In the late 1990s, the vaccine was made mandatory for all servicemembers, and a number of servicemembers accepted court-martial and bad discharges rather than take the vaccine.

Because the science is still out on this question, the VA offers no compensation programs specific to the anthrax vaccine. If you believe you have suffered an adverse reaction to the vaccine it is important to document everything related to it. As soon as possible following the exposure, file a

report with the Vaccine Adverse Event Reporting System (VAERS) maintained by the Food and Drug Administration. More information on how to file this report is available by calling the FDA at 1-800-822-7967 or on the web: www.fda.gov/opacom/backgrounders/problem.html

7) Exposure of Military Personnel to "Project SHAD" Experiments

Project SHAD (Shipboard Hazard and Defense) was a experimental program conducted by the Department of Defense starting in 1962, and was part of a larger program called Project 112. It involved servicemembers from the Navy and Army, and may have involved smaller numbers of personnel from the Marine Corps and Air Force.

The military is continuing to declassify reports related to these projects. Additional experimental exposure of military personnel to a variety of chemical and/or biological agents took place from 1955 to 1975, primarily at military facilities at Edgewood, Maryland.

According to documents available on the VA website, exposures may have included chemical warfare agents (Sarin/VX) and a variety of bacterial agents.

Detailed information about these exposures is available at www1.va.gov/SHAD.

Veterans concerned that their health issues may be related to exposure to agents or participation in these experimental programs should file a claim for compensation. Because of the complexity of these claims, it is important to work with a knowleable veterans service officer from one of the Veterans Service Organizations, including VFA, American Legion, VVA or others.

8) Exposure to Depleted Uranium

Depleted Uranium (DU) is used by the U.S. military primarily in the M1A1 Abrams Tank as a kinetic energy weapon, and was first used in combat during the 1991 Gulf War.

DU has been an incredibly controversial issue, and one which has given rise to substantial amounts of misinformation on all sides of the issue.

Although this book will not go into all of the details of the arguments, it will lay out what is clearly known.

DU primarily gives off alpha particles, which are a short-range, high energy form of radiation which is effectively stopped by clothing, paper or even the dead layer of skin on the body. External exposure to depleted uranium is generally not considered a health hazard.

That said, under certain circumstances, there may be more risk. Because DU is pyrophoric (meaning it burns), when it strikes a vehicle the DU rounds can burn up into a fine, respirable dust. Military personnel who have contact with destroyed vehicles or equipment which has been hit by DU rounds are at risk of breathing these particles and taking them into the lungs, which MAY have a cancer risk similar to that of radon (which is also an alpha particle emitter).

At this time the science is largely still out on these questions. Studies conducted by the military have shown that rats with implanted depleted uranium pellets may develop health problems. However, no human studies have been conducted. Consequently, at this there is no compensation program available to veterans who may have been exposed to DU.

If you believe you may have been exposed to DU during military service, you should take the following steps:

1) Document the exposure. This documentation should include all the possible information you can gather, including photographs, unit reports, medical records, and buddy statements.
2) If you are still in the military, report the possible exposure.
3) Register with the VA's Gulf War Registry, and ensure you provide the documentation of your exposure. To participate in the Gulf War Registry, call 1-800-749-8387.

9) Effect of Traumatic Brain Injuries

Often referred to as the "signature wound" of the Iraq and Afghanistan wars, traumatic brain injury (TBI) can result from the head being violently hit or shaken. Because of the large numbers of roadside bombs and other explosions, substantial numbers of servicemembers may have experienced brain injury and not be aware of it. Research into traumatic brain injury

shows that people who survive multiple concussions can develop serious health problems including:

- Trouble with memory, attention or concentration
- Sensitivity to sounds, light or distractions
- Impaired decision making ability or problem solving
- Difficulty with inhibiting behavior, impulsiveness
- Slowed thinking, moving, speaking or reading
- Easily confused or overwhelmed
- Changes in sleep patters
- Changes in sexual interest or behavior

Symptoms of TBI can easily be confused with that of other conditions, such as Post-Traumatic Stress Disorder (PTSD) and therefore can easily be misdiagnosed. Currently VA policy requires all veterans of Iraq and Afghanistan to be screened for possible TBI when they receive medical care.

In September 2008, the VA announced new regulations that make it easier to establish a compensation claim based on traumatic brain injury. However, the rules only apply to claims received *after* September 23, 2008. Claims received before that date, or which have already been decided, are evaluated under the older, more difficult criteria. If you filed a claim before September 23, 2008, you must explicitly notify VA that you wish your claim to be considered under the new rules. As of the writing of this chapter, the procedure for requesting a review has not been made available.

10) Anti-Malaria Drugs (Larium)

Malaria is a serious, sometimes life threatening illness which is a risk to anyone in the tropics, and has long been a serious problem for U.S. military forces deployed around the world.

Currently the mostly commonly provided anti-maliaria drug provided to U.S. troops is mefloquine, also known as Larium.

In general, larium is tolerated well by most people who take it, and it is an effective preventer for malaria. However, individuals susceptible to seizures, or who suffer psychiatric problems or depression should not take it.

Potential side effects of the drug have been documents. However it is important to remember that these have been reported in only a small minority of those taking the drug. They include include dizziness, lethargy, insomnia, severe headaches, violent mood-shifts, seizures, panic attacks, and in rare cases, serious psychosis.

If you think you may have problems related to having taken Larium, take the following steps:

1) Document that you took it. Check your medical records for the terms mefloquine or Larium. Because it is nor routinely recorded in medical records, you should also check with the corpsmen/medic (if you are still on active dury) because it may be recorded in the dispensing logs of the unit. Check with buddies you served with to find out if they have documentation.
2) If you don't have any documentation, ensure you write down what you remember of what you were given, instructions you were provided on how much to take and when. Include any side effects you may have experienced.
3) ill out the larium side effects questionaiire provided by Larium Action U.S. at: www.lariaminfo.org/pdfs/side_effects_questionnaire.pdf
4) Consult a physician for diagnosis and treatment, and ensure your exposure is documented by the VA. Provide the physician with the "Information for Military Service Members and Their Families" fact sheet available from the Deployment Health Center of the Department of Defense, available at www.pdhealth.mil/downloads/Mefloquine_SM_fs_4104.pdf

11) Chronic Pain

By the American Pain Foundation

Introduction

Pain is a growing issue among members of the military, past and present. Yet, many do not receive timely, adequate pain relief. Too many veterans

and military personnel fail to seek timely medical attention for their pain. Instead, they tend to abide by the military directive to be tough and push through any pain or adversity. While this may be a good coping skill on the battlefield, it is potentially harmful when returning to civilian life.

(Editor's note: there is no VA disability compensation for chronic pain unless it is linked to a diagnosis. For more on disability compensation, see other sections and subchapters of this chapter.)

Although pain is among the most common complaints for all returning military, appropriate medical resources are limited and facilities ate potentially unprepared to care for the volume of service members expected to return with pain-wrenching injuries. According to published reports, in the present conflicts more than 50,500 U.S. soldiers have suffered non-fatal injuries as of September 2006, which translates to 16 wounded servicemen/women for every fatality–the highest killed-to-wounded ratio in U.S. history (Bilmes, 2007). Although today's body armor and rapid evacuation to medical care is saving lives, there are more maimed and shattered limbs than ever before, with instances of amputation double previous rates. At the same time, an increasing number of veterans, especially those from the Vietnam era, are moving into their senior years when war wounds deepen and can become more problematic.

If left untreated or undertreated, pain can lead to a host of negative health outcomes, including limited function, difficulty working and chronic anxiety, depression and feelings of isolation. Pain is also a leading cause of short- and long-term disability among veterans. *Early pain assessment and treatment is essential to avoid long-term problems and needless suffering.*

"Toughing it out" by leaving pain untreated can lead to years of needless suffering, which can destroy lives and families, negatively impact military morale and over-burden the military/veteran healthcare system. This is not an acceptable legacy for those who have sacrificed their lives, limbs and future in order to serve and protect our country. It also places a heavy burden on military families, many of which are struggling to cope with military separation and subsequent war-related stress and injuries.

The good news is that there are a growing number of resources and treatments available for members of the military to effectively manage pain and reclaim their lives. In this chapter, we provide an overview of special pain conditions, practical information about the diagnosis and treatment of

pain, as well how to cope. A comprehensive list of resources is also included.

For more comprehensive information about pain treatment options, the difference between physical dependence and addition, the burden of pain in the military, common fears and misperceptions, and to access online support services, visit the **American Pain Foundation**'s web site at www.painfoundation.org or call the toll-free message line at 1-888-615-7246.

Special Considerations

Pain is a public health crisis across this country. But for member of the military, who are at heightened risk for injury and combat wounds, effective pain management is particularly challenging. Many present with PTSD, traumatic brain injuries, amputations and other injuries, which further complicate their care, especially in areas that lack appropriate medical resources.

PTSD commonly affects soldiers returning from war, and is triggered by exposure to a situation or event that is or could be perceived as highly threatening to a person's life or those around him/her, and may not emerge for years after the initial trauma. Chronic pain symptoms and PTSD frequently co-occur and may intensify an individual's experience of both conditions. Chronic pain and PTSD result in fear, avoidance behaviors, anxiety and feelings of isolation.

Amputations have long been a tragic, unavoidable consequence of combat injury—"one of the most visible and enduring reminders of the cost of war," according to the Amputee Coalition of America. While there have been major advances in medicine, prosthetics and technology that allow amputees to lead more independent lives, most of these patients continue to need specialized long-term or lifelong support. Managing wound, post-operative, phantom and stump pain is important to reduce suffering and improve quality of life.

A traumatic brain injury (TBI) is a blow or jolt to the head or a penetrating head injury that disrupts the function of the brain and is a major cause of life-long disability and death. Managing pain in veterans with TBIs may be complicated by memory lapses affecting medication management, difficulty organizing and following complicated and

sometimes even simple pain management regimens, and difficulty learning new coping skills. Rehabilitation should incorporate efforts to relieve associated pain.

Unfortunately, many of today's wounded combat veterans will face a life of chronic pain. The devastation and impact of chronic pain on veterans' lives cannot be ignored. In his testimony for the Congressional Briefing on Pain in June 2006, Rollin M. Gallagher, MD, MPH, director of pain management at the Philadelphia VA Medical Center stated:

"We will have tens of thousands of veterans home with us for the rest of their lives, trying to restore a life, following blast injuries causing severe tissue and nerve damage that leave them in a state of permanent severe pain. Mechanical devices can help restore functioning of limbs. *However, more often than not, it's the severe and unrelenting pain that will prevent them from obtaining a reasonable quality of life*, for it takes over a person's brain."

Studies of VA patients show that the pain of veterans is significantly worse than that of the general public (Kazis et. al. 1999, 1998). Veterans have greater exposure to trauma and psychological stress (Arnstein et al. 1999), both of which increase pain and compound therapy. Chronic pain is an important contributor to the development of post traumatic stress disorder, depression, anxiety, panic attacks and substance abuse and, if untreated, worsens their outcome (Schatzberg, Archives General Psychiatry).

Common Concerns and Perceptions among Veterans and Military Members Suffering with Pain

- The acknowledgement of pain is a sign of weakness
- Perception that if pain medication is prescribed they will be "drugged up" and that the meds will change their personality
- Taking medication will reflect negatively on them; fears that they will lose their military/civilian job and benefits.
- Concerns that they'll be on medications for life and become addicted
- Believing medication(s) will affect sexual functioning and health over the long term (e.g., organ problems)
- Even if they do take medicine, thinking that it won't help
- That they "can't" tell others especially military/veteran peers
- REMEMBER: Pain is not a sign of weakness, and is often an inevitable result of injury or trauma associated with the duty to serve one's country.

Why is Managing Pain Important?

If you are reading this and suffer with pain, it is critical that you seek appropriate medical care and social support. Persistent pain can interfere with your enjoyment of life. It can make it hard to sleep, work, socialize with friends and family and accomplish everyday tasks. When your ability to function is limited, you may become less productive. You may also find yourself avoiding hobbies and other activities that normally bring you happiness in order to prevent further injury or pain. Ongoing pain can cause you to lose your appetite, feel weak and depressed. Failure to treat acute pain promptly and appropriately at the time of injury, during initial medical and surgical care, and at the time of transition to community-based care, contributes to the development of long-term chronic pain syndromes. In such cases, pain signals remain active in the nervous system for weeks, months or even years.

Consequences of Pain

- Untreated pain can have serious physiological, psychological and social consequences, which may include:
- Weakened immune system and slower recovery from disease or injury
- Decreased quality of life. Pain adversely impacts almost every aspect of a person's life including sleep, work, and social and sexual relations.
- Human suffering, fear, anger
- Depression/anxiety
- Deterioration of relationships, marriages, intimacy
- Loss of independence (can't perform activities of daily living)
- Loss of self-esteem

Goals of Pain Therapy

Your pain management team will work with you to map out a treatment plan tailored to your specific needs. Successful pain management aims to:

1. Lessen the pain
2. Improve functioning
3. Enhance your quality of life

In most cases, a "multi-modality" approach is recommended. For example, your healthcare provider may prescribe a medication along with activities to reduce stress (e.g., deep-breathing exercises). To improve daily functioning, specific therapies may be suggested to increase muscle strength and flexibility, enhance sleep and reduce fatigue, and assist you in performing usual activities and work-related tasks. Non-drug, non-surgical treatments could include relaxation therapy, massage, acupuncture, application of cold or heat, behavioral therapy, and other techniques.

Diagnosing and Assessing Your Pain

To correctly diagnose your pain, your healthcare provider may:

Perform a complete physical exam

Complete a pain assessment

Ask detailed questions about your medical history and lifestyle

Order blood work, X-rays and other tests

Note: Because of the current state of medical science and limited pain research, there are some causes of pain which may not be able to be confirmed with current medical technology and diagnostic tests. Just because a concrete cause for your pain can't be found, doesn't mean that your pain doesn't exist.

It is important to give your healthcare provider a complete picture of your pain history. This information will help him or her to determine the right treatment plan for you. To complete a pain assessment, your healthcare provider may ask about seven aspects of pain to help LOCATE your pain and make the correct diagnosis.

L = the exact Location of the pain and whether it travels to other body parts.

O = Other associated symptoms such as nausea, numbness, or weakness.

C = the Character of the pain, whether it's throbbing, sharp, dull, or burning.

A = Aggravating and Alleviating factors. What makes the pain better or worse?

T = the Timing of the pain, how long it lasts, is it constant or intermittent?

E = the Environment where the pain occurs, for example, while working or at home.

S = the Severity of the pain (See discussion of pain scales below).

Be sure to share how your pain affects your sleep, mood, appetite and activity levels. Remember to use descriptive language when explaining your pain. Describe your pain with words like: sharp, crushing, throbbing, shooting, deep, pinching, tender, aching, among others. Your healthcare provider may also use a pain scale to help assess your pain. Pain scales are tools that can help you describe the intensity of your pain and help your doctor or other healthcare providers diagnose or measure your level of pain. Three types of scales are commonly used: numeric, verbal and visual.

With numerical scales, you use numbers from 0-10 (0 being no pain and 10 being the worst pain ever) to rate the intensity of your pain.

Verbal scales contain commonly used words such as "mild," "moderate" and "severe" to help you describe the severity of your pain.

Visual scales use aids like pictures of facial expressions (from happy, or no hurt, to agony, or hurts most), colors or gaming objects such as poker chips to help explain the severity of the pain. Body diagrams may also be used to help pinpoint where your pain occurs.

Your Pain Management Team

Common pain problems can often be managed by your primary care provider or treating healthcare professional. This individual could be a physician, nurse practitioner or physician's assistant. When pain is more difficult to treat, help from additional healthcare professionals and others with specialized training in pain may be required. Some of these disciplines may include, but are not limited to:

Specialty physicians from the fields of pain medicine, neurology, neurosurgery, physical medicine, anesthesia, orthopedics, psychiatry, rheumatology, osteopathy, for example.

Nurses

Pharmacists

Social Workers

Psychologists

Case Managers

Chiropractors

Physical Therapists, Occupational Therapists, Physiatrists

Complementary/Alternative Medicine Practitioners (massage therapists, yoga instructors, acupuncture, etc.)

Be sure to find a healthcare professional not only trained to treat your pain disorder, but who is also willing to work with you to manage your pain. At each follow-up visit, a re-assessment of your pain and pain management plan is very important in order to evaluate the effectiveness of your treatment.

Mapping a Treatment Plan

There are many ways to treat pain. Find out about the benefits and risks of drug and non-drug therapies. Learn about the different ways drugs can be prescribed. For example, opioids—strong medications for relieving serious pain—can be delivered through pills, a transdermal patch, or a pump. Many non-drug therapies, used alone or in combination with medications, can also help reduce pain. A few include relaxation therapy, exercise, psychological counseling, acupuncture and physical therapy, the application of cold or heat, as well as a host of complementary and alternative treatments, such as massage, acupuncture, and yoga.

Pain is complex and unique to each individual. For this reason, your healthcare team will consider many aspects of your pain and daily life before recommending a treatment program, including:

Type of pain (whether it is acute or chronic)

Intensity of your pain

Your physical condition, coping ability and challenges

Your lifestyle and preferences for treatment

Your treatment plan will likely include a combination of the following:

Pharmacotherapy (e.g., non-opioids, opioids and other medications)

Psychosocial Interventions (e.g., stress management, coping, counseling)

Rehabilitation Techniques (e.g., re-conditioning, exercise therapy, application of heat or cold, myofascial therapy)

Complementary and Alternative Medicine (e.g., meditation, tai chi, dietary supplements, aromatherapy, therapeutic massage)

Injection and Infusion Therapies (e.g., nerve blocks, patient-controlled analgesia, or PCA)

Implantable Devices and Surgical Interventions (e.g., pumps, stimulators)

NOTE: *When used for medical purposes and under the guidance of a skilled healthcare provider, the risk of addiction from opioid pain medication is very low.*

For more detailed information about specific therapies within each of these areas, visit the American Pain Foundation's web site, www.painfoundation.org, to download or order *Treatment Options: A Guide for People Living with Pain* (www.painfoundation.org/Publications/TreatmentOptions2006.pdf). Also, take advantage of the online support services and information specifically for members of the military and veterans. It helps to talk to others who understand.

Getting Help/Pain Resources

Finding good pain care and taking control of your pain can be hard work, but there are a number of resources you can turn to for support. Look for pain specialists by:

Asking your healthcare provider for a referral to a pain specialist or pain clinic.

Asking friends, family members, co-workers—particularly those who've had pain or know someone with pain—for suggestions.

Contacting the referral service of the largest hospital in your area.

Checking resources available through your area VA facility.

Speaking with people who belong to pain support groups in your area or region. Ask which doctors they like and what they look for in a specialist or pain center.

Contacting your local chapter of the American Society of Pain Management Nurses (ASPMN) or the American Academy of Pain Medicine (AAPM).

Researching your State Pain Initiative at aspi.wisc.edu/state.htm.

If you are in a managed care program, call your representative and get the list of approved pain specialists. Also be sure to check the American Pain Foundation's *Pain Resource Locator Links* at www.painfoundation.org.

Remember, you are part of your health care team, so play an active role in your pain care and work with your healthcare providers to come up with a treatment plan that works best for you.

Some people have found that getting involved with advocating on a state and/or national level about the issue of better pain care has helped them feel more empowered and has positively impacted their pain. If you

are interested in exploring this, please go to the American Pain Foundation's web site at www.painfoundation.org and click on "Take Action Now" to find our how you can become involved with advocacy activities.

Helpful Hints on Your Road to Recovery

Managing your pain is an important step to reclaim your life. It's important to remember that getting help for your pain is not a sign of weakness. And the earlier you seek treatment, the better. Here some helpful tips:

Seek out a "battle buddy," someone else who has faced a similar experience and can help you through your war on pain.

Speak up! Only you know the extent of your pain and how it affects your quality of life.

Tell your healthcare provider about past treatments for pain. Have you taken prescription medication or had surgery? Tried massage? Applied heat or cold?

Knowledge is power. Learn all you can about your pain and possible treatments. Remember, there are a variety of drug and non-drug therapies (e.g., physical therapy, yoga, meditation) available to effectively control pain; these are typically used in combination.

Tell your provider what over-the-counter medications, vitamins and supplements you take, at what dose and how often. Also let him or her know about other personal health habits (e.g., smoking tobacco, alcohol use), which can interfere with some pain treatments and increase pain levels.

Keep a pain journal to record the frequency and intensity of your pain. Use descriptive words, such as sharp, crushing, throbbing, shooting or tender. Also, take note of how well your treatment plan is working and what makes your pain worse or better.

Write down questions and concerns that you have before each appointment.

Take advantage of the VA and other health care services, which are *earned* by veterans.

Bring a relative or friend with you for support and to help take notes and remember what was said.

Research available support groups and educational programs, like the American Pain Foundations Military/Veterans Initiative, which includes a dedicated section of the web site, including online bulletin boards, chats, articles, news, education and support to address veteran/military pain issues.

Talk with your family about how you are feeling. Mental health issues and depression, although not visible on the outside, can also cause pain.

Accept support from loved ones—you need and deserve all the help

you can get. Long-term pain often results in physical and psychological challenges.

"Pain is a powerful thing. It changes everything. Your whole life is altered to accommodate it. In military hospitals all around the nation I witnessed strong young Infantrymen, Medics, and Snipers buckle under its crushing weight. Exhausted emotionally and physically they cried out in pain."

— Captain Jonathan D. Pruden of the U.S. Army at a Congressional Hearing provided testimony for a Congressional Hearing on Chronic Pain, December 8, 2005.

The information in this chapter is provided to help readers find answers and support. Always consult with health care providers before starting or changing any treatment. This information is provided for educational and information purposes only. APF is not engaged in rendering medical advice or professional services, and this information should not be used for diagnosing or treating a health problem. APF makes no representations or warranties, expressed or implied.

RESOURCES

Military/Veteran-Specific Resources

There are a number of resources available to military service members, veterans and their families, including the Veterans Administration, Veterans Service Organizations (e.g., Veterans For America, American Legion, VFW, DAV) and state-level programs through state veterans' office. The below lists helpful organizations and health care resources to suit your needs.

American Pain Foundation

(888) 615-PAIN (7246)

www.painfoundation.org

APF has launched a comprehensive initiative to reach out to active military and veterans who are in pain and provide them with educational information, and support to improve their pain care, decrease their sense of isolation, and encourage them in their pursuit of a better quality of life for themselves and their families.

American Legion

www.legion.org
The world's largest veteran's organization, supporting and assisting military veterans and their families.

Amputee Coalition of America
www.amputee-coalition.org/military-instep/
Consumer educational organization reaches out to people with limb loss and empowers them through education, support and advocacy. The Amputee Coalition of America, in partnership with the United States Army Patient Care program, has just published: Military in-Step, a full-color, 98-page publication aimed at meeting the informational needs of returning military personnel with service related amputations. Copies are available to all as a PDF download through the Amputee Coalition of America's Web site.

Angel Flight for Veterans
angelflightveterans.org
Angel Flight for Veterans provides no-cost or greatly reduced rate, long-distance charitable medical transportation/travel. Angel Flight for Veterans serves veterans and active duty military personnel and their families.

Center for Women Veterans
www1.va.gov/womenvet/
The Center for Women Veterans ensures that women veterans receive benefits and services on a par with male veterans, encounter no discrimination in their attempt to access these services, are treated with respect and dignity by VA service providers, and acts as the primary advisor to the Secretary for Veterans Affairs on all matters related to programs, issues, and initiatives for and affecting women veterans.

Defense and Veterans Brain Injury Center
www.dvbic.org
The mission of the Defense and Veterans Brain Injury Center (DVBIC) is to serve active duty military, their dependents and veterans with traumatic brain injury (TBI) through state-of-the-art medical care, innovative clinical research initiatives and educational programs.

Disabled American Veterans (DAV)
www.dav.org
DAV provides a nationwide network of services to America's service-connected disabled veterans and their families.

Fallen Citizen
www.fallencitizen.org

New nonprofit project of the National Heritage Foundation, has been established to help veterans and their families who have suffered because of death or injury, and face financial uncertainty as a result.

House Committee on Veterans' Affairs
veterans.house.gov/index.htm
The House Committee on Veterans' Affairs reviews veterans' programs, examines current laws, and reports bills and amendments to strengthen existing laws concerning veterans and the Department of Veterans Affairs (VA).

Institute of Medicine Health of Veterans and Deployed Forces
veterans.iom.edu
The Institute of Medicine has created an Internet web site with information about a variety of military-related health issues. The web site has separate sections for health care issues affecting veterans of World War II, the Korean War, the Vietnam War and the Gulf War. Other sections list IOM's reports, while another area contains studies about chemical and biological agents. Another section contains reports and information about deployment health.

Iraq and Afghanistan Veterans of America
www.iava.org
The nation's first and largest group dedicated to the Troops and Veterans of the wars in Iraq and Afghanistan, and the civilian supporters of those Troops and Veterans.

Iraq War Veterans Organization
www.iraqwarveterans.org/
The Iraq War Veterans Organization provides information and support. The web site has links to information about Veterans Administration health care, readjustment after deployment, education, employment, military discounts, PTSD issues, support-chat forums, family support and deployment information.

MedlinePlus: Veterans and Military Health
www.nlm.nih.gov/medlineplus/veteransandmilitaryhealth.html
MedlinePlus brings together authoritative information from NLM, the National Institutes of Health (NIH), and other government agencies and health-related organizations. MedlinePlus also has extensive information about drugs, an illustrated medical encyclopedia, interactive patient tutorials, and latest health news.

Military OneSource
www.militaryonesource.com/skins/MOS/home.aspx
Supplements existing installation services, provides free help and information, by phone with a professionally trained consultant or online, on a wide range of issues that affect you and your family—from budgeting and investing to relationships and deployment.

National Gulf War Resource Center, Inc.
www.ngwrc.org
The National Gulf War Resource Center is an international coalition of advocates and organizations providing a resource for information, support, and referrals for all those concerned with the complexities of Persian Gulf War issues, especially Gulf War illnesses and those held prisoner or missing in action.

National Veterans Legal Service Program
www.nvlsp.org
The NVLSP is an independent, non-profit veterans service organization that has been assisting veterans and their advocates for more than 25 years.

NVLSP achieves its mission through education, advocacy, litigation, training advocates who represent veterans, and publications.

Paralyzed Veterans of America

www.pva.org

The Paralyzed Veterans of America is a veterans service organization founded in 1946, provides services and advocacy for veterans of the armed forces who have experienced spinal cord injury or dysfunction.

Purple Heart Organization

www.purpleheart.org

The Military Order of the Purple Heart provides services to all combat wounded veterans and their families, and supports necessary legislative initiatives.

Soldiers Angels

www.soldiersangels.com

Soldiers' Angels are dedicated to ensuring that our military know they are loved and supported during and after their deployment into harms way.

Veterans Administration Chronic Pain Rehabilitation Center

www.vachronicpain.org

The Chronic Pain Rehabilitation Program is a comprehensive, inpatient chronic pain treatment program established in 1988 to help veterans with chronic pain cope with their condition. Since that time it has evolved into a nationally known center for pain diagnosis, treatment, research, and education.

Veterans Administration Survivor Benefits Web site

www.vba.va.gov/survivors

The Department of Veterans Affairs (VA) has created a new internet web site for the surviving spouses and dependents of military personnel who died on active duty and for the survivors and dependents of veterans who died after leaving the military.

Veterans Consortium Pro Bono Program
http://www.vetsprobono.org
A consortium of four organizations: American Legion, Disabled American Veterans, National Veterans Legal Services Program, Paralyzed Veterans of America – Providing volunteer lawyers to help eligible veterans and their families with appeals to the Court of Appeals for Veterans Claims.

Veterans for America
www.veteransforamerica.org
Veterans for America (VFA), formerly the Vietnam Veterans of America Foundation, is uniting a new generation of veterans with those from past wars to address the causes, conduct and consequences of war. Together, Veterans offer a crucial perspective when addressing public and political concerns about war in the 21st century.

Veterans Health Administration Directive on Pain Management
www1.va.gov/Pain_Management/
Provides information on VA resources and policies related to the effective management of pain. This site includes information on VA national pain management policy, the names of key contact people in the VA who may be of assistance in pain management efforts, links to VA facility web sites that contain information about their pain programs and policies, and links to non-VA pain management organizations that may serve to support pain management efforts.

Veterans of Foreign Wars
www.vfw.org
The VFW mission is to "honor the dead by helping the living" through veterans' service, community service, national security and a strong national defense.

Wounded Warriors
www.woundedwarriorproject.org
The Project seeks to assist those men and women of U.S. armed forces who have been severely injured during the conflicts in Iraq, Afghanistan, and other hot spots around the world.

ADDITIONAL RESOURCES

American Chronic Pain Association
(800) 533-3231
www.theacpa.org

National Chronic Pain Society
(281) 357-HOPE (4673)
www.ncps-cpr.org

National Pain Foundation
www.nationalpainfoundation.org
Prescription Drug Assistance
Partnership for Prescription Assistance
(888) 4PPA-NOW / (888) 477-2669
www.pparx.org/Intro.php

Patient Advocacy
Patient Advocate Foundation
(800) 532-5274
www.patientadvocate.org

Palliative Care
National Hospice and Palliative Care Organization
(703)-837-1500
www.nhpco.org

Finding A Pain Specialist

American Academy of Medical Acupuncture
(323) 937-5514
www.medicalacupuncture.org/acu_info/generalinfo.html

American Academy of Pain Management
(209) 533-9744
www.aapainmanage.org/info/Patients.php

American Academy of Pain Medicine
www.painmed.org/membership

American Academy of Physical Medicine and Rehabilitation
(312) 464-9700
www.aapmr.org

American Association of Naturopathic Physicians
(866) 538-2267
www.naturopathic.org

American Chiropractic Association
(703) 276-8800
www.amerchiro.org/level1_css.cfm?T1ID=13

American Holistic Medical Association
(505) 292-7788
www.holisticmedicine.org/public/public.shtml

American Holistic Nurses Association
(800) 278-2462
www.ahna.org/practitioners/index.html

American Osteopathic Association
(800) 621-1773
www.osteopathic.org/index.cfm?PageID=findado_main

American Pain Society
(847) 375-4715
www.ampainsoc.org

American Society of Addiction Medicine
(301) 656-3920
www.asam.org/search/search2.html

American Society of Interventional Pain Physicians
(270) 554-9412
www.asipp.org

American Society for Pain Management Nursing
(888) 34-ASPMN / (888) 342-7766
www.aspmn.org

American Society of Regional Anesthesia & Pain Medicine
(847) 825-7246
www.asra.com

Pain Assessment Scales
Pain Assessment Scales
www.partnersagainstpain.com/index-mp.aspx?sid=3&aid=7825

Pain Assessment Scales for Children
www.childcancerpain.org/content.cfm?content=assess07

Pain Assessment Scales in Multiple Languages
www.partnersagainstpain.com/index-mp.aspx?sid=3&aid=7692

Clinical Trials
Pain Clinical Trials Resource Center
www.centerwatch.com/ctrc/PainFoundation/default.asp

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Chapter Four
Need-Based Pension for Low-Income Veterans or Survivors

By Charlene Stoker Jones, Meg Bartley and Ronald B. Abrams, National Veterans Legal Services Program

The VA has two disability benefit programs for veterans called compensation and pension. They are very different from each other.

Compensation, which is discussed in Chapter 3, "Compensation," is paid to veterans who suffer from disabilities that were incurred in or aggravated by service. Compensation is not based on need. Veterans applying for compensation benefits do not need to have total disability, low income, or wartime service. Veterans seeking compensation, however, must connect their disability to their time of active duty service.

Unlike compensation, pension is a needs-based program similar to Supplemental Social Security income (SSI). You do not have to link your disability to service. To be eligible for pension benefits, you must have wartime service, low income, and a permanent and total disability. For pension purposes, the VA will presume that you are permanently and totally disabled if you are age sixty-five or over. You may not receive both pension

and compensation at the same time, but usually the VA will pay you the higher amount.

Surviving family members of a veteran may be eligible for non-service-connected death pension benefits if they are in financial need. Survivors cannot receive death pension benefits at the same time they are receiving dependency and indemnity compensation (DIC) for a service-connected death.

This chapter begins with a discussion of VA pension eligibility requirements and the pension claims process. It describes special monthly pension, old-law pension, Section 306 pension, and the choice to elect improved pension in place of the older pension programs. The chapter then shifts focus to VA death pensions for surviving relatives of deceased veterans and concludes with information on the annual reports required to maintain pension and death pension benefits.

VA Pension Eligibility Requirements

The purpose of non-service-connected pension, also called improved pension, is to supplement the income of needy "wartime" veterans who are disabled. This benefit was originally created as form of welfare to help totally disabled wartime veterans who would otherwise be living in poverty. Increasingly, it has become a middle class benefit for veterans and their surviving spouses, even those with significant assets and income, due to the high cost of long-term-care.

One key advantage of non-service-connected pension is that your disability can be completely unrelated to service. You must meet five requirements to be eligible for non-service-connected pension benefits:

1. You must be discharged under other than dishonorable conditions.
2. Your disability must not be due to your willful misconduct.
3. You must have served during a period of war.
4. You must be permanently and totally disabled.
5. You must satisfy a means test (verify your low income and net worth).

The Veteran Must Be Discharged Under Other Than Dishonorable Conditions

You must have been discharged or released from military service under conditions other than dishonorable to receive VA pension. *Honorable discharges and discharges under honorable conditions clearly satisfy the first part of the eligibility test.* Bad conduct discharges from a special court-martial and discharges under other than honorable conditions, however, are not automatic bars to VA benefits. These discharges may or may not make you and your family ineligible. If you have a negative discharge, the VA will make a special determination on the character of your service and decide if you are still eligible for VA benefits.

You will not qualify for VA pension if you were released from service as a conscientious objector, as a result of a general court martial, as a deserter, as an alien during a period of hostilities, as an officer who resigned for the good of the service, or as a result of an absence without official leave (AWOL) for at least 180 continuous days.

There is an exception to this rule if the VA later finds that you were insane when you committed the offense that led to your release from service (see definition in the next paragraph). Another exception may be granted in an AWOL case if you can show that compelling circumstances led to your absence.

VA regulations define an insane person as one who, while not mentally defective or constitutionally psychopathic, . . . exhibits, due to disease, a more or less prolonged deviation from his or her normal method of behavior, or who interferes with the peace of society; or who has so departed from the accepted standards of the community to which by birth and education he or she belongs (has become antisocial) as to lack the adaptability to make further adjustment to the social customs of the community in which he or she resides.

If you are prohibited from receiving VA benefits due to your discharge, you can request a discharge upgrade from a Discharge Review Board or from a Board for Correction of Military Records. Discharge upgrade cases can be complicated and difficult to win. You should contact a representative from a veterans service organization or an attorney experienced in military law for help with changing a negative discharge. Services reps are usually associated with veterans service organization, such as AMVETS, the

American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

Willful Misconduct

The VA will not award you VA pension if your disability was a result of your own willful misconduct. Willful misconduct is defined as deliberate or intentional wrongdoing with knowledge or wanton disregard of its probable consequences. Alcoholism or drug addiction that is not the result of another condition, such as Post- Traumatic Stress Disorder (PTSD), is considered willful misconduct. Other examples could include criminal acts, venereal disease, and suicide. This is an area with many exceptions and special rules. If willful misconduct is a potential issue in your case, consult with a service representative or experienced attorney for help, as you may still be eligible for benefits.

Service Requirements

You must have served at least ninety days of active duty during a period of war or ninety consecutive days with at least one day during a period of war. The ninety days of service requirement is also satisfied if you served in more than one service period for a total of ninety days. Congress has designated the periods of war as:

World War I: April 6, 1917–November 11, 1918. If a veteran served in the former Soviet Union, this period of war is extended through April 1, 1920.

World War II: December 7, 1941 through December 31, 1946. This may be extended to July 25, 1947, if continuous service with active duty on or before December 31, 1946 is established.

Korean Conflict: June 27, 1950 through January 31, 1955.

Vietnam Era: August 5, 1964 through May 7, 1975. For veterans who served in the Republic of Vietnam, the Vietnam Era begins on February 28, 1961.

Persian Gulf War: August 2, 1990 through a date yet to be determined.

The conflicts in Iraq and Afghanistan are currently included in the open-ended Gulf War period.

You do not have to have experienced combat or even served in a combat zone to be eligible for pension. You only have to have served at least one day between the start and end dates of the period of war. For example, a veteran will not be excluded from VA pension because he or she served in Germany during the Vietnam Era nor will a veteran be excluded if he or she was not deployed at all during the war.

Permanent and Total Disability Requirement

For VA pension benefits, you must be totally disabled and the disability must be permanent. Permanent means the disability is expected to continue throughout your lifetime. You are considered totally disabled for VA pension purposes in any of the following circumstances: when you are evaluated (or rated) 100% disabled based on the VA Rating Schedule (38 C.F.R. Part 4); when the VA determines that you are unable to obtain and retain substantially gainful employment; or when you are age 65 or older.

In processing a claim for VA benefits, the VA evaluates the severity of your disability and assigns it a percentage rating based on your symptoms. The rating may range from zero percent for no disability to one hundred percent for a total disability. The VA will consider a claim for pension when you have at least one disability that is rated at sixty percent or higher. It will also consider a claim if you have more than one disability and at least one of your disabilities is rated at forty percent or higher and the combined total of all of your disabilities is seventy percent or higher.

In some instances, the VA will presume that you are permanently and totally disabled. When a permanent and total disability is presumed, the VA does not require you to prove the extent of your disability. This type of presumption is common when veterans receive long-term care in a nursing home or the pension applicant is age 65 or older.

In some cases, VA Regional Office (VARO) officials may grant a veteran pension benefits even if his or her disabilities do not meet the general evaluation requirements. The VA calls this a grant of pension on an extra-schedular basis. It occurs when the veteran is unemployable by reason

of factors that are not included in the VA rating schedule and may include the nature of his or her disability(ies); age; occupational background; education; and other, related factors.

Income and Net Worth Limits

Claimants for VA pension benefits must demonstrate financial need by showing that they have low income and low net worth. The VA uses a complicated formula for determining pension eligibility and it is summarized below.

First, the VA calculates a claimant's maximum annual pension rate (MAPR). This is the maximum dollar amount that the claimant is potentially eligible to receive. To calculate the MAPR, the VA must first identify the type of beneficiary involved, because a different rate may be paid depending on whether the beneficiary is a veteran, surviving spouse, or child. Next, the VA must count the number of dependents to be considered because the MAPR is increased by the number of dependents. Next, the VA must decide whether the pension beneficiary is entitled to any of the increased benefits that are available to veterans with certain severe disabilities.

After calculating the claimant's MAPR, the VA then calculates the veteran's income. The VA determines the claimant's countable income for the coming year, which is the 12 months beginning the month after the VA receives a written request for benefits. The general rule for countable income is that all income is included, or counted as income, unless specifically excluded under VA regulations. Actually, a veteran's yearly income is better described as the family's yearly income because it includes all of the veteran's income, the spouse's income, and dependents' income (if the veteran is living with his or her spouse and dependents). Usually, the only income that is not counted is Supplemental Social Security income and the value of maintenance services provided by a friend or relative to the veteran (usually money or the value of housing). Most unreimbursed medical expenses can be deducted from the VA countable income. The VA will require that the veteran submit his or her Social Security number to the VA when applying for pension benefits so that the VA can verify a claimant's Social Security benefits by checking information from the Social

Security Administration and other income by checking information from the Internal Revenue Service.

If the veteran informs the VA that he or she will receive some income in the next year but the amount is uncertain, the VA will use an estimate when calculating countable income. The VA will pay the pension benefit at the lowest possible rate to avoid an overpayment. The VA, however, will not count future benefits if it is not certain they will be paid. For example, only after the veteran actually receives Social Security Disability Income (SSDI) will it be considered income by the VA.

If your countable income exceeds the MAPR calculated for you, you will not be entitled to any VA pension benefits and your claim for improved pension will be denied. If your countable income does not exceed the MAPR, then the VA will reduce the MAPR dollar-for-dollar by the amount of your countable income. If your annual income is zero, you may qualify for the full amount of the MAPR per year, which as of December 1, 2007, was $11,181 for a single veteran without dependents. Updated MAPR information may be found at www.vba.va.gov/bln/21/Rates/pen01.htm. After calculating the annual amount if any that you are owed in pension, the VA divides this annual amount by twelve to determine the monthly amount owed to you.

Normally, financial need will be shown when the veteran's net worth is less than $80,000. Net worth is the market value, less mortgages, of all real and personal property owned by the claimant. The claimant's home is not included in determining net worth. If a veteran's net worth exceeds $80,000, he or she should include an explanation as to why the claim should not be denied for excess net worth. For example, veterans in high cost-of-living areas should point that out to the VA that they live in such areas.

Initiating a Claim for Improved Pension

To initiate a claim for pension, you should notify the VA in writing that you are seeking all benefits to which you may be entitled, specifically pension, and request that the VA provide you with the appropriate application form. This can be done by simply sending a letter to the VA.

After you initiate your claim, get help. Ask a service organization to represent you. The service organization will represent you before the VA

for no charge. Do not fill out any VA form until you have an opportunity to consult with your service representative. These representatives are usually called service officers.

The date on which the VA received your letter should serve as the effective date for the pension award, but the first payment date will be the first day of the following month. In response to your letter, the VA will probably send you a VA Form 21-526, "Veteran's Application for Compensation and Pension." When filling out the form, you should be prepared to provide your service information, marital and dependency information with certified copies of marriage or birth certificates, employment history, and net worth and income information.

If you were permanently and totally disabled before applying for pension benefits, you may be eligible to receive a retroactive award, which is an award of up to one year's worth of pension benefits. In your claim, you need to explain that your disability prevented you from filing the claim for pension when you became disabled. For example, you may have been hospitalized and unable to submit your application. You need to file a specific claim asking for retroactive pension benefits.

Special Monthly Pension

Veterans with severe disabilities may be eligible for increased VA benefits, known as special monthly pension (SMP). There are two types of special monthly benefit payments—housebound benefits and aid and attendance benefits.

Housebound benefits are available to veterans with a single disability rating of 100% who are essentially confined to their homes. A veteran may also be entitled to housebound benefits if he or she has a 100% disability rating with an additional disability rating of 60% or more even if he or she is not housebound.

Aid and attendance benefits are available to veterans requiring assistance to perform tasks associated with daily living. A claimant requiring skilled nursing care in a nursing home because of a physical or mental incapacity may be entitled to the aid and attendance benefit. However, you do not have to be in a nursing home to receive the benefit. Entitlement may

be established by showing that the veteran is unable to dress or undress or keep him or herself clean, that regular adjustments to any special prosthetic or orthopedic appliances are often required, or that a mental incapacity requires assistance on a regular basis to protect the claimant from the hazards of daily life. Entitlement can also be established if the veteran is blind or nearly blind (5/200 vision in both eyes, with corrective lenses, or contraction of the visual field to five degrees or less).

Special monthly pension benefits are important because they can increase the veteran's monthly payments by a significant amount. The VA must consider a veteran's entitlement to SMP benefits whenever a veteran's single disability is rated as one 100%.

Special Issues for Elderly Veterans

Family members and advocates of elderly or totally disabled veterans may want to consult with an elder law attorney because the eligibility or potential eligibility for non-service-connected pension benefits can have a huge impact on estate planning, asset protection efforts, and long-term care planning.

Medicaid has a five-year look-back period.

Nevertheless, for assessing assets for Medicaid eligibility, the VA does not have a look-back period in assessing assets for non-service-connected pension. (If a needs-based benefit has a look-back period, then any asset that you gifted away—and some other transfers—during that period counts as if it were still your property in determining whether you are eligible for the benefit.)

Also, for pension purposes most medical expenses can be deducted from income and the cost of nursing home care, assisted living care, and home care may be considered a medical expense. In some cases, even a veteran with significant income becomes eligible for pension or pension plus aid and attendance once the cost of medical care is deducted from income due to the high cost of long-term care. The VA rules for pension should be considered in conjunction with the rules for Medicaid eligibility to determine the best course of action for a veteran and a veteran's family. There is no substitute for consultation with an experienced elder law attorney.

Old-Law Pension

The old-law pension program ended July 1, 1960 and is therefore available only to veterans who began receiving pension benefits prior to this date. Section 306 pension program was available between July 1, 1960, and December 31, 1978. The main difference between these older pension programs and the improved pension program is the way in which a spouse's income is considered when calculating the income and net worth of a veteran. The old-law pension did not consider the spouse's income at all in its calculations and Section 306 pension counted only the spouse's unearned income, such as Social Security benefits.

Veterans in receipt of old-law pension or Section 306 pension may elect to receive improved pension instead of the older pension program. However, veterans should proceed with caution and seek the advice of a service officer before making this change to the improved pension because an election of improved pension is permanent and cannot be withdrawn or changed. One advantage of electing improved pension is that veterans may be eligible for special monthly pension or housebound benefits under the improved pension program. A veteran who is unsure of whether he or she is eligible for special monthly pension should ask a service officer to write to the VA Regional Office (VARO) to inquire whether the veteran would be entitled to special monthly pension if he elected to receive improved pension. Of course this letter should not be written in such a way that suggests the veteran is definitely electing to receive improved pension. Another advantage is that the maximum annual pension rate is much higher for improved pension than for the older pension programs. Again, a veteran should be cautious to make sure that he or she meets all of the qualification requirements for the improved pension before electing to change.

Spouses who receive old-law death pension benefits or Section 306 death pension benefits are considered to have a "protected pension." This means that their benefit rates are protected and will not change. However, spouses may wish to elect to receive improved pension benefit so that they may establish entitlement to aid and attendance or housebound benefits. However, spouses too should proceed with caution and ensure that they are eligible for improved pension before electing to receive it. The rates for the protected pension programs can be found at www.vba.va.gov/bin/21/Rates/pen03.htm.

Non-Service-Connected Death Pension

Introduction

Non-service-connected death benefits are pension payments for low-income surviving spouses and surviving dependent children. A veteran's dependent parents are not eligible for non-service-connected death pension.

The basic eligibility requirements for non-service connected death pension are that the veteran would have met the basic eligibility requirements for VA benefits described in the section Eligibility for VA Benefits and the survivor demonstrates financial need. The survivor need not be disabled, nor is it necessary that the veteran have established entitlement to VA benefits before his or her death. The disability of the survivor is not at issue in claims for death pension.

Eligibility for Death Pension

A surviving spouse seeking death pension benefits must satisfy additional criteria to be eligible. The surviving spouse must have been married to the veteran for at least one year prior to the veteran's death. If the spouse was not married to the veteran for one year, the spouse may still be eligible if a child was born to them before or after the marriage. The surviving spouse may receive an increased pension amount if the spouse has custody of the veteran's biological or adopted children.

If the surviving spouse married the veteran after discharge, death pension can be paid if the surviving spouse married the veteran before the following dates:

- For veterans of the **Mexican Border Period and World War I**, the marriage must have occurred before December 14, 1944.
- For veterans of **World War II**, the marriage had to occur before January 1, 1957.
- For veterans of the **Korean Conflict**, the marriage had to occur before February 1, 1965.
- For veterans of the **Vietnam Era** the marriage had to occur before May 8, 1985.
- For veterans of the **Persian Gulf War**, the marriage had to occur before January 1, 2001.

A veteran's child may be eligible for death pension benefits in his or her own right if the child is not in a surviving spouse's custody, or if there is no surviving spouse who is entitled to pension. Children are not entitled to improved death pension if they are in the custody of a surviving spouse with excessive income or net worth. If a child is in the custody of a surviving spouse who has remarried, the income of the surviving spouse and new husband or wife will be considered when determining the child's eligibility. However, when the child's legal guardian or custodian is not the child's parent, the income of the legal guardian's spouse will not be counted.

The countable income and net worth for a veteran's survivor seeking improved death pension is determined in the same way as for a veteran seeking improved pension. When calculating income, the VA will consider the income of the entire household. The only difference is in the timing of when the VA begins paying death pension. If the veteran was not receiving VA pension benefits or compensation prior to his death, the payment will be withheld for the first month after the veteran's death, meaning payment will start two months after the veteran's death. If the veteran was receiving some benefits from the VA prior to his death which exceeded the amount that the spouse will receive, the survivor will receive the amount due to the veteran for that month and the death pension amount will begin the following month.

The MAPR for death pension is lower than the MAPR for a veteran seeking VA pension. As of December 1, 2007, the MAPR for a surviving spouse was $7498. More information about death pension rates may be found at www.vba.va.gov/bln/21/Rates/. The monthly death pension benefit rate may be increased with aid and attendance benefits or housebound benefits. The eligibility criteria that apply to veterans seeking special monthly pension also apply to surviving dependents seeking a special monthly allowance.

Applying for Non-Service-Connected Death Pension

To apply for death pension benefits, the surviving beneficiary should send a letter to the VA stating that the survivor seeks death pension benefits and requests that the VA send the proper form. The VA should reply by sending

the beneficiary a VA Form 21-534, "Application for Dependency and Indemnity Compensation, Death Pension, and Accrued Benefits by a Surviving Spouse or Child." An application for survivor's benefits filed with the Social Security Administration will also be considered a claim for VA benefits. Please note that while there is no time limit for applying for death pension; in order to qualify for death pension benefits dating back to the veteran's death, the survivor must submit a VA Form 21-534 within a year of the veteran's death.

When filing for non-service-connected death pension, the survivor must submit proof of his or her relationship to the veteran. This may be accomplished by submitting a certified copy of a marriage license or, in the case of a dependent child, a birth certificate may be submitted. As always, it is important to get help from a qualified veterans service officer before applying for non-service-connected death pension. For more information about veterans service representation, consult your local telephone directory under the names of veterans service organizations or the office of your county or state-funded veterans assistance office. The VA Web site www.va.gov has a directory of veterans service organizations and state veterans affairs offices.

Annual Reports for Improved Pension Beneficiaries

The VA requires veterans receiving VA pension and survivor beneficiaries receiving VA death pension to file annual reports that detail their previous year's income. These reports are called Eligibility Verification Reports (EVRs). If an EVR is not completed and returned within sixty days of the VA's request for it, the VA will suspend the award or disallow a claim. The VA uses these reports to verify that a beneficiary is still eligible to receive pension and to adjust the amount of a recipient's award.

The VA has identified some common problems in EVRs filed by veterans and survivor beneficiaries. These errors include improper signing and dating of forms, leaving blocks unmarked when the word "none or zero" is required, incorrect Social Security information, and incorrect addresses. Such errors could result in delay and suspension of benefits. Extra care in completing the EVR is recommended and a veteran may wish to seek the assistance of a veterans service representative.

Supplemental Security Income benefits should not be counted as income for VA pension purposes but the VA counts other Social Security benefits. Often the Social Security Administration subtracts a claimant's monthly Medicare premium from his or her SSDI benefits check. However, this is countable income for VA pension purposes and the claimant must report it. If the claimant fails to report it as income, the VA could treat it as an overpayment, and overpayments generally must be repaid.

The National Veterans Legal Services Program (NVLSP) would like to thank and acknowledge the fine work performed by Margaret I. Crews, a law clerk for NVLSP and a third-year law student at the Catholic University's Columbus School of Law. Ms. Crews did much of the preliminary work for many of the chapters and subchapters authored by NVLSP.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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Chapter Five. Explaining the VA Claims and Appeals Process

By Charlene Stoker Jones, Meg Bartley and Ronald B. Abrams, National Veterans Legal Services Program

Introduction

To avoid any unpleasant surprises, when seeking compensation or pension from the VA, you should have an understanding of the claims and appeals process. This chapter should give veterans and eligible dependents a basic overview of the claims and appeals process for VA benefits. Beyond the claims for federal benefits that are discussed here, veterans should know that many states provide their own benefits to veterans. To learn more about state benefits, contact your state or county department of veterans affairs.

EDITOR'S NOTE: This chapter contains a lot of details on how veterans claims and appeals are processed. We are not saying that veterans who are represented by a service representative (sometimes called a "service officer") or attorney need to memorize all these details. Veterans should rely on their rep or attorney to know the details. Still,

veterans will benefit from reading through the chapter and getting an idea of the deadlines and other complexities involved.

You should know that the amount of evidence that you need to win a claim for VA benefits is relatively low. Television has made everyone familiar with the standard of proof in a criminal case, which is typically that the evidence shows guilt "beyond a reasonable doubt." Another common standard of proof is the "preponderance of evidence" standard often used in civil lawsuits, with the winner being the side with the most favorable evidence. In claims for veterans benefits, the VA can deny a claim only if the preponderance of evidence weighs against the claim. If the evidence is even, creating an equal balance for and against the claim, the claim must be granted. This is sometimes called the "benefit of the doubt" rule because where the evidence is even, the veteran gets the "benefit of the doubt" and wins.

When a claim is first filed, it is received and decided by the local VA Regional Office (VARO). Each state usually has its own VARO, but some larger states have more than one. You can find which VARO will process your claim at the VA's Web site, www.va.gov, by clicking on a link called "Find a Facility." If your claim is granted at any point during the claims or appeal process, you should start to receive the benefits that have been granted. If your claim is fully granted, the claims process ends for that particular claim. If the VARO denies your claim, you may wish to appeal.

The first level of appeal is to the Board of Veterans' Appeals (BVA or Board) and if the claim is not satisfied at the BVA level, you may appeal to the U.S. Court of Appeals for Veterans Claims (CAVC). It is important to keep in mind that throughout the process, there are rules that govern when to file, how to file, and what evidence is required to win your claim. These rules, which will be explored later in this chapter, not only apply to you as the claimant, but some of them apply to the VA as well. This means that you may have grounds to appeal a negative decision when the VA does not uphold its end of the bargain by providing you with certain notice and information. It also means that you could lose your case for failing to follow the proper procedure. In addition to the system of appeals, there are several steps that you may take to have your claim reviewed outside of the traditional appeals process. Such steps include requesting review by the VARO or the BVA of their own negative decisions.

Representation

The first thing that you should know about the VA claims process is that it is complicated and confusing and can be frustrating. Therefore we highly recommend that claimants seek assistance from a county, state, or national veterans service organization. National organizations include but are by no means limited to The American Legion, AMVETS, the Disabled American Veterans, the Military Order of the Purple Heart, the Veterans of Foreign Wars, and Vietnam Veterans of America. Contact one of these organizations (see the appendix at the end of this book for contact information) and ask to be referred to a service representative (also called a "service officer") employed by the organization. Service reps will assist you without charge.

Not all veterans seeking something from the VA are making claims for benefits, but if you are doing so, you can be represented by a service rep but can choose instead to be represented by an agent or an attorney. An "agent" is a layperson who is permitted (recognized) by the VA to represent claimants seeking VA benefits. Agents and attorneys may, in certain circumstances, charge a fee for their services. Service representatives may never charge fees. We suggest that veterans and other claimants seeking VA benefits first contact a service representative, because they do not charge a fee and because lawyers and agents are less likely to get involved at the beginning of a claim because they are not permitted to charge a fee until the claim is first denied. The terminology can be confusing, and we will confuse you further by explaining that anyone representing you may correctly or incorrectly be called your "representative" or your "advocate."

If you choose an organization (through its service rep / service officer) to represent you, you or your representative must complete and file (with a VA Regional Office) a VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative." This form will notify the VA that you are officially represented by a veterans service organization. Attorneys and agents (these people do not work for service organizations), must file VA Form 21-22a to be accepted by the VA as the holder of the claimant's power of attorney (POA).

The VA recently changed a rule that prohibited veterans from hiring attorneys until after the Board of Veterans' Appeals had issued a negative decision. Now veterans may hire attorneys to represent them in an appeal at a much earlier stage in the VA adjudication process. Attorneys (or agents)

can now be hired once the claimant receives his or her first negative decision from the VA Regional Office (VARO). A negative decision by the BVA is one that partly or fully denies a veteran's appeal and a negative decision by a VARO is one that partly or fully denies a veteran's claim.

Applying For Benefits

Time is of great importance when applying for VA benefits. This is because if the claim is successful, the VA usually grants benefits back to the date when the VA first received notice of the claim. To start a claim, you should send a signed and dated letter to the local VARO as soon as you realize that a possible claim for benefits exists. The letter should state "I apply for [identify the desired benefit], and any other benefits that I may be entitled to. Additional documentation will be submitted." This letter is considered an informal claim and if the claim is eventually granted, the benefits may be paid back to the date when the VARO received it. Remember, it is not necessary to gather all of the evidence needed to win your claim prior to applying for benefits.

Once the VA receives the informal claim for VA benefits, if it is the first time that you have filed for this VA benefit, the VA will respond by sending a formal application form, VA Form 21-526, "Application for Compensation and Pension." This form must be completed within a year from the date when the VA Form 21-526 was mailed to you. If you do not submit the VA Form 21-526 by the one-year deadline, the effective date for any award of benefits will be the date on which the VA finally receives the form but if you submit the form before the deadline, the effective date will be the date that the VA received the informal claim.

VA forms should be filled out to the best of your knowledge and the particular benefit you are seeking should be identified on the form. You have the right to review your military service records and other VA records before completing the application. Of course, an advocate should help you complete the form and review all written documents prior to submitting them to the VA. Recently, the VA began offering veterans the option to electronically file their claims for VA benefits. The program, "Veterans On-line Application" (VONAPP), may be accessed through the VA's Web site, www.va.gov. However, certain claims cannot yet be applied for online, including claims for an increase in service-connected disability rating.

Surviving spouses, dependents, and reservists also may not be able to apply for pension online.

The VA is required by law to notify you and your representative if your application form is incomplete. The VA will not assist you in gathering evidence or schedule any necessary medical examinations until you submit the missing information.

Claims

There are three different types of claims: a new or original claim; a claim for revision of a previous final decision based on clear and unmistakable error (CUE); and a reopened claim. The type of claim affects the decision-making process used by the VA to develop and decide the claim. For example, a reopened claim will be considered only after the claimant presents "new and material" evidence. This requirement does not apply to a new or original claim.

A new or original claim can take many forms. Obviously, the first time you apply for a benefit, you have a new and original claim. Also, the VA treats claims for service connection for a new condition as new and original claims. Claims for an increase in disability rating and all claims for non-service-connected pension are also adjudicated by the VA as new claims. Claims for increased disability ratings are new because they are based on a current contention that the service-connected disability has increased in severity. Claims for non-service-connected pension benefits are considered new even if a veteran's previous request for pension benefits was denied. This is because pension is based on current income and current disability and a veteran's income and disabilities may change over time.

A claim that the VARO made a clear and unmistakable error (CUE) in a previous rating decision is considered an original claim, because the VA is correcting a prior decision rather than reopening it. The VA describes CUE as occurring when either the VA decision-maker did not know the correct facts of the case when making the decision or the VA decision-maker incorrectly applied the law to the facts. A CUE is the type of error that is not debatable and had the error not been present, the outcome would have been different. To base a claim on CUE, you must specifically state when and how the CUE occurred. It is not enough to simply claim that the VA was wrong. Also, you should be aware that the VA does not consider a CUE claim to be an "application claim for benefits." Because of this, the Veterans

Claims Assistance Act of 2000 (VCAA) requiring the VA to assist claimants, does not apply to CUE claims. CUE claims are unusual because winning one allows you to receive an earlier effective date. A decision to reverse or change a previous decision based on CUE "has the same effect as if the decision had been made on the date of the prior decision." This means that the effective date that would have been given to the previously denied claim had it been granted actually becomes the effective date. There is no time limit for requesting review of a previous decision for CUE, and a denial of a CUE claim may be appealed.

When a veteran seeks a new decision on a claim that was previously denied, the claim is considered a reopened claim. The three types of claims that can be reopened are claims for service connection of a veteran's disability, claims filed by a surviving family member for service-connected death compensation, and claims for burial benefits. A veteran should consider reopening a claim if he or she previously failed to submit important evidence or if the VA wrongly denied the previous claim. Reopened claims may be helpful to establish entitlement to benefits when a veteran failed to appeal a negative decision before the deadline. However, in order to get the earliest possible effective date for payment, you should always attempt to timely appeal your case rather than waiting to reopen the claim. You may attempt to reopen a claim at any time after it has been finally denied and there is no limit on the number of times that you can file to reopen a claim.

Veterans can reopen a claim that has otherwise been finally denied with "new and material" evidence. The VA defines "new and material" evidence as evidence that was not previously submitted to the VA and relates to an unestablished fact necessary to prove the claim. Simply put, the requirement of new evidence means that the evidence should be different and not overly similar to evidence that was already considered. The requirement of material evidence means that the evidence should raise a reasonable possibility of supporting the claim. Until a claim has been reopened, the VA does not have to schedule a VA examination although it does have to attempt to obtain evidence identified by the claimant. To determine whether evidence is new and material, you and your advocate should review the most recent decision denying the claim. A helpful place to look is in the VARO's statement of the case which should give its reasons for denying the claim. In addition, the VA is required to provide detailed information to claimants

who file reopened claims, with the VA explaining why a previous claim was denied and what evidence would, if submitted, qualify as "new and material."

The VA considers two issues in connection with a reopened claim. First, whether the claim should be reopened because the new and material evidence has been submitted. Second, if new and material evidence has been submitted, whether the claimant is entitled to the benefit sought, considering all the new and old evidence and reviewing the case without giving any weight to any previous VA decision denying the claim or to the fact that the VA may have previously disbelieved some of the old evidence.

This two-step analysis shows that even when the VA decides that new and material evidence has been submitted, the claim is not yet won. The VARO may still deny the reopened claim because the VA has determined that all the evidence of record still does not make it as likely as not that the benefit should be granted. Of course, the claimant can appeal both the decision by the VA Regional Office not to reopen the claim because new and material evidence has not been submitted and a decision that the evidence of record still does not support the grant of benefits.

One significant factor in favor of the claimant is that the VA cannot refuse to reopen a claim simply because it does not believe the "new and material" evidence. The VA must treat new evidence as believable; however, you are not out of the woods just yet. Even though the VA must accept the evidence and reopen the claim, the VA ultimately will determine how much weight to give the new evidence when it considers the merits of the reopened claim.

Evidence

Once the claim has been filed, you and your representative should begin to gather evidence to support the claim. Supporting evidence may include private medical records, service medical records, statements from the veteran about symptoms and events, and statements from his or her family and friends.

If the VARO finds that the claim is plausible, the VA must also help you gather evidence. This does not mean that the VARO is granting the claim; it simply means that the VARO believes the claim is plausible. The VA has the responsibility to specifically inform you of the information and

evidence that is not in the record but necessary to prove the claim, the information and evidence that the VA will obtain, and the information and evidence that you must submit. The VA may request that you provide any relevant evidence in your possession.

If the VA requests that you provide certain information or evidence, you must submit the information within a year of the date that the VA request was sent. If you do not respond to the VA's request within thirty days, the VA may decide the claim prior to the expiration of the one-year period. If you later submit the requested information within a year of the VA's request, the VA must re-decide the case. A few words of caution: even though you have a year to submit requested information, you should submit this information as soon as possible to avoid the premature denial of a claim and even though the VA is required to help gather evidence, you should not just rely on the VA to do so. You and your advocate (your service representative or qualified attorney) should discuss together what evidence you should obtain and submit to support your claim.

Medical Evidence

You and your advocate (who may be a service representative [also called a "service officer"], an attorney, or an agent) should obtain your medical records from your private doctors and from the VA. It may be helpful to write a list of all of the VA medical hospitals or clinics where you were treated before and after service and of any private doctors whom you saw about to the condition. The VA is required by law to make reasonable efforts to obtain relevant records that you identify to the VA and authorize the VA to obtain in connection with a claim. If after reasonable effort, the VA is unable to obtain some of the private records listed, the VA must notify you and your advocate with a description of any further action that will be taken concerning the claim. As for records that are held by federal agencies or departments, the VA is required to continue its efforts to obtain the records unless it is reasonably certain that such records do not exist or further efforts to obtain the records would be useless. The VA's duty to assist in obtaining records is heightened when federal records, such as a veteran's service medical records, are lost.

Military medical records or service medical records may be helpful in establishing that the veteran was treated for a problem during service that is linked to the claimed condition. Copies of specific service treatment

records may be requested. You have the right to one free copy of your VA claim file (c-file). You should not hesitate to exercise this right, because it allows you to see what information the VA has gathered about the claim and it allows you to double-check that the VA's records are correct. To obtain a free copy of your claim file, you or your representative should send a letter to the VARO handling the claim stating, "I am exercising my rights under the Privacy Act to obtain a free copy of all my VA records."

A current medical examination is often necessary for the VA to determine the severity of a claimed condition and in many instances to determine if a particular disability is linked to service. A medical examination is required by law if after the VA has considered all information and evidence, the file indicates that the disability may be associated with the claimant's service but the file does not contain sufficient medical evidence for the VA to make a decision on the claim. To increase the likelihood that a medical examination will be granted, veterans may want to submit detailed lay evidence addressing the disability. This may include detailed statements from the claimant, his or her family, friends, and co-workers regarding how often symptoms occur, the severity of symptoms and their effects on his or her daily life.

Once it has been established that a medical examination is necessary, the VA is required to provide a thorough and current medical examination to the veteran. A VA doctor should review the veteran's entire record, examine the veteran, and give a full report of the veteran's condition. When you go in for an exam, you should ask the VA doctor whether he or she has access to your entire claims file. If the VA doctor does not, you should report this to your advocate. It is also important to remember that the VA doctor is not examining you as your private doctor; he or she is examining you to determine if you are entitled to benefits. Use caution in what you reveal to VA doctors, as potentially harmful statements made in front of a VA doctor could come back to haunt you.

If your claim involves a medical matter and you can afford to see a private doctor, you should do so and request that the doctor write a medical report regarding such matters as the severity of the claimed disability and whether the condition is linked to service. Sometimes it is helpful for your advocate to explain to the private doctor exactly what information is needed and what the VA expects from the examination, so that the doctor knows what to include in the report. Again, you should share the report with your

representative prior to submitting it to the VA. If the medical opinion does not support the claim, you are under no legal duty to send it to the VA unless the VA specifically requests it.

Military Personnel Records

Military personnel records are important to the claim. You will need a copy of your discharge form or DD 214 to establish your eligibility for VA benefits. Records of awards, combat medals, and military occupational specialties may be useful to corroborate certain types of disabilities that may have occurred in or from combat, such as physical wounds or Post-Traumatic Stress Disorder (PTSD). A veteran is entitled to one free copy of his or her military personnel records. A letter requesting the records should be sent to the National Personnel Records Center in St. Louis, 9700 Page Blvd.; St. Louis, MO 63132. You can make an online request for your military records at www.vetrecs.archives.gov.

If a veteran learns that his or her records have been destroyed, he or she should request that the VA help rebuild the records. To help with the reconstruction of the records, the veteran should provide details about his or her military experiences, especially those relating to the claimed condition. You should provide the dates and locations of service, the name of your unit, the names and ranks of commanding officers and fellow servicemembers, and a detailed description of any accident, injury, disease, or treatment you had in service that relates to the claim.

VA Decision Letters

Once the VA decides a claim, it will send you and your representative (service rep, attorney, or agent) a letter notifying you of the decision. If the VARO denies the claim, evaluates a condition at a lower than desired level, or assigns an undeserved effective date, you can appeal or request reconsideration by the VARO. To begin the appeal process, a veteran should, with the help of his or her advocate, file a notice of disagreement (NOD) and request a copy of the rating decision. An NOD can be in the form of a letter to the VA that includes the date of decision and claim number and outlines the reasons that you disagree with the VARO decision and states that an appeal is desired. If the negative decision covered more than one issue, you should specifically state which issue you plan to appeal or that you plan to appeal all issues. The NOD must be mailed to the VA

within one year of the date of the VARO's decision letter. There are no extensions to this deadline and you will lose your right to appeal if the deadline is missed. If the VARO's decision becomes final, a veteran can reopen his or her claim, but a showing of new and material evidence may be required. Also, the effective date of the claim will change and the veteran will lose back benefits that he or she would have been eligible for if a timely appeal had been filed.

The VA will respond to an NOD by sending a statement of the case (SOC), which summarizes the evidence considered and the relevant VA law and explains how it came to the decision. The SOC should be mailed with a blank VA Form 9 which is a Substantive Appeal form for the veteran to complete and return. A "Substantive Appeal" is a document containing your arguments as to why the decision you are appealing was wrong. Sometimes the term means Form 9 and sometimes it means the arguments themselves. The veteran should not delay in completing the VA Form 9, because the VA has a long backlog of appeals of VA actions on claims and it may take several years before an appeal is decided by the Board of Veterans' Appeals. Once the VA Form 9 is filed, the case is assigned a number at the Board based on when the Board received the form. Cases are considered in order of the number assigned. The Board may consider a request by the veteran to expedite a case for earlier consideration, but this is granted only in exceptional cases such as where the veteran is terminally ill.

When an SOC is inadequate because it fails to provide the claimant with enough information as to the reason for the decision, the VARO is required to issue a supplemental statement of case (SSOC). You are not required to respond to the SSOC as long as a Substantive Appeal has already been filed in response to the initial SOC. In fact, you should not respond to the SSOC unless a Substantive Appeal has not yet been filed as to a claim in the SSOC, because such a response could delay the appeal.

Optional Appeal to a Decision Review Officer

If a veteran's claim has been denied, he or she can request review by a Decision Review Officer (DRO). You may include this request in your NOD or request review by a DRO separately. You should know that a DRO cannot change any aspect of the decision that is favorable to you unless it contains a clear and unmistakable error; thus a favorable decision cannot be changed simply because the DRO disagrees with the VARO decision.

The DRO can issue a new decision and can grant all the benefits sought by the veteran. The previous denial should not be considered in the DRO's decision. Instead, the DRO takes a fresh look at the evidence of record and the law. The DRO "review decision" should look very much like a VARO decision. It should include a summary of the evidence, references to pertinent laws, a discussion of how these laws affected the decision, and a summary of the reasons for the decision. If the DRO returns a decision that is unfavorable, you need not restart the appeals process. Unless the claimant withdraws the NOD, the VA will issue an SOC and the claimant will have time to perfect his or her Substantive Appeal.

The claimant may request another DRO review if the first DRO granted service connection (or if service connection was subsequently granted by the VARO) and the claimant desires to appeal another issue, such as the disability rating assigned or the effective date.

VARO Hearings

Before or after completing the Substantive Appeal, you may request a personal hearing at the VARO. Most claimants wait until after an initial VARO denial before requesting a hearing. A personal hearing allows you to meet in person with a VA hearing officer and discuss why the claim should be granted. Usually VARO hearings are held at the VARO that issued the initial decision. If it is inconvenient for the claimant to travel to the VARO for a hearing, sometimes it is possible to arrange to have the hearing at a closer or more convenient VA facility.

It can be helpful for the hearing officer to actually see the veteran and ask questions about how the veteran copes with a condition. You and your representative should always prepare before going to a VARO hearing. Arguments and evidence in support of the claim should be well organized. The veteran should be prepared to testify and to answer questions that the VA hearing officer will ask. Any witnesses should also be adequately prepared for the hearing. Please take note that if you and your advocate are not properly prepared for the hearing, it may cause the hearing officer to question the credibility of your evidence, which could severely hurt your claim.

Hearings at the VARO are non-adversarial in nature, which means the hearing officer is there to gather information and is not supposed to cross-examine you or your witnesses. There is no set format for a hearing at the

VARO and generally the VA allows the claimant and representative to organize the presentation of the hearing. Although the VA has the power to issue subpoenas that require witnesses to appear at hearings and to take affidavits, claimants and their representatives rarely ask that the VA issue subpoenas so the VA rarely uses this authority.

Substantive Appeal

The Substantive Appeal, which is usually filed on a VA Form 9, is extremely important. The claimant must include "specific arguments related to errors of fact or law" in his or her Substantive Appeal. If no hearing is requested, the Substantive Appeal is of even more importance, because it is the claimant's main opportunity to respond to the VA's reasoning for its decision to deny the original claim. A Substantive Appeal may be submitted in the form of a detailed letter but it is best to file a Substantive Appeal on a VA Form 9 to avoid confusion. Additional pages may be added to the form if more space is necessary.

The BVA must consider the claimant's arguments broadly when deciding whether they raise pertinent issues for appeal. This means that the BVA must review all issues which are reasonably raised by the Substantive Appeal (issues that the VA should have identified while adjudicating the claims), other documents, or oral testimony given prior to the BVA decision. If the BVA determines that an appeal is inadequate and should be dismissed, the BVA must advise the claimant and his or her representative of its intentions and provide a sixty day period for the submission of written argument or request a hearing to present oral argument as to whether the Substantive Appeal was adequate or not.

BVA Jurisdiction

The BVA is the second of two major levels of review of claims within the VA but, unlike the VARO, the BVA is independent of the Veterans Benefits Administration. The BVA has jurisdiction to review an appeal on all questions of fact and law regarding claims for VA benefits. This includes claims of entitlement to service-connected disability compensation and health care, dependency and indemnity compensation for service-connected death, non-service-connected pension benefits, vocational rehabilitation, and education benefits. The BVA is also responsible for deciding matters concerning the award of attorneys' fees for representation before the VA.

The BVA caseload is dominated by claims involving service-connected disability claims.

The BVA reviews decisions of the VARO *de novo*; that is, the BVA decides for itself the correct outcome for a claim without giving any weight to how the VARO previously decided the claim. When a claimant appeals to the BVA, often he or she is arguing that the VARO incorrectly denied benefits when benefits should have been granted. However, since claimants are allowed to add evidence to the record to support the claim before a decision is rendered by the BVA, a claimant can win at the BVA even if the VARO was correct to deny the claim, because the new evidence presented to the BVA plus the old evidence may now weigh in favor of the claim. Finally, a claimant may base his or her appeal on the fact that the VARO failed to comply with the notification and assistance provisions of the Veterans Claims Assistance Act of 2000. For example, if the VARO failed to notify the claimant of the evidence necessary to win the claim or failed to obtain evidence concerning the proper issue, the claimant could raise these points in an appeal to the BVA.

When the BVA issues a decision on an appeal, it is required to include a written statement of its findings and conclusions and the reasons for those findings and conclusions on all issues presented on appeal. If the VARO or BVA violates any of its duties, the claimant can remedy the error by appealing to the U.S. Court of Appeals for Veterans Claims.

Hearings at the BVA

In addition to a VARO hearing, a claimant is entitled to a hearing before a member of the BVA. The claimant should discuss with his or her advocate whether a BVA hearing should be requested. It may be that the hearing will add an unnecessary delay to the case. However, a hearing may be advantageous, since it makes the appeal more personal and allows the Veterans Law Judge to ask questions and identify evidence that is still necessary to the claim. Also, veterans who request hearings usually get more time to submit evidence than those who do not. The VA Form 9 includes a section in which the claimant is asked to indicate whether or not he or she wants a BVA hearing and, if so, what type of hearing. However, a claimant may request a hearing at any time from the filing date of the Substantive Appeal until the end of the ninety days following the filing of the Substantive Appeal.

If a veteran desires a hearing, he or she must choose between a hearing held at the BVA in Washington, D.C., a hearing held at a local VARO whenever a BVA member can travel to hear the case, or in some locations a hearing by videoconference. If a veteran chooses to have the hearing in Washington, D.C., the VA will not pay travel and lodging expenses. If a veteran cannot appear in person for a hearing, his or her representative may submit a written argument for the Board's consideration, which is known as an informal hearing. Claimants who desire a Travel Board hearing must be aware that there may be a significant backlog of hearing requests which may create a long waiting period before the veteran's hearing is scheduled. Once the claimant's hearing has been scheduled, the VARO is required to provide at least a thirty-day notice of the time and location of the hearing.

BVA hearings in Washington, D.C. are held at the BVA's main offices at the Export-Import Bank building. The letter from the BVA notifying claimants of the hearing date will include the BVA's address and directions. The claimant will need to bring identification and pass through a security check when he or she arrives for the hearing. Once the claimant arrives at the BVA for the hearing, he or she will have an opportunity to review the claims file before the hearing.

Videoconference hearings are usually offered only to claimants who request a Travel Board hearing. The VARO usually sends the claimant a letter acknowledging the Travel Board request and may attempt to persuade the claimant to withdraw the request in favor of a videoconference option. A claimant may request a videoconference hearing without waiting to be asked, by including the request in the Substantive Appeal. When a claimant requests a videoconference hearing, he or she gives up the right to another BVA level hearing. A word of caution: it is a good idea to request a videoconference only if you and your representative have gathered all the evidence that you want the BVA to consider. If additional evidence still needs to be obtained, a request for a videoconference hearing is risky because it puts the case on the fast track and may result in a hearing before the necessary evidence is obtained.

Once a hearing date is set, a claimant may request to change the hearing date. In the case of a Travel Board hearing, the claimant may request a change at any time up to two weeks prior to the scheduled date but the claimant must demonstrate a good reason for the rescheduling. For hearings in Washington, D.C., the claimant must request a change in hearing date

within sixty days of the VA hearing notification letter or two weeks prior to the scheduled hearing (whichever date is earlier).

If a claimant fails to show up for a scheduled hearing, he or she will lose the chance for a hearing in the appeal unless the failure to appear was for good cause and the cause of the failure to appear arose under emergency circumstances; that is, it was impossible for the claimant to file a timely request for postponement. A motion for a new hearing must be made in writing and must be filed with the BVA's Director of Management and Administration within fifteen days of the hearing at which the claimant failed to appear.

At the start of a BVA hearing, the claimant and his or her representative will be called to a hearing room. At this point, the Veterans Law Judge will briefly explain the hearing process, clarify the issues on appeal, and discuss any documentary evidence that will be submitted during the record. This part of the hearing is considered "off the record." The "on the record" portion of the hearing will begin only after the claimant is sworn in. The "on the record" proceedings usually begin with an opening statement by the claimant's representative. After the opening statement, the representative usually asks questions of the claimant and any witnesses, as does the Veterans Law Judge. Finally, the representative usually gives a closing statement summarizing the reasons that the claim should be granted and highlighting the key evidence. At the close of a hearing, the representative should ask that a transcript of the hearing be prepared and a copy sent to both the claimant and his or her representative.

When a claimant submits documents as evidence during a Board hearing, the BVA gives the claimant a choice. The claimant can give up the right to have the regional office consider this new evidence and issue a new VARO decision or the claimant can refuse to give up the right to have the regional office consider the new evidence. Often, claimants have a better chance of success at the BVA than at the VARO, so a decision not to waive the VARO consideration of additional evidence may result in a time-consuming remand (the BVA would send the case back to the VARO) with no positive effect on the case. Unless the evidence submitted is so strong that it should clearly change the VARO's decision, the veteran should consider waiving the VARO review of the evidence.

During the hearing, the judge may indicate that a particular piece of additional evidence is necessary to the claimant's case. If you do not have

this evidence to submit at the hearing, you may request to keep the record open. If the request is granted, the record is usually held open for sixty days or less, giving you time to obtain and submit the evidence.

Board of Veterans Appeals Decisions

An overwhelming number of cases are remanded by the BVA to the VARO. This means that the BVA sends the case back to the VARO, where it will be reconsidered. If a decision is remanded, that does not mean the veteran has lost or won; it simply means that the matter is still being decided. If the BVA decides against the veteran, the veteran has several options for challenging the decision. He or she may request reconsideration by the BVA and he or she may appeal to the U.S. Court of Appeals for Veterans Claims (CAVC). The veteran may reopen the claim at the VARO with new and material evidence, or appeal to the CAVC while reopening the claim with new and material evidence at the same time. The veteran may wish to consult with an attorney when making the decision to appeal to the CAVC.

If you ask the BVA to reconsider a negative decision by filing a motion for reconsideration and the BVA grants the request, the earlier BVA decision is thrown out and the case will be re-heard before a larger panel of BVA members. Once the BVA grants a request for reconsideration, you have sixty days to submit additional evidence. In reconsidering the case, the BVA will look for obvious errors of fact or law to overturn the decision.

You will have 120 days from the date of the BVA decision to appeal a BVA decision to the U.S. Court of Appeals for Veterans Claims (CAVC). If you miss this deadline, you will lose the right to appeal. If you appeal to the CAVC, new evidence will not be allowed. One option is for you to appeal to the CAVC and attempt to reopen the claim at the VARO with new and material evidence at the same time. The advantage of this is that you protect your chance to appeal and win at the CAVC, but if your appeal is denied, you will have established the earliest possible effective date if new evidence later convinces the VARO to award benefits. Another option is to request reconsideration by the BVA within this 120-day time frame. After the BVA makes its decision on reconsideration, you will have a new 120-day deadline to file a notice of appeal with the CAVC.

Even if the BVA sides with the claimant, finding for example that a condition is service-connected, this does not necessarily mean that the claim process is finished. Often the veteran's file will be sent back to the VARO to

decide what rating the condition should be given or what effective date should be granted. If a veteran disagrees with the rating or effective date assigned, he or she may appeal that decision to the BVA as well.

Court of Appeals for Veterans Claims

The U.S. Court of Appeals for Veterans Claims (CAVC) may review decisions of the Board of Veterans' Appeals. It is highly recommended that if a veteran has not hired a lawyer already, he or she does so for an appeal to the CAVC. You may be able to obtain a free lawyer who volunteers his or her time through the Veterans Consortium Pro Bono Program. It is rare to win outright at the CAVC. Often the CAVC will remand (send the case back) to the BVA to develop additional evidence or to hear the case again. A veteran may submit new evidence to the record when it is sent back to the BVA.

A claimant who files a lawsuit in the CAVC is called the "appellant" and the opposing party (always the Secretary of Veterans Affairs) is called the "appellee." Only claimants may appeal cases to the CAVC; the VA cannot appeal a BVA decision to the CAVC. The CAVC cannot lower the benefits that the BVA has already granted and so you should not end up worse off by appealing to the CAVC. One restriction on appellants is that an appeal to the CAVC will not survive if the veteran dies. Usually if a veteran dies while the case is pending on appeal, the appeal is dismissed and the underlying Board and VARO decisions are vacated as well. Surviving family members, however, can file a claim for accrued benefits, as discussed in Chapter 10, "VA Programs for Veterans' Family Members and Survivors."

In an appeal to the CAVC, the appellant must show that the Court has jurisdiction (meaning authority) to hear the case and the appellant must prove his or her case by a "preponderance of the evidence," which means that the greater weight of evidence favors the appellant. If the BVA remands a case to the VARO, the claimant cannot immediately appeal to the CAVC. The claimant must wait until the VARO acts on the remanded claim, the case is returned to the BVA, and the BVA acts on the claim again before he or she may appeal to the CAVC. If the BVA decision resolves some of the claims before it but remands other claims to the VARO, the CAVC determines whether the claims are "inextricably intertwined." If they are, the CAVC will not accept the appeal until all of the issues are finally resolved by the BVA. Basically, if the claims are related to each other, they

cannot be appealed until a final decision has been reached on all of them. If there is confusion or uncertainty regarding whether a case is reviewable, the best course of action is to file a protective Notice of Appeal (NOA) with the CAVC so that you will not lose your chance to appeal.

If an appeal is not filed in a timely manner, the BVA decision will be considered final unless the claimant can show that the BVA decision was not properly mailed and the BVA cannot show that the claimant received the defectively mailed decision in a timely manner. The CAVC may potentially excuse a failure to file a NOA within the time limit based on fairness and equity under some limited circumstances: if the appellant has been misled or induced by the VA into missing the deadline; if the claimant has actively pursued judicial remedies but misfiled the appeal; if the claimant's failure to file in a timely manner was the direct result of physical or mental illness that prevented the claimant from engaging in rational thought or deliberate decision-making or rendered the claimant incapable of handling his or her affairs; or if the failure to file was due to extraordinary circumstances beyond the claimant's control, as long as the claimant exercised due diligence in preserving his or her right to appeal.

In order to qualify as a Notice of Appeal, a document need not be on a particular form but must comply with Rule 3(c) of the Court's Rules of Practice and Procedure, which can be found on the Court's website at www.vetapp.gov. This rule specifies that a NOA shall:

1. Show the most recent name, address, and telephone number of the person or persons taking the appeal and the appropriate VA claims file number;
2. Reasonably identify the Board decision being appealed from and be able to be reasonably construed, on its face or from the surrounding circumstances, as expressing an intent to seek Court review of that decision; and
3. If filed by a representative, must be accompanied by a notice of appearance.

The Power and Scope of Review of the CAVC

You may be surprised to learn that the CAVC does not hold a trial when a veteran appeals to it. The CAVC reviews the action of the VA and the

record created during the claims process. With few exceptions, this usually means that the CAVC reviews only the evidence that the BVA reviewed. The Court generally does not accept any new evidence.

Once an appeal has been filed, the record on appeal will be developed and transmitted to the CAVC. The Clerk of the CAVC will send a notice requesting that the appellant file a brief. The brief should summarize the issues on appeal and the facts of the case and make an argument as to why the BVA's decision should be reversed. The appellant has sixty days after the date of notice from the Clerk to file this brief. Sixty days later, the VA's brief will be due to the CAVC and the appellant will have fourteen days to submit a reply brief. Sometimes the CAVC will request an oral argument to help clarify the issues but this is not always the case.

When deciding the appeal, the CAVC will consider all relevant questions of law, interpret the law and apply it to the facts. The CAVC can set aside decisions or findings of law when the CAVC determines that the BVA was wrong or that the BVA went beyond the scope of its authority in its decision. The CAVC can review the BVA's factual findings, but the CAVC gives more deference to the Board on findings of fact than on findings of law. The CAVC will reverse the factual findings of the BVA only if it finds that the BVA was "clearly erroneous" in its decision. Some decisions of the CAVC can be appealed to the U.S. Court of Appeals for the Federal Circuit.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

1. Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.

2. Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
3. Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer *pro bono* attorneys.

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Chapter Six
VA Attempts to Recover "Overpayments"

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Introduction

Veterans and other people who receive payments from the VA can end up owing the VA money. This most commonly happens when you are overpaid for a disability or education benefit or when you fail to make payments on a VA-insured home loan. If you find yourself subject to a debt collection action from the VA, it is best to take prompt action.

Overpayments

The VA makes millions of payments by check or direct deposit to veterans and other beneficiaries each year. It is inevitable that the VA will occasionally pay someone more than it should. An overpayment usually happens when the VA miscalculates the amount due an individual. A miscalculation sometimes occurs because either the VA failed to adjust payment rates after a person's circum-stances changed or a beneficiary failed

to tell the VA of his or her changed circumstances. For example, a married veteran frequently receives higher benefits than a single veteran. If a veteran divorces, but the VA continues to pay the veteran as if he or she is married, the veteran will receive more than the veteran is entitled to and an overpayment will be created. Another example is the overpayment created when a former servicemember receiving disability compensation is recalled to active duty. The servicemember is not allowed to receive both active duty pay and compensation at the same time, but the VA sometimes continues to pay compensation by mistake.

On rare occasions, the VA may allow a beneficiary to keep overpayments. If the VA realizes that it has been over-paying a VA beneficiary, the VA may allow the beneficiary to keep the excess payments where the award of excess benefits was totally the fault of the VA. Total fault of the VA could occur when the overpayment was caused solely by a VA administrative error or a VA error in judgment. For example, the VA may be totally at fault if a beneficiary tells the VA that he or she married on a certain date and the VA fails to adjust the rate of benefits. In such a case, even if the VA decides not to collect previous excessive payments, the VA is still obligated to reduce or discontinue future payments.

In most cases, the overpayment is not totally the fault of the VA. The veteran or beneficiary may be at fault for failing to notify the VA of a change in circumstances or by being aware of the mistake and not taking steps to correct it. If the veteran or beneficiary is at all at fault, the VA will usually require that the excess funds be repaid to the VA. The VA should give the veteran the benefit of the doubt if it is unclear as to whether he or she was aware of the error. It is best to notify the VA immediately if you believe you are being overpaid.

When the VA learns that a veteran or beneficiary has been overpaid and determines that the overpayment was not solely the fault of the VA, it will try to recover the extra money that was paid in error. If you are notified that the VA believes that you received an overpayment and now wants to collect the overpayment, you have several options for how to respond.

At this point you need help and you should consult your service organization representative, also known as a veterans service officer. If you do not already have a representative, you should contact a veterans service organization that will provide a representative at no cost. Service organizations include AMVETS, the American Legion, the Disabled

American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America. You cannot pay an attorney to represent you in an overpayment case until later in the VA process, after you have filed a notice of disagreement (NOD).

You can challenge whether the debt actually exists or you may dispute the amount of the debt. You and your representative should always check that the VA correctly calculated the debt. If you agree that the debt is valid and the amount is correct, you can attempt to compromise by asking the VA to accept partial payment of the debt to satisfy the entire debt. If you are experiencing financial hardship, you may consider requesting a waiver or forgiveness of the debt. The remainder of this chapter will focus on the debt collection process and the options available to veterans from whom the VA is attempting to collect debts.

Collection Process

After the VA determines that it has overpaid a veteran, the VA will send the veteran a demand and notification letter, requesting that the veteran pay back the excess amount within thirty days. Responding to this letter within thirty days is important. If you do not respond within thirty days, the VA can act to reduce or terminate your VA benefits even if you are contesting the existence of the debt or the amount of the debt. In some instances the VA may propose to collect the debt by reducing your benefits. This is called an "offset." Debt collection by offset is handled by the VA Regional Office (VARO) and insurance center in St. Paul, Minnesota. Any time that you write to or communicate with the VARO about an offset, it is wise to also send copies of the corre-spondence or information to the St. Paul, Minnesota VARO; 1 Federal Drive; Fort Snelling; St. Paul, MN 55111-4050.

The VA letter must explain how the overpayment occurred and inform you of your right to challenge the existence and the amount of the overpayment. The VA will send a second letter and a third letter requesting payment if you do not respond. After the third letter, if you have not paid the debt, the VA will notify consumer debt reporting agencies (credit bureaus) that you are in default and may ask a private debt collector to collect the money from you. The VA can also ask the Internal Revenue

Service (IRS) to withhold your tax refund and apply it to the VA debt. The VA may even file a lawsuit against you for collection of the debt.

Disputing the Existence or Amount of the Debt

You should not represent yourself when dealing with the VA and you will need an advocate when disputing a debt. As soon as possible, obtain free representation from a service associated with a veterans service organization. You should also keep a record and copies of all letters and communications sent by you to the VA. In fact, it is advisable to send all letters to the VA by certified mail, return-receipt-requested. Your post office can explain how to do this.

While it is important to retain a representative, you must also be prepared to act quickly. If the VA proposes to reduce your current benefits as a method of collecting the debt, this offset will begin once the thirty-day deadline has passed. This means that your monthly disability or pension award could be significantly reduced or terminated if you fail to respond within thirty days. If you miss the thirty-day deadline, you may still challenge the VA's decision to collect by filing a notice of disagreement (NOD) within a year from the date of the notification letter, but your monthly award during this time could be reduced or discontinued.

Waivers

You can request that the VA waive repayment of the debt. Waiver requests must be made in writing to the VARO. In the request, you should explain why the collection of the debt would create an unreasonable financial hardship on you or your family. You should discuss any other factors having to do with fairness. You should support your claim of financial hardship by providing the VA with current, accurate financial information. The VA will send you and your representative a financial status report form which should be completed and returned to the VARO.

You must request a waiver within 180 days of the date of the notice letter. If you miss this deadline, you will lose your chance to request a waiver of the debt. It is recommended that you request a waiver within thirty days of the VA notice letter; otherwise the VA may begin to withhold

portions or all of the VA benefits that you receive to pay for the debt. If you apply for a waiver within thirty days of the VA notice letter, the VA will not begin to withhold your benefits until the claim for waiver is decided. If your request for waiver is received after thirty days and the VA begins to withhold your benefits, you will be refunded the withheld amount if the VA eventually grants the waiver request.

You may also request a personal hearing at the local VARO in front of what the VA calls the Committee on Waivers and Compromises. This is the committee that decides if a waiver should be granted. A personal hearing is almost always a good idea because it allows you and your representative to meet face-to-face with the VA employees who are handling your case. This gives you the opportunity to explain the circumstances surrounding the creation of the debt, present evidence, and answer the VA's questions about the case directly.

The VA will not hear waiver requests if it finds that you acted in bad faith, lied, or acted dishonestly with the intent to deceive the VA. If you do not fall into any of these categories, the VA must consider your request for a waiver.

Most waiver cases are decided based on whether collection of the debt would be "against equity and good conscience." Basically the VA tries to determine if there are any factors that would make debt collection fundamentally unfair. This decision is based on several factors. The VA will consider:

- who was at fault in creating the debt,
- whether collecting the debt would result in unreasonable hardship to the veteran,
- whether collecting the debt would defeat the purpose of the VA benefits involved,
- whether failing to collect the debt would result in unfair enrichment of the veteran, and
- whether the veteran has changed his or her position for better or worse by relying on VA benefits. For example, a veteran may have purchased a home or relocated based on the mistaken belief that he or she was entitled to a benefit or a higher level of benefits.

If you are granted a debt waiver, you should discuss the tax implications with whoever is representing you before the VA or a tax professional.

Depending on the circumstances of your case, you may have to pay taxes on the amount waived. If you are not granted your request for a waiver, you may appeal the decision to deny the waiver.

Compromise Offers to Settle the Debt

In order to settle the matter, you may want to offer a "compromise" payment to the VA of an amount less than the total debt owed. If the debt is less than $100,000, the VA has the authority to enter into compromise agreements. If the debt is greater than $100,000, the VA does not have the authority to accept; it only has the authority to reject the offer. The U.S. Department of Justice has the authority to accept compromise offers for debts that are greater than $100,000.

The VA may consider a number of factors in deciding whether to accept the compromise offer. Usually, the decision turns on whether or not the VA thinks that the veteran will be able to pay the full amount in a timely manner, whether the VA's case is strong enough that a court would order collection of the debt, and the likely cost that the VA will incur in seeking to collect the full amount. When you are seeking to enter into a compromise agreement, you may request a personal hearing at the local VARO in front of the Committee on Waivers and Compromises.

Home Loan Debts

Home loan debts can create complicated legal issues, as they may involve the intersection of both state and federal law. Veterans faced with a VA home loan debt should consider hiring an attorney at the earliest possible time.

When the VA guarantees a veteran's home loan and the veteran fails to make payments on the loan, the VA may seek to recover money from the veteran. Usually when the veteran defaults on a home loan, the mortgage lender obtains a foreclosure on the property, the property is sold at a foreclosure sale, and the lender keeps the money from the sale. If there is still a balance owed on the loan, the VA will pay the mortgage lender the balance up to the limit of the VA guaranty on the loan. (If a vet has made payments on the loan and there is a foreclosure sale, the lender gets only the

amount of the loan minus the portion of the principal that the vet has paid.) If you default on a VA-guaranteed home loan by failing to make monthly mortgage payments, the VA may attempt to recover from you any money it paid as the guarantor of the loan. Even if you sold the home to someone else, who assumed the mortgage but failed to make the payments, you may still be indebted to the VA, because the buyer defaulted on the loan. Your first mode of protection from this type of debt is to obtain a release of liability from the VA when you sell the home. If you have already sold your home and do not have a release, you may seek a retroactive release from liability from the VA.

State law, not federal law, applies in foreclosure proceedings. This means that the steps that the VA must take in notifying the veteran about the foreclosure of property and in collecting the debt will vary from state to state. However, there are a few important federal rules in the area of home loan debts that the VA and the veteran must comply with in addition to the state laws.

The process for notifying the veteran or debtor of the debt must be sent by certified mail, return-receipt-requested.

The deadline for requesting a waiver of a home loan guaranty debt is one year from the date that the certified mail, return-receipt-requested notice is received by the veteran.

If the notice was not sent by certified mail, return-receipt-requested, the notice is insufficient and there is no deadline for requesting a waiver of this type of debt.

A home loan guaranty debt can be challenged or defended based on possible violations of state law as well as on possible violations of federal law.

You do not need to wait to hire an attorney when you are faced with a VA home loan debt. The VA does not bar attorney involvement at any stage of this process. Therefore you should seek qualified representation to research the applicable state notice requirements and otherwise to determine whether the VA complied with state law. If the VA did not follow the federal and state laws and due-process procedures, then you can challenge the legality of the debt. If the debt is not legal, it is not enforceable.

Release of Liability

If you have a VA-guaranteed home loan made after March 1, 1998, you will not need to request retroactive release from liability, because all loans made after this date require the veteran to notify the VA of the potential sale. Once notified of the potential sale, the VA is required to determine whether or not it will release the veteran from liability on the loan. The buyer who assumes a VA-guaranteed loan from a veteran must also pay the VA one-half of one percent of the balance of the loan.

Veterans with VA-guaranteed loans made before March 1, 1998, could have their loans assumed by subsequent buyers of the home without prior approval by the VA. If the buyer later defaults on the loan, the VA will hold the original veteran owner liable for the unpaid loan balance. If you find yourself in this situation, you may request a retroactive release from liability on the loan. If the VA determines that the VA would have issued the release from liability on the loan when you sold the property, the VA may but is not required to retroactively release you from liability. In deciding whether to release a veteran from liability, either at the time of the sale or retroactively, the VA considers whether the buyer has good credit, whether he or she has agreed in a contract to assume all of the veteran's liability, and whether the loan is current.

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.

- Placing meritorious cases (especially cases involving claims of service-members and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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Chapter Seven
Educational Assistance and Vocational Rehabilitation

The G.I. Bill and Other Programs

By Jack Mordente

On June 24, 1944, President Franklin D. Roosevelt signed the Serviceman's Readjustment Act, better known as the G.I. Bill of Rights. Originally, it covered not only education, but many other benefits. Beyond providing an important, deserved benefit for veterans, the G.I. Bill also averted the possibility of almost all 16 million World War II veterans entering the workforce at almost the same time, which would have create more unemployment than ultimately occurred. Many questioned the concept of sending battle-hardened veterans to universities, a privilege previously reserved for the economic and social elite. The G.I. Bill has emerged as one of the most enlightened and significant pieces of social legislation ever written in this country. Not only was it the catalyst for the higher education system we have today; it has long been a symbol of soldiers returning to civilian society.

When the Vietnam War and the its draft ended, we went to an all-volunteer, downsized military. Up until this point, you earned the G.I. Bill as

the result of wartime service. Without a draft, Uncle Sam had to figure out a way to encourage young men and women to enlist. His first attempt, the Veterans Educational Assistance Program was a bust. During its eight-year run, Uncle Sam realized that a new and improved G.I. Bill was needed to get young people to enlist. Also, with the draft no longer an option, the downsized military would need support for the next war. In 1985, the Montgomery G.I. Bill (MGIB) was signed into law. It was not only for active duty types, but also for National Guard and Reservists who enlist for six years. They are not paid as much as their active-duty counterparts, but heck, they are only "Weekend Warriors"! With the first Gulf War in 1991, this concept would change drastically.

VA Education

During the Vietnam Era, there were three chapters of the G.I. Bill. (VA regulations are found in Title 38 of the Code of Federal Regulations. The chapters mentioned below are subsections of Title 38.) They were Chapter 34, for active duty veterans; Chapter 31 for disabled veterans and Chapter 35 for dependents and survivors of certain veterans. Chapters 31 and 35 remain. Chapter 34 has been replaced by Chapter 30, which has four "categories." In addition, we have Chapters 32, 1606, and 1607, the Educational Assistance Test Program and the National Call to Service Program. Confused? Join the crowd. Now you have a sense of what it's like for school certifying officials, the majority of whom certify veterans for their G.I. Bill. as an additional duty while they also do their full-time jobs in financial aid, the registrar's office or the business office.

Effective 1 August 2009 the new Post-9/11 (Chapter 33) GI Bill will start. Veterans will receive:

- Tuition and fees not to exceed those of the most expensive in-state public institution of higher education.
- A monthly housing allowance equal to the basic allowance for housing (BAH) payable to E-5s with dependents, in the same zip code as the school.
- Yearly books and supplies stipend of up to $1,000.
- For more information go to

"Time, time, time's not on your side"

Although the G.I. Bill covers most any kind of educational program you can imagine, you must give yourself plenty of time to access them. Just as during post-Vietnam days, the Department of Veterans Affairs (the VA) is overworked and understaffed. Claims processing takes time, at least two to three months. This can be a huge inconvenience when colleges and universities generally expect tuition payments to be made by the start of classes.

Then there is the deadline by which you must use your G.I. Bill. It is called the "10-year delimiting date." It means that, with few exceptions, you have 10 years from your date of separation from active duty to use your education benefits. (A key exception is that reservists have 14 years.) When you leave active duty, especially after war deployments, you may not be ready to take on the rigors of academia. You may have family responsibilities and therefore need to work. You may be dealing with the effects of war, such as struggling with Post-Traumatic Stress Disorder (PTSD).

It is possible to extend the delimiting date beyond 10 (or 14) years. If you could not start or continue your education due to a physical or psychological condition, you may qualify for an extension. You apply for an extension at a VA Regional Office. If you receive an extension, it will be for the amount of time for which your disability prevented you from attending an educational institution.

Veterans who have received an upgraded discharge: If you had a bad discharge that prevented you from qualifying for G.I. Bill benefits, you usually start a 10-year period of eligibility on the date your discharge is upgraded. You have earned the right to be able to use your benefits when you want to use them. Organizations like the National Association of Veterans Program Administrators (NAVPA), Iraq and Afghanistan Veterans of America (IAVA) and Veterans for America continue to urge Congress to remove the delimiting date.

Eligibility

Chapter 30: Montgomery G.I. Bill–Active Duty (MGIB-AD)

CATEGORY I

a. Entered active duty for first time after June 30, 1985.
b. Elects to have military pay reduced by $100 a month for first 12 months of active duty, for a total contribution of $1,200. (There is an additional $600 Buy-up Program that you can choose to purchase before discharge. It will increase your monthly G.I. Bill payment rate by $150 per month.) Both the $1,200 and the $600 are non-refundable.
c. You must have continuously served for three years on a three-year enlistment, or for two years on a two-year enlistment, or for two years if you entered the Selected Reserve within a year of leaving active duty and you serve four years (this is the "2 by 4" program).
d. Provides up to 36 months of education benefits.
e. Effective August 1, 2008, monthly payment if attending school full time was increased to $1,321 ($1,471 with the Buy-Up). This current increase was the result of the recent overhaul of the GI Bill by Congress. Rates still increase every October 1.
f. Honorable Discharge. (If you get anything less, even a general discharge, you not only don't get the G.I. Bill; you lose your $1,200.)

There are three other categories of the MGIB-AD that you can find at www.gibill.va.gov

They are too complicated to cover here.

Chapter 1606: Montgomery G.I. Bill–Selected Reserve (MGIB-SR)

a. This benefit is based on Selected Reserve service (Reserves or National Guard).
b. You must have a six-year obligation in the Selected Reserve to which you committed after June 30, 1985.
c. Complete your initial active duty for training (IADT).
d. Have your high school diploma or equivalency before completing IADT.
e. Remain in good standing while serving in an active Selected Reserve unit.

f. If your IADT completion date began prior to October 1, 1992, you have 10 years from that date or the date you leave Selected Reserve to use 36 months of benefits.
g. If your IADT completion date was on or after October 1, 1992, you have 14 years from that date or the day you leave Selected Reserve to use 36 months of benefits.

One exception exists. If you are mobilized (or recalled to active duty from Control Group), your eligibility is extended for the amount of time you are mobilized PLUS four months. For example, if you are mobilized for 12 months, your eligibility period is extended for 16 months (12 months active duty PLUS four months). Multiple deployments can be added together. If you leave the Selected Reserves, you can continue to use what you have remaining from your 36 months for the period of the extension. If you have used Chapter 1607 (see below), you have up to 48 months of benefits.

h. The current monthly payment rate is $317. (That's if you have a "Kicker"; a Kicker is extra money based on your military speciality.) You lose the Kicker if you leave Selected Reserve.

Chapter 1607: Reserve Educational Assistance Program (REAP).

a. Provides educational assistance to members of the Selected Reserves called to active duty for 90 days or more in response to a war or national emergency after September 11, 2001.
b. Monthly payment is a percentage of the Chapter 30 three-year rate, $1,101.50 as of this writing.
    1. If you serve 90 days but less than one year, you receive 40%.
    2. If you serve one year but less than two years, you receive 60%.
    3. If you serve more than two years, you receive 80%.
    4. Kickers are added to these rates.
c. This benefit is retroactive for those who were attending school and drawing 1606

Benefits prior to their deployment.

d. You can use REAP only as long as you remain in a paid drill status EXCEPT if you are released for a disability incurred or aggravated in the line of duty. If you are released for a disability you have 10 years from your date of eligibility to use REAP.
e. You will receive 36 months of benefits unless you have already used 1606. In this case you can receive up to 48 months of benefits.

National Call to Service Program.

This is a three-tiered program with four choices of incentives. Few participate in this because few are interested.

Chapter 32: Veterans Educational Assistance Program (VEAP)

A post-Vietnam Era education program for those who served on active duty from January 1, 1977 through June 30, 1985. Not many vets remain eligible, because most have reached their 10-year delimiting date. More information may be found at (www.gibill.va.gov)

Chapter 35: Survivors' and Dependents' Educational Assistance Program (DEA).

DEA provides 45 months of education benefits for the son, daughter or spouse of:

a. a veteran who died or is permanently and totally disabled (referred to as "100% P + T") as the result of a service-connected disability.
b. a servicemember missing in action or captured in the line of duty by a hostile force.
c. a servicemember who is hospitalized or receiving outpatient treatment for a service-connected, permanent and total disability and is likely to be discharged for that disability (effective December 23, 2006).

Sons and daughters are eligible between the ages of 18-26. Marriage is not a bar to this benefit. The benefit for a spouse of a veteran ends 10 years from date the VA finds the spouse eligible or when the veteran dies.

The current monthly benefit if the survivor or dependent is attending full-time is $806.

Educational Programs

Besides Institutions of Higher Learning (IHLs), there are many different types of educational programs available through the various G.I. Bills. They include:

1. Non-College Degree Programs (NCD): examples include HVAC certification, truck driving, EMT certification and barber/beauty school.
2. On-the-Job or Apprenticeship Training: examples include union plumber, hotel management and firefighter.
3. Flight Training: available for rotary wing, B747-400 or dual qualification. You must have a private pilot's license and valid medical certification. The VA reimburses 60% of approved charges. Payments are issued after training is completed.
4. Independent, Distance Learning or Internet Learning: usually offered by IHLs.

5. Correspondence Training: lessons are usually received in the mail for which you have a certain amount of time to complete. The VA will reimburse 55% of approved costs. Payments are made quarterly after the lessons are completed.
6. National Testing Program: The VA reimburses fees charged for national tests for admissions to IHL and national tests providing course credit at IHLs. Examples are SAT, GRE, CLEP and LSAT. Available only for MGIB-AD, VEAP and DEA.
7. Licensing and Certification: MGIB-AD, VEAP and DEA beneficiaries receive payments for licensing or certification only for tests taken on or after March 1, 2001. Effective January 6, 2006, MGIB-SR and REAP became eligible. The tests must be approved for the G.I. Bill. The VA pays the cost of the test up to $2,000, but not other fees. The payment is issued after you submit proof of payment to the VA.
8. Entrepreneurship Training: learn how to start or enhance a small business. The VA pays only for programs offered by the Small Business Administration or the Veterans Corporation (full name: National Veterans Business Development Corporation), a government agency separate from the VA. This training is coveredy by all G.I. Bill benefits except DEA (the Dependents' Educational Assistance Program). For more on the Small Business Administration, see Chapter 11.
9. Work-Study Program: Available for any student receiving Chapter 30, 31, 32, 35, 1606 or1607 G.I. Bill and going to school at least three-quarters of full-time. The student can work at the school veterans office, a VA Regional Office, a VA medical facility, or a state employment office approved by the VA. The pay rate is the state or federal minimum wage, whichever is greater.
10. Co-op Training: attend school and gain work experience at the same time.
11. Accelerated payment for MGIB-AD: a lumber sum payment of 60% of tuition and fees for certain high-cost, high tech programs. You must be enrolled in a high tech program and certify that you intend to seek employment in a high tech industry as defined by the VA.
12. Tuition Assistance "Top-Up": for active duty military only. The VA can pay the difference between the total cost of a college course and the amount of tuition assistance paid by the military.
13. Tutorial Assistance Program: if you are receiving the G.I. Bill at the half-time or more rate and have a deficiency in a course.

How to apply for G.I. Bill benefits

Generally you apply for the G.I. Bill through the school or other educational or training program in which you want to participate. Ask for the school's VA certifying official. The application is a two-part process. First, you need to apply to and be accepted by the school you want to attend (the school must be VA-approved). Second, your school or program must certify to the VA that you are attending.

Tuition Assistance (T/A)

If you are serving in the National Guard or Reserves you may be eligible for tuition assistance. Contact your unit administrator for more information.

Tuition Waivers

Some states offer assistance with tuition and/or fees for war-deployed veterans, National Guard and Reservists. Visit the State Veterans Benefits Directory at Miliitary.com.

Vocational Rehablitation and Employment (VR&E) Program

This program helps veterans with service-connected disabilities prepare for and find jobs within their physical, mental and emotional capabilities. Check out: www.wba.va.gov/bin/vre

Eligibility: VA service-connected disability rated at least 20 percent with an employment handicap or rated 10 percent with a serious employment handicap. Must be discharged from military service under "other than dishonorable conditions." The VA pays the cost of services and a living allowance. Generally you must complete your program within 12 years from your date of discharge from active duty or within 12 years from the date the VA notifies you about your service-connected disability. If you have been

unable to enter or continue a training program because of medical problems, the VA may grant an extension of the 12-year deadline. You would apply to the VA Regional Office.

Eligible veterans may receive up to four years of full-time training or the equivalent amount of part-time training. To apply for training, fill out VA Form 28-1900, Disabled Veterans Application for Vocational Rehabilitation. File the form with the nearest VA Regional Office. Generally, the VA requires that disabled vets undergo VA educational counseling before it will approve a specific rehabilitation program.

If you are a disabled vet, you may qualify for benefits under vocational rehabilitation and also under the G.I. Bill. You must choose one or the other. In most cases you will do better under "voc rehab." Although its monthly payments are lower than those for the G.I. Bill, it covers all educational costs, like tuition, fees, books and supplies. Under the G.I. Bill, you must pay all costs not met by your monthly check.

If you are disabled, but your disability has not been rated by the VA as service-connected, you may still be eligible for voc rehab through the voc rehab agency run by your state government. Some information about such agencies is available at www.military.com.

War-Deployed National Guard And Reservists

In 2005 this author uncovered the fact that the VA and the Department of Defense (DoD) were at odds with each other regarding the interpretation of the law giving VA educational benefits to discharged war-deployed National Guard and Reservists. Although the DoD finally relented, confusion and misinformation continue to rule. Here is the bottom line:

If you are a war-deployed Guard or Reservist and you leave paid drill status, you are eligible for the Chapter 1606 G.I. Bill for the number of months you were deployed plus four months. If you had multiple tours, you can add them together. To apply, you must bring your DD 214 to your school certifying official and specifically request 1606 benefits. Unfortunately, the clock starts ticking the day you leave paid drill status. Some veterans are trying to effect legislation that will give you a 10-year delimiting date. Stay tuned.

Type of Discharge

You are eligible for education benefits only if you receive an HONORABLE DISCHARGE. Ironically if you receive a GENERAL UNDER HONORABLE CONDITIONS DISCHARGE, you are eligible for all your other VA benefits except education. This hardly seems fair, considering you have contributed $1,200 to your G.I. Bill. The National Association of Veterans Program Administrators (NAVPA) is trying to effect legislation to fix this injustice.

Helpful Hints

1. Prior to leaving active duty, make sure you have your DD 214 and copies of any Kickers you have earned.

2. Save copies of any VA correspondences, especially our VA award letters. These letters tell you the dates you have attended school and the number of months you have used from your 36 months of educational benefits.

3. The VA pays only for courses that part of your program. Meet with your academic advisor each semester to ensure that you are taking the right courses.

4. Whenever you speak with a VA or other government official, write down his or her name and phone number and the date of the conversation as well as a summary of what was said.

5. If enrolled in AD MGIB, then they must make sure all $1,200 is deducted.

6. If you are enrolled, check to make sure you served the correct amount of time.

7. If you are enrolled, be sure to check on any "Kickers" based on MOS, Guard/Reserve service, etc. before discharging.

8. Save a copy of all the VA correspondence, because the VA is known to make mistakes.

9. Keep track of exactly how much and when the VA paid you, because the VA is known to make mistakes.

10. Make sure your instructor counts you present in class, as missing class may cause you to lose all or part of your VA educational monthly benefit.

11. Befriend the university/college registrar's office, as it approves the payments.

12. Check with the registrar if you are taking any unusual classes, as the VA may not pay for university/college classes unless they lead directly to graduation in the major/degree selected, etc, etc, etc...

Key Phone Numbers and Web Sites

(888) 442-4551—To get straight through to a live VA G.I. Bill counselor. When the automated system answers, press 1, then immediately press 0.

(800) 827-1000—Other benefits such as disability compensation and medical benefits. You can complete a VA application for educational benefits online and submit it electronically: vabenefits.vba.va.gov/vonapp/main.asp

G.I. Bill Web Site: www.gibill.va.gov

Vocational Rehabilitation: vba.va.gov/bln/vre

Veterans Benefits Main Web page: www.vba.va.gov

Education Resource: www.navpa.org

Federal Financial Aid Application: www.fafsa.ed.gov

Scholarships: .military.com/education/scholarship/newsearch

Jack Mordente is the Director of Veterans Affairs at Southern Connecticut State University (SCSU). In November 2005 he was inducted into the Connecticut Veterans Hall of Fame by Governor Jody Rell. In 2007 he discovered that the Department of Defense (DoD) had misinterpreted a law that was denying war-deployed National Guard and Reservists their G.I. Bill benefits. After months of his letter-writing, testifying and press conferences, DoD announced that it was working to ensure that all Guard and Reservists, past and present, would be notified of the policy change.

Jack served on active duty with the U.S. Army from 1970 to 1974 and continued with the Army Reserves until 1982. He began his career serving veterans at Southern Connecticut State University in 1975. He provides counseling, academic advising, G.I. Bill and tuition waiver certifications and liaison with the VA. As an advocate for veterans rights and benefits on a local, state and national level, Jack is President of the National Association of Veterans Program Administrators (NAVPA), the only national veterans education group in the country. He also serves on Congresswoman Rosa DeLauro's Veterans Advisory Committee and is a member of Connecticut's Employer Support of the Guard and Reserve (ESGR). He has served on the city of New Haven Veterans Advisory Committee and the Connecticut Board of Higher Education Veterans Advisory Committee and chaired the Connecticut Agent Orange Commission from 1983 to1987.

He is often sought-after to speak about veterans rights and benefits. He recently served on education panels at the Department of Defense Worldwide Education Symposium in Orlando and the National Symposium for the Needs of Young Veterans in Chicago. This year he presented a paper titled "From the Battlefield to the Classroom" at the National Association of Student Personnel Administrators Annual Conference in Florida.

Jack received a B.A. from Providence College in 1970. He obtained his master's degree and sixth year (a further degree) in counseling/student personnel from SCSU in 1977 and 1979. He resides in Branford, Connecticut with his wife, Linda. He has two daughters, Elisa and Jill, and two grandsons, Andrew and Tyler.

Chapter Eight
VA Housing Programs

By Mathew B. Tully

Introduction

Housing is one of the basic necessities in life, and the VA offers several benefits to help veterans obtain, purchase, and maintain homes. There are many benefits to owning a home. The main advantage is that you can stop making rent payments and instead start making mortgage payments. When you get a loan and purchase a home, your mortgage payments build equity (your share in the ownership of the property). Rent payments do not build equity, because you are not paying toward any sort of ownership of the property that you occupy. Another advantage of home ownership is that the interest portion paid on home mortgages may amount to a substantial tax deduction. With these benefits of ownership, however, come many responsibilities, including regular payments and home maintenance, even in times of emergency or disaster.

This chapter focuses on the housing programs available for veterans to purchase homes. Specifically, it outlines the basics of VA loans in comparison to conventional loans, as well as the requirements, uses, and added benefits of choosing to purchase your home using a VA loan. It also outlines key steps to take to keep your home should you fall behind on your

home loan payments. This chapter further addresses information and resources regarding state housing programs available to veterans, as well as veterans domiciliary facilities for veterans who do not wish to purchase a home, or are not physically capable of living independently or maintaining home. Included is also an update on recent changes in the laws affecting veterans and housing. Lastly, in light of recent events in this country and around the world, this chapter offers advice on what to do for yourself, your home, and your future in the case of a natural disaster.

It is our hope that this chapter serves as a resource to access relevant information on VA housing benefits, and a first step for veterans and their families in finding, financing, and keeping the home of their dreams.

VA Loans

For many veterans, the most helpful program that the VA offers is the one that provides for home loans. Getting a VA loan can be a critical step in buying a home; buying a home can be a critical step in improving the financial picture for families and single individuals alike. A VA loan makes the purchase of a home possible for many veterans who would otherwise be unable to buy one; a VA a loan can—quite literally—open the door to a new home for a returning veteran.

The first thing that it is important to note is that the term "VA Loan" does not usually mean a loan directly from the VA to the veteran. A VA loan is a home loan (also called a "mortgage") made by a private lender (such as a savings bank or loan company), which is granted to veteran borrowers who are approved for the loan after the application process, and who fulfill all other requirements for receiving the loan. *The VA does not act as a lender; it simply guarantees the repayment of the loan. This reduces the risk to the lender that is implied in the transaction, which makes it possible for the lender to provide lower interest rates and more advantageous terms for veteran applicants.*

However, direct loans from the VA to veteran home purchasers may be available in certain limited instances. VA "direct" home loans are available to eligible Native American veterans who want to buy, build or improve a home on Native American trust land or simultaneously purchase and improve a home. Direct loans also are available to reduce the interest rate

on existing loans. These loans otherwise have the same standards and requirements as the standard VA loans discussed below.

Many returning veterans may face discrimination in various aspects of their personal and professional lives. It is important for you to note, however, that discrimination in the sale or financing of housing because of race, sex, religion, family status, handicap, or national origin is prohibited by federal laws. The Department of Veterans Affairs (the VA) oversees the VA housing program and ensures that all veterans are given an equal opportunity to buy homes with VA assistance. Lenders participating in the VA loan program are required by the Civil Rights Act of 1968 to act on loan applications without regard to a veteran's race, sex, religion, family status, handicap, or national origin. If you experience or suspect discrimination by a builder, broker, or lender, you should notify your nearest VA Regional Office (VARO), and it will investigate. To start a VA investigation, submit a written complaint directly to the VARO. Your complaint must describe the discriminatory action, including the date it occurred, names, addresses and telephone numbers of all parties involved in the action, and the address of the property involved. The VA has a form for this purpose (VA Form 26-8827, Housing Discrimination Complaint), which you can request from the VARO.

Benefits of VA Loans vs. Conventional Loan

For a majority of buyers, who need close to one hundred percent of the purchase price for a new home, a VA loan could be one of the best options available as compared to conventional loans. The biggest and most distinct advantage of a VA loan is the "no down-payment" feature. In addition, and unlike conventional loans, you have access to VA support during temporary financial hardships (this will be discussed in more detail below). You can also get pre-qualified for a VA loan before you even start looking for a new home, so that you know what your budget is.

Pre-approval is an uncomplicated process, much like the actual VA loan application process. The difference is that the process takes place before you purchase your home. The process may vary slightly between lenders. However, there are three basic steps to pre-qualification that remain relatively constant:

1. You must find an approved lender of VA loans. There are many lenders out there, and more information is also available from the VA.
2. Determine your eligibility for a VA loan. Whatever lender of VA loans that you choose will be able to assist you with this.
3. Provide your chosen lender with all pertinent information that the lender requires for a determination, such as income information, tax returns, and a credit report. The required information may vary slightly between various lenders.

After you have given the lender all of the requisite information, the lender will inform you of the dollar amount for which you are pre-approved. Once you are pre-approved for up to a certain loan amount, the lender will also give you a pre-approval notice, which verifies the approved sum. The notice is purely for your records, but it may be useful to show to sellers when making an offer in order to demonstrate genuine interest in purchasing the seller's home.

It is not necessary to spend the entire loan amount (if you find the home you want at a lesser price). There is no penalty for spending less than the VA pre-approval amount. However, you should not exceed your budgeted loan pre-approval amount on a home, unless you have funding elsewhere.

You can borrow up to one hundred percent of the purchase price of the home that you choose to buy. The VA does not set a maximum limit on loan amounts. As of January 1, 2008, most lenders have capped the maximum amount at $417,000, and as high as $625,500 in certain high-cost areas. You might be able to receive a higher loan amount if you make a down payment, depending on your lender. VA loans also allow the seller to pay all of the veteran's closing cost as long as the cost does not exceed 6% of the sale price of the home. VA loans don't have the closing costs that are associated with most conventional loans because the VA has a list of fees that cannot be charged. Commissions or "buyer broker" fees are another example of fees that will not be charged to veteran purchasers.

With a VA loan, there is no private mortgage insurance which extends through the life of the loan. This is different from conventional loans, which include mortgage insurance. Mortgage insurance is required for most conventional loans to protect the lender in the event that you cannot make your payments. It is an added cost which could increase your monthly loan

payments. Veterans accepting VA loans must pay a funding fee for the loan. The funding fee is standard across all lenders, but may vary between types of servicemembers (regular or reservist), and the amount paid for the down payment. For most regular military servicemembers, the basic funding fee is 2.15 percent and must be paid to the VA by all but certain veterans. A down payment of 5 percent or more will reduce the fee to 1.5 percent, and a 10 percent down payment will reduce the funding fee to a 1.25 percent. For all eligible reserve/National Guard individuals using a VA loan, a funding fee of 2.40 percent is required. As with regular servicemembers, the fee varies with the down payment. A down payment of 5 percent or more will reduce the fee to 1.75 percent, and a 10 percent down payment will reduce it to 1.5 percent.

There is also a funding fee associated with loans used to refinance an existing VA home loan with a new VA home loan to lower the existing interest rate. Again, the percentage varies due to the amount of the down payment. A detailed table for the uniform funding fees for VA loans is available at www.homeloans.va.gov/funding_fee_tabels.doc. Also note that for all VA loans, the funding fee may be paid in cash or it may be included in the loan. The funding fee can be financed, but is waived only if the veteran receives monthly payments for a service-connected disability.

The interest rates for VA loans are not necessarily lower than those for conventional loans, but the interest rates on VA loans are both competitive and negotiable. The VA does not set the interest rates and discount incentives for VA loans; these rates and programs are established only by lenders. As such, these rates and discounts might vary among different lenders. In addition, once approved for a VA loan, as a veteran or active duty service person, you are eligible for the best interest rates available regardless of your credit score or credit history. There are often easier qualification standards for VA loans, and credit and income standards are not as strict as for most conventional loans. For example, when applying for a VA loan, lenders look only at your previous 12 months of credit activity, with the exceptions of bankruptcies, tax liens, and collections, which could have an adverse impact on your loan even if they are more than 12 months old. In addition, there are no prepayment penalties associated with VA loans.

VA loans are 30-year loans with a choice of payment plan options, including: traditional fixed-payment plans, graduated payment mortgages,

and growing equity mortgages. At present, however, the VA does not offer interest-only loan programs. All loans guaranteed through the VA pay back to the principal of you loan and increase your home equity with each payment. Equity is the amount of value that a homeowner has invested in their property.

Uses for VA Loans

Although they are most commonly used to buy houses, VA loans can be used to purchase, build, or improve a house, to simultaneously purchase and renovate a house, to purchase a mobile home and lot, to purchase a condominium, or to purchase a farm residence. In some cases, VA loans can be used to refinance an existing home loan. A refinancing loan may not exceed 90 percent of the appraised value plus the costs of the improvements. VA loans can also be used to purchase energy-efficient home materials, appliances, or equipment. These improvements include (but are not limited to): installing energy-related features such as solar panels or heating or cooling systems, water heaters, insulation, weather-stripping, caulking, storm windows or doors, and other energy-efficient improvements approved by the lender and VA. A VA loan can be increased up to $3,000 based on documented costs of these improvements, or up to $6,000 if the increase in the mortgage payment is offset by the expected reduction in utility costs. The property purchased with or affected by VA loans, however, must be *residential* property.

There are some restrictions regarding the use of VA loans. First, you must live in the home you purchase using a VA home loan, and it must be your primary residence. You cannot use a VA loan to purchase a vacation home. Deployed veterans, however, can use VA loans to purchase a new home, as long as that home will be their primary residence when they return. At present, VA loans *may not* be used to purchase foreign property or cooperative apartments (known as "co-ops"). You should check with the VA or your chosen VA loan lender for more details regarding the specific uses for and prohibited uses of VA loans.

Eligibility for VA Loans

Almost all veterans who have been discharged "other than dishonorably" are eligible for VA loans. There is no requirement that the veteran must be a first-time home buyer in order to be eligible. Eligible veterans include: Veterans who served on active duty at any time during World War II, the Korean War, and the Vietnam Era and were on active duty at least 90 days or were discharged due to a service-related disability; service during the peacetime periods from 1980 (enlisted) or 1981 (officers), if 181 days of continuous active duty were served; or, after these dates, active duty service of 24 consecutive months or one full period (181 days). Individuals may also be eligible if they were released from active duty due to an involuntary reduction in force, certain medical conditions, or, in some instances for the convenience of the government.

Surviving spouses of deceased eligible veterans may be eligible for VA loans if the spouse meets certain criteria. Unmarried spouses of veterans who died in service or from a service-related disability are also eligible to apply for VA loans, as are spouses of veterans who are prisoners of war or missing in action. Also, a surviving spouse who remarried on or after reaching the age of 57 on or after December 16, 2003, may be eligible for the home loan benefit. There was a window for applications from surviving spouses who remarried before December 6, 2003, which closed, without exception, on December 14, 2004.

In addition, there is also VA loan eligibility for certain United States citizens who served in World War II for a government that was allied with the United States. Individuals with service as members in certain organizations, such as Public Health Service officers; cadets at the United States Military, Air Force, or Coast Guard Academy; midshipmen at the United States Naval Academy; officers of the National Oceanic and Atmospheric Administration; merchant seaman with WW II service; and some others are eligible for VA home loans. Contact the VA with any questions about VA loan eligibility.

Veterans who file for bankruptcy are still allowed to use a VA home loan if they are eligible. There is, however, a two-year waiting period after the bankruptcy period before the veteran is eligible again.

VA Loan Application, Qualification and Approval

If you qualify, you may be able to receive a VA loan even if other loans are unobtainable. It is important to remember, however, that a VA home loan is not an automatic benefit. In order to qualify for a VA loan, veterans must first meet one of the eligibility requirements outlined above, and then must also have an income that is capable of supporting the monthly home loan payments that such a loan would require. You may want to consult with an accountant or financial planner while completing the paperwork involved with your loan application.

The main difference between an application for a conventional home loan and an application for a VA loan is the necessity of both a "Certificate of Eligibility" and a VA-assigned appraisal. If you don't already have one, you can complete VA form 26-1880, which is the Request for a Certificate of Eligibility for VA Home Loan Benefits, and submit it to the VA Eligibility Center. The contact information, address and telephone number for the VA Eligibility Center are available and kept current at www.homeloans.va.gov/eligibililty. You will also need copies of your most recent discharge or separation papers covering active military duty since September 16, 1940, which show active-duty dates and type of discharge. With most lenders, the process of obtaining a Certificate of Eligibility can now also be handled online through an Automatic Certificate of Eligibility (ACE) program. Your lender, once you choose one, can help you with this.

When you have chosen the house you would like to purchase, you will need a VA-assigned appraisal; the lender typically does this. A state-licensed real estate appraiser will visit the home to give the lender and VA an opinion of the market value of the property. From this information, the lender and the VA will decide if the value of the property to be purchased will be sufficient collateral (value as security) for the VA loan. This appraisal, however, is in no way a warranty for the property. It does not guarantee that the property is free from construction or other defects; these types of warranties should be requested of and given by only real-estate brokers and/or homebuilders. A separate pest inspection is also required for loan approval. If pests are found, the problem must be fixed before you can close on the home. This requirement is for the protection of the buyer, because an insect infestation not only reduces the value of your home; it also reduces your use and enjoyment of the home, as well as the life of the

home. You do not need an additional home inspection for other defects, although it is highly recommended for the same reasons.

During this application and appraisal process, your lender may also be gathering credit information on you. As compared to conventional loans, these procedures may slightly slow the process of getting approved for and closing on your new home. This is why the VA loan pre-approval option discussed above is an attractive option for many borrowers. You can contact the local VARO for tips on speeding up the application process.

You can also pre-qualify for a home loan, which means determine if you can receive a VA loan, and generally how much you can afford to spend, before you choose which home you are going to buy. This does not waive the eventual requirement of appraisal, but may be a good option if you don't yet know which home you would like to buy, or you would like to be more certain of your budget before you begin looking for a new home. In order to pre-qualify for a VA loan, you must first find a qualified lender for VA loans. Next, you will need to determine your eligibility with your lender. This involves the Certificate of Eligibility process discussed above, which can be quick and easy. Once you have provided your lender with the relevant information to make a decision about your loan, you may be pre-certified for a certain amount of loan funds.

Your lender will mail you a notice of this pre-certification, and this notice can be shown to prospective sellers to show that you are a serious buyer. Some realtors also require pre-qualification for VA loans. If you choose to pre-qualify for a VA loan, you are not obligated to accept the loan until you sign the closing documents for the home. The information that you should be prepared to provide your lender includes but is not limited to: tax returns, income information, employment history, and a credit report. Also note that if you are looking to borrow through a VA home loan and have children under the age of 13, your loan application requires a "Child Care Letter." This is because VA loans require that childcare expenses be counted as liabilities for qualification purposes.

If and when both the home and the loan have been approved, it is then time to close on the property. In order to close on the property, you as the buyer must contact a state-licensed insurance agent to purchase homeowner's insurance on the property. This will protect your home *and* your lender in case of any future damage to or loss of the property. Title will be transferred to you as soon as the closing documents are completed

and made part of the public record. The transfer of title means that you officially own and be responsible for the property.

Foreclosure and How to Avoid It

If you fall behind in your mortgage payments, you risk losing your home. Whether you have a VA loan or a conventional loan, the lender may "foreclose" on the property if you don't make payments on time. Foreclosure is a legal proceeding to take away your ownership of the property. The cardinal rules for avoiding foreclosure are:

1. Contact your lender as soon as you realize you will not be able to make your payments.
2. Don't ignore your lender's attempts to contact you; this will only make your problems worse, because fast action is *key* to a favorable resolution.
3. Stay positive. There are many options that may be available to help you avoid foreclosure.

In any event where you are unable to make your scheduled loan payments, it is important to contact your lender because there may be options available to you. There may be a way to arrange for an easier payment schedule by extending your contract terms, or you may qualify for forbearance. Forbearance is a period during which your lender gives you permission not to make loan payments; interest, however, will oftentimes continue to accrue on your loan while it is in forbearance. Because your loan could accrue interest during the forbearance, you should be aware that you monthly payment *after* forbearance might be larger than before because the accrued interest will be added to the principal. It is important to discuss these options with your lender as soon as you think it will be difficult to make payments. Once you are several months behind on your payments, your lender may be less willing or have fewer options to help you.

Unlike with conventional loans, however, a lender may not foreclose on a VA loan unless the veteran is three months behind on payments. Before foreclosing, the lender must give the VA 30 days' notice. In certain situations, the lender must accept partial payments in lieu of foreclosing on the property. All lenders are supposed to take steps to avoid foreclosure and to give veterans "all reasonable forbearance." If your lender does not make

a reasonable effort to avoid the foreclosure of your property, you may want to complain to the Loan Guaranty Division at the nearest VARO.

Aside from forbearance, there are other options that you can discuss with your lender to avoid foreclosure. The first and simplest option that may be available is reinstatement. Reinstatement might be possible when you are behind in your payments yet can, nonetheless, promise a lump sum to bring payments current by a specific date. If your account is past due on account of a short-term financial hardship and you can now make payments, your lender might agree to let you catch up by adding a portion of the past due amount to a certain number of monthly payments until your account is current. This is simply a repayment plan that is structured and approved by your lender.

In some cases of long-term financial hardship, loan modification is available for a small percentage of VA loans, when both the lender and the investor agree on the terms of the modification. Essentially, this is a process where the mortgage contract is renegotiated to lower the interest rate and/or extend the term of the loan; this then results in lower monthly payments. The veteran borrower is responsible for the costs and fees associated with a modification. All property taxes must be current or you must be participating in an approved payment plan with the state and local municipalities that levy taxes on your property in order to be eligible for a modification. Any additional liens or mortgagees must also agree to be subordinate to the first VA loan/mortgage. In addition, all of these requests are subject to your lender's approval.

A VA loan may also be re-funded; this is when the VA buys or "assumes" your loan from the lender. Re-funding may buy you time and give the VA flexibility to consider options to help you save your home that your current lender either could not or would not consider. When the VA re-funds a loan, the delinquency is added to the principal balance and the loan is re-amortized, or liquidated once again to allow for a new loan payment plan. Your new loan will be non-transferable without prior approval from the Secretary. If your interest rate was lowered and an assumption is approved, the interest rate will be adjusted back to the previous rate. This is a more common remedy than modification, because there are fewer prerequisites to begin the process. A re-funding, however, takes at least 30 days to process and must be completed before your lender initiates foreclosure.

If you are trying to sell your home and are unable to make your mortgage payments due to long-term financial hardship, you may be eligible for a "deed-in lieu-of-foreclosure" if your house has been on the market (at a fair market value) for at least 90 days. You will need to provide a current copy of the listing agreement for your home, as well as complete a financial package. Also, there cannot be any additional claims or liens (other than the mortgage) against the property in order to be considered for this option. If you are approved for a deed-in-lieu-of-foreclosure, you will be giving up all rights to the property and the property will be conveyed to your lender; you will no longer own the home. The benefit of a deed-in-lieu-of-foreclosure is that the veteran is spared the embarrassment and negative credit consequences of foreclosure, and most all of the veteran's indebtedness from the defaulted loan will be erased through this transaction if the amount of the debt is less than or equal to the market value of the home.

If you want to challenge the foreclosure of your home and you have exhausted the resources and remedies offered by the VA, you should consult an attorney before giving up all hope. An attorney can best advise you on state laws that protect against foreclose for all homeowners (not just veterans). A lawyer can also be helpful in analyzing and explaining VA regulations, as well as the legal documents and processes that are involved with a foreclosure proceeding.

Lastly, repairing your credit should also be a long-term goal if you have fallen behind on your home loan payments. This is because when you default on your loan payments, it will likely have a negative effect on your credit; damaged credit can drastically limit your ability to obtain later loans or credit for any purpose. A nonprofit credit-counseling agency might be able to help you work with your creditors to reduce your monthly payments by lowering interest rates or extending repayment periods. Be wary, however, of credit counseling services that offer quick solutions to your credit problems, but come with a large price tag. There are plenty of organizations that offer the help that suits both your needs and your budget. The National Foundation for Credit Counseling, available online at www.debtadvice.org, may be a good place to begin.

Selling a Home Purchased With a VA Loan

When it is time to sell the home that you purchased with a VA loan, it is important for you to remember that selling the property, alone, *does not* release you from liability for the VA loan. The veteran must notify the VA or the lender that the liability will be transferred to the new owner. The new owner must also agree to the shift in liability. This process is what is being referred to when it is said that the new owner "assumes the mortgage." For VA loans closed after March 1, 1988, the veteran must contact the lender or the VA and request a release from liability. The purchaser who is to assume the VA mortgage must first be approved by the VA or lender for a release to be granted. If the loan was closed prior to March 1, 1988, the loan may be assumed without approval from the VA or the lender. The veteran, however, is strongly encouraged to request a release of liability from the VA. If you do not obtain a release of liability when you sell a home subject to a VA loan, and the VA suffers a loss on account of a default by the assuming purchaser or some future assumer, a debt may be established against you. Obtaining a release, regardless of when the loan was closed is the best way to avoid personal liability for the VA mortgage on the sold house.

Specially Adapted Housing Grant Program

The VA has grant programs available for veterans or servicemembers who have specific service-related disabilities. These grants are provided to eligible servicemembers for the purpose of constructing an adapted home, or modifying an existing home, to meet their adaptive needs. The goal of these programs is to provide a barrier-free living environment that affords the veteran or servicemember a level of independent living he or she may not normally enjoy. Essentially, if you or a loved one is a severely disabled veteran facing the difficult choice of giving up your independence to live in specially adapted housing, you may be eligible for grant money to afford you the opportunity to modify your own home, or even build a new one to meet your present needs without sacrificing your independence. There are three main types of grant programs administered by the VA for the purpose of providing specially adapted housing for severely disabled veterans. These will be discussed below.

First, the **Specially Adapted Housing Grant** (SAH) is available to severely disabled veterans or servicemembers who are entitled to a home especially adapted for their needs due to loss of mobility. This grant is currently limited to a maximum of $50,000 per person to create wheelchair accessible homes for those that require wheelchair accommodations for daily living activities. Such accommodations might include the installation of ramps or elevators, as well as handrails in the kitchen, bathroom, or other areas where necessary to facilitate daily activities in the home. SAH funds may also be used in conjunction with a VA home loan (discussed above) to purchase a new, specially adapted home.

Next, the **Special Housing Adoptions Grant** (SHA) is available to veterans or servicemembers who are entitled to home adaptations due to blindness in both eyes or 5/200 or worse visual acuity. It is also available to veterans who suffered the anatomical loss, or loss of use, of both hands. This grant is currently limited to a maximum of $10,000 per person. Grants can be used for a wide array of home modifications and improvements. For both the SAH and SHA, home ownership is a prerequisite for receiving grant funding. In other words, you are not eligible to receive monetary funding if you are living with family or friends in a home that you do not own.

However, Congress has recently created a third grant program, the **Temporary Residence Adaptation Grant** (TRA), for severely disabled veterans and servicemembers who are temporarily living, or intend to temporarily live, in a home (which the veteran or servicemember does not own) with a family member. This grant affords specifically adapted housing to veterans and servicemembers who do not yet own a home of their own. Under the TRA program, those veterans and servicemembers who would otherwise be eligible for grants under SAH, but are precluded from obtaining funding because they do not own a home, will be eligible for a maximum of $14,000. Similarly, veterans and servicemembers who would otherwise be eligible for grants under SHA but do not own their home are eligible to receive a maximum payment of $2,000 in VA grant funds.

In addition, there are other programs available through the VA to make specially adapted housing available for severely disabled veterans and servicemembers, such as the Vocational Rehabilitation and Employment Services "Independent Living" Program, the Veterans Mortgage Life Insurance Program, and the Veterans Heath Administration (VHA) Home

Improvement and Structural Alterations Grant. For more information on any of the grant programs mentioned in this section, you can contact a local VARO by calling, toll free, (800) 837-1000. Additional program information and grant application forms are also made available at www.homeloans.va.gov/sah.htm.

State Loan Programs for Veterans

Many states offer veterans benefits programs that are separate from the federal loan programs discussed at the beginning of this chapter. The separate benefits that some states offer include: home loans, veterans homes, educational grants and scholarships, special exemptions or discounts on fees and taxes, and free hunting and fishing privileges. The following is a list of links to the Web sites for each of the individual states that offer veterans benefits. For additional information, click on the name of your state in order to link to your state department of veterans affairs or to information at Military.com. **Editor's note:** For additional information and links to each state department of veterans affairs, go to www.military.com/benefits/veterans-benefits/index.

Alabama	Louisiana	Ohio
Alaska	Maine	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington

Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming
Kentucky	North Dakota	Commonwealth of Puerto Rico
Territory of Guam		

More information on state programs for veterans is also available at: www.military.com/benefits/veteran-benefits/state-veterans-benefits-directory.

Veterans Homes and Domiciliary Facilities

Veterans homes and domiciliary facilities are places to live that are provided for by the VA. The impetus for institutionally established veteran homes came in the aftermath of the Civil War, in order to create homes for disabled soldiers and sailors. These were originally built or bought and operated entirely by the states. The first Congressional Act providing federal aid to state-run veteran facilities was enacted in 1888, titled "An Act to Provide Aid to State or Territorial Homes for the Support of Disabled Soldiers and Sailors of the United States." The Act provided $100 per year for each eligible veteran residing in a state home.

Federal assistance to states for the costs of constructing nursing homes for veterans was first authorized in 1964. In 1977, state home applications for construction funds exceeded the annual appropriations, and resulted in a backlog of eligible applications has continued since that time. In 1986, Congress established a priority system for awarding state home construction grants. The backlog of currently eligible construction grant applications is approximately $637 million. The VA was estimated to participate in the construction of approximately 645 state nursing home care and domiciliary beds during fiscal years 2006 and 2007.

The VA participation in grant-in-aid programs for the states is twofold. First, the VA may contribute to approximately 65 percent of the cost of

construction or purchase of state nursing home or domiciliary facilities or the renovations to existing state homes. Secondly, the VA provides per-diem (by the day) payments to states for eligible veterans to reside in state homes. The Secretary of Veterans Affairs has the discretion to adjust these daily rates each year to account for inflation and increased costs of living.

The most recent evaluation of veterans homes and domiciliary facilities was done in 2007. That evaluation found that there are 126 homes in 47 contiguous states and Puerto Rico, including 54 facilities in 33 states with 5,644 VA-authorized beds; 114 nursing homes in 47 states with 21,031 VA-authorized beds; four hospitals in four different states with 287 VA-authorized beds; and two adult day health care facilities in two states with 95 VA-authorized beds. Per-diem rates for 2007 were set at $67.71 for nursing homes and hospital care and $31.30 for domiciliary care. The adult day health care per-diem rate is $40.48. Maintenance and operation of veterans homes is also supported by the VA, which sustains roughly 33 percent of operating costs.

State Veterans Homes

These veteran homes are established by states for veterans disabled by age, disease, or otherwise, and who, by reason of such disability, are unable to adequately provide for living necessities. The Veterans Homes program, as created by the State Home Grant Program, represents one of the longest existing federal-state partnerships. The program represents a significant part of the Veterans Housing Administration's (VHA) long-term care strategy for disabled servicemembers, by providing grants to individual states for the construction and support of residences established to provide long-term care for aging veterans and those who require assisted living. Although hospital care may also be provided for in some instances, funding is limited to state homes that also provide domiciliary, or nursing home care. Domiciliary care provides shelter, sustenance, and incidental medical care on an ambulatory self-care basis. Care provided does not rise to the level of the skilled nursing services that are characteristic of nursing homes; both are eligible for funding. The hospital care referenced above would essentially be for short-term care, where domiciliary care or nursing home care involves long-term or permanent assisted living.

The VA also continues to encourage states to renovate state homes and to maintain a safe and healthy environment in existing homes for eligible veterans seeking long-term care.

Domiciliary Care

Domiciliary care is provided in VA domiciles, as well as state homes. In the 2001 fiscal year, VA domiciliary facilities provided care to 24,931 veterans. Nearly 5,000 of those veterans were homeless and admitted for specialized care. Although many state veterans homes provide services similar to those offered in VA facilities, the latter tend to provide for veterans advanced in years. Domiciliary facilities predominantly serve the homeless and provide specialized programs to facilitate the rehabilitation of patients who suffer from head trauma, stroke, mental illness, alcoholism, early dementia, and a myriad of other disabling conditions.

Although the average age of veterans overall in VA domiciles is 59 years (43 years for those in the homeless program), new programs have recently focused on aging veterans in order to address quality-of-life issues. For example, domiciliary patients are encouraged to become involved with programs in the community such as senior citizen centers and "foster grandparents" programs. These activities have enabled veteran residents to continue community involvement, as well as to reintegrate into the community.

Recent Updates in the Laws Affecting Veterans and Housing

There has been a recent push to make continued amendments to laws affecting veterans and housing a national priority. One recent bill would amend the old Montgomery G.I. Bill, and remove many of the fees associated with veterans housing loans. A senator stated that "[p]atriotic men and women have answered the call of duty throughout our history; those who put down the plow, or the books, or the laptop, who left their families to wear the uniform. . . . For too long, their sacrifice has not been matched by a national commitment on the part of our government."

Although much change is required to meet the increasing needs of veterans returning from the wars in Iraq and Afghanistan, positive measures have already been attained. In 2006, the President signed into law the Veterans Housing Opportunity and Benefits Improvement Act, which has proven instrumental to alleviating some of the housing concerns facing our nation's veterans. The Act provides in a pertinent part:

- ***Section 101.*** Permits the Secretary of Veterans Affairs (Secretary), in the case of a service-disabled veteran who is residing, but does not intend to permanently reside, in a residence owned by a member of the veteran's family, to assist the veteran in acquiring such adaptations determined reasonably necessary due to the veteran's disability. Provides assistance limits. Terminates such assistance five years after the enactment of this Act. Prohibits any veteran from receiving more than three grants of assistance. Requires an interim and final implementation report from the Comptroller General to Congress.
- ***Section 102.*** Allows the Secretary, with respect to hybrid adjustable rate mortgages offered to veterans under provisions of the National Housing Act, to increase or decrease the interest rate in any single adjustment by such percentage points as the Secretary may prescribe. (Currently, the Secretary is limited to an increase of one percentage point in any single adjustment.)
- ***Section 103.*** Amends provisions directing the Secretary to establish and implement a pilot program for making direct housing loans to Native American veterans to: (1) make such program a permanent program rather than a pilot program; and (2) require the Secretary to include information on loans so provided as part of the annual benefits report of the Veterans Benefits Administration.
- ***Section 104.*** Extends eligibility for Department of Veterans Affairs (VA) direct loans for Native American veterans to a non-Native American veteran who is the spouse of a Native American veteran, as long as there is joint possession or ownership on trust land.

For information on legislation currently before Congress, or legislation currently supported by your Senator or Congress person, please visit the Library of Congress Web site at thomas.loc.gov .

Veterans Benefits Initiatives in the Private Sector

Fannie Mae Announces Grant to Help Homeless Veterans:

In a recent poll conducted by Fannie Mae (the Federal National Mortgage Association), nearly one-quarter of veterans indicated that they had been concerned that they may not have a place to live, and 86 percent of veterans thought that homelessness among veterans was increasing or staying the same. The survey also indicated that nearly half (48 percent) had taken in a friend or relative who was facing homelessness. But veterans strongly agreed (60 percent) that homeless people could become self-sufficient if they had affordable housing options. In response, Fannie Mae has pledged a $200,000 grant to Common Ground that will enable it to build supportive housing units for veterans.

Common Ground is a nationally recognized nonprofit developer of supportive housing and other innovative solutions to prevent and end homelessness. Common Ground has indicated that the Fannie Mae grant "will help them achieve their goal of creating 1,000 supportive housing units for homeless veterans through new development, joint ventures and technical assistance activities."

The grant is an integral element of Fannie Mae's commitment to preventing and ending homelessness. In announcing the grant, the President and CEO of Fannie Mae, Daniel Mudd, stated that "[t]hose who have defended our homeland should have a home to call their own."

Disaster Advice for Veteran Homeowners

Several areas of the country have been devastated in recent years by natural disasters such as hurricanes, floods, and wildfires. As a result, the VA has issued current circulars in order to keep veterans who are affected by disasters up-to-date on their options. The VA offers advice and help for all veterans who are in need as a result of a natural disaster. This information is available at www.va.gov.

According to the *Disaster Advice for Veteran Homeowner* bulletin distributed by the VA, the following steps are recommended for veteran homeowners affected by natural disasters:

- **Contact Your Mortgage Company As Soon As Possible.** This is because you are not excused from making your regular loan payments, even if you can't live in your home. At this time, you should also talk with the mortgage company about forbearance (non-payment of loans for a set period if certain criteria are met) or extending or modifying your loan agreement to lessen the monthly payment amount so that you can make payments on time.
- **Contact Your Insurance Agent or Company.** File insurance loss claims as soon as you can. The VA advises not to make an insurance settlement too quickly and to do careful research on the damages and costs. When your property appears repairable, contact your local government engineer's office to inspect for structural damage. Try to get at least two estimates from licensed contractors for the cost of repairs. Insurance checks for personal property or living expenses should be addressed to you. Checks to cover home damage should be addressed to both you and your mortgage company.
- **Contact the Federal Emergency Management Agency (FEMA).** This is the first step in recovering your losses from any other disaster recovery agency, including the Small Business Administration (SBA). Benefits such as low-interest loans, cash grants, and housing assistance may be available from agencies supporting the recovery effort. You can register with FEMA by calling the toll-free number (800) 621-FEMA (3362), or (800) 462-7585 (for the speech- or hearing-impaired). More information is available at www.fema.gov .
- **Contact Other Sources of Help.** Special assistance may be available from organizations such as the American Legion, Veterans of Foreign Wars, Disabled American Veterans, and other veterans groups, even if you are not a member. For information on additional benefits offered by the VA for veterans in need after a natural disaster, call (800) 837-1000. For information on residential care, domiciliary care, housing for relatives of hospitalized servicemembers, and other housing issues for relatives and friends of servicemembers, see Chapter 20, "Advice for Families and Caregivers of Wounded Servicemembers."

- **Change Your Address.** You should notify your post office if you are receiving a monthly benefit or other check from the VA or other source and are unable to receive mail at your regular address.

As discussed in the section on foreclosure above, you should contact your mortgage company if something happens to physically prevent you from making your mortgage payments, so that you can discuss the available options. These options may include forbearance, a waiver of late charges for uncontrollable financial circumstances and suspension of credit reporting until the borrower can catch up on payments. These benefits may also be available for National Guard members experiencing financial hardship after leaving their normal job when called into active duty in response to an emergency.

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Chapter Nine
VA Medical Care

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The VA operates the largest health care system in the United States, caring for millions of veterans per year. VA health care is administered by the Veterans Health Administration ("VHA"), a division of the VA, and managed by twenty-one Veterans Integrated Services Networks ("VISNs"). Not all veterans are entitled to cost-free VA care and even if a veteran is entitled, the system has complicated rules and pitfalls that may confuse some veterans. This chapter attempts to help you understand the VA health care system.

First, we provide some very basic information that you should keep in mind. It is always best to apply for VA health care as early as possible after separation, because receiving care from the VA may be beneficial in some instances, such as where an uninsured veteran seeks reimbursement for the cost of some non-VA care. Second, eligibility for VA health care does not necessarily mean that you are entitled to cost-free care. Third, most veterans must enroll in the VA health care system before receiving VA care—and there may be a significant wait time for a veteran seeking to enroll. Finally, even if you are eligible for care without first enrolling, we recommend that you enroll, because your status may change over time. For example, veterans who served in Iraq and/or Afghanistan receive enhanced eligibility for VA

heath care for a period of five years even if they don't enroll for care. However, if these veterans enroll while they are entitled to enhanced eligibility, they will continue to be enrolled even after their period of enhanced eligibility expires.

This chapter will discuss the following topics: types of care and services provided by the VA; the VA's informed consent and privacy rules; how to enroll for VA health care; enrollment priority groups; veterans exempt from VA health care copayments; paying for VA health care; eligibility for VA hospital care, outpatient care, nursing home care, pharmacy services, and prosthetics services; reimbursement for non-VA care; VA-paid care available to some dependents and survivors of veterans; and the rights, including appeal rights, of veterans receiving VA health care.

VA Health Care Services

Once enrolled in the VA health care system, you should be eligible for health services included in the VA's "medical benefits package." Basic VA health care includes outpatient and inpatient care that consists of medical, surgical and mental health care. Prescription drugs and over-the-counter drugs as well as durable medical equipment and prosthetic or orthotic devices, eyeglasses and hearing aids may be included in health care benefits. Emergency care in VA facilities and some non-VA facilities is included as well as rehabilitation services. Home health and nursing home care may be available to some veterans as well.

While this package covers a wide range of medical services, care will be provided only if a VA doctor determines that the care is needed. Some services are specifically excluded from the VA's medical benefits package, such as abortions, drugs and medical devices not approved by the FDA, gender alterations, hospital and outpatient care for the incarcerated, and gym membership.

Informed Consent, Privacy and VA Health Care

As explained below, veterans are entitled to make their own decisions about health care, they have privacy rights under federal law, and their medical history is protected. Before a medical procedure is performed, the VA

doctor primarily responsible for the care must obtain informed consent from the patient. Informed consent requires that the veteran or the veteran's guardian or surrogate (one authorized to give informed consent on behalf of a patient who lacks decision-making capacity) be informed of the nature of a proposed procedure or treatment, the expected benefits, the reasonably foreseeable associated risks, the complications or side effects, the reasonable and available alternatives, and the anticipated results if nothing is done. The veteran should be informed if the procedure is new or unusual, be allowed to ask questions, be allowed to make a decision without being influenced by the doctor and be allowed to change his or her mind or revoke consent at any time. When informing the veteran or surrogate, the VA doctor must use language that is easily understood and should not use technical, medical language that cannot be understood by the average person.

A surrogate can be a health care agent or person with a VA or non-VA durable power of attorney for health care, a legal guardian or special guardian, next of kin, or a close friend. A surrogate's decision must be based on "substituted judgment," which means that the surrogate should base the decision on what the veteran would have wanted. If a veteran has an advanced health care planning document, the VA is obligated to follow the wishes in that document unless they are inconsistent with VA policy. If a critically ill veteran "verbally" (orally) expressed his or her wishes and is expected to lose capacity, the verbal instructions will be followed so long as they were expressed to at least two members of the health care team. The VA does not describe which individuals comprise a health care team, but those people may include doctors (including psychiatrists), nurse practitioners, physician's assistants, nurses, hospital social workers, psychologists, and other professionals, all of whom work as a team to provide care.

In an emergency where medical care is immediately necessary to preserve life or prevent serious impairment to the health of the patient or others, informed consent will be implied if the veteran is unable to consent and it is not possible to obtain surrogate consent.

Federal law protects veterans' privacy. The VA's general policy is that information should not be released unless it is determined that such disclosure is in the best interest of the VA and the veteran, unless law or regulation mandates disclosure. However, VA health facilities and providers

have an obligation to notify a veteran if something went wrong in the course of treatment or care, when harm is obvious or severe or where harm may be apparent only in the future. If the veteran is deceased or incapacitated, the disclosure must be made to the veteran's representative and anyone designated by the representative.

Enrollment For VA Health Care

You can apply to enroll at any time in the VA health care system by mail, over the Internet at www.va.gov/onlineapps.htm, or in person at any VA facility that provides medical services. Veterans applying for enrollment for the first time complete VA Form 10-10EZ; enrolled veterans applying for renewal use VA Form 10-10EZR, "Health Benefits Renewal Form." You may apply for VA health care enrollment at any time; however, there is often a delay in receiving care even after enrollment so you should enroll as soon as possible after discharge, even if you do not need care at that time. Once enrolled, you will be issued a Veterans ID Card (VIC), which is required to check in at VA health care facilities and to receive radiology, pharmacy, laboratory, and other health services. The VIC card is similar to an insurance card.

Unless enrolled in the VA health care system, you will not be able to receive health care from the VA unless you are exempt from enrollment. Those exempt from enrollment are:

- Veterans rated for service-connected disabilities at 50% or more—they can receive VA hospital and outpatient care for any condition even if unrelated to service;
- Veterans discharged or released from active duty for a disability incurred or aggravated in the line of duty–they can receive VA hospital and outpatient care for that disability for 12 months following discharge or release;
- Veterans seeking care for a service-connected disability—they can receive VA hospital and outpatient care;
- Veterans with a compelling medical need—or if you need an examination to determine whether you are catastrophically disabled and eligible due to a compelling medical need;

- Veterans participating in the VA's vocational rehabilitation program—they can receive medical treatment, care and services that the VA determines to be necessary to complete the rehabilitation plan;
- Veterans receiving VA hospital or outpatient care based on factors other than veteran status, such as veterans receiving care under DoD retirement agreements;
- Certain veterans needing care abroad;
- Veterans otherwise authorized by statute or regulation.

Enrollment Priority Groups

Veterans who apply for VA health care are sorted into priority groups. Each year the VA determines, based on its budget and other resources, which priority groups will be enrolled for the following year. There are eight priority groups to which you might be assigned. Priority group one, the highest priority group, includes veterans with a single or combined disability rating of 50% or greater based on one or more service-connected disabilities or "individual unemployability."

Priority group two includes veterans with a single or combined rating of either 30% or 40% based on one or more service-connected disabilities.

Priority group three includes veterans who are former POWs, veterans awarded the Purple Heart, veterans with a single or combined rating of 10% or 20% based on one or more service-connected disabilities, veterans discharged from service for a disability incurred or aggravated in the line of duty, veterans entitled to VA compensation due to injury from VA care or treatment, veterans whose compensation is suspended because of receipt of military retired pay, and veterans rated as 10% disabled based on multiple noncompensable service-connected disabilities.

Priority group four includes veterans who receive increased pension based on receiving "aid and attendance" benefits or housebound benefits, or those determined to be catastrophically disabled. A catastrophically disabled veteran is one who has a permanent severely disabling injury, disorder or disease that makes him or her unable to carry out the activities of daily living (for example, quadriplegia and blindness are considered catastrophically disabling).

Veterans not included in priority groups one through four, who are determined by the VA to be unable to pay for necessary care, are in category five.

All other eligible veterans who are not required to make co-payments for their care make up priority group six. Priority group six includes veterans with "combat veteran eligibility," who are enrolled in priority group six unless eligible for enrollment in a higher priority group.

Priority group seven includes veterans who qualify as "low income" under the U.S. Department of Housing and Urban Development ("HUD") geographic means testing rules and who agree to pay a reduced co-payment.

Finally, priority group eight veterans are those who do not fall into groups four through seven and are eligible for care only if they agree to pay a copayment.

Veterans Entitled To Free VA Hospital And Outpatient Care

If you need treatment for a service-connected disability, you are entitled to free VA care for that disability. In addition, if you are in any one of the following groups, you are entitled to free VA hospital or outpatient (clinical) care for any condition, at no charge and with no copayment:

- Veterans with a compensable service-connected disability (a disability rated as at least 10% disabling);
- Veterans discharged or released from active service for compensable disability incurred or aggravated in the line of duty;
- Veterans with annual income under the maximum annual pension rate or with income below a threshold level set by the VA (you may request a hardship waiver—if granted it would allow you to receive free care even though you exceed the income threshold);
- Veterans receiving VA compensation due to a disability incurred post-service, during treatment at a VA facility or during VA voc rehab (or, if a veteran's compensation due to VA treatment has been suspended to offset a federal tort settlement, if continuing care is provided for in the settlement);
- Veterans who are former prisoners of war or have received the Purple Heart;

- Certain veterans authorized to receive care because of:
- Radiation exposure during
- Vietnam Era herbicide exposure;
- Exposure to a toxic substance or environmental hazard during the Gulf War; or
- Service during periods of hostility after November 11, 1998–these veterans are also eligible for free nursing home care (see below for more information about these "enhanced combat veteran health care benefits").
- Certain other veterans not charged copayments, including veterans whose compensation is suspended because of receipt of military retirement pay, veterans requiring care for treatment of sexual trauma, and veterans requiring care for certain cancers of the head and neck.

Enhanced Combat Veteran Health Care Benefits

If you served on active duty in combat operations during a period of war after the Persian Gulf War, or in combat against a hostile force after November 11, 1998, you are eligible for free hospital care, medical services, medications and nursing home care for any illness potentially related to service in combat. (Note that this includes veterans of the wars in Afghanistan and Iraq.) Activated Reservists and members of the National Guard are eligible for these benefits if they served the period to which they were called and were separated under other than dishonorable conditions. Entitlement is for a five-year period following separation from military service. You will not owe copayments so long as your physical or mental condition is determined by your doctor to be potentially related to military service. While you are not required to enroll in the VA health care system for these benefits, it is wise to enroll immediately following discharge so that you can maintain your enrollment status after the five-year period ends.

If You Have To Pay For VA Health Care

If you are not entitled to certain VA care cost-free, you may receive VA health care if resources and space are available and providing you pay a

copayment. In most cases the copayment for VA care is much less than the cost of private care. If you are choosing between obtaining VA care for a cost (the copayment and any additional fees; see below regarding fees) and private care not covered by insurance, you will usually save money by choosing VA care. You may be eligible for reduced copayment amounts if they meet HUD low-income guidelines.

Despite the array of health care services available to veterans through the VA, the system has serious problems. VA health care is chronically underfunded. More than 260,000 veterans have been prevented from accessing VA health care due to an enrollment freeze that went into effect in 2003. Lack of sufficient funds has also led to long waiting lists for medical care, concern about the quality of VA health care, and lengthy delays in adopting and properly implementing information technology advances and other technological advances that could strengthen and streamline VA health care. Underfunding may also affect the management and oversight of VA health care. In particular, management problems plague the system. These troubles affect the ability of individual veterans to receive quality, timely care from the VA and impede veterans' ability to rely on the VA system for health care needs. Of course, not every VA facility experiences the above-described problems. If you have a choice between VA health care and private care you should check with veterans who are receiving VA care in your local area. They may be able to give you advice about the quality of local VA care and whether timely care is provided.

The basic copayment for VA hospital care is based on the inpatient Medicare deductible (Part A), which changes every year. The inpatient Medicare deductible is the amount of money a person entitled to Part A of Medicare has to pay for hospital care during a period of illness before the Medicare program kicks in and pays for the rest of the medical expenses incurred in a year. In addition to the copayment, veterans are charged a fee of $10 per day for inpatient hospital care. Veterans receiving outpatient treatment may be charged a copayment of $15 for a primary care visit and $50 for a specialty care visit. Veterans may also be required to pay a medication copayment of $7.

Generally, if you are required to make a copayment for VA hospital and outpatient care, you will also be required to make a copayment for VA nursing home care. The maximum daily copayment rate for VA nursing home care is $97.

If a veteran fails to pay a copay, the VA can refuse to treat the veteran until the copay has been paid in full. The VA is allowed to collect the debt from (disability) compensation benefits owed the veteran. More information on VA debt collection rules and procedures is found in Chapter 6, "Attempts by the VA to Recover Overpayments."

VA Pharmacy And Medication Services

In general, if you are eligible to be treated for a condition, you will be eligible for VA-prescribed drugs, medications, or medical supplies for treatment of the condition. In the following situations you are not charged the VA medication copayment: (1) if the medication is for treatment of a service-connected condition; (2) if the medication is for treatment of any condition, so long as you are rated 50% or more; (3) if you are a former prisoner of war; (4) if your annual income is below the applicable VA maximum annual pension rate; (5) if the medication is authorized on the basis of your status as a Vietnam Era herbicide-exposed veteran, a radiation-exposed veteran, a Gulf War veteran, or post-Gulf War combat-exposed veteran; (6) if the medication is for treatment of sexual trauma that occurred while on active duty; (7) if the medication is for treatment of cancer of the head or neck where there was certain radiation treatment during service; or (8) if the medication is provided as part of certain VA-approved research projects.

You may have non-VA prescriptions filled at VA pharmacies without seeing a VA doctor if you receive a higher level of compensation or pension benefits based on the need for aid and attendance or permanent housebound status. If you would be eligible for such elevated compensation benefits, but you receive military retirement pay instead because it provides a greater benefit, you may have non-VA prescriptions filled by the VA.

Prosthetics and Sensory Aids

Prosthetics and sensory devices include all aids, appliances, parts or accessories required to replace, support, or substitute for a deformed, weakened, or missing body part or function. Examples of prosthetic and sensory devices include but are not limited to: aids for the visually impaired;

artificial limbs; hearing aids, hearing aid accessories; speech communication aids; home dialysis equipment and supplies; medical equipment and supplies; optical supplies; orthopedic braces and supports; orthopedic footwear and shoe modifications; ocular prostheses; cosmetic restorations; ear inserts; wheelchairs and mobility aids; and prosthetic replacements of joints such as hips, knees, ankles, shoulders, and elbows.

In general, all veterans enrolled in the VA health care system are eligible for all needed prosthetics, medical equipment, and supplies. The following are eligible to receive cost-free prosthetic devices:

- any veteran, for treatment of a service-connected disability;
- any veteran with a compensable service-connected disability–rated 10% or more, or service-connected as described in Public Law 90-493, 4(b)–for treatment of any disability;
- former prisoners of war, veterans awarded a Purple Heart, veterans whose discharge or release from service was for a compensable disability, and veterans receiving compensation due to negligent VA medical treatment or VA vocational rehabilitation, all for the treatment of any disability;
- veterans receiving elevated pension benefits based on the need for aid and attendance or permanent housebound status, for the treatment of any disability;
- veterans with annual income below the income threshold set by the VA, for the treatment of any disability; and
- any other veteran not required to pay a copayment for VA health care.

Veterans who must pay a copayment for their care may also receive prosthetic services, provided they pay for the service.

If you fall into one of the above categories, you have the choice of going to any orthotic or prosthetic provider, not just a VA or military facility, for you orthotic or prosthetic device, regardless of cost. However, that device must have been approved and be part of a VA contract with the provider. If you are denied this service, you can seek a review of the VA's decision. Also, during an evaluation, you have the right to question the clinic team as to new devices and what devices might provide better functioning and more comfort. The clinic team consists of a VA doctor, a VA therapist and the outside provider.

Free sensory aids, including all necessary eyeglasses, contact lenses, and hearing aids, are available to the following veterans:

- veterans with compensable service-connected conditions, for the treatment of any condition;
- former prisoners of war and Purple Heart recipients;
- veterans receiving disability compensation benefits due to negligent VA medical treatment or VA vocational rehabilitation;
- veterans receiving a higher level of VA pension based on the need for regular aid and attendance or permanent housebound status;
- veterans with visual or hearing impairment resulting from a medical condition for which the veteran is receiving VA care (for example, if the VA prescribes an ototoxic drug that may cause hearing impairment);
- veterans severely functionally or cognitively impaired, as evidenced by deficiencies in activities of daily living (not including normally occurring visual or hearing impairments);
- veterans so severely visually or hearing-impaired that aids are necessary to permit their participation in medical treatment; and
- veterans with certain service-connected hearing conditions rated 0%, where the condition contributes to a loss of communication ability.

Nursing Home Care Benefits

Nursing home care may be available to veterans too sick, disabled or elderly to care for themselves. Different types of nursing care are available—"intermediate" care is for veterans not in need of the constant, intensive care provided in a "skilled" nursing facility.

Since 1999, the VA has been required to provide nursing home care to two groups of veterans—those who need nursing care for a service-connected disability and those who need nursing care and who have a service-connected disability rated at 70% or higher. If you do not fall into either of these groups, the VA may still provide you with nursing home care, but it is not required to do so.

There are three different types of nursing home care you may receive from the VA, either free of charge or partially subsidized by VA. First, some

VA Medical Centers (VAMCs) have specialized nursing home care units (NHCUs) designed to care for veterans who require nursing care. These are usually located in or around the VAMC. However, other veterans may be eligible to receive community nursing home care (CNHC) at the VA's expense in a public or private nursing home. Finally, the VA may pay for part of the nursing home care that an eligible veteran receives in a state veterans home, a facility maintained and administered by the state and approved by the VA.

To receive care in a VA NHCU, you must be entitled to nursing home care for a service-connected disability or have a combined-service-connected rating of at least 70% and be in need of nursing home care. The veteran's doctor usually initiates an application for admission to a VA NHCU. Requests may be made when the veteran is hospitalized at a VAMC or they may come from outside the VA system. If you are not exempt from owing a copayment for nursing home care, you will need to complete a VA Form 10-10EC, "Application for Extended Care Services." If you are not entitled to nursing home care, any care provided will usually be limited. It may be financially wise to try to prolong inpatient hospital care at the VAMC, instead of moving to VA nursing home care.

Veterans receiving VA nursing care may not be transferred from the facility without their consent. Also, discharge should not occur unless treatment goals have been met, the facility can no longer accommodate the veteran due to a change in care needs, or the veteran shows flagrant disregard for VAMC policies.

Community Nursing Home care (CNHC) is available to veterans requiring nursing home care for a service-connected disability and to veterans who have previously been discharged from a VA hospital and are currently receiving home health care services from the VA. Some veterans may be eligible to be transferred to a non-VA community nursing home from a VA or DoD facility, for care at the VA's expense, if the VA determines that prolonged nursing home care is necessary. There is no limit on the length of time that you can receive CNHC for a service-connected condition or if you are rated at least 70 % disabled. However, don't be surprised if the VA proposes alternatives to CNHC, such as home health care and adult day health care. These types of care are cheaper for the VA, but they should be opposed if they would not meet your nursing needs.

If you don't require care for a service-connected condition and are not rated at least 70% disabled due to service-connected conditions, the VA may in its discretion provide you a maximum of six months of VA-paid CNHC. When you have received this maximum amount of nursing care, you will have to arrange for payment through Medicare or Medicaid. In certain circumstances, you may be granted an extension of up to forty-five days over the six-month limit. If you have applied for public assistance, the VA may grant an extension. If you are terminally ill with a life expectancy of less than six months, the VA will usually grant a longer extension than the normal forty-five day limit.

State veterans homes may provide hospital care, nursing care, or domiciliary care for you, your spouse, or your surviving spouse. The VA pays for part of the cost associated with providing care in a state home and the veteran or Medicare pays for the remainder. States typically have their own eligibility requirements for such care. The VA requires that you have basic eligibility for VA health care. If you meet the state eligibility requirements and are placed in a state home, the VA will pay for a portion of the care indefinitely.

VA Domiciliary Care

VA domiciliaries can provide a home environment for a limited period of time if you are unable to earn a living. Domiciliaries provide food, shelter and clothing and other comforts as well as rehabilitation, vocational services, support services and some medical services. To be admitted to a VA domiciliary, you must be able to perform basic daily functions on your own. Usually a doctor will refer you to VA domiciliary care, but you may apply by completing a VA Form 10-10EZ at a VAMC admission office. You are eligible for domiciliary care if your annual income does not exceed the maximum annual pension rate of a veteran in need of aid and attendance or if you have no adequate means of support. You will also need to show that you suffer from a longstanding condition that produces persistent disability and prevents you from earning a living.

Breaking Scheduled VA Health Care Appointments

Avoid missing scheduled VA health care appointments without good cause. Failing to keep a second scheduled appointment without giving twenty-four hours' notice is considered a refusal of treatment and no more appointments will be scheduled until you agree to cooperate by keeping appointments. If the VA decides to discontinue treatment, it will mail you notice of this and you may appeal this decision. If you have an excuse for breaking an appointment that the VA considers to be "good cause," your missed appointment should not be considered a refusal of treatment. Of course, if you are having a health emergency, the VA should treat you regardless of previous missed appointments.

Reimbursement of Non-VA Unauthorized Medical Expenses

If you are entitled to cost-free VA health care (see the list in the section earlier in this chapter titled "Veterans Entitled to Free VA Hospital and Outpatient Care") and incur expenses in a non-VA facility (a public, private or Federal facility) without first obtaining authorization or approval from the VA, these expenses are considered "unauthorized medical expenses." (Generally, you should try to obtain prior approval from the VA for outside treatment, but there may be situations in which this is impossible.) If you did not obtain pre-authorization, there are two different ways you might be able to receive reimbursement for the non-VA care.

First, the VA will reimburse you if you needed the care for a service-connected disability, or for a non-service connected disability that was aggravating a service-connected disability, or if you are permanently and totally disabled due to a service-connected disability, or if you are currently participating in VA vocational rehabilitation. However, even if you meet one of the above requirements, the care must have been provided in a medical emergency in which a reasonable person would expect that a delay in obtaining medical treatment would have been hazardous to life or health. In addition, you must show that VA medical facilities were not feasibly available and an attempt to use them beforehand would not have been reasonable. Basically, if you experience an emergency in which immediate

care is necessary to avoid serious risk to your life or health and it is not practical to seek treatment at a VA hospital, the VA should reimburse you for the emergency care received at another hospital.

If you don't satisfy the above requirements, you may still be reimbursed for the cost of the non-VA treatment if you are enrolled in the VA health care system and received VA care within twenty-four months prior to the medical emergency. In addition, you must be personally liable for the non-VA emergency treatment provided—that is, you must have no health insurance that would cover the cost of the non-VA care. It is also required that the care have been provided in a medical emergency of such a nature that a reasonable person would expect that delay in seeking immediate medical attention would be hazardous to life or health.

You can receive only reimbursement for emergency care—the VA will not pay for care provided after the emergency ends. VA rules provide that a VA physician determines when the emergency ended. A decision to deny reimbursement for non-VA emergency care may be appealed through the VA administrative claims and appeal process (see Chapter 3, "Compensation," section A, "Eligibility for VA Benefits").

Transportation Costs and Temporary Lodging Associated with VA Medical Care

The VA has discretion to reimburse you or provide you with an allowance for transportation costs associated with examination, treatment or care. If you travel for treatment or care for a service-connected disability, if you are rated at least 30% or more disabled due to service-connected conditions, if you receive VA pension benefits, or if your annual income equals or is less than the maximum annual pension rate, you are eligible for a travel allowance or reimbursement of travel expenses. If you are not in any of the above groups, you may receive reimbursement if you provide clear and convincing evidence that you are not able to pay the cost of transportation.

Registry Programs

The VA will provide a complete physical examination to veterans eligible for one of the VA registry programs—this includes veterans who were exposed

to dioxin or other toxic substances during active military service and any Gulf War veteran or veteran of the wars in Iraq and Afghanistan. The examination provided is called the "Agent Orange Registry Examination" or the "Gulf War Registry Examination." The names of the veterans who receive these examinations are added to one of two VA registries, the "Agent Orange Health Registry" or the "Gulf War Veterans Health Registry."

Non-VA Treatment For Drug And Alcohol Problems

You may be able to receive cost-free treatment for alcohol and drug addiction and dependence problems in non-VA community based treatment facilities, if the VA determines that such treatment would be medically helpful and cost-effective. The maximum period for one treatment episode is sixty days, with an extension of up to thirty days.

Medical Services for Dependents and Survivors Of Veterans

The VA's health care program for dependents and survivors of veterans is called the VA Civilian Health and Medical Program ("CHAMPVA"). CHAMPVA is a cost-sharing program in which the VA shares the cost of certain covered medical services with dependents or survivors. CHAMPVA provides medical care and is usually subject to the same limitations as found in the military's TRICARE health care plan.

The following are eligible so long as they are not eligible for the TRICARE program and are not age 65 or older: (1) the spouse or child of a veteran with a permanent and total service-connected disability; (2) the surviving spouse or child of a veteran who died as a result of a service-connected condition; (3) the surviving spouse or child of a person who died in the line of duty while on active military service and not due to misconduct. Eligible children pursuing full-time post-secondary instruction approved by the VA under Title 38, United States Code, Chapter 36 (VA education benefits) who incur a disabling illness or injury due to no fault of their own, resulting in inability to resume education, may also be eligible for care for a limited amount of time.

In the past, survivors lost eligibility for CHAMPVA when they turned age 65 and became eligible for Medicare Part A. Currently, those age 65 and older who are enrolled in Medicare Parts A and B may be eligible for CHAMPVA as a secondary payer to Medicare.

Appealing VA Health Care Decisions

VA health care claimants have the same rights of appeal as claimants for other VA benefits. VHA is obligated to give you written notice of the reason for its decision to deny medical care or services. The VA must also give you written notice of your right to appeal the denial decision. Unfortunately, there is poor compliance with these rules. You should inform your advocate if the VA fails to comply with the above requirements.

VA health care decisions are appealable either through (1) the VHA clinical appeals process or (2) the VA administrative claims and appeal process. The first appeal route, the VHA clinical appeals process, is explained below. The second route is explained in the chapter on entitlement to VA benefits, under Chapter 5, "Explaining the VA Claims and Appeals Process." Which route you choose depends on the issue that you are appealing. If you disagree with a medical decision made by a VA care provider, such as a doctor's decision as to what drug you are prescribed, you must use the VHA clinical appeal process. If you disagree with a non-medical VHA decision, such as whether you are eligible for free VA hospitalization, you should use the VA administrative and appeal process, which includes the possibility of judicial (court) review.

You may use the VHA clinical appeals process when you disagree with a treatment decision made by a VA health care provider. There are several general steps that the VA must take when a dispute arises about a veteran's care or treatment. First, upon being notified that there is a dispute concerning care or treatment, the VA should try to resolve the dispute. If resolution does not occur, the medical facility must provide written notice to the patient, or the patient's representatives, of the facility's final determination. This written notice must describe the VISN clinical appeals process. The Chief Medical Officer ("CMO") should request supporting information from you and make sure that you are safe in your current

environment. Next, the CMO develops a written draft decision on the appeal and sends it to the VISN director. The VISN director either independently reviews the appeal or decides to request external (outside the VISN) review. If the VISN director requests external review, the clinical record, statement of appeal, and other relevant documents are forwarded to the VA Office of Quality and Performance. External review essentially means that an impartial clinical panel reviews the documentation and makes a recommendation on appeal within ten days. After receiving the external review recommendation or after independently reviewing the appeal internally, the VISN director issues you and the medical facility director a written final decision. This decision should be issued within thirty days after the initial receipt of the clinical appeal; forty-five days are allowed for clinical appeals receiving external review.

In addition to the above appeal process, there is an optional "reconsideration" procedure. This procedure applies specifically to non-medical decisions that are appealable to the Board of Veterans' Appeals (BVA). If you disagree with any part of a decision concerning care or treatment, you may submit a written request, within one year of the initial decision, for reconsideration. This written request will be considered a notice of disagreement for purposes of appeal. The request should state why the decision is wrong and can include new and relevant information. A meeting with the immediate supervisor of the initial VA decision-maker can also be requested. The immediate supervisor must issue a written decision affirming, reversing or modifying the initial decision.

Regarding VA claims and appeals, see Chapter 5, "VA Claims and Appeals." If you need help with denied medical benefits or any other problem with the VA, consult a veterans service representative (also known as a "veterans service officer" or "service rep"). You can find a service rep by contacting a veterans service organization, such as the American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

Keep in mind that federal courts do not have any authority (jurisdiction) over a tort claim by a servicemember against the government for injuries that arise out of or in the course of activity incident to service. A tort claim is one where an individual alleges that negligent or intentional wrongdoing led to an injury. In the Supreme Court case of Feres v. United States (called the Feres doctrine), a lawsuit for an injury or incident that

occurred during active service is prohibited. If you suffer an injury that can be related to an injury that occurred while you were in the military and file a lawsuit requesting relief, the claim will likely be dismissed by the court. You may seek VA service-connected disability compensation for an injury or illness that occurred during active service. Also, if you were injured by medical malpractice while on active duty you may seek only conventional VA service-connected compensation. You cannot sue the military facility.

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- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of service-members and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.

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Chapter Ten
VA Programs for Veterans' Family Members and Survivors

Introduction

By Charlene Stoker Jones and Ronald B. Abrams

Some VA benefits may be available to the dependents of a living veteran or to the surviving family members of a deceased veteran. Even though these VA benefits are paid to family members, entitlement to benefits is established through the veteran. This means that the veteran must meet certain eligibility requirements before benefits are awarded and there must be a qualifying relationship between the veteran and the beneficiary. The requirements for a veteran to qualify for VA benefits are discussed in Chapter 3, "Compensation," in section A, "Eligibility for VA Benefits."

The major types of VA benefits for a veteran's surviving family members are accrued benefits, dependency and indemnity compensation (DIC) for a service-connected death, and death pension, which is a needs-based survivor benefit. Accrued benefits and dependency and indemnity compensation will be covered in this chapter along with educational benefits for family members. Information on death pension is available in the Chapter 4, "Needs-Based Pension for Low-Income Veterans or Survivors." The requirements for the benefits discussed in this section may be

complicated and there are exceptions to every rule. You should discuss the specific circumstances of your case with your veterans service organization representative (also known as a "service rep") or with an attorney experienced in veterans benefits law. You will want to make your best possible case.

Qualifying Family Relationships

The surviving spouse, child and parents of a veteran all have the potential to qualify for VA benefits if the right circumstances exist. The surviving spouse is usually the first person entitled to benefits, with the veteran's children next in line. If there is no spouse or child, the veteran's dependent parents may be eligible to receive some benefits, but most survivor benefits do not apply to parents.

Spouses

For VA benefits purposes, a spouse is defined as a "person of the opposite sex who is a wife or husband" of the servicemember. Same-sex partners do not qualify as spouses for VA benefits. You must have a "valid" marriage to be eligible for benefits as a spouse. In order for a marriage to be recognized by the VA, a valid marriage must have been formed under state law and neither party can be married to another person at the time of the marriage. The VA recognizes common-law marriages as valid so long as they are legally recognized in the state where they were created.

In most cases, the VA will require only a veteran's written statement as proof of a valid marriage. The statement must include a list of all prior marriages for both the veteran and the spouse. This marital history must include the first and last names of prior marriage partners, how the prior marriages were ended (by death, divorce, or annulment), and the date and location where the previous marriages were terminated. Usually, the VA will not require other evidence. However, if questions arise, the VA may require more documentation, such as a copy of the record of marriage, the original marriage certificate, an official report of a marriage occurring during service, an affidavit from the person who officiated at the ceremony, or affidavits from eyewitnesses to the ceremony. If none of these documents is available, any evidence that supports the belief that a valid marriage

actually occurred should be submitted. The VA may also require proof that a previous marriage ended.

For survivor benefits, in addition to showing that you were the valid spouse of the veteran at the time of the veteran's death, you may need to show that you and the veteran were married for at least one year or that you had a child together. The veteran and surviving spouse also must have lived continuously together during the marriage. There are some exceptions to this rule for spousal abuse or abandonment by the veteran without fault by the abandoned spouse. Further discussion of the eligibility requirements for a surviving spouse or child may be found in the Chapter 3 section "Eligibility for VA Benefits."

In the past, a surviving spouse lost all his or her VA benefits if he or she remarried. From November 1, 1990 until October 1, 1998, the remarriage of a surviving spouse ended both entitlement to further benefits and eligibility for VA benefits unless the later marriage was annulled or found to be void. As of October 1998, a surviving spouse may be eligible to have DIC reinstated, or to receive DIC for the first time, if the remarriage ends due to divorce, annulment, dissolution or the death of the second spouse or (where no legal marriage was created) if the spouse stops living with the other person or stops holding himself or herself out to be that person's spouse.

Now, surviving spouses who remarry on or after turning age 57 and apply for benefits on or after December 16, 2003 are eligible for service-connected death benefits (DIC), VA home loan benefits, and other VA benefits, such as medical care (CHAMPVA). The remarriage need not end in order for these spouses to be eligible. They may remain remarried and still be entitled to benefits based on their earlier marriage to the veteran. This means that a spouse who remarried in 2002 (but after he or she turned 57) would be eligible for DIC if the application was filed after December 16, 2003. Still, the surviving spouse is not eligible for non-service-connected death pension.

To apply for benefits as the survivor of a deceased veteran, you should submit VA Form 21-534, "Application for Dependency and Indemnity Compensation, Death Pension, and Accrued Benefits by a Surviving Spouse or Child" to the VA. You can obtain a copy of the form from your service organization representative or apply on-line at www.va.gov/onlineapps.htm. You should also submit a copy of the veteran's death certificate, a copy of

the veteran's discharge or form DD 214, and a copy of the marriage certificate or any other documents that prove a valid marriage existed. Veterans service organizations offer claimants free assistance in filing and preparing claims for benefits. Take advantage of their knowledge and experience.

Benefits Available When a Veteran Dies with a Pending Claim

There are two main types of survivor benefits that may result if a veteran dies while the VA is still deciding his or her claim. They are accrued benefits and non-negotiated benefits.

Accrued Benefits

Normally, if a VA claimant dies before establishing a right to receive a claimed VA benefit, the claim for the benefit dies as well. Generally, a survivor is not able to step into the shoes of a deceased claimant in order to continue a claim or an appeal. The only way a survivor can recover any of the claimed VA benefits is by filing a claim for accrued benefits. If a veteran dies with a claim for benefits pending and the VA decides, based on evidence in the veteran's file at the time of death, that the veteran would have been awarded benefits, then the VA may pay accrued benefits to the veteran's survivors. The accrued benefits consist of the benefits that would have been awarded to the veteran had he or she survived. Accrued benefits may also be awarded when a veteran received a favorable VA decision prior to his or her death, but the benefit was not actually paid before the veteran died.

Accrued benefits can be sought for any type of monthly VA benefit that was "due and unpaid" based on the evidence in file at the time of claimant's death. Please note that the VA will not award accrued benefits for a one-time payment: the benefit must be of the monthly recurring type. Accrued benefits are not considered death benefits, rather they are unpaid benefits owed to the veteran for an earlier period of time.

For accrued benefits to be awarded, the claimant must be the surviving spouse, child, or dependent parent of the deceased veteran, and he or she must apply within one year of the veteran's death. The one-year deadline will be enforced. The veteran's claim for VA benefits must have been pending when the veteran died and the evidence at the time of death must show that the veteran was entitled to the benefit. A pending claim is one in which no decision was made prior to the veteran's death, or if a decision was made, it had not yet become final at the time of the veteran's death. A decision becomes final when the appeal process has been exhausted or when the deadline to appeal goes by without an appeal. A survivor can also be awarded accrued benefits when VA benefits were awarded prior to death but remained unpaid at death, or when entitlement otherwise can be shown from an existing rating decision.

Accrued benefits may also be paid to reimburse any individual who paid for the last sickness or burial of the deceased veteran even if the individual is not a spouse, child or parent. Fiduciaries, such as trustees, are not entitled to claim or receive accrued benefits.

Survivors who successfully claim accrued benefits are entitled to the entire amount of benefits that would have been paid to the veteran had he or she lived if the veteran's death occurred on or after December 16, 2003. For deaths that occurred before December 16, 2003, survivors may recover only up to two years of accrued benefits.

Non-Negotiated Benefits

If a check for benefits is received by the veteran but not deposited or cashed prior to his or her death, the amount of the check is considered a non-negotiated benefit. The VA will pay non-negotiated benefits in the same way that it pays accrued benefits. There is no time limit by which a survivor must file a claim for non-negotiated benefits.

Non-negotiated benefits may be paid to the same people who are eligible for accrued benefits.

Service-Connected Death Benefits

A veteran's surviving spouse, child, or parent may apply for Dependency and Indemnity Compensation (DIC) when the veteran's death is connected to service. The death may happen during service or after service from a service-connected cause. DIC is usually paid to a surviving spouse with an

increase in benefits if the spouse is the parent or guardian of the veteran's child. If there is no surviving spouse, a surviving child is next in line to receive DIC payments. If the veteran died prior to January 1, 1957, the survivor may receive death compensation or elect to receive DIC instead.

A DIC claim may be filed at any time after the veteran's death. If your DIC claim is received by the VA within a year of the veteran's death, you will be retroactively paid back to the date of the veteran's death. Therefore, it is important to file a DIC claim within one year of the death to receive the earliest possible effective date. A claim for DIC is also considered to be a claim for death pension and accrued benefits, so the VA must consider whether these benefits are due as well. The same application, VA Form 21-534, is used by a spouse or child to apply for all three benefits. Parents applying for DIC use VA Form 21-535.

There are two different methods that a survivor may use to establish that he or she is eligible for DIC. With the first method, a survivor may show that the veteran's death resulted from service, from a service-connected disability, or from a condition that could have been service-connected. The second method applies when a veteran's death is not service-connected, but the veteran was rated, or should have been rated, as totally disabled for ten years before the veteran's death.

As a general rule, if a servicemember dies while on active duty, the VA will conclude that the death was service-connected and grant an eligible survivor DIC. The same rule applies where the serviceperson is missing or missing in action and death is presumed by the service department. In some circumstances, the VA will determine whether an active duty death will be considered service-connected, including where the in-service death is a result of suicide, a result of a disease that occurred during the initial six months of active service, or potentially a result of misconduct.

Entitlement to DIC is also relatively easy to establish where a disability or condition for which the veteran was receiving service-connected disability compensation is shown to be a main or contributing cause of the veteran's death. The medical cause of death is usually reported on the veteran's death certificate.

DIC claims get more complicated if the veteran never applied for service-connected disability compensation or if the veteran's claim was denied during his or her lifetime. In such cases, the survivor may still prove entitlement to DIC by overcoming two hurdles. First, the DIC claimant

must show that the veteran would have qualified for service-connected disability benefits for the particular condition. To do this, the claimant must gather and submit evidence similar to the evidence you would submit if you were filing an original claim for disability compensation. The needed evidence will include: first, medical evidence that the veteran had the particular disability at the time of death; second, evidence of an injury, disease or event that happened in service; and third, medical evidence linking the disability at the time of death to the in-service injury, disease or event. Each of these three elements is more fully explained in Chapter 3, "Compensation."

After the claimant demonstrates that the particular condition was service-connected, the second hurdle is to show that this same condition was an immediate or underlying cause of the veteran's death. This is usually done by submitting a copy of the veteran's death certificate, but if the death certificate omits the particular condition, you could submit a letter from the veteran's doctor explaining why the condition should be considered a principal or underlying cause of death. The service-connected condition does not have to be the sole or even the main cause of death as long as it was a contributing factor.

The second method to establish DIC is more complex. If a veteran was receiving or was eligible to receive compensation for a service-connected disability continuously for the ten-year period immediately prior to the veteran's death, a survivor may receive benefits as if the veteran's death was service-connected. The distinction here is that the veteran's cause of death may not actually be service-connected, but instead, the veteran suffered from a totally disabling service-connected disability for the ten years prior to death. This type of DIC benefit is often referred to as a Section 1318 DIC claim because it is found in Section 1318 of Title 38 of the United States Code (federal law).

The VA is obligated to consider entitlement to Section 1318 DIC when the VA denies service connection for a veteran's cause of death but the veteran had a totally disabling service-connected condition at the time of death. A survivor is eligible for Section 1318 DIC when a VA rating decision granted the veteran a total disability rating using the rating guidelines in the VA rating schedule. A survivor may also be eligible for Section 1318 DIC if the VA granted the veteran a "total disability rating based on individual unemployability" (TDIU). TDIU is granted when the

VA judges that a veteran's service-connected disability prevents him or her from finding and retaining substantially gainful employment even if his or her symptoms are not rated at 100% under the VA's rating schedule. It is a separate way of getting a total disability rating. Once you establish that the veteran suffered from a totally disabling service-connected condition, you must then show that he or she was totally disabled by the condition for at least the ten years prior to death.

Section 1318 DIC claims may get even more complex. If a veteran was not actually receiving compensation at a total disability rating for the last ten years of his or her life, a survivor may still establish entitlement to benefits in a few additional ways. A survivor may show entitlement to DIC by showing that but for a "clear and unmistakable" error by the VA, the veteran would have received total disability compensation for the required period of time. An explanation of what sort of error constitutes a "clear and unmistakable error" is found in Chapter 5, "VA Claims and Appeals." Another way to obtain Section 1318 DIC is to show that the VA did not consider existing service department records at the time of a prior VA decision and those records would have changed the outcome of the decision. Finally, a veteran's survivor may still be eligible for DIC if at the time of the veteran's death, he or she had a service-connected disability that was rated continuously and totally disabling by the VA for the required time, but he or she was not receiving compensation because it was being withheld for indebtedness, or paid to his or her dependents, or he or she was receiving retired pay instead. These rules are complicated and contain other exceptions. If you think you potentially have a Section 1318 DIC claim, you should consult a service organization representative or an attorney experienced in veterans law about your case.

The payment rate chart the VA uses in calculating the amount of DIC benefits due to a survivor can be found at www.vba.va.gov/bln.21/Rates. For service-connected deaths occurring on or after January 1, 1993, DIC payments to surviving spouses start with a monthly base amount. The monthly base amount may be increased in accordance with an annual cost-of-living increase. As of December 1, 2007, this amount was $1,091. Additional incremental amounts are paid if the spouse has minor children or if the spouse requires the "aid and attendance" of another due to a state of helplessness or if the spouse is "permanently housebound," meaning that he or she is substantially confined to the home.

As of January 1, 2006, the VA has added a transitional DIC benefit of $250 to the surviving spouse's monthly DIC amount if there are children under the age of 18. This is paid for two years from the date DIC entitlement started and is discontinued when there is no child under the age of eighteen. The basic rate of DIC is also increased if the veteran was receiving or entitled to receive compensation for a service-connected disability rated totally disabling for at least eight years prior to death. However, only periods during which the veteran was married to the surviving spouse are considered, so if the surviving spouse was married to the veteran for less than eight years, he or she is not eligible for this enhanced DIC rate.

In cases where the veteran died on or before December 31, 1992, the rate of DIC compensation paid to a surviving spouse is based on the highest pay grade attained by the deceased veteran in the service. The higher the rank, the more the survivors get paid. However, if this amount is less than the standard monthly base rate for deaths occurring after January 1, 1993, the VA pays higher amount.

If there is no surviving spouse and the veteran's minor children are eligible for DIC benefits, the children will be paid in equal shares at the same rate as a surviving spouse, except that surviving children are not entitled to the transitional DIC benefit or the enhanced DIC benefit. A surviving child who is determined to be "helpless" by the VA and who is over the age of eighteen may be entitled to DIC benefits in his or her own right. As of December 1, 2007, a "helpless child" is entitled to receive an additional $462 per month. Also, a qualifying surviving child between the ages of 18 and 23, who is pursuing his or her education at an approved educational institution, is entitled to receive DIC. As of December 1, 2007, children pursuing their education were entitled to receive $230 per month in DIC. However, the child must choose DIC benefits or educational benefits and cannot receive both. Educational benefits are discussed toward the end of this chapter. Normally, the educational benefit is greater than the DIC benefit for education.

Although the amount of DIC paid to a surviving spouse or child is not based on need, DIC payments to a veteran's dependent parents are based on the parents' annual income. The income guidelines are very strict and parents who receive DIC are required to complete an annual "expected" income questionnaire. Most parents have too much income to qualify for

DIC. Like a surviving spouse, dependent parents may be eligible for an increased DIC allowance if they require "aid and attendance" or are "housebound," but they are not eligible for transitional or enhanced DIC.

Restored Entitlement Program for Survivors

The Restored Entitlement Program for Survivors (REPS) are benefits payable to certain surviving spouses and children of veterans who died during active duty before August 31, 1981 or who died of a service-connected disability that arose or was aggravated before that date. (Veterans exposed to Agent Orange fall under this rule because their exposure occurred before 1981.) REPS benefits are payable to surviving spouses if, since the time of the veteran's death, the surviving spouse was caring for the veteran's child between the ages of sixteen and eighteen. The only exception to this is if the child is considered mentally incompetent and continues to receive Social Security benefits after his or her sixteenth birthday. REPS entitlement is terminated if the spouse remarries, but can be reestablished if the remarriage ends by death or divorce.

REPS benefits are available to a surviving child if, since the time of the veteran's death, the child was between the ages of eighteen and twenty-two and was enrolled in a course of approved full-time postsecondary education and was unmarried during this time. Unlike a surviving spouse, the child cannot reestablish eligibility if the child's marriage ends.

To apply for REPS, the surviving spouse or child should complete and submit VA Form 21-8924, "Application of Surviving Spouse or Child for REPS Benefits." The claimant's income during the period of eligibility has a direct effect on entitlement. If the survivor is entitled to both Social Security and REPS, the REPS benefit will be offset dollar-for-dollar by the Social Security payment if it is less, or cancelled completely if the Social Security amount is equal to or more than the potential REPS payment.

Educational Assistance for Spouse and Children of Veterans

Spouses and dependent children of certain veterans are potentially entitled to education assistance under the Survivors' and Dependents' Educational Assistance Program (DEA). This benefit may also be referred to as

"Chapter 35" because of its location in the United States Code. The purpose of DEA is to provide educational opportunities for children whose education could be interrupted or impeded because their veteran-parent suffers from a severe service-connected disability. DEA also provides educational assistance for the spouses of veterans with a service-connected total disability for the purpose of assisting the spouse in preparing to support his or her family.

A spouse of a living servicemember is entitled to DEA benefits in the following circumstances: when the veteran has a total and permanent service-connected disability; when the servicemember is listed as missing in action; or when the servicemember is a prisoner of war. A surviving spouse of a deceased veteran is entitled to DEA when the veteran died from a service-connected disability or died with a total and permanent service-connected disability rating. The surviving spouse of a veteran who died on active duty may receive DEA benefits for twenty years from the date of the veteran's death. Other surviving spouses usually have to apply for DEA benefits within ten years of the veteran's death or within ten years of a VA decision either that the death was service- connected or that the veteran's service-connected disability is total and permanent.

Children may be entitled to DEA when the veteran-parent died of a service-connected disability, when the veteran-parent died from or suffers from total and permanent service-connected disability, or when the veteran-parent is listed as missing in action or a prisoner of war.

Please note that even though a veteran may be receive a 100% disability rating for a service-connected disability, the VA must also rate the disability as "total and permanent" for the veteran's spouse and children to be eligible for DEA. Veterans who receive 100% disability ratings without the additional finding of "total and permanent" may appeal the award. As of the year 2000, children and spouses who file for DEA within one year after the VA's award of DIC or a total and permanent disability rating if the veteran is living, may receive DEA back to the effective date of the award of DIC or total and permanent disability.

"Transferred" Montgomery GI Bill Education Benefits

Some spouses and dependents are eligible for VA education benefits that were transferred to them by a spouse or parent eligible for benefits under the Montgomery GI Bill (MGIB). Individuals who are entitled to educational assistance under the MGIB may seek approval from the service department to transfer a portion of this entitlement to a dependent or dependents. Transfers may be approved where the servicemember requests permission to transfer entitlement and has completed six years of service, has either a designated critical military skill or is in a military specialty designated as requiring critical military skills, and agrees to serve at least four more years in the military. If a servicemember transfers his or her MGIB, he or she may modify or revoke the transfer of any unused portion at any time. The death of a servicemember does not affect the surviving spouse or child's use of the education benefits that were transferred.

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PART TWO
Special Non-VA Programs, Opportunities and Problems

Chapter Eleven Employment, Self-Employment and the Small Business Administration

Employment and the Small Business Administration

By a friend and long-time observer of the Small Business Administration.

From the very beginnings of our nation, America's citizen soldiers have succeeded as self-employed small business owners following military service. In more contemporary times, the G.I. Bills of World War II and then Korea linked loan guarantees, educational benefits and small business counseling to veterans. In 1953, Congress and President Eisenhower created the U.S. Small Business Administration (SBA) as the primary federal agency focused on maximizing the productive capacity of the American small business community during periods of mobilization for war and in support of growing economic opportunity for all Americans to strengthen our democracy during times of peace.

Since 1953, SBA has helped veterans start, manage and grow small businesses. Today, SBA provides specific programs for veterans (including service-connected disabled veterans), members of the reserve and National Guard, transitioning servicemembers, and spouses of the preceding. It also assists widows of servicemembers who died in service or from a service-connected disability. SBA provides access to a full range of entrepreneurial support programs to every American citizen, including veterans.

During and following the Vietnam War, Congress and most federal policymakers focused government small business resources to specific socioeconomic groups while largely ignoring the valued asset that veterans are in America's entrepreneurial economy. To remedy this neglect, beginning in 1978 a small circle of veteran small business owners/advocates pushed various administrations and Congress to reverse the neglect of veterans. After 19 years of volunteer advocacy, pushing for hearings, providing testimony and working with administrations in creating skeletal veterans small business programs, Congress began taking steps to strengthen and refocus federal programs specifically for veterans and reservists.

In 1997, in Congressman James Talent's (R-MO) suburban district office, one of these advocates was participating in a meeting discussing the alleged safe operation of a Superfund sited dioxin incinerator operating at Times Beach, Missouri, when Congressman Talent, then chairman of the U.S. House of Representatives Committee on Small Business, asked if anyone wanted to discuss anything other than the incinerator. A veteran responded that veterans were being left out at SBA, and he wanted to work with the chairman to remedy that. This initiated a number of legislative actions (P.L. 105-135 in 1997), the establishment of an SBA Veterans Affairs Task Force, and the development and inclusion of specific recommendations for the Congressional Commission on Servicemembers and Veterans Transition Assistance (1998). Finally, in 1999, Congress unanimously passed Public Law 106-50, The Veterans Entrepreneurship and Small Business Development Act of 1999, the most comprehensive entrepreneurial legislation for veterans ever created. This law established the SBA Office of Veterans Business Development and a position of Associate Administrator for Veterans Business Development as the source of policy and program development for veterans.

In addition, this law created the National Veterans Business Development Corporation (also known was the Veterans Corporation) and

set goals for federal procurement for service-disabled veterans and veterans in general. (Setting goals creates initiative in federal agencies to include service-disabled vets and vet-owned small businesses in their plans for marketing, outreach, and contracting opportunities.) The law also established the Military Reservists Economic Injury Disaster Loan, initiated new research into the success of veterans in small business, and brought focus to veterans in the full range of SBA lending, entrepreneurial counseling, and government contracting programs.

SBA has established Veterans Business Outreach Centers, developed special loans and surety bonding programs for veterans and reservists, established government procurement programs for veterans, provided for Veterans Business Development Officers in every SBA district office, and conducted special outreach, counseling and training at more than 1,500 Business Development Centers.

Special local initiatives target veterans, service-disabled veterans and reserve and National Guard members to aid in starting, managing, maintaining, and growing successful small businesses. Online and printed business planning guides are available, including: *Balancing Business and Deployment*, for self-employed members of the reserve and National Guard to prepare for mobilization, and *Getting Veterans Back to Business* to assist in restarting or reestablishing a business upon return from mobilization or from active duty. These manuals include an interactive CD-ROM with a wealth of information on preparing your business and your employees for your absence, re-establishing a small business upon return from Title 10 activation, and information on various business assistance resources available to assist reserve and National Guard member entrepreneurs. The CDs also contain downloadable and printable information on loans, government procurement and information describing the full range of SBA's assistance to any veteran. In addition, SBA, through SCORE (originally called the Service Corps of Retired Executives) has established an online business counseling service that may prove useful to veterans and especially service-disabled veterans, as well as to self-employed members of the reserve and National Guard.

SBA offers programs and services designed to assist small business owners and entrepreneurs in starting, managing, and growing successful small business concerns, in part to ensure the maximum involvement and capability of small business in supporting the wars in Iraq and Afghanistan,

and to ensure they are a source of competitive American strength in the global economy.

To learn more about the programs, services, and business assistance tools SBA offers as well as business and technical assistance specific to veterans in general, service-disabled veterans, and reservists, please explore the links below, or visit an SBA local office located in or near the community to which you return.

District Office Veterans Business Development Officers (VBDOS)

As a new veteran, you may not know a lot about the assistance available from SBA. To ensure that every aspiring veteran entrepreneur has access to the full range of SBA programs and is able receive the specific assistance and guidance he or she may be seeking, SBA has established a Veterans Business Development Officer (VBDO) in every one of the 68 SBA district offices around the nation. These officers are responsible for providing prompt and direct assistance and guidance to any veteran or reservist seeking information about or access to any SBA program. To identify your local VBDO, contact either your local SBA district office (see the phone book's blue pages) or contact the SBA national Office of Veterans Business Development at (202) 205-6773 or visit www.sba.gov/VETS/reps.html.

Business Management Training & Technical Assistance

Veterans Business Outreach Centers

SBA funds five Veterans Business Outreach Centers (VBOC) specifically established to offer and coordinate business development assistance to veterans, service-connected disabled veteran and reservist entrepreneurs. Services are provided face-to-face and online and include outreach, concept development, business training, counseling and mentoring. Please contact them directly at:

- The Research Foundation of the State University of New York
  41 State Street

Albany, NY 12246
(518) 443-5398
Web page: www.nyssbdc.org/services/veterans/veterans.html
E-mail:brian.goldstein@nyssbdc.org

- The University of West Florida in Pensacola
  c/o 2500 Minnesota Avenue

  Lynn Haven, FL 32444
  (800) 542-7232 or 850-271-1108
  Web page: www.vboc.org
  E-mail: vboc@knology.net

- The University of Texas—Pan American
  1201 West University Drive
  Edinburg, TX 78539-2999
  (956) 292-7535
  Web page: www.coserve.org/vboc
  E-mail: vboc@panam.edu

- Vietnam Veterans of California
  7270 E. Southgate Drive, Suite 1
  Sacramento, California 95823
  (916) 393-1690
  Web page: www.vboc-ca.org
  E-mail: cconley@vboc-ca.org

- Robert Morris University
  600 Fifth Avenue
  Pittsburgh, PA 15219
  (412) 397-6842
  Web page: www.rmu.edu/vboc
  E-mail: vboc@rmu.edu

Small Business Development Centers

SBA provides funding, oversight, and management to 1,100 Small Business Development Centers (SBDCs) in all 50 states and in U.S. territories. This program provides a broad range of specialized management assistance to current and prospective small business owners. While SBDCs offer one-stop assistance to individuals and small businesses by providing a wide variety of information, guidance, linkages, training and counseling in easily accessible branch locations usually affiliated with local educational institutions, **each SBDC is tasked with working with veterans, reserve component members and families**.

The SBDC program is designed to deliver up-to-date counseling, training and technical assistance in all aspects of small business management. SBDC services include, but are not limited to, assisting small businesses with financial, marketing, production, business planning, organization structure, engineering and technical problems, and feasibility studies.

To find your local SBDC: www.sba.gov/sbdc/sbdcnear.html **or contact your district office VBDO.**

SCORE

SCORE is a nonprofit organization which provides small business counseling and training under a grant from SBA. SCORE members are successful, retired businessmen and women who volunteer their time to assist aspiring entrepreneurs and small business owners. There are SCORE chapters in every state.

SCORE is the best source of free and confidential small business advice to help you build your business—from idea to start-up to success. The SCORE Association, headquartered in Washington, D.C., is a nonprofit association dedicated to entrepreneurial education and the formation, growth, and success of small businesses nationwide.

More than half of SCORE's extensive, national networks of 10,500 retired and working volunteers are veterans, and they are experienced entrepreneurs and corporate managers/executives. They have succeeded in business. They provide free business counseling and advice as a public service to all types of businesses, in all stages of development. SCORE is a resource partner with the U.S. Small Business Administration and a resource asset for you.

- Ask SCORE e-mail advice online at: www.score.org. Some SCORE e-counselors specifically target veterans (including service-disabled veterans) and reserve component members.
- Face-to-face small business counseling at 389 chapter offices.
- Low-cost workshops and seminars at 389 chapter offices nationwide.
- A great online, Web-based network.

  Find your local SCORE chapter:
  www.score.org/findscore/chapter_maps.html

Women's Business Centers

The Office of Women's Business Ownership provides women-focused (men are eligible as well) training, counseling and mentoring at every level of entrepreneurial development, from novice to seasoned entrepreneur, through representatives in SBA district offices and a nationwide networks of Women's Business Centers (WBCs) and mentoring roundtables. Additionally, WBCs provide online training, counseling and mentoring.

Women's Business Centers represent a national network of more than 80 educational centers designed to help women start and grow small businesses. WBCs operate with the mission of leveling the playing field for women entrepreneurs, who face unique obstacles in the world of business. To find your local WBC: www.sba.gov/onlinewbc/index.html

Financial Assistance

SBA administers four separate, but equally important, loan programs. The agency sets the guidelines for the loans while their partners (lenders, community development organizations, and micro-lending institutions) make the loans to small businesses. SBA backs those loans with a guaranty that will eliminate some of the risk to their lending partners. The agency's loan guaranty requirements and practices can change as the federal government alters its fiscal policy and priorities to meet current economic conditions. Therefore, past policy cannot always be relied upon when seeking assistance in today's market.

The loan guaranty which SBA provides transfers the potential risk of borrower non-payment, up to the amount of the guaranty, from the lender to SBA. Therefore, when your business applies for an SBA loan, you are actually applying for a commercial loan from your local lending institution, structured according to SBA requirements, but provided by cooperating lending partners, which receive an SBA guaranty.

Basic 7(a) Loan Guaranty

The 7(a) Loan Guaranty Program serves as the SBA's primary business loan program to help qualified small businesses obtain financing when they might not be eligible for business loans through normal lending channels.

Loan proceeds can be used for most sound business purposes including working capital, machinery and equipment, furniture and fixtures, land and building (including purchase, renovation and new construction), leasehold (property held by lease) improvements, and debt refinancing (under special conditions). Loan maturity is up to 10 years for working capital and generally up to 25 years for fixed assets. **SBA does target veterans and reservists with veteran status specifically in some loan programs, including the SBA Community Express Loan program** that provides access to business planning assistance as part of the loan application process. To find out more, visit www.sba.gov/financing/sbaloan/7a.html or contact your district office, or any of the centers or chapters mentioned previously.

Patriot Express Initiative

In June 2007, SBA initiated a new Pilot Loan Program specifically targeted to the military community, including veterans, service-disabled veterans, active duty servicemembers participating in the DoD Transition Assistance Program (TAP), all reserve and National Guard members, current spouses of any of the above, the widowed spouse of a servicemember who died during service or of a service-connected disability.

Offered through SBA Community Express or Preferred Lenders, this new loan guarantee program combines the best available aspects of SBA's various 7(a) loan products into this targeted initiative. Loan applicants can usually expect an answer from their lending institution within 24 hours of application.

For more information, visit:

www.sba.gov/services/financialassistance/index.html

If you want to start with a self assessment for your business idea, visit: appl.sba.gov/survey/checklist/index.cgi

Certified Development Company 504 Loan Program

The Certified Development Company-504 (CDC/504) loan program is a long-term financing tool for economic development within a community. The 504 program provides growing businesses with long-term, fixed-rate financing for major fixed assets, such as land, buildings and equipment. A Certified Development Company is a Community Development nonprofit Corporation set up to contribute to the economic development of its community. CDCs work with SBA and private-sector lenders to provide financing to small businesses. There are about 270 CDCs nationwide. Each CDC covers a specific geographic area. **Veterans are included in the Public Policy Goals of the 504 program, which allows for even higher lending totals to veterans.**

Typically, a 504 project includes a loan secured with a senior lien from a private-sector lender covering up to 50 percent of the project cost, a loan secured with a junior lien from the CDC (backed by a 100 percent SBA-guaranteed debenture) covering up to 40 percent of the cost, and a contribution of at least 10 percent equity from you, the small business owner being helped.

Microloan Program

Microloan Program provides very small loans to start-up, newly established, or growing small business concerns. Under this program, SBA makes funds available to nonprofit community-based lenders (intermediaries) which, in turn, make loans to eligible borrowers in amounts up to a maximum of $35,000. The average loan size is about $13,000. Applications are submitted to the local intermediary and all credit decisions are made on the local level. **Veterans are a target group in the Microloan program**.

Terms, Interest Rates, and Fees:

The maximum term allowed for a microloan is six years. However, loan terms vary according to the size of the loan, the planned use of funds, the requirements of the intermediary lender, and the needs of the small

business borrower. Interest rates vary, depending upon the intermediary lender and costs to the intermediary from the U.S. Treasury. Generally these rates will be between eight percent and thirteen percent.

International Trade

The Office of International Trade works in cooperation with other federal agencies and public- and private-sector groups to encourage small business exports and to assist small businesses seeking to export. Through 16 U.S. Export Assistance Centers, SBA district offices and a variety of service-provider partners, SBA directs and coordinates the agency's ongoing export initiatives in an effort to encourage small businesses going global.

SBA's Investment Programs

In 1958 Congress created the Small Business Investment Company (SBIC) program. SBICs, licensed by the Small Business Administration, are privately owned and managed investment firms. They are participants in a vital partnership between government and the private sector economy.

All SBICs are profit-motivated businesses. A major incentive for SBICs to invest in small businesses is the chance to share in the success of the small business if it grows and prospers.

Equity (venture) capital or financing is money raised by a business in exchange for a share of ownership in the company. Ownership is represented by owning shares of stock outright or having the right to convert other financial instruments into stock of that private company. Two key sources of equity capital for new and emerging businesses are angel investors and venture capital firms.

Typically, angel capital and venture capital investors provide capital unsecured by assets to young, private companies with the potential for rapid growth. Such investing covers most industries and is appropriate for businesses through the range of developmental stages. Investing in new or very early companies inherently carries a high degree of risk. But venture capital is long term or "patient capital" that allows companies the time to mature into profitable organizations.

Surety Bond Guarantee Program

The Surety Bond Guarantee (SBG) Program was developed to provide increased bonding opportunities to small v**eteran, service-disabled veteran** and minority contractors to support contracting opportunities for which they would not otherwise bid.

If your small construction, service or supply company bids on or performs projects requiring surety bonds, the U.S. Small Business Administration has a program that could help make you more competitive.

Small business contractors and manufacturers can overcome challenges they face in winning government or private contracts by using the SBA's Surety Bond Guarantee Program. A surety bond is a three-way agreement between the surety company, the contractor and the project owner. The agreement with the SBA guarantees the contractor will comply with the terms and conditions of the contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed.

The SBA Surety Bond Guarantee Program covers four types of major contract surety bonds:

- **Bid Bond**–guarantees the project owner that the bidder will enter into the contract and furnish the required payment and performance bonds.
- **Payment Bond**–guarantees the contractor will pay all persons who furnish labor, materials, equipment or supplies for use on the project.
- **Performance Bond**–guarantees the contractor will perform the contract in accordance with its terms, specifications and conditions.
- **Ancillary Bond**–a bond that is incidental and essential to the performance of the contract.

The overall surety bond program has two programs:

- **The Prior Approval Program**–SBA guarantees 80 or 90 percent (**for veterans**) of a surety's loss. Participating sureties must obtain SBA's prior approval for each bond.
- **The Preferred Surety Bond Program**–Selected sureties receive a 70 percent guarantee and are authorized to issue, monitor and service bonds without SBA's prior approval.

Program eligibility requirements

In addition to meeting the surety company's bonding qualifications, you must qualify as a small business concern, as defined by SBA. For federal prime contracts, your company must meet the small business size standard for the North American Industry Classification System (NAICS) Code that the federal contracting officer specified for that procurement. For more information about the Surety Bond Guarantee Program, visit www.sba.gov/osg/.

Business Planning and Disaster Assistance For Small Businesses who Employ or are Owned by Military Reservists

All of the technical assistance programs referenced above can provide pre- and post-mobilization business counseling and planning assistance to any reservist who owns his or her own business or to the business they work for. SBA also offers assistance to the caretaker of the business who may manage the business while the reservist is activated. The SBA Office of Disaster Assistance also offers the **Military Reservist Economic Injury Disaster Loan (MREIDL)** program at very favorable rates and terms. The purpose of the MREIDL is to provide funds to eligible small businesses to meet their ordinary and necessary operating expenses that they could have met, but are unable to meet, because an essential employee was called up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as it matures until operations return to normal after the essential employee is released from active military duty. The purpose of these loans is not to cover lost income or lost profits. MREIDL funds cannot be used to take the place of regular commercial debt, to refinance long-term debt or to expand the business. Interest rates on these loans are capped at a maximum of 4% and terms can be up to 30 years. Contact your district office or visit:
www.sba.gov/disaster_recov/loaninfo/militaryreservist.html

Government Procurement

The SBA Office of Government Contracting (GC), and the Office of Veterans Business Development work together to create an environment for maximum participation by small businesses owned by disadvantaged, women, v**eterans and service-disabled veteran-owned small businesses** in federal government contract awards and large prime subcontract awards. GC also advocates on behalf of small business in the federal procurement arena.

The federal government purchases billions of dollars in goods and services each year. To foster an equitable federal procurement policy, it is the policy of the Congress, and it is so stated in the Small Business Act, that all small businesses shall have the maximum practicable opportunity to participate in providing goods and services to the government. To ensure that small businesses get their fair share of federal procurements, the President has established an annual 23 percent government-wide procurement goal for small business concerns, **small business concerns owned and controlled by service- disabled veterans**, qualified HUBZone (Historically Underutilized Business Zone) small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women. The individual program goals are: 5 percent of prime and subcontracts for small disadvantaged businesses; 3 percent of prime and subcontracts for HUBZone businesses; and **3 percent of prime and subcontracts for service-disabled veteran-owned small businesses**. The SBA negotiates annual procurement preference goals with each federal agency and reviews each agency's results. The SBA is responsible for ensuring that the statutory government-wide goals are met in the aggregate. In addition**, large business prime contractors are statutorily required to establish subcontracting goals (best efforts) for veteran-owned small businesses** as part of each subcontracting plan submitted to the government in response to a prime federal contract opportunity.

GC administers several programs and services that assist small businesses in meeting the requirements necessary to receive government contracts, either as prime contractors or subcontractors. These include the Certificate of Competency, the Non-Manufacturer Rule Waiver, and the

Size Determination programs. The office also oversees special initiatives such as the Women's Procurement program, **the Veterans Procurement program**, the Procurement Awards program and the Annual Joint Industry/SBA Procurement Conference. **While veteran or service-disabled veteran status does not ensure your eligibility for participation in all procurement programs, many veterans and service-disabled veterans do participate in the 8a, HUBZone, Women-Owned, and Small Disadvantaged Business programs if they meet those programs' eligibility criteria**.

Resources and Opportunities–Contact your local SBA district office or visit:

www.sba.gov/GC/indexwhatwedo.html

Federal Agency Procurement Forecast

www.sba.gov/GC/forecast.html

Contacts and Representatives

Subcontracting Opportunities Directory

Contains a listing of Prime Contractors doing business with the federal government

www.sba.gov/GC/indexcontacts-sbsd.html

Procurement Technical Assistance Centers (PTACS)

The Defense Logistics Agency, on behalf of the Secretary of Defense, administers the DoD Procurement Technical Assistance Program (PTAC). PTA Centers are a local resource available that can provide assistance to business firms in marketing products and services to the federal, state and local governments.

www.dla.mil/db/

Procurement Center Representatives

SBA's Procurement Center Representatives (PCR), who are located in area offices, review and evaluate the small business programs of federal agencies and assist small businesses in obtaining federal contracts and subcontracts.

- TPCR–Traditional Procurement Center Representative–TPCRs increase the small business share of federal procurement awards by initiating small business set-asides, reserving procurements for competition among small business firms; providing small business sources to federal buying activities; and counseling small firms.
- BPCR–Breakout Procurement Center Representative–BPCRs advocate for the breakout of items for full and open competition to affect savings to the federal government.
- CMRs–Commercial Marketing Representatives - CMRs identify, develop and market small businesses to large prime contractors and assist small businesses in identifying and obtaining subcontracts.

Contact your local SBA district office or visit this site:
www.sba.gov/GC/pcr.html

Various Agency Offices of Small and Disadvantaged Business Utilization

The OSDBUs offer small business information on procurement opportunities, guidance on procurement procedures, and identification of both prime and subcontracting opportunities at numerous federal agencies. OSDBUs also have Veteran Small Business Representatives. If you own, operate or represent a small business, you should contact the Small Business Specialists for marketing assistance and information. The specialists will advise you as to what types of acquisitions are either currently available or will be available in the near future.

Contact your local SBA office of visit this site: www.osdbu.gov

GC Programs

Section 8(a) Program/Small Disadvantaged Business Certification Program

The SBA administers two particular business assistance programs for small disadvantaged businesses (SDBs). These programs are the 8(a) Business Development Program and the Small Disadvantaged Business Certification Program. While the 8(a) program is not specifically a government procurement program, it does offer a broad scope of assistance to socially

and economically disadvantaged firms, including SBA acting as a prime contractor and sub-contracting directly to participating 8(a) firms. SDB certification strictly pertains to benefits in federal procurement. Companies which are 8(a) firms automatically qualify for SDB certification.

Contact your local SBA office of visit this site: www.sba.gov/8abd/

Small Disadvantaged Business

While the 8(a) program offers a broad scope of assistance to socially and economically disadvantaged firms, SDB certification strictly pertains to benefits in federal procurement. SBA certifies SDBs to make them eligible for special bidding benefits. Evaluation credits available to prime contractors boost subcontracting opportunities for SDBs. SBA has become, in effect, the gateway to opportunity for small contractors and subcontractors.

Qualifications for the program are similar to those for the 8(a) Business Development Program. A small business must be at least 51% owned and controlled by a socially and economically disadvantaged individual or individuals. African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans are presumed to quality. Other individuals can qualify if they show by a "preponderance of the evidence" that they are disadvantaged. All individuals must have a net worth of less than $750,000, excluding the equity of the business and primary residence. Successful applicants must also meet applicable size standards for small businesses in their industry.

HUBZone Empowerment Contracting Program

The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities by providing federal contracting preferences to small businesses. These preferences go to small businesses that obtain HUBZone certification in part by employing staff who live in a HUBZone. The company must also maintain a "principal office" in one of these specially designated areas. A principal office can be different from a company headquarters, as explained in the SBA section dedicated to frequently asked questions. **Contact your local SBA office of visit this site:**
https://eweb1.sba.gov/hubzone/internet/

Service-Disabled Veteran-Owned Small Business Concern Program

www.sba.gov/gc/indexprograms-vets.html

On May 5, 2004, the Small Business Administration) issued regulations in the Federal Register as an Interim Final Rule implementing Section 36 of the Veterans Benefits Act of 2003 (Public Law 108-183).

Section 308 of P.L. 108-183 amended the Small Business Act to establish a procurement program for Small Business Concerns (SBCs) owned and controlled by service-disabled veterans. This procurement program provides that contracting officers *may* award a sole source or set-aside contract to a service-disabled veteran-owned small business if certain conditions are met.

Finally, the purpose of this procurement program is to assist agencies in achieving the 3 percent government-wide goal for procurement from service-disabled veteran-owned small business concerns.

Important Definitions

- **Veteran**–a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.
- **Service-Disabled Veteran**–a person with a disability that is service-connected and that was incurred or aggravated in the line of duty in the active military, naval, or air service.
- **Service-Disabled Veteran with a Permanent and Severe Disability**–a veteran with a service-connected disability that has been determined by the U.S. Department of Veterans Affairs to be a permanent and total disability for purposes of receiving disability compensation or a disability pension.
- **Permanent Caregiver**–a spouse, or an individual 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of a service-disabled veteran, to include housing, health and safety.

Service-Disabled Veteran-Owned Small Business Contracts

SDVO contracts are contracts awarded to an SDVOSB through a sole-source award or a set-aside award based on competition restricted to SDVOSBs. The contracting officer for the contracting activity determines if a contract opportunity for SDVO competition exists.

SDVO SBC Set-Aside Contracts

The contracting officer may set-aside acquisitions for SDVOSBs if:

- the requirement is determined to be excluded from fulfillment through award to Federal Prison Industries, Javits-Wagner-O'Day orders under indefinite delivery contracts, orders against federal supply schedules, requirements currently being performed by 8(a) participants, and requirements for commissary or exchange resale items.
- the requirement is not currently being performed by an 8(a) participant, and unless SBA has consented to release of the requirement from the Section 8(a) program.
- SBA has not accepted the requirement for performance under the 8(a) authority, unless SBA has consented to release of the requirement from the Section 8(a) Program
- there is a reasonable expectation that at least two responsible SDVOSBs will submit offers.
- the award can be made at a fair market price

Service Disabled Veteran Owned Small Business Concern Sole-Source Contracts

A contracting officer *may* award a sole-source contract to a SDVOSB if the contracting officer determines that none of the SDVOSB set-aside exemptions or provisions applies and the anticipated award price of the contract, including options, will not exceed:

- $5.5 million for manufacturing requirements
- $3.5 million for all other requirements and
- the SDVO SBC is a responsible contractor able to perform the contract and
- award can be made at a fair and reasonable price

SDVO SBC Simplified Acquisition Contracts

If a requirement is at or below the simplified acquisition threshold, a contracting officer may set aside the requirement for consideration among SDVOSBs using simplified acquisition procedures or may award a sole-source contract to a SDVOSB.

Contact your local SBA office or visit this site:

www.sba.gov/gc/indexprograms-vets.html

The following is a basic synopsis of the full range of SBA programs and services, designed to help you through the process of determining if small business ownership is for you, and if, after you determine you do want to establish your own small business, what steps may be appropriate for you to follow, and what services are available to help you succeed. Remember, while one in seven veterans is a successful self-employed small business owner, small business ownership is not for everyone and there is no guarantee of success. Should you choose entrepreneurship, there are many resources available to help you succeed, but there is no entitlement to success.

U.S. Small Business Administration

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the nation's economy by aiding, counseling, assisting and protecting the interests of small businesses and by helping families and businesses recover from national disasters.

The mission of the SBA Office of Veterans Business Development is to conduct comprehensive outreach to veterans, service-disabled veterans and Reserve and National Guard small business owners, formulate, execute and promote policies and programs of the Administration and act as an ombudsman for full consideration of veterans in all programs of the Administration.

In carrying out its mission, SBA offers programs and services designed to assist small business owners and entrepreneurs in starting, managing and growing successful small business concerns that are a source of competitive American strength in the global economy. These programs and services are defined by four distinctly identifiable phases of successful entrepreneurial development:

- Entrepreneurial self analysis

- Resources to assist entrepreneurs and small business owners
- Capital and Financing Resources
- Government Contracting Resources

To learn more about the programs, services and business assistance tools, SBA offers small business owners and entrepreneurs, as well as business and technical assistance specific to veteran and service-disabled veteran small business owners/entrepreneurs and Reserve Component members explore the links below.

Entrepreneurial Self Analysis

Phase 1 Entrepreneurial Self Analysis

This link provides access to entrepreneurial tests that will assist you in determining if owning a business is right for you.

www.sba.gov/starting_business/startup/areyouready.html.

Entrepreneurial Development Resources

Phase 2 Resources to assist in starting, managing and growing successful small business concerns

This link provides access to SBA's network of resource partners that can assist you in starting, managing and growing successful small business concerns. Included in this network are Centers charged with providing assistance specific to veteran and service-disabled veteran business owners/entrepreneurs, as well as tools specifically designed to aid self-employed members of the Reserve and National Guard balance successful business ownership with Title 10 activations and deployment including restarting or reestablishing their businesses upon de-activation from active duty.

Veteran Business Outreach Centers (VBO Centers)
www.sba.gov/VETS/vbop.html

Veteran Business Development Officers (VBD Officers)
www.sba.gov/VETS/reps.html

Small Business Development Centers (SBDCs)
www.sba.gov/sbdc/sbdcnear.html

SCORE
www.score.org

Women's Business Centers
www.sba.gov/onlinewbc

Native American Affairs
www.sba.gov/naa/

Small Business Training Network
www.sba.gov/training/

Reserve and Guard Tools
www.sba.gov/reservists

Hire a Veteran
www.hirevetsfirst.gov/committee.asp
PNHVC website

Phase 3 Capital and Financing Resources

This link provides access to the various loan programs SBA offers small business owners and aspiring entrepreneurs. By clicking the links, a synopsis on the Agency's loan programs follows along with information on how to apply for an SBA-backed loan and criteria for qualifying.

Basic 7(a) Loan Program
www.sba.gov/financing/index.html

CDC/504 Loan Program
www.sba.gov/financing/sbaloan/cdc504.html

Micro-Loans
www.sba.gov/financing/sbaloan/microloans.html

Surety Bond
www.sba.gov/financing/bonds/whatis.html

International Trade
www.sba.gov/oit

Military Reservists Economic Injury Disaster Loans
www.sba.gov/disaster_recov/loaninfo/militaryreservist.html

Small Business Investment Corporations
www.sba.gov/INV/

Phase 4 Government Contracting Resources

This link provides information on the various government contracting programs SBA offers in assisting small business owners and entrepreneurs in bidding on and winning federal government contracts.

Government Contracting for Veteran Business Owners
www.sba.gov/vets

HUBZone Program
www.sba.gov/hubzone

8(a) Business Development Program
www.sba.gov/8abd

Technology–SBIR/STTR Program
www.sba.gov/sbir

Contract Assistance for Women-owned Businesses
www.sba.gov/GC/indexprograms-cawbo.html

Small Disadvantaged Businesses
www.sba.gov/sdb/

Procurement Center Representatives
www.sba.gov/GC/pcr.html

Commercial Market Representatives
www.sba.gov/GC/indexcontacts-cmrs.html

Procurement Technical Assistance Centers
www.aptac-us.org
www.dla.mil/db/procurem.htm

Other Resources

SBA Office of Advocacy for data on veteran business ownership
www.sba.gov/ADVO/

SBA Office of Ombudsman
www.sba.gov/ombudsman

Department of Veterans Affairs
www.va.gov

VA Vocational Rehabilitation and Employment Services
www.vba.va.gov/bln/vre/index.htm

Department of Labor
www.dol.gov

DOL Office of Veterans Employment and Training Services
www.dol.gov/vets/programs/empserv

Office of Disability Policy Initiatives
www.dol.gov/odep

National Veterans Business Development Corporation
www.veteranscorp.org/

Last notes: The world of veteran entrepreneurship is full of dynamic and growing effort. Various agencies of the federal government are making special efforts to identify qualified Service-Connected Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) for potential federal contracting and sub-contracting opportunities. These includes the Departments of Defense and Veterans Affairs. In addition, a number of state and local governments are exploring

improving entrepreneurial opportunity for veterans and reservists, as are many large federal prime contractors. Also, Congress is continually exploring new or additional improvements to federal laws to improve or enhance veterans entrepreneurial success.

Because of these ongoing efforts, programs and laws are still changing. Remember, successful entrepreneurship for veterans is a dynamic and growing initiative, and this may require you to receive or investigate new information or programs created since this chapter was written.

The author of this section of the chapter is a one-time government employee who must remain anonymous.

Employment Services and Unemployment Benefits

By Dennis K. Rhoades

For most veterans who are retiring or separating from military service, the most immediate need is for a source of income. For some veterans, including deactivating National Guard and Reservists, this means returning to their previous jobs. (See Chapter 12, "Re-employment Rights and Associated Rights for Time Spent in Military Service.") For other veterans, it means immediate enrollment in a training or education program under the GI Bill.

Many veterans, however, are faced with the prospect of finding a new job, or finding an alternative income stream while they are looking for work. Even in good economic times finding work can be an intimidating process, particularly for those who are unskilled or have not had a job in the military which is readily transferable into the civilian labor market. Even worse, there is no single agency responsible for employment assistance for veterans. Unless you are a disabled veteran enrolled under VA Vocational Rehabilitation, the VA will not help you find a job.

In previous chapters, this book discussed a variety of programs and services for veterans. The common denominator among all of them was the VA. This creates the impression that the VA is all things to all veterans.

From here on, we will be discussing other programs and benefits which you must access through agencies other than the VA. For this chapter, we will start with the U.S. Department of Labor (DOL).

Although federal law assigns responsibility for veterans employment to DOL, the Department provides little in the way of direct services to veterans, with the exception of re-employment rights. Instead, veterans employment and training services are provided by agencies of state and local government which are funded by DOL. These agencies, though required by federal law to provide assistance to veterans, operate by their own set of rules, and have their own priorities about whom to serve and how.

State Employment Service

Chief among the state agencies responsible for the delivery of employment-related services for veterans is the state employment security agency (SESA) in each state. These agencies go by different names, depending on the state – Employment Services, Employment Security Commission, Job Service, One-Stop Job Center, or Workforce Development Center. There are approximately 1,800 SESA local offices nationwide. Your job search may sooner or later lead you to one of these offices, so you should know how they are set up.

A local SESA office functions primarily as a labor exchange; that is, they are a clearinghouse for matching job applicants to jobs in the local labor market. These offices thus work both with applicants and local employers. As a veteran you are entitled to priority in services the office provides. In most offices, you can conduct your own electronic job search, but we recommend that you ask to see one of two state employees:

A Local Veterans Employment Representative (LVER) is assigned in each office to facilitate employment, training and placement services furnished to veterans. The LVER also conducts outreach to employers to assist veterans in getting a job.

Most offices also employ a Disabled Veterans Outreach Program (DVOP) specialist who is responsible for providing intensive services to severely disabled veterans, other disabled veterans, and other veterans such as those who are economically or educationally disadvantaged.

In larger offices, the staff identified as the LVER or DVOP may be assigned full time to these positions. In smaller offices, LVERs and DVOPs are assigned part time and thus have other responsibilities in the office. These staff are key contacts not only for your job search, but also for training opportunities in the local area under the Workforce Investment Act. LVERs and DVOPS also facilitate many of the Transition Assistance Program job preparation workshops conducted on military bases throughout the nation.

Other services of local Employment Service Offices include:

- Provision of vocational counseling, if you need help deciding your career goals or don't know how to go about achieving them.
- Referral to state vocational rehabilitation if you are unable to qualify for the VA's vocational rehabilitation program
- Knowledge of local job market information, including what occupations are in demand, what occupations are not.
- Referral to local job training opportunities available under the Workforce Investment Act.

You should understand that SESAs have been the subject of criticism over the years, some of it deserved, some not. Some critics believe that local offices carry only low-paying jobs that private employment agencies refuse to carry. Others believe that local offices give priority to services for youth, day labor and public welfare clients at the expense of the general public, including veterans. Still others maintain that local offices operating in smaller states, or areas outside of major cities, are more effective in matching job seekers to employers. You will have to decide for yourself if a given local office is meeting your needs. If it isn't, try another office.

Community-Based Organizations

In many communities, veteran-oriented community-based organizations have evolved over the past 30 years. These organizations are not-for-profit and are designed to serve veterans and their families. Many of these organizations maintain robust employment or training programs designed especially for veterans. Organizations such as Swords to Plowshares, Vietnam Veterans of California, and the Philadelphia Veterans Multi-

Service Center have deep roots in the community and may provide you with the kind of effective, individualized assistance that government agencies cannot or will not provide.

Transition Assistance Program (TAP)

If you are still in military service, but within one year of separation or two years of retirement, you may find that attending a TAP workshop is a good first step in returning to the civilian labor market. TAP is a partnership among the Departments of Labor, Defense, Veterans Affairs and Homeland Security to provide employment information to active-duty servicemembers and their eligible spouses.

TAP workshops are designed as three-day sessions to be conducted at selected military installations in the United States. At U.S. installations overseas, TAP workshops are available in:

- Germany
- Japan (including the prefecture of Okinawa)
- Great Britain
- Italy
- Korea

The workshops are conducted by professionally trained facilitators from the local state employment service, military family support centers, federal or state contractors, or federal staff from the Veterans Employment and Training Service of the Department of Labor.

Workshop attendees learn about:

- The job search process
- Career decision-making
- Resume preparation
- Interviewing skills
- Current occupational and labor market conditions

You will also be provided with an evaluation of your employability relating to your skill level and the job market. A half day (usually the last) is given over to a briefing on benefits and services available through the VA.

If you anticipate leaving military service with a disability, you may want to attend a Disabled Transition Assistance Program (DTAP) session, normally conducted following the regular TAP workshop. These sessions are conducted by VA staff to provide individual instruction and to address the special needs of veterans with disabilities.

You may not feel that you need to attend the workshops if you already have a job waiting for you upon your retirement or separation. You should evaluate your situation carefully, however, and ask yourself if the information from the workshop might not be of some value to you down the road. We especially recommend that you attend the VA Benefits portion of the workshop. TAP workshop participants generally receive valuable information that gives them an edge over other job seekers and makes the transition from military service to civilian life less difficult than it otherwise would be. An independent national evaluation of the program estimated that TAP participants, on average, found their first post-military job three weeks sooner than those who did not participate in TAP.

That's the good news—the way TAP is supposed to work. Be aware that there are some limitations to TAP as it is actually carried out in the field. First, owing to Defense Department restrictions, TAP is not currently available in Iraq, Kuwait, or Afghanistan or certain smaller bases in the Middle East. These restrictions particularly affect members of the National Guard and Reserve, who have little opportunity to attend the workshops during the process of demobilization of their units.

Second, you may find that TAP sessions are shorter than three days at your installation. Although the participating agencies have agreed to the length of the workshops, the actual time a servicemember is allowed to attend TAP is very much at the discretion of local commanders.

Finally, if you are unable to attend TAP while on active duty, you may still attend a workshop once you get out. TAP is available to any veteran within six months following separation from active duty. This will require contact with your local office of the state employment service (see below), to find out the schedule for TAP at a local military installation, as well as what you need to do to gain base access.

Unemployment Benefits

Unemployment Insurance provides unemployment benefits to eligible workers who are unemployed through no fault of their own. Unlike other workers, when you leave or retire from military service you are automatically entitled to receive these benefits, provided that you were separated under honorable conditions. This program is called Unemployment Compensation for Ex-Servicemembers (UCX).

As with general unemployment benefits, UCX is administered by the individual state in which you apply. The cost of the benefit is paid for by the various branches of the military.

Unemployment benefit amounts will vary, depending both on the state in which you make your initial claim and your military pay. Benefits are based upon a percentage of your earnings over a recent 52-week period. You may receive benefits for a maximum of 13 to 26 weeks. In time of high unemployment, Congress may extend this time period to 39 or even 52 weeks.

How to file a claim and what to expect.

To file a claim for UCX, you should contact the State Unemployment Insurance agency, normally listed under "State Government" in the phone directory. In some states you can now file a claim over the Internet. In filing a claim, be sure you have a copy of your DD 214. This provides proof of service, character of discharge, and rank.

It generally takes two to three weeks after you file your claim to receive your first benefit check. Some states require a one-week waiting period, so that the second week claimed is actually your first week of payment.

You will have to file weekly or biweekly claims and respond to questions concerning your continued eligibility. Keep in mind that while you are drawing UCX you must be able and available for work. When you are asked if you looked for a job during the week, answering "No, I was sick," may temporarily disqualify you from receiving benefits.

You may be asked to report to the local state unemployment insurance office on a scheduled day and time. Be certain you keep your appointment; otherwise your benefits could be denied

You may be directed to register for work at the state employment service office. If you turn down a referral to a legitimate job, it could jeopardize your UCX claim.

You may find that drawing unemployment benefits is not a particularly pleasant experience. In some states, that is by design in order to discourage claimants from staying on any longer than necessary. But unemployment is not welfare, and is there to provide you with a modest income stream while you are seeking work, and is thus a valuable resource to you as you get back into civilian life.

Here's a helpful tip: The amount of unemployment you receive will depend upon the state in which you first make your claim. If you should move, that claim and its dollar amount will follow you. Therefore you would be wise to do advance research on what a state's maximum unemployment benefit will be, both for the state in which you will be immediately upon discharge, and the state where you ultimately may be living. This can be a real advantage to you, for example, if you make your initial claim in California, where the benefits are high, and move to state like Mississippi, where benefits are considerably lower. Your California claim and its dollar amount will be transferred to Mississippi.

Dennis K. Rhoades is a Vietnam veteran who spent 35 years working on behalf of his fellow veterans. He has held positions in the Departments of Veterans Affairs and Labor and at the White House, Vietnam Veterans of America and The American Legion. Rhoades was also appointed by U.S District Court Judge Jack B Weinstein to set up and administer the Agent Orange Class Assistance Program, a part of the 1984 Agent Orange Settlement. He retired in 2006.

Chapter Twelve
Re-Employment Rights and Associated Rights for Time Spent in Military Service

By Captain Samuel F. Wright, JAGC, USN (Ret.)

Federal Law Gives You the Right To Return To The Job You Left To Go On Military Duty

Since 1940, Federal law has given members of the Armed Forces the right to return to the civilian job that they left in order to perform *voluntary or involuntary* military service or training. Congress largely rewrote this law in 1994, and the current law is called the Uniformed Services Employment and Reemployment Rights Act (USERRA).

I have been speaking and writing about reemployment rights for more than 25 years. I recently retired from the Navy Reserve—I served on active duty and in the reserve as a judge advocate (attorney). I also worked for the United States Department of Labor (DOL) as an attorney for ten years, and during that time, together with one other DOL attorney (Susan M. Webman), I largely drafted USERRA.

In 1997, I began the "Law Review" column in *The Officer,* monthly magazine of the Reserve Officers Association (ROA). You can find all the back articles (more than 300 so far) on ROA's Web site, www.roa.org. Click on "ROA Law Library" above the scales of justice on the right side of ROA's main page. To save space in this article, I will refer to specific "Law Review" articles on the ROA website.

To what employers does USERRA apply?

USERRA applies to almost all employers in the United States, including the Federal Government (as a civilian employer), the states, counties, cities, school districts and other local government organizations, as well as private employers, *regardless of size.* Other Federal laws require that an employer have a specific minimum number of employees (often 15) in order to be subject to the law, but the reemployment statute has never had such a requirement. *You only need one employee to be an "employer" for purposes of this law. See Cole v. Swint,* 961 F. 2d 58, 60 (5th Cir. 1992).

The only employers within the United States that are exempt from USERRA are religious institutions (Law Review 185), Indian tribes (Law Review 186), embassies and consulates in the United States for foreign governments and international organizations (United Nations in New York City, World Bank in Washington, DC, etc.) .USERRA even applies outside the United States to U. S. employers and to foreign employers that are owned and controlled by U. S. employers (Law Review 24). Foreign-owned employers are subject to USERRA with respect to their operations in the U. S. See Law Review 0715.

I don't have any one employer—I work as a longshoreman through a hiring hall operated by my union. I work for many different employers, as assigned by the hiring hall. Does USERRA apply to a situation like this? In this sort of situation, who is my "employer?"

Yes, USERRA *does* apply to the hiring hall situation. The hiring hall is your employer. People who work as longshoremen, construction workers, stagehands or in other kinds of work where a hiring hall assigns workers do most definitely have USERRA rights, just like workers in more traditional jobs. Please see Law Reviews 28, 174, 183 and 0712.

Conditions That You Must Meet To Have The Right To Reemployment

What conditions must I meet to have the legal right to return to my civilian job?

Under USERRA, you must meet five simple conditions to have the right to reemployment in your civilian job:

a. You must have left the job for the purpose of performing voluntary or involuntary service in the uniformed services.
b. You must have given the employer prior oral or written notice.
c. Your period of service (the most recent period plus any prior periods while employed by that same employer) must not have exceeded five years. *All* involuntary service and *some* voluntary service do not count toward your five-year limit.
d. You must have been released from the period of service without having received a punitive (by court martial) or other-than-honorable discharge.
e. You must be timely in reporting back to work or applying for reemployment.

Now that I have mentioned the five conditions, let me go into greater detail on each one. *You must meet all five of these conditions—four out of five is not good enough*. I suggest that you very carefully "dot the I's and cross the T's."Keep in mind that you may be called upon to prove that you meet each condition.

Leaving Civilian Job for The Purpose of Service

The uniformed services are the U. S. Army, Navy, Marine Corps, Air Force and Coast Guard, as well as the commissioned corps of the U. S. Public Health Service (Law Review 46). The commissioned corps of the National Oceanic and Atmospheric Administration is *not* a uniformed service for USERRA purposes, although it is a uniformed service for other legal purposes. See Law Review 52.

A period of service in the uniformed services can be anything from five hours (one "drill" period for a member of the National Guard or Reserve) to five years of full-time, voluntary active duty. Contrary to popular

misconception, USERRA applies to *voluntary as well as involuntary* military training or service. See Law Reviews 30, 161, 203 and 205. Because Congress abolished the draft in 1973, all military service today is essentially voluntary—you may be mobilized involuntarily, but only if you originally volunteered.

USERRA is not limited to the National Guard and Reserve—it also applies to individuals who leave civilian jobs to join the regular military. Anyone who meets the five conditions set forth above has the right to reemployment under USERRA. See Law Review 0719.

USERRA's definition of "service in the uniformed services" also includes time away from work for purposes of an examination to determine fitness for military service. For example, let us say that you visit an Army recruiter, who schedules you for an examination (including a physical examination, as well as the Armed Forces Qualifying Test) at a Military Examination and Processing Station (MEPS). If you notify your civilian employer, you have the right, under Federal law, to a day or two off from work, as necessary to get to the MEPS, take the examinations, and return to your home and then back to work. You can have the right to return to your job even if you were found unfit for military service. See Law Review 50.

Prior Notice to the Civilian Employer

Regardless of what kind of service that you will be performing, you must give prior notice to the employer, orally or in writing. I strongly recommend that you give the notice in writing and retain a copy of the notice, because you may be required to prove that you had given notice.

The law does not specify the amount of advance notice—just that the notice must be in advance. If your work day starts at 8 a. m. and you call in at 7:30 to say that you are performing military service that day, that is advance notice, but if you call in at 8:30 a. m. that is not advance notice. I strongly recommend that you give as much advance notice as possible. If you have many weeks of advance notice from the military and withhold it from your civilian employer until the last moment, and if the lateness of the notice disrupts the employer's operations, that will be "viewed unfavorably."

If you receive late notice from the military, the lateness of the notice to your civilian employer is not to be held against you. If giving the employer

advance notice is precluded by military necessity or otherwise impossible or unreasonable, you will not lose the right to return to your job for having failed to give notice.

If you are a member of the National Guard or Reserve, you will probably have a "drill weekend"—generally the same weekend each month, like the first weekend. In that sort of situation, I recommend that you give the employer notice, in writing, for the whole fiscal or calendar year and then reiterate the notice orally as each drill weekend approaches.

I recommend that you give the employer the *actual dates* of your scheduled drills—don't just say "first weekend" or "third weekend."If there is federal holiday on the Monday after the first weekend of the month (as happens for Labor Day), the "first weekend" is the following weekend, as far as your reserve unit is concerned. Don't expect your employer to figure this out—give the employer the actual calendar dates that you expect to be away from work for military training or service.

If you leave a job to enlist in the regular military service, *give the employer notice,* even if you think that it is unlikely that you will want to return to that job. Giving notice costs you nothing, and you should be giving the employer such notice in any case, just as a matter of simple courtesy.

I suggest that you avoid using words like "quit" or "resign" when giving the employer notice that you will be away from work for military training or service, but using such words does *not* cause you to lose the right to return to the job after service. Please read Law Review 63. For other articles about notice, I invite your attention to Law Reviews 5, 29, 77, 84, 91 and 117.

Five-Year Limit on the Duration of the Period or Periods of Service, With That Employer

If you enlist in the regular military, you will have the right to return to your pre-service civilian job, so long as you do not go over the five-year limit through a voluntary reenlistment. Your active duty period could be longer than five years if that is your initial period of obligated active duty service. For example, persons who enlist in the Navy and choose nuclear power must commit to remain on active duty for at least six years. If you leave active duty at the end of six years, and if that was your initial period

of obligated active duty, you will have the right to reemployment. Of course, you must meet the law's other requirements as to prior notice to your civilian employer, release from active duty under honorable conditions and a timely application for reemployment.

If you are in the National Guard or Reserve, your training duty (weekend drills, annual training, etc.) does not count toward your five-year limit, and any involuntary service (like in a mobilization) also does not count toward your five-year limit. Even some voluntary emergency active duty is exempted from the computation of your five-year limit. Moreover, when you start a new job for a new employer, you get a fresh five-year limit with the new employer. Please see Law Reviews 201 and 0714 for a comprehensive discussion of what counts and what does not count toward using up your five-year limit with your current employer.

Release from Service Under Honorable Conditions

If you receive a punitive discharge by court martial for a serious offense that would disqualify you from the right to return to your civilian job [Combining first part and following sentence into a single sentence.], such a discharge would be called a "bad conduct discharge" or a "dishonorable discharge" or a "dismissal" for a commissioned officer. An "other than honorable" administrative discharge would also preclude you from the right to return to your pre-service civilian job. A "general discharge under honorable conditions" or an "entry-level separation" would not disqualify you from reemployment rights. Please see Law Review 6.

Returning to Work in a Timely Manner

After I am released from a period of military training or service, how long do I have to report back to work or apply for reemployment?

If your period of service was less than 31 days (like a drill weekend or two-week annual training period for a member of the National Guard or Reserve), you must report for work at the start of the first full work period (like a shift) on the first day that you are scheduled to work, after the completion of the period of service, the time reasonably required for safe transportation from the place of service to your residence, plus eight hours

for rest after you get home. If your return to work is delayed by factors beyond your control, like an automobile accident while driving home from your drill weekend, you must report back to work as soon as reasonably possible. Generally, you must be back at work the next work day after one of these short military tours, or by the second day if you have a long return trip.

If your period of service was more than 30 days but less than 181 days, you must apply for reemployment within 14 days after the date of release from the period of service. If your period of service was 181 days or more, you may (if you wish) wait up to 90 days, after the date of release from service, to apply for reemployment.

There is no particular form required for an application for reemployment, but see the attachment to Law Review 77 for a sample application for reemployment letter. You need to make it clear to the employer that you left your job for military service and that you have returned and are seeking *reemployment—you are not an applicant for new employment, and the employer should not treat you as one.* For more information about applying for reemployment, please see Law Reviews 7, 60, 77, 86, 91, 154, 156, 174, 178, 0622 and 0710.

Entitlements of the Returning Veteran

Prompt Reinstatement

If you meet the five conditions discussed above, the employer has a legal obligation to reemploy you *promptly.* After a period of less than 31 days of service, like a drill weekend or a standard two-week annual training tour, you must report back to work immediately, and the employer is required to put you back on the payroll immediately, as soon as you report back to work. After a longer period of military training or service, you must apply for reemployment within 14 days or 90 days after the release from the period of service. The employer is required to act on your application for reemployment and have you back on the payroll within 14 days after you submit your application.

If you have been away from work for military service for a significant time, it is entirely possible that the employer has filled your position in your absence—the work must go on whether you are there or not. *The fact that*

there is no current vacancy does not defeat your right to reemployment. In some cases, the employer is required to lay off the replacement in order to reemploy the returning veteran. Moreover, you can have reemployment rights under USERRA even if your pre-service job was considered "temporary,""probationary," or "at will." Please see Law Reviews 8, 73, 77, 87, 94, 95, 130, 203, 206, 0616, 0621, 0642 and 0701.

Continuous Accumulation of Seniority

The reemployment statute dates back to 1940, when Congress enacted it as part of the Selective Training and Service Act. For a comprehensive discussion of the history of this law, please see Law Review 104.

In 1946, the year after the end of World War II, the first case under this statute made its way to the United States Supreme Court. In that case, the Supreme Court held:"[The returning veteran] does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war." *Fishgold v. Sullivan Drydock & Repair Corp.,*328 U. S. 275, 284-85 (1946).

Several later Supreme Court cases elaborated on this "escalator principle," and section 4316(a) of USERRA [38 U. S. C. 4316(a)] codifies it in the current law. The escalator principle does not apply to everything that you *might have* received in your civilian job if you had remained continuously employed instead of going away for service—the escalator principle applies to *perquisites* (benefits) of seniority. You are entitled to a benefit of seniority, upon returning from a period of uniformed service, if the benefit meets a two-part test.

a. The benefit must be a *reward for length of service* rather than a form of compensation for services rendered.
b. It must be *reasonably certain* (not necessarily *absolutely* certain) that you would have received the benefit if you had been continuously employed.

The employer is not required to give you the vacation days that you would have earned if you had been continuously employed. More than 30 years ago, the Supreme Court determined that vacation days fail under the first part of

this two-part test—they are not a reward for length of service. *See Foster v. Dravo Corp. ,* 420 U. S. 92 (1975).

On the other hand, the *rate at which you earn vacation* is a reward for length of service and a benefit of seniority which the returning veteran is entitled to claim upon reemployment. For example, let us take Joe Smith, an Army Reservist and an employee of the XYZ Corporation. At XYZ, employees with 0-5 years of seniority earn one week of vacation per year, and employees with more than five years of seniority earn two weeks of vacation per year. Joe has worked for XYZ for four years, before he is called to active duty for 18 months. When Joe returns to work, he starts immediately earning two weeks of vacation per year—if he had not been called to active duty he clearly would have gone over the five-year point in XYZ employment. But Joe is not entitled to the vacation days that he would have earned during that 18-month period. For more information about USERRA and vacation benefits, please see Law Reviews 26 and 59.

Upon returning to work, you are entitled to the rate of pay that with reasonable certainty you would have attained if you had been continuously employed. After a lengthy period of service, your proper rate of pay on reemployment will probably be significantly higher than your rate of pay before you left work for service. If most of your colleagues at work received pay raises, you are also entitled to a pay raise, *as if you had been continuously employed.*

"Merit pay" systems are very common today in the private sector, and even in some government agencies. In such a system, each employee gets evaluated, and the evaluation determines the individual's pay raise for the next year. A handful of employees are rated "superior" and receive pay raises well in excess of inflation. Most employees are rated "satisfactory" and receive pay raises roughly equal to inflation. A handful of employees are rated "unsatisfactory" and receive no pay raises.

Let us say that Joe Smith received pay raises from XYZ for each of the four years that he worked there, before he was called to active duty for 18 months. Based on his record of satisfactory work performance at XYZ, before his military service, Joe is entitled upon reemployment to the pay raise that he probably would have received if he had been continuously employed. Denying him that pay raise based on the mere possibility that his performance might have "tanked" to the unsatisfactory level is a violation of Federal law. Please see Law Reviews 120, 169 and 0604.

More than 30 years ago, the Supreme Court applied the escalator principle to pension benefits. *See Alabama Power Co. v. Davis,* 431 U. S. 581 (1977). The Court held that Mr. Davis was entitled to his company pension as if he had been continuously employed from 1936, when hired by the company, until 1971, when he retired. The Court held that the reemployment statute entitled Mr. Davis to be treated, for pension purposes, as if he had been continuously employed by the Alabama Power Co. during the 30 months that he was on active duty during World War II. Please see Law Review 139 for more information about pension credit for military service prior to 1994, when Congress enacted USERRA to replace the 1940 law.

Section 4318 of USERRA [38 U. S. C. 4318] applies the escalator principle to pensions, including both defined contribution plans and defined benefit plans. I invite your attention to Law Reviews 4, 9, 40, 74, 75, 76, 82, 107, 119, 138, 167, 177, 183, 0607 and 0703 for detailed information about how USERRA applies to pension benefits.

Please recognize that the escalator can go down as well as up. USERRA does not protect you from a bad thing like a layoff or reduction in force (RIF) that *clearly would have happened anyway* even if you had not been away from work for military service at the time. If you are part of a collective bargaining unit represented by a labor union, the collective bargaining agreement between the union and the employer probably determines how employees are laid off, by seniority order—the last hired are the first to be laid off in such a situation. In a unionized situation, it is generally easy to determine what *would have happened* to your job if you had not left the job for military service.

In non-unionized companies, layoffs and RIFs are generally not based on seniority. In that case, determining what *would have happened* to your job is much more difficult. The employer may tell you that your job would have gone away anyway, but you should ask for proof.

Status of the Returning Veteran

Upon your application for reemployment, and assuming that you meet the five conditions, the employer is required to reemploy you in the position of employment that you would have attained if you had been continuously

employed (usually but not always the position you left). If your period of service was 91 days or more, the employer does have some additional flexibility. In such a situation, the employer has the option of reemploying you in another position, for which you are qualified, that provides like seniority, *status,* and pay.

The word *status* is an important word, full of meaning. Location (commuting area) is an aspect of status. You are not required to accept the employer's offer of a similar job in a distant city, unless there is evidence that the job itself moved during the time that you were away from work for military service. If the store where you worked closed during the time that you were on active duty, and all of your colleagues moved to a new store in a distant city or left the employ of the company, then the evidence shows that you would have been affected by that move even if you had not been on active duty at the time, and USERRA does not exempt you from changes that would have happened anyway.

If the job you had still exists in the same metropolitan commuting area where you worked before your military service, then the employer must reemploy you in that commuting area, even if it means displacing another employee. See Law Review 206. Of course, the employer may "sweeten the deal" by offering you relocation benefits and other incentives to take the job in a distant city. You can take that offer if you wish to, but if you decline the offer the employer must reemploy you in a job of like status (including location) to the position that you would have attained if you had been continuously employed. Congress recognized that there may be important considerations precluding you from moving to another city—for example, your spouse may have a job and not wish to give up that job to move with you. Other aspects of status include hours of employment (most people prefer daytime to nighttime work), being the supervisor instead of the supervisee, etc. Please see Law Reviews 8, 79, 129, 153, 170 and 191 for a detailed discussion of status.

Reinstatement of Your Civilian Health Insurance Coverage

Upon your reemployment, you are entitled to immediate reinstatement of your health insurance coverage (including coverage for family members).

There must be no waiting period and no exclusion of "pre-existing conditions" other than conditions that the U. S. Department of Veterans Affairs has determined to be service-connected. Please see Law Reviews 10, 69, 85, 118, 142 and 176.

Protection from Discharge after Reemployment

If your period of service was 181 days or more, it is unlawful for the employer to discharge you, except for cause, within one year. If your period of service was 31-180 days, it is unlawful for the employer to discharge you, except for cause, within 180 days. This period of special protection begins on the date that you are *properly* reinstated. If you were reinstated in a position inferior to the position to which you were entitled under USERRA, the period of special protection never started running and therefore has not been exhausted. Thus, in some circumstances the special protection period would remain in effect for more than a year after you return to work.

The purpose of this special protection period is to protect the returning veteran from the bad faith reinstatement. Please see Law Reviews 184 and 0701 for more information on this provision.

Accommodations for Returning Disabled Veterans

If you return from service with a service-connected disability, the employer is required to make reasonable efforts to enable you to return to the position of employment that you would have attained if you had been continuously employed. Of course, not all disabilities can be accommodated in the same position of employment—a blinded veteran cannot return to the cockpit of an airliner. If your disability cannot be reasonably accommodated in that particular position, the employer must reemploy you in some other position for which you are qualified, or can become qualified with reasonable employer efforts, and that provides like seniority, status and pay, or the closest approximation consistent with the circumstances of your case. Please see Law Reviews 8, 77, 121, 130, 136, 155, 174, 183, 199 and 0640.

Discrimination Prohibited

Section 4311 of USERRA provides as follows:

> § 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.
>
> (a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.
>
> (b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter [38 USCS §§ 4301 et seq.], (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter [38 USCS §§ 4301 et seq.], or (4) has exercised a right provided for in this chapter [38 USCS §§ 4301 et seq.]. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.
>
> (c) An employer shall be considered to have engaged in actions prohibited—
>
>> (1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or
>>
>> (2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter [38 USCS §§ 4301 et seq.], (B) testimony or making of a statement in or in connection with any proceeding under this chapter [38 USCS §§ 4301 et seq.], (C) assistance or other participation in an

investigation under this chapter [38 USCS §§ 4301 et seq.], or (D) exercise of a right provided for in this chapter [38 USCS §§ 4301 et seq.], is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title [38 USCS § 4312(d)(1)(C)].

38 U. S. C. 4311.

Proving a section 4311 violation (discrimination) is more difficult than proving a section 4312 violation (reinstatement). If you are fired after the special protection period has expired, or if you are denied initial hiring or denied a promotion or benefit, that would be a section 4311 case. You are required to prove that your membership in a uniformed service, performance of uniformed service, application or obligation to perform service or one of the other protected factors mentioned in section 4311(a) or 4311(b) was *a motivating factor* (not necessarily the sole factor)in the employer's decision. You need not prove that your service was *the reason—it is sufficient to prove that it was a reason.* You can prove "motivating factor" by circumstantial as well as direct evidence—there need not be a "smoking gun."Please see Law Reviews 11, 35, 36, 64, 122, 135, 150, 162, 198, 205, 0609, 1616, 0631 and 0707 for a detailed discussion of section 4311 of USERRA.

Assistance And Enforcement

If you have questions or need assistance, as a person claiming USERRA rights with respect to civilian employment, I suggest that you contact *the National Committee for Employer Support of the Guard and Reserve (ESGR)* at 1-800-336-4590 or DSN 426-1386. I also invite your attention to the ESGR website, www.esgr. mil.

ESGR is a Department of Defense organization, established in 1972. ESGR's mission is to gain and maintain the support of public sector and

private sector employers for the men and women of the National Guard and Reserve. ESGR has a network of more than 900 trained volunteers called "ombudsmen."An ESGR ombudsman will contact the employer on your behalf and to explain the law and try to work things out in a non-confrontational manner. If the ombudsman's efforts are not successful, the ombudsman will advise you to contact the U. S. Department of Labor or the U. S. Office of Special Counsel, or to retain a private lawyer to assist you in enforcing your rights.

I suggest that you *not* call ESGR or anyone else from work to complain about your civilian employer, and that you *not* use your civilian employer's e-mail system when seeking advice or making a complaint about your employer. You probably have no privacy when using the employer's telephone or e-mail system, and your employer probably has a rule against non-work activities on work time or with the employer's equipment. If your employer is annoyed with you for the time that you are away from work for military training and service and is looking for an excuse to fire you, the last thing that you should do is to give the employer such an excuse. Please see Law Reviews 150 and 0702.

ESGR's toll-free line is only answered during regular business hours Eastern Time, but ESGR is expanding its hours in order to make it possible for National Guard and Reserve personnel to contact ESGR from the privacy of their own homes, outside their business hours. ESGR also recently established a way for individuals to seek ESGR assistance through the ESGR website. Go to www.esgr. mil and select the link "USERRA Complaint Request" on the right side of the page. Provide contact information for yourself and your employer, as well as a brief explanation of the problem or issue. This information is stored on a secure server, and ESGR will assign your request to one of its 900 ombudsmen.

A detailed discussion of USERRA's somewhat complicated enforcement mechanism is beyond the scope of this chapter. For detailed information about USERRA enforcement, please see Law Reviews 12, 24, 34, 65, 67, 89, 93, 108, 115, 123, 148, 149, 159, 172, 189, 197, 200, 203, 205, 206, 0605, 0610, 0611, 0616, 0619, 0623, 0634, 0637, 0639, 0701, 0706, 0707, 0711, 0712, 0715 and 0717.

Captain Samuel Wright, JAGC, USN (Ret.) recently retired from the Navy Reserve, with more than 37 years of active and reserve service,

including more than ten years of full-time active duty. His military decorations include two Meritorious Service Medals, a Joint Service Commendation Medal and two Navy Commendation Medals. He worked for the U. S. Department of Labor (DOL) as an attorney for ten years, and during that time he and one other DOL attorney (Susan M. Webman) largely drafted USERRA. He initiated ROA's Law Review column in 1997.

Chapter Thirteen
Homeless Veteran Programs

By John Driscoll

On any given night, a quarter to a third of homeless men and women are veterans. If you find yourself homeless or in unstable housing, you are not alone. The VA, community-based homeless veteran service providers and non-veteran specific providers are out there to help you find temporary or permanent housing, income streams, healthcare, mental healthcare, drug and alcohol counseling and employment. That said, it will take some work on your part to find these resources in your community. The following material is a step-by-step guide to finding resources in your community The materials includes Internet-based referral lists through which you may find resources throughout the country. Most public libraries offer free Internet access. In addition, you may call the National Coalition for Homeless Veterans' toll-free number, (800) VET-HELP for assistance.

Getting Started

Before beginning a search for assistance available to you, it will be helpful to make a plan. Think about what it is that you need. Do you need medical, substance abuse or mental health care? Are you ready to work or do you need to learn a job skill? Do you have legal issues that need to be

resolved? Do you need to reapply for Supplemental Security Income (SSI) or VA benefit checks?

Make a list of your needs. This list is a tool to help you get organized and to help you figure out where to look for the kinds of help you may need. A sample list might look like this:

1. I need a place to live today.
2. I need a job.
3. I need clothing to wear to work.
4. I want to get counseling for Post-Traumatic Stress Disorder (PTSD).
5. I owe child support.
6. I need to find out what federal benefits I can get as a veteran.

Think about your list as you read through these Web pages. Who do you think can help you with each of your needs? There may be one organization able to work with you on many issues, or you may need to contact several agencies. Keep track of the steps you take, including the dates and names of people you contact for information or assistance. This will help you explain your situation and make sure you don't repeat steps you have already taken. Although this chapter provides *national* addresses for many organizations, we recommend that you check your phone book for local, county and state agencies that can direct you to help that is available in your area.

Requesting Information

If writing a letter or e-mail to request information, *be clear*. Keep it short and to the point and computer-print your message or write (or, better, hand-print) legibly. Include the following information:

- Your name and contact information.
- A brief statement about your current situation.
- Your specific request.
- What you have done so far. *Example: I have written to _____ [organization] and they suggested I contact you.*

When contacting an agency for help by mail, phone or email, *be persistent and polite* in order to get results. Ask questions if information is not clear to

you. Remember that organizations are often staffed by volunteers who are eager to help but may not have the answers you are looking for. If someone cannot help you, ask them to tell you who can.

Mailing Address

If you are not enrolled in a residence program, you may not have a fixed address, which means that receiving mail and phone calls may be a problem. If you are staying at a shelter, ask to use the shelter's address and telephone number as your contact information. If you are moving around, ask to receive mail and phone calls for the short term at a local drop-in center, shelter, the VA Regional Office or clinic, local veterans service organization (VSO) or your church. (Drop-in centers include vet centers as well as other centers, for veterans or for veterans and others, run by community-based organizations. Centers may be found in many local phone books under "Homeless Services" or "Homeless Assistance." A list is also available at nchv.org, the Web site for the National Coalition for Homeless Veterans, on the left side of the home page under "Homeless Veteran Service Providers.") Enrolling in a transitional housing program as soon as possible will give you a fixed address and phone number to use while applying for and receiving employment assistance and other supportive services.

Where to Go For Help

Housing

This section includes ways to locate emergency shelter, transitional programs, and permanent housing assistance. If transitional housing is available, you should try to move out of emergency shelter as quickly as possible. However, there are often waiting lists or interviews for transitional, temporary, and public housing, so you should apply now.

Emergency and Transitional Housing

For Veterans Only

- The National Coalition for Homeless Veterans provides services to homeless veterans around the nation.
- Every Department of Veterans Affairs Medical Center has a Homeless Veteran Services Coordinator who is responsible for helping homeless or at-risk veterans. To find the VA Medical Center serving your area, look in the blue pages of the phone book (the blue-edged pages near the front of the book) under "United States Government, Veterans Affairs," call the VA (toll-free) at (877) 222-8387 or go to www.va.gov, click on "Health," then "Locate a VA Medical Center."

For Veterans and Non-Veterans

- Look in the phone book yellow pages under "Homeless" or "Social Service Organizations" for local shelters and organizations.
- Look in the phone book blue pages under local, city or county government Department of Social Services "Human Services" or "Homeless Shelters" or call the Office of the Mayor for information about local low-income housing coalitions or homeless advocacy groups that may know what is available.
- To find a list of emergency shelters for men, women and families in every state, check the U. S. Department of Housing and Urban Development online at www.hud.gov/homeless/hmlsagen.cfm
- Coalitions for the homeless are listed in the phone book for many cities and urban counties. You may also find local housing information at www.nationalhomeless.org/local/local.html.

Long-term or Permanent Housing

For Veterans and Non-Veterans

Public housing waiting lists can be long, but the length of time can vary from place to place. Even if you are not sure where you want to live yet, apply to get on the waiting list so that you have as many options as possible. To learn how to apply, contact the local housing authority listed in the phone book blue pages under "Local Government, Public Housing Authority."

Health

If you have health issues that need to be addressed, contact the nearest VA Medical Center or clinic or a local community clinic for treatment. See below for information on general and more specialized health needs.

If eligible for veterans benefits

Every VA Medical Center has a homeless services coordinator who helps veterans and their families find resources inside and outside the VA health care system. Call (877) 222-8387 to find the medical center nearest you, or go towww.va.gov, click on "Health," then "Locate a VA Medical Center."

If ineligible for veteran's benefits

Free or low-cost health care may be available from the following sources:

- The Department of Social Services can tell you where to find health care facilities for the homeless. Check the phone book blue pages under local, city or county government for the number. Also check the listings for private organizations such as the Salvation Army, Catholic Charities, Volunteers of America, and Goodwill. In some areas, these organizations have clinics; in others, they have agreements with private health care providers.
- The National Health Care for the Homeless Council has a list of healthcare providers working with homeless people across the nation. For a list of providers in your state, go to www.nhchc.org.
- Non-VA hospitals receiving federal funds must provide some free services to those who are unable to pay. Information about free care should be posted at the hospital but you may have to ask for it.
- Free clinics are run by many local organizations and communities. Look in the phone book blue pages under "Public Health" to contact local government offices for clinics in your area.

Special health information for veterans

All homeless people carry a higher risk of contracting Hepatitis C, HIV and tuberculosis (TB) infections, and homeless veterans are at an even higher risk for Hepatitis C and TB.

- If you think you may be at risk for AIDS and HIV infection, contact the nearest VA Medical Center to get tested and seek counseling. Those at highest risk for AIDS and HIV infection are:
  - people who share needles or syringes to inject drugs or steroids;
  - men who have sex with other men;
  - those born to mothers who have HIV;
  - people who received blood transfusions before 1985;
  - anyone who has sex with anyone who is at risk for HIV/AIDS.

- Hepatitis C (HCV) is a serious disease that can cause cirrhosis (scarring of the liver) and liver cancer. If you think you are at risk, contact the nearest VA Medical Center to get tested and seek HCV counseling. You are at risk if:
  - you ever used a needle to inject drugs;
  - you had a blood transfusion or organ transplant before 1992;
  - you were a health care worker and had contact with blood;
  - you were on long-term kidney dialysis;
  - your mother had hepatitis C when she gave birth to you.

- The Veterans Health Administration also recommends testing if:
  - you are a Vietnam-era veteran;
  - you have had exposure to blood on your skin;
  - you have had multiple sex partners;
  - you have tattoos or body-piercing;
  - you have ever snorted cocaine;
  - you have liver disease;
  - you have a history of drinking a lot of alcohol;
  - you have had an abnormal liver function test.

If ineligible for veterans health care, see previous section, "Health," for free or low-cost testing.

Substance Abuse and Mental Health Treatment

The following resources may be of help if you are homeless and have substance abuse or mental healthcare issues, including depression or symptoms of Post-Traumatic Stress Disorder (PTSD).

If eligible for veterans benefits

- Contact the Homeless Veteran Services Coordinator at the local VA Medical Center. Call (877) 222-8387 to find the medical center nearest you, or go to www.va.gov, click on "Health," then "Locate a VA Medical Center."
- The Department of Health and Human Services Drug and Alcohol Treatment Referral Routing Service can refer you to local programs. Call (800) 662-4357.
- National Alliance for the Mentally Ill lists community mental health services providers at www.nami.org, or call (800) 950-6264.
- National Mental Health Association offers support groups, rehabilitation, socialization and housing services through 340 community organizations located across the country. Call (800) 969-NMHA, or find a local office online at www.nmha.org.

Employment

Finding a job can be frustrating, but with persistence you will get one! This section provides a list of resources and supportive services for you to build job skills, to find a job and to access supportive employment services.

For Veterans Only

- U. S. Department of Labor—Veterans' Employment and Training Service (DOL-VETS), Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives (LVER) work to help veterans find and keep jobs. DVOP specialists develop job
  and training opportunities for veterans with service-connected disabilities, linking veterans with employers and making sure follow-up services are provided. LVER specialists are located in state employment offices (also called One-Stop Career Centers or Unemployment Offices). To find a DVOP or LVER near you, visit

your state employment service office listed in the phone book blue pages under "State Government, Employment Agencies," or go to www.dol.gov/vets/aboutvets/contacts/main.htm.

- Organizations provide employment and training services to homeless veterans to help them get back into the workforce through the DOL-VETS Homeless Veterans Reintegration Program (HVRP). Organizations provide job search, counseling, job placement assistance, remedial education, classroom and on-the-job training, and referral to supportive services. To find out if there is a program near you, call the DOL-VETS State Director listed for your state on the Department of Labor Website at www.dol.gov/vets/aboutvets/contacts/main.htm. VA Vocational Rehabilitation and Employment Services help veterans with service-connected disabilities by providing job training and counseling. Services include help finding a job, on-the-job training, job development and vocational training. If you are not eligible for these services, a VA counselor may help you find other options, goals or programs. Call your Department of Veterans Affairs Regional Office (VARO) or go to www.vba.va.gov/bln/vre/index.htm. Call (877) 222-8387 for the VARO nearest you, or go to www.vba.va.gov/bln/vre/regional_offices.htm.
- Department of Veterans Affairs Compensated Work Therapy Program (CWT) is available to some veterans who have a primary psychiatric or medical diagnosis and are referred from certain VA programs. CWT provides a structured environment where clients participate in job training activities at least 30 hours per week. Contact the local VA Medical Center to see if you qualify. Call (877) 222-8387 to find the medical center nearest you.
- The Department of Veterans Affairs Website can help job seekers prepare resumes, find on-the-job training and apprenticeship programs, and search for job openings by state. For more information about VA employment assistance services and programs, and for contact information in your area, go to

www.va.gov, then click on "Vocational Rehabilitation and Employment Services."

- Many community-based organizations provide employment preparation and placement services. Employment assistance is often part of a holistic program offering housing and other supportive services. For a list of organizations in your area that can provide information and local employment services, call (800) VET-HELP.

For Veterans and Non-Veterans

- Every state government has an employment services and assistance department that provides information and supportive services to job seekers. Though each state is different, most offer comprehensive job listings, veteran-specific assistance programs (usually in partnership with DOL and VA programs), and information about unemployment benefits and training programs. Search your state's employment assistance Website for services that are offered, application policies, contact information and office locations. On most internet search engines, simply type in the state name followed by "employment." You can also try the blue pages in your phone directory.
- Each state has a Vocational Rehabilitation program that helps people with disabilities find and keep jobs. Look in the phone book blue pages under "Department of Human Resources" or "Department of Education" (it may be different in various states), then "Rehabilitation," or search the Internet by typing in your state name followed by "employment," and look for vocational rehabilitation programs and information.

Other Assistance

Check the local phone book yellow pages under "Homeless" or "Social Service Organizations" for a list of local organizations that offer different services, which may include clothing, public transportation tokens, emergency shelter and more. You may need to contact several agencies to find all the services you need.

Services provided by government agencies are listed in the blue pages found near the front of the phone book. Check with your local public assistance office to find out what programs are available and what their guidelines are.

The Internet can be helpful to find information about the VA benefits and community resources in your area. Use the on-line yellow pages, search the classified section of various newspapers, view government pages regarding veteran benefits, etc. and locate resources using key words such as "veteran," "homeless," "jobs" or "employment." The resource pages, at the end of this chapter, provide links to various federal agency home pages, veteran-related resources and homeless assistance organizations.

For Veterans Only

- State departments of veterans affairs provide many services which differ from state to state but may include assistance with the benefits claims process, readjustment counseling, crisis intervention, loans, family counseling and employment assistance. For contact information in your state, go to www.nasdva.com or look in the blue pages of your local phone book under "State Government, Veterans Affairs" or "County Government, Veterans Affairs."
- Stand Downs are one- to three-day events offering homeless veterans a broad range of necessities including food, clothing, medical services, legal and mental health assistance, job counseling and referrals. A list of scheduled Stand Downs can be found at www.nchv.org/standdownevents.cfm.

For Veterans and Non-Veterans

- The National Coalition for the Homeless has a directory of shelters and homeless assistance programs online. This does not list every program in the country, so be sure to check your phone book for local programs. Go to www.nationalhomeless.org/local/local.html. The Website also includes a directory of statewide and local advocacy organizations. Not all of these coalitions provide direct services, but they may be able to tell you about local programs or services.

- The Salvation Army provides services, including shelter, for homeless individuals and families. Check the phone book for a local post or go to www.salvationarmyusa.org.
- The United Way provides a variety of services through local organizations. Check the phone book for a local office or locate local organizations online at www.unitedway.org. In some states, dial 211 to access local emergency services.
- Local churches and faith-based organizations, such as Catholic Charities, the Salvation Army and Volunteers of America, may have a variety of programs to assist you. Find these organizations by calling your county or city Department of Social Services. Check the blue pages of the phone book for the number. You may also find organizations that can provide assistance in the business listings in the white pages under their names or in the yellow pages under "Homeless" or "Social Service Organizations."
- Travelers Aid International provides emergency travel vouchers for homeless individuals and families in crisis. To find help in your area, check the business listings in the white pages, call (202) 546-1127 or go to www.travelersaid.org.

Financial Help

For Veterans Only

- The American Legion provides Temporary Financial Assistance (TFA) from its national headquarters to help maintain a stable environment for *children* of veterans. To obtain an application, look in the phone book to contact a local post, or contact the National Headquarters to find the post nearest you.

For Veterans and Non-Veterans

- If you are unemployed with little or no income, you may be able to get food stamps. A person may normally qualify for $85 to $100 worth of food stamps per month. Call the toll-free information number at (800) 221-5689, or find a list of food stamp hotlines for each state at www.fns.usda.gov/fsp/contact_info/hotlines.htm. To

ask for an application, you can also contact the city, county, or state department of human services, many drop-in shelters or legal aid services to ask for an application.

- Supplemental Security Income (SSI) and disability benefits can be applied for with the Social Security Administration. Food stamps can be applied for with the SSI application. It normally takes about three months to review an SSI application, so apply as soon as possible. It is best to get help filling out the application. For detailed information or assistance, call (800) 772-1213, or call your local social security administration office listed in the phone book blue pages, or go to www.ssa.gov/notices/supplemental-security-income/text-apply-ussi.htm.
- The Federal Emergency Management Agency (FEMA) has an Emergency Food and Shelter Program to help prevent homelessness. Contact the local Office of the Mayor or United Way to ask who awards this money in your area and what the rules are.

Legal Help

Veteran status issues

You should talk to a veterans service representative (also called a "veterans service officer) for help with discharge upgrades, seeking benefits and filing a VA claim (see "Seeking Federal Benefits," below).

- You can find them at VA Regional Offices, VA Medical Centers, and through veterans service representatives. Whenever possible, get advice from an attorney, veteran service officer or other advocate before you request the VA's expedited process for homeless veterans. You don't want the VA to fast-track a claim that is not ready for adjudication (court decision); it might simply reduce your chances of success.

Other legal issues

- Most law is state-specific, and most common legal problems are governed by the law in the state where you live or where your problem occurred. When looking for legal help, make sure that

information you find applies to your state, or that the lawyer or other service provider is qualified to work in your state.

- The American Bar Association has a Web site with guidelines about free legal services and links to directories of legal aid offices and pro-bono programs. Go to: www.abanet.org/legalservices/findlegalhelp/probonodirectory.html .
- Legal Services and Legal Aid offices have staff lawyers to provide free legal help to low-income clients. Look in the yellow pages for a local Legal Aid office or check online at www.rin.lsc.gov/rinboard/rguide/pdir1.htm.
- Pine Tree Legal Assistance has an online list of organizations across the nation which provide free legal help to clients who qualify. Go to www.ptla.org/links/services.htm.
- Lawyers in private practice sometimes volunteer in "pro-bono" programs to take cases for poor citizens free of charge. Look in the yellow pages under "legal aid,""attorneys," or "lawyers" to find the name of the bar association that serves your area, or call your local court and ask for the name and number of that association. Many local bar associations can be found at www.abanet.org/barserv/stlobar.html.

Replacing Personal Records

There are certain personal records you must have to rent a place to live, apply for employment, open a bank account or request assistance from government agencies and community-based organizations. The following are personal records you will need:

- Birth certificate: You will need to contact the appropriate office of the state or county government in your state of birth. The Centers for Disease Control's National Center for Health Statistics Website provides addresses and information about obtaining birth certificates. Go to www.cdc.gov/nchs/howto/w2w/w2welcom.htm. There is often a cost associated with ordering a copy of a birth certificate. Check

with your local drop-in center: or other local programs to see if they provide assistance in obtaining birth certificates.

- Photo ID: Contact the homeless veterans coordinator at the nearest VA Medical Center for information on how to obtain a VA photo ID. Call (877) 222-8387 to find the medical center nearest you. Each state's Department of Motor Vehicles provides ID photo services for a fee. Check the blue pages of your phone book for the local number.
- Social Security Card: Apply at the nearest Social Security office (check the blue pages of your local phone book under U.S. government, Social Security Administration, or call (800) 772-1213). Because of tightened security at some federal buildings, and because some security personnel discriminate against the homeless, check with your local office to see if there are special procedures you must follow to get into the building where you would apply. You may also apply for a replacement card online at www.ssa.gov/replace_sscard.html.
- Form DD 214: Homeless veterans are entitled to one copy of their service and medical records free of charge. Use SF-180, the government's request form. Vets may submit the SF-180 to any VA medical center, VA clinic, or vet center. Most community-based organizations helping homeless vets can also help vets get their DD 214. The questions are pretty basic: full name at induction into the service; Social Security number, period of service, branch, and (if known) home of record at discharge. Then remember to sign and date the form and send it to the address listed on the form for your state. Homeless veterans, through their DVOP/LVER or case manager, may fax the request for records to (314) 801-9201. Be sure to write "Homeless Veteran Case" clearly on the form, or make your request online at http://vetrecs.archives.gov.

Veterans discharged from the Navy after Dec. 31, 1994, and the Marine Corps after September 30, 2001, should send requests to Navy Personnel Command; PERS 312E; 5720 Integrity Drive; Millington, TN 38055-3120. Veterans may also submit their requests online at www.vetrecs.archives.gov.

State Offices of Veterans Affairs often have military records of veterans who are state residents. Go to www.nasdva.comfor contact information in your state.

Seeking Federal Benefits

The Department of Veterans Affairs (the VA) publishes a booklet called "Federal Benefits for Veterans and Their Dependents" that describes the types of benefits available and lists the addresses and phone numbers for VA facilities nationwide. To request a copy, write to your VA Regional Office (VARO) or call (800) 827-1000. You can also find information about benefits and addresses for regional offices at www.vba.va.gov/benefits/address.htm. Information about benefits can also be found in several chapters of this book.

Eligibility for VA Benefits

Your ability to get most VA benefits depends on your discharge from the military. In general, you are eligible for services if you were discharged under honorable conditions. This includes honorable discharges and general discharges. Disability Compensation is money paid to veterans who were injured or have a disease that started or got worse during active duty. The VA Disability Pension is money that may be available to low-income veterans who are permanently and totally disabled, but not as a result of military service, and have 90 days or more of active military service, at least one day of which was during a period of war.

For expedited processing of benefit claims for homeless veterans, claims should be directed to the Homeless Coordinator at the nearest Regional VA Regional Office. Be sure to clearly mark "homeless veteran" on all applications and required forms.

Help Seeking Benefits

If you would like to get benefits or think you have a pending claim before the VA, it is best to get professional help to assist you.

To find the number of a county veteran service officer, look in the county or city government section of your phone book's blue pages under "Veterans Affairs." You might also call your county government information line to see if there is one in your area. In addition, you can see if there are county veteran service officers in your state by going to www.nasdva.com.

Many Veterans Service Organizations have trained staff who can help you with your VA claim, and can legally represent you before the VA. Some also help homeless and at-risk veterans find the support services they need. You can contact any VSO listed below to see if there is a service representative
near you, or find a list of VA-recognized VSOs online at www.appc1.va.gov/vso/index.cfm.

Seeking VA Compensation or Pension

Homeless veterans can qualify for disability compensation or pension; just follow the steps in chapters 3 and 4.

Organization Contact Information

The American Legion
700 North Pennsylvania St.
PO Box 1055, Indianapolis, IN 46206
(317) 630-1200 • Web: www.legion.org

AMVETS
National Service Officers, 4677 Forbes Blvd., Lanham, MD 20706
(877) 726-8387 • Web: www.amvets.org

Blinded Veterans Association
Field Service Officers, 477 H. St. , NW, Washington, DC 20001
(800) 669-7079 • Web:www.bva.org
Disabled American Veterans
P. O. Box 14301, Cincinnati, OH 45250-0301
(859) 441-7300 • Web: www.dav.org

Jewish War Veterans
1811 R St. , NW, Washington, DC 20009
(202) 265-6280 • Web: www.jwv.org

Military Order of the Purple Heart
5413-B Backlick Rd. , Springfield, VA 22151
(703) 642-5360 • Web: www.purpleheart.org

Non Commissioned Officers Association
PO Box 427, Alexandria, VA 22313
(703) 549-0311 • Web: www.ncoausa.org

Paralyzed Veterans of America
801 18th St. , NW, Washington, DC 20006
(800) 424-8200 • Web: www.pva.org

Veterans of Foreign Wars
National Headquarters, 406 W. 34th St. , Kansas City, MO 64111
(816) 756-3390 • Web: www.vfw.org

Vietnam Veterans of America
8605 Cameron Street, Suite 400, Silver Spring, MD 20910
(301) 585-4000 • Web: www.vva.org

Toll-Free and Other Numbers

Crisis and other important numbers are often listed in the front cover or first few pages of the phone book. You may also want to check under "Social Services" in the blue or yellow pages for additional hotlines and local numbers. Following are some numbers that may help you. Not all are toll-free.

Department of Health and Human Services Drug and Alcohol Treatment Referral Routing Service
(800) 662-4357

Department of Veterans Affairs
Benefits:(800) 827-1000

Medical Centers:(800) 827-1000
Persian Gulf War Helpline:(800) 749-8387

Focus on Recovery Helpline
A 24-hour national alcohol and drug abuse, addiction and treatment hotline: (800) 374-2800 or (800) 234-1253

Food stamps information line
(800) 221-5689

National AIDS Hotline
Talk to someone who knows about HIV/AIDS and can tell you about AIDS services in your city or state: (800) 342-2437

National Alliance for the Mentally Ill
(800) 950-6264

National Coalition for Homeless Veterans
(800) 838-4357 ([800] VET-HELP)

National Crisis Hotline
(800) 784-2433

National Mental Health Association
(800) 969-NMHA

National Personnel Records Center fax line
(To obtain form DD 214.) (314) 801-9201

National Suicide Support Number
(888) 784 2433 ([888] SUICIDE)

Supplemental Security Income (SSI) information line
(800) 772-1213

Travelers Aid International

(202) 546-1127

John Driscoll is Vice President of Operations and Programs for the National Coalition for Homeless Veterans. He joined the NCHV staff in January 2002. He served in the U. S. Army from 1970 to 1980, including a tour as an air-evac medic and platoon sergeant with the 575th Medical Detachment during the Vietnam War. After returning from Vietnam, he served as the senior clinical specialist on the Surgical Intensive Care Unit of the Walter Reed Army Medical Center in Washington, D. C. , from 1973 to1980 and remained a certified medevac specialist for both fixed-wing and helicopter aircraft until his discharge from the service.

Driscoll graduated from the University of Maryland with a Bachelor of Arts degree in journalism in 1988, and spent the next 13 years as a group newspaper editor for the Chesapeake Publishing Corporation. As a journalism student intern in 1987, he wrote a series on homeless veterans living on the streets of the nation's capital which was submitted for Pulitzer Prize consideration in two categories by Chesapeake Publishing. His exposé on the widespread use of chemicals used in the manufacture of Agent Orange throughout the United States until 1984—12 years after its use was banned in Vietnam—also received considerable attention.

Significant publishing credits while working with NCHV, in partnership with the Department of Labor-Veterans Employment and Training Service (DOL-VETS), include "Planning for Your Release, A Guide for Incarcerated Veterans," which has been distributed to more than 11,000 employment specialists, transition assistance counselors and incarcerated veterans; "Assistance Guide for Employment Specialists Helping Homeless Veterans," the primary DOL-VETS training manual for homeless assistance providers; and the "HVRP Best Practices Project," a study of 21 community-based programs cited for exemplary performance in helping formerly homeless veterans prepare for and obtain steady, gainful employment and successfully transition from homelessness to independent living.

Mr. Driscoll acknowledges the assistance of Swords to Plowshares, a veterans advocacy organization in San Francisco, for its assistance in the preparation of this chapter.

Chapter Fourteen
Veterans in the Criminal Justice System

By David F. Addlestone and Alan Chaset

This chapter is for veterans who, since separation, have gotten into trouble with the law. The very basic information contained here may be helpful to those who have been charged with a crime, but who have not yet gone to trial; it may be help those convicted of a crime, but not yet sentenced; and it may be helpful even to those who have been in prison for quite some time. (When the word "prison" or the word "jail" is used in this chapter, it means "prison or jail.")

Combat vets and non-combat vets who served in a dangerous area may have special problems that may provide special alternatives or advantages when they find themselves entwined with the criminal justice system. The key issue here involves war-related Post-Traumatic Stress Disorder (PTSD) and whether the vet may suffer from the disorder or already has been diagnosed with it. PTSD can make a critical difference in what happens to the vet who has been arrested and charged with a crime.

For information on PTSD in general, see Chapter Three. Note particularly the discussion of the VA-funded Vet Centers as a potential source for help for vets with PTSD.

The following discussion concerning the veteran and the criminal justice system has been crafted to familiarize the vet with some basic terms and concepts. It is most important to stress that the laws and procedures vary from state to state and that the complexity of the rules and the systems requires the services of a qualified attorney. While knowing something about the contents of this chapter will help the vet discuss his of her case with his or her lawyer, criminal charges present waters too deep and too full of hidden hazards for the vet to try to swim alone. When possible, try to secure a lawyer who has defended vets before and, if PTSD might be implicated in the vet's behavior, try to find an attorney who understands the disorder and who has worked with vets or others who have suffered from it.

Before Trial

Most criminal cases are concluded without going to trial before a judge or jury. The prosecuting attorney and the lawyer for the person charged with a crime (the defendant) work out an agreement or plea bargain to settle the matter. Under the terms of the agreement, the defendant agrees to plead guilty in return for being charged with fewer crimes or a less severe crime or crimes, in return for a shorter prison sentence, in return for a different kind of sentence (such as in-patient treatment instead of prison), in return for testimony against a co-defendant, or some combination of those alternatives.

PTSD may be helpful to the defendant interested in negotiating a plea agreement. Given the fact that the presence of the disorder itself may provide a defense (or partial defense) to the charged misconduct, the prosecutor might be more willing to secure a conviction for some (lesser) crime rather than risk the vet being found not guilty. It can also present a valid ground for sentencing an offender, perhaps as part of a probation plan, to serve a term in a treatment facility or hospital rather than a jail or prison. Obviously, if the conduct charged does not involve violence, injury or the use of a weapon, the opportunity for a more favorable outcome is increased.

In some circumstances, the defense attorney might even be able to persuade the prosecutor to simply not proceed with the criminal matter. Where the behavior of the vet has been unusual or strange, but non-violent,

and the vet clearly has recognized he or she has a problem and has voluntarily commenced treatment, prosecutors can elect to drop or dismiss the charges on the condition that the vet continue treatment and not repeat the offending behavior in the future. Alternatively, there are programs where the vet must enter a guilty plea and is then placed on a period of probation during which he or she must get treatment. If he or she successfully completes that treatment, the conviction can sometimes be expunged (erased) from the record.

At Trial

For the veteran who has PTSD and has been charged with a crime, a whole new world was created in 1980. In that year, the American Psychiatric Association published its *Diagnostic and Statistical Manual*, Third Edition, better known as *DSM-III*. *DSM-III* provided the first official recognition of the existence and characteristics of PTSD. Before the Association's recognition, it was difficult, if not impossible, to use a PTSD diagnosis in court. Subsequent editions of *DSM* further discuss PTSD.

While PTSD as an officially recognized diagnosis may literally open criminal justice doors, vets must remember that most vets do not have the disorder even if their experiences during the war were highly traumatic. Furthermore, even for those who have a legitimate PTSD problem, many of the crimes that were committed have nothing to do with the disorder and cannot be explained by or related to that diagnosis.

However, if you have PTSD and your crime is the product of or can be connected to the disorder, your lawyer can and should take the necessary steps to your advantage. As noted before, it might help in securing an acquittal, PTSD might provide enough mitigation (something that reduces the severity of a crime) to secure a charge of lesser severity, and it might help when it comes to sentencing—enabling the vet to receive probation or treatment rather than prison.

Obviously, if a PTSD defense is going to be used, your lawyer must be well prepared. He or she must be familiar with the kinds of defenses and the requirements that are viable in the (state or federal) court in which the vet has been charged. He or she should also be well versed in how PTSD has been used in previous cases both in that court and elsewhere and how

to employ experts and other evidence in its regard. And, without question, he or she should be fluent specifically in how PTSD occurs, its typical symptoms and its usual treatment, and how those items have occurred in your case and your overall situation. While you will need diagnostic and treatment experts, your lawyer must be or become familiar with the basic aspects of PTSD.

Insanity Defense

In most states, a person charged with a crime has the potential for securing an acquittal—being found not guilty—for the offense if it has been demonstrated that he or she was insane the time when the crime was committed. While the definition of insanity typically involves not knowing or understanding the nature and consequences of the criminal act and/or not knowing or understanding that the act was wrong, the precise language of the statutes here vary greatly. The advice and counsel of a lawyer, while generally a wise thing to secure, is particularly necessary to have on this issue.

The existence of PTSD may be a key element in putting forward an insanity defense. The disorder may, for instance, have caused such confusion in the mind of the veteran that, when he or she was firing a weapon at an otherwise innocent person, he or she may have been thinking he or she was still in combat using a weapon to repel an assault by the enemy. Psychiatrists and other mental health experts are needed by the defense to assist the defense lawyer in understanding PTSD and to testify as to matters such as the veteran's PTSD-induced confusion and the nature of PTSD. While the insanity defense is similarly available in non-violent crimes, its use has been significantly restricted in recent years because of the difficulties in meeting the increasingly strict standards for its application.

Additionally, the vet must understand that, even if there is a finding of not guilty by reason of insanity or not guilty but insane (some states permit such a finding), the offender is rarely then released back into society. Most states require the immediate transfer into a mental hospital where the period of incarceration may well exceed the time the vet was facing in jail or prison. Beware of using this defense except in the most serious cases.

Other Defenses

The number of other defenses or arguments that can be linked to PTSD and thus used to negate an element of a crime is limited only by the creativity of the attorney and the prior court decisions in the jurisdiction in question. For instance, it can be argued that PTSD had the effect of eliminating the mental state (for instance, the intent to kill) necessary for a finding of guilt. The successful use of such a defense may result in an acquittal or, more frequently, in a negotiation for a guilty plea to a lesser offense than the one initially charged.

Additionally, PTSD may serve to support a self-defense argument whereby the veteran asserts that he or she legitimately believed that he or she was under attack and/or faced imminent bodily harm from the victim. Courts have excused aggressive or assaultive behavior in such instances. Also, though more rare, courts have excused reactive conduct toward others (in the law this is called "automatism"), likening the veteran's behavior to action without conscious thought.

Sentencing

Once an offending veteran has been convicted of a crime or has entered a plea of guilty, the next step in the criminal justice process is sentencing. Even in those instances where the diagnosis of PTSD has not been successfully used to eliminate charges or lessen their severity, the existence of the disorder and its consequences can play an important role in determining the extent and type of penalty to be imposed for the offense. The creativity of the attorney is key, with his or her presentation of the case generally proceeding from the argument that the veteran is less culpable than the typical offender because of the disorder and how it was acquired. The position here should be that the offender requires treatment instead of punishment and that, even where imprisonment will be imposed, access to treatment during incarceration is a requirement.

Nevertheless, research into and knowledge about the available treatment programs is a must to ensure that the penalty imposed is not more severe than might be otherwise imposed. For instance, an offender might be eligible for a minimum security facility where "doing time" might be relatively easier (and safer) than a period in the penitentiary. If the treatment

program exists only in the high- or medium-security institutions (as in the federal system), the veteran might be better off foregoing the treatment alternative. The vet's attorney might ask the judge to recommend placement in a specific facility. Ask the judge to order or recommend placement ina a particular facility.

Sentences in cases prosecuted in the U.S. district courts (federal crimes) are greatly influenced by the so-called "federal sentencing guidelines," which are in many instances not rational. The courts have upheld the guidelines' rule that good military service is not a factor in giving a lower sentence than those in the guidelines. Only in the most exceptional case is a federal judge likely to provide a lesser sentence than provided in the guidelines because of military service. The consideration of service is most likely to be useful in negotiating a favorable pretrial agreement.

After Trial

Even after a veteran has been tried, convicted and sentenced, he or she might still benefit from arguments based on the existence of PTSD.

Reducing the Sentence

While the window of opportunity is often quite small, there does exist some opportunity in some jurisdictions to introduce the existence of the disorder and its consequences for the first time even after the sentence has been imposed. Basically, the argument is that the offender's PTSD was just discovered, there was no reasonable way of knowing about it or discovering it beforehand and, if it had been known before and fully explored and detailed, the outcome of the case would have been different. Another possible argument is that the lawyer at trial was incompetent for not raising PTSD.

Seeking a New Trial

Similarly, and also limited by strict time constraints, an offender might seek to withdraw the plea of guilty and/or seek a new trial based upon newly discovered evidence. Thus, if the lawyer can legitimately argue that he

or she did not know about the existence of the disorder and all reasonable steps taken would not have uncovered its existence, an effort can be launched to state that the offender would not have entered a plea of guilty and is entitled to withdraw the plea. Basically, the veteran can start the trial over again. Caution needs to be exercised here as the chance always exists for the second outcome to be more harsh than the first. Also, grants of new trials are rare.

Appeal

While offenders who have entered a guilty plea have limited opportunities to challenge their convictions on appeal, certain issues decided by the trial court when there was a plea of not guilty may still be raised as part of appellate review. Generally, the successful appeal requires a demonstration that the lower court made an error of law (not fact) such as failing to recognize that PTSD is an actual disease and/or failing to recognize that PTSD can be used to support an insanity defense or a self-defense defense in that particular jurisdiction. Furthermore, even when the conviction itself cannot be appealed, some sentencing decisions may be challenged, especially in those jurisdictions that have adopted sentencing guidelines or other systems which require specific findings of fact to warrant a particular sentence.

Habeas Corpus

Even if an appeal is unavailable or has been unsuccessful, many state and federal offenders still have an opportunity to make another challenge to their conviction and sentence. The challenge would be outside the normal appellate system. An example is the *habeas corpus* procedure. While there are hard-and-fast time limits for the filing of *habeas corpus* petitions (typically one year from the date that direct appeals were final) and while issues already litigated on appeal are typically not permitted to be addressed again, *habeas* petitions afford offenders the chance to raise issues implicating the Constitution and the rights that flow from it. For instance, the failure of a trial lawyer to raise the veteran's known PTSD as a defense or to use it as a vehicle for an alternative sentence, or both, may form grounds for a claim

of ineffective assistance of counsel. Another basis for this claim is that the lawyer's failure to fully explore and document the existence of the disease denied the defendant the right to an adequate defense.

Parole

While the federal system and many states have eliminated the potential for early release from incarceration through parole, PTSD and its treatment can serve as a means for demonstrating why veterans should receive favorable treatment in states that have other types of clemency systems. For instance, arguing that the offender has a disease that is being addressed through treatment clearly may demonstrate the lowered culpability of the veteran and point to the likelihood for success while under post-release supervision. Obviously, if such treatment is ongoing at the institution where the parole hearing is taking place, it is important that the treating professional participates at the hearing (in person or in summary reports or both) and it is similarly important that the release plans being proposed include demonstrable commitment to continuing the treatment once placed back in the home area. Sometimes VA Vet Centers can help in this regard. See also the following section of this chapter which discusses the VA's new program to assist incarcerated veterans to reenter society

Even if no treating professional is available for testimony, it is advisable to have written materials to provide to the paroling authorities which fully detail and explain the diagnosis and implications of PTSD. Educating the paroling authority and providing a post-release treatment plan will afford the veteran a better opportunity to secure release. Again, a Vet Center may be able to provide such information.

In Prison (Or Jail)

The veteran in prison should attempt to use the time there as productively as possible, including participating in as much educational and vocational programming as might be available. Additionally, voluntary participation in treatment programs and other self-help opportunities make sense in and of themselves and, importantly, are looked upon favorably by

paroling or similar clemency authorities (authorities with the power to reduce sentences).

If the particular facility does not have a specific program to deal with PTSD or if the health staff and treating professionals have no specific experience in dealing with the disease and its symptoms, or both, an effort can be made to secure a transfer to a facility where competent help is available. Additionally, your counsel might contact local Vet Centers, the VA transitional assistance program official (at the nearest VA Regional Office or VA Medical Center) or local chapters of veterans groups such as the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars and Vietnam Veterans of America to see if someone there might visit the institution or might set up a program within the walls, or both. Working with the prison authorities to create such a program is something else that should be looked upon favorably by the parole authorities. Again, see the following section on the VA's new incarcerated assistance program.

VA Benefits

All potential recipients of VA benefits (veterans and their families) may apply for disability compensation and other money benefits even while the potential recipient is in jail or prison. Nevertheless, payments are usually reduced to recipients who were receiving benefits before being incarcerated. Any recipient of VA benefits who is imprisoned for more than 60 days as a result of the conviction of a felony will not be paid in excess of the amount paid to a vet with a 10 percent disability rating. If an imprisoned vet has a 10 percent rating, he or she will receive only half of what a vet with that rating is ordinarily paid.

The result is the same if the imprisoned person is receiving DIC (Dependency and Indemnity Compensation, for survivors of veterans) payments. Still, the money the vet would receive if he or she were not in prison can be paid to his or her family. If, for example, a veteran is rated as 100 percent disabled but gets payments at only the 10 percent rate because of imprisonment, the difference between the 10 percent rate and the 100 percent rate can be sent to his or her family—if the family can prove need. Veterans in prison should encourage their families to apply to a VA Regional Office for an "apportionment"—division of the disability compensation. The family must be prepared to explain why it needs the money. The form the family files is VA Form 4-5655.

While the preceding is just a general description of the restrictions, the following rules are worth noting:

- Payments cease on the 61st day after incarceration following a conviction for a felony. If the VA continues to pay after 61 days, the VA should be told to stop so the vet can avoid an overpayment which will be recouped by the VA from payments made after the vet's release from prison.
- There are special rules for fugitive felons and their families, usually resulting in the cut-off of all benefits.
- A felony is usually defined as an offense punishable by more than one year in prison, unless the offense is specified as a misdemeanor in the court where the sentence was imposed.
- Full benefits are restored if the person is released on work release or to a halfway house to complete his or her sentence. The VA must be notified of the vet's changed circumstances. The vet can notify the VA with help from a veterans service organization or a VA Re-Entry Specialist (such specialists are discussed below).

Any attempt by the VA to reduce the disability compensation rating previously assigned by the VA while the vet is incarcerated should be resisted and, if necessary, appealed. If the percentage rating is reduced, the payments upon release will be less than before incarceration. And they will take years to be increased if the vet must reopen the claim. So the attempt to reduce the rating should be opposed. See the chapters in this book that describe the VA claims and appeals process.

- An imprisoned person who wants to begin to receive VA benefits or to increase his or her disability rating for VA benefits upon release can apply while in prison. Positive results will immediately affect the amount of the payments the person will receive upon release from prison.
- Any need-based VA pension is totally cut off if the recipient is imprisoned for any offense, not just a felony.
- Notify the VA Regional Office which handled your claim of any impending release from prison. Try to get a veterans service organization to help you. Examples of these organizations are the

American Legion, DAV, VFW, and Vietnam Veterans of America. The VA may start to reopen your file, but do not count on it. You will likely need to show it a certificate of release. See the following section on the VA's new transitional assistance program, which provides Incarcerated Veterans Re-Entry Specialists. The transitional assistance program may help get your payments started right away.

New VA Transitional Assistance Program For Vets Getting Out Of Jail Or Prison; Re-Entry Specialists

The VA has started a potentially very useful program to assist the incarcerated vet in making a smooth transition upon release. The program is very new, so do not expect instant miracles. One of the authors of this chapter has spoken with those responsible for the program and he has concluded that they are sincere.

By September 2007, the VA had hired 21 Incarcerated Veterans Re-Entry Specialists. They will be stationed at all 21 VA Health Administration locations ("VISNS"), which are responsible for their regions of the country. They in turn will train Re-Entry Specialists at all other VA medical facilities. Sometimes these specialists will be located at the VA Medical Center nearest to prisons with large veteran populations. Their work will be governed by VHA Information Letter 10-2006-007 (Healthcare for Re-Entry Veterans). Similarly, each VA Regional Office, where claims are processed, is supposed to have an employee assigned to help vets returning from prison to receive or apply for compensation or pension payments.

The goals of the program are to provide outreach to enable pre-release re-entry counseling and assessment services to include housing information to prevent homelessness; to arrange for medical or social services appointments; and to provide employment information, counseling, and short-term case management as needed. These services are to include referrals and appointments with local agencies and/or VA facilities.

The VA has prepared pamphlets for each state (regarding the particular benefits available in each state) to describe local services available to newly released vets. Ask the prison social services or similar department or pre-release counseling service, if any, how to obtain a pamphlet, or go to the VA Web sites that exist or which will be set up for more information. Two of these sites are www.va.gov (for a huge variety of VA information) and

www1.va.gov/homeless/page.cfm?pg=38 (for information on Incarcerated Veterans Re-Entry services and resources). If you have a problem locating a Re-Entry Specialist, call (310) 478-3711, extension 41450.

Educational Benefits

Veterans convicted of a felony and confined in a prison are not eligible for full educational benefits under the G. I. Bill or other VA educational programs. The VA will pay for only tuition, fees, necessary books, equipment, and supplies not otherwise paid for by a government agency. (This is because the veteran has no essential living expenses while in prison.) Regardless of the reduced VA payments, vets in prison may benefit from joining educational programs offered within the prison or (for certain prisoners) at colleges or other institutions outside the prison.

Legality Of Loss Of Benefits

Thus far, all court challenges by incarcerated vets regarding the restrictions of educational benefits and compensation have failed.

Help For Lawyers

Vets in trouble with the law need lawyers. Lawyers representing vets, especially vets with PTSD, often need help themselves. Lawyers representing veterans with PTSD will benefit from getting a copy of the excellent article on PTSD in the criminal justice system written by Prof. C. Peter Erlinder and published in the March 1984 issue of the *Boston College Law Review*. Another resource, available from Amazon.com, is the 1989 book by the late Barry Levine, *Defending the Vietnam Combat Veteran: Recognition and Representation of Military History and Background of the Combat Veteran Legal Client*.

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Chapter Fifteen
Upgrading Less-Than-Fully-Honorable Discharges

By Kathleen Gilberd

Introduction

For many vets, no veterans issue is as important as the upgrading of discharges. Changing a bad discharge can make a veteran eligible for VA benefits and other state and federal veterans benefits, even many years after discharge. A discharge upgrade can make a major difference in employment and career options. And for many vets, there are matters of personal honor and dignity that are equally important. This chapter describes the most common way to upgrade less than honorable discharges and to change reasons for discharge, through the Discharge Review Board (DRB) and the Board for Correction of Military Records (BCMR) for each service.

GI's are given discharge documents on the day they are discharged. The most important of these is a DD 214, which includes a great deal of information about their time in the service. The DD 214 comes with a "long form," showing the reason for discharge, character of discharge, reenlistment code and a three-letter or -number code matching the reason for discharge. There is also a "short form" version, which doesn't include

that information. Of course the VA and many employers want to see the long form.

Myths about discharges and upgrading

There are a number of military myths and urban legends about discharges and discharge upgrades, and some have been around for decades. You may have heard some of them: bad discharges automatically upgrade to general (or honorable) after six months; all you have to do is wait six months and send in a form to get an upgrade; anyone can get an upgrade by showing that they've done well after getting out; nobody looks at DD 214 discharge documents anymore, so there's no reason to worry about the kind of discharge you get… and so on.

A few rumors say just the opposite: general discharges can be under other than honorable conditions, and those don't entitle you to benefits; you don't get any benefits with any general discharge; with an other than honorable, you lose all federal benefits, not just veterans benefits.

None of these things are true. But many people honestly believe them, and commands often use the first set of rumors to convince soldiers or sailors to waive all their rights in discharge proceedings and take whatever the command wants to give them. The truth is that there are no automatic discharge upgrades, no minimum time before you can apply for an upgrade, and almost no easy upgrade cases. On the other hand, there is no such thing as general under other than honorable conditions; general discharges only affect GI bill benefits, not most other VA benefits, and vets with other than honorable discharges may be able to apply for VA benefits in some circumstances. Most federal benefits, like social security, aren't affected at all.

Statistics obtained by the National Veterans Legal Services Program show the real picture. In the last several years, overall success rates in discharge upgrade cases at the Navy Discharge Review Board have run around 4%. The Army DRB success rate in upgrades is 41%. The Air Force rate is 19% (that breaks down to 15% for upgrade applicants who don't have a personal appearance and 45% for those who have an appearance). The Coast Guard DRB has a success rate of only 1%. The Board for Correction of Naval Records upgrades approximately 15-20% of cases, while the Army Board for Correction of Military Records (BCMR) upgrades 10-15% and the Air Force BCMR upgrades 20%. Coast Guard BCMR rates are 15-20%. (The BCMRs, discussed in Chapter 16, can

consider "appeals" of bad DRB decisions, and can make many other changes in discharges and service records as well.)

But it is important to remember that every case is different, with its own set of facts and legal issues. These make a huge difference in individual chances of success. However, the low overall success rates mean that it's important not to rely on the rumors that upgrades are automatic or easy, and to treat your case like a serious military engagement. Good representation by an advocate or attorney, careful preparation and thorough documentation are extremely important. Requesting a personal appearance before the DRB usually makes a big difference as well. In this writer's experience, these things frequently mean the difference between a victory and defeat. Just filling out an application form and submitting evidence of good character seldom results in anything but a denial.

A quick look at discharges

It's useful to take a look at the military's discharge system when thinking about upgrades. (This is also discussed in the first part of chapter 18, which covers early separations.) This chapter uses the term "discharge," because it's the common word. Technically, a "discharge" means the complete end of a military obligation, while a "separation" can mean release from one kind of service to another. At the end of their active duty service, most GI's are separated and placed in the inactive reserve to finish the eight-year military obligation all enlisted personnel incur, and are discharged when they reach eight years.

Character of service is often the most important issue in a discharge review case. It may be an honorable discharge (HD), general under honorable conditions (GD), other than honorable (OTH), (For older vets, OTH discharges were characterized as "undesirable" or, before that, "blue" discharges.) Courts-martial discharges, called punitive discharges, may be bad conduct discharges (BCD) or dishonorable discharges (DD); officers would be awarded "dismissal" instead. Discharges initiated within the first 180 days of continuous active service may be Entry Level Separations (ELS), which are technically uncharacterized. Occasionally, when an enlistment is shown to be completely illegal to begin with, enlistments are "voided" with no discharge or character of discharge.

Discharges at the end of active service (ETS or EAOS) are characterized as honorable or general, as are discharges on completion of active or inactive reserve status.

Discharges prior to the end of enlistment are frequently administrative (which just means the military uses administrative procedures and the chain of command to give them). These can be honorable, general or other than honorable, depending on the reason for discharge. Administrative discharges include, among others, hardship, erroneous enlistment, conscientious objection, homosexual conduct, parenthood, pregnancy and misconduct.

Early medical discharges or retirement, awarded through the military's disability system rather than the command structure, are normally honorable, but in some services may be characterized as general if the overall service record is poor. They cannot be under other than honorable conditions.

BCDs and DDs may only be awarded by courts- martial—BCDs may be given by either special or the more serious general courts-martial, and DDs come only as the result of general courts-martial. Officers can receive only "dismissals" at courts-martial, and these come only from general courts-martial.

In addition to the character of discharge, vets may want to change the reason for discharge (called the narrative reason for discharge on DD 214 forms); the army refers to most of them as "chapters." They describe the basis for discharge, such as disability, erroneous enlistment, hardship, personality disorder, misconduct, etc. In many cases, vets feel they have been discharged for the wrong reason, or should not have been discharged at all, and may want to change the reason as well as character.

Discharges are also coded with reenlistment (RE) codes and letter or numerical codes (formerly called SPN codes). RE codes show eligibility for reenlistment. They may be RE-1, which allows immediate reenlistment, RE-2 or -3, which require various levels of waiver for reenlistment, or RE-4, which bars reenlistment unless it the code is changed, not just waived. SPN codes correspond to the reason for the discharge, sometimes giving slightly more detail. Since these codes aren't well known, and have changed over the years, employers may know that they mean something, but not know what.

Discharge upgrades in a nutshell

Each branch of the service has a Discharge Review Board (DRB) and a Board for Correction of Military (or Naval) Records (BCMR or BCNR); most upgrade cases begin at the DRB. DRBs have the power to upgrade any discharges except those awarded by a general court-martial, and can change the reason for discharge to or from any reason except medical disability. The DRBs cannot change RE codes, change a discharge to medical retirement or medical discharge, reinstate people in the service, or make other changes in their records.

Applications to the DRBs must be made within 15 years of the date of discharge, while applications to the BCMRs should be made within three years of discharge or of the date of an adverse DRB decision. The DRBs are inflexible about that time limit, but the BCMRs will often allow late applications if it is "in the interest of justice" to do so. For example, the BCMRs will usually accept late applications if the vets had not known they could ask the BCMRs for help until after the time had passed.

The BCMRs can make all of these changes, too, so they are usually used to appeal unfavorable DRB decisions. (If applications ask for an upgrade or change in reason, which the DRBs can grant, and nothing else, the BCMRs will tell applicants to apply to the DRB first, unless the 15-year period to apply to the DRB has passed.) In addition, the BCMRs can change other discharges to medical retirement or discharge, upgrade BCDs and DDs from general courts-martial and make a wide range of other changes in a person's service and medical records. (The BCMRs are discussed in more detail in Chapter 16).

DRBs are composed of officers from the branch of service involved; the Navy board reviews Marine Corps cases, and have a mix of Navy and Marine Corps officers. Applications to the DRBs must be made within 15 years of the date of discharge, and the DRBs don't accept late applications. DRB applicants can ask for a records review (also called a documentary review) or a personal appearance review. In a records review, the case is considered on the basis of the veteran's official military personnel and medical records and any evidence or statements submitted by the veteran, but the boards rarely obtain any other records, either on their own or at the veteran's request. Essentially, the boards believe it is the applicant's job to produce any other records that are important to the case.

A personal appearance review involves an informal hearing before the board, where the vet and/or representative can present arguments, testimony, witnesses and evidence for the Board's consideration. All of the boards hold hearings in Washington, DC, and some of them have travel panels, which hold hearings in a few major cities around the country. If a records review is held first, applicants can ask for a personal appearance review later, so long as it is still within 15 years of discharge. Vets can only ask for another review after a personal appearance if there was absolutely no representation provided the veteran in the prior review, or if the service can be persuaded that the DRB acted improperly. (The DRB regulations say that finding new material evidence might allow another review, but this writer doesn't know of any such cases.) Success rates are normally much higher with a personal appearance, except in cases involving purely legal arguments or really obvious factual mistakes.

Choosing the best approach

Most discharge upgrade cases start at the Discharge Review Board level, but there are lots of variables, and it important to talk with an attorney or advocate as you think about how to approach the case. For example, if you believe you should have been medically retired, but were administrative discharged, you may decide to skip the DRB and apply directly to the BCMR, since the DRB cannot make that change. The same thing is true if you have an otherwise good discharge but want to change your RE code.

If you have an OTH discharge, and your main interest is in receiving VA benefits, you can sometimes ask the VA to make a character of discharge determination and award benefits anyway. This is not a discharge upgrade, however, and doesn't change your DD 214. The VA also has some "bars" to benefits, where a character of discharge determination is more difficult and, depending on the year, an upgrade from a BCMR may be almost the only way to obtain benefits. One important bar is an OTH for an unauthorized absence (AWOL or UA) of 180 continuous days or more. In those cases, an upgrade from a BCMR is necessary. Some veterans challenge their discharges through the VA and DRB or BCMR at the same time, though they may run into problems if more than one agency tries to obtain the vets' military records at the same time.

Some veterans decide to wait a while after discharge before applying to the DRB, in order to build a strong record of post-discharge accomplishments. With a BCD or DD discharge, which can only be upgraded on the basis of clemency, this is extremely important, since rehabilitation and good conduct after discharge are central issues. Vets who choose to wait need to keep the DRB and BCMR deadlines carefully in mind. On the other hand, in administrative discharges with serious legal errors in the discharge process, and discharges involving important and obvious factual mistakes, waiting and developing a good record (and requesting a personal appearance) may be less important.

The moral of all this is that an advocate or attorney can help you to make decisions about where and when to apply for review at the beginning of your case, to give you the greatest likelihood of success.

Legal standards and presumptions.

Most vets who apply to the boards believe that they will get a fair and objective review of their case—that vets start out on an even playing field, and that the boards look carefully at the official record to make sure each discharge was fair and proper. But the DRBs and the BCMRs use legal standards and presumptions that make almost every case an uphill battle. By law, the DRBs consider cases with a "presumption of regularity in the conduct of governmental affairs," which is a nice way of saying that the boards start from the position that discharges are fair and legal, that commands and discharge authorities acted properly and military records give an accurate statement of what really happened.

When you apply to the DRB (or BCMR) the legal burden is on you to overcome that presumption by providing "substantial credible evidence" that the discharge was not fair or proper. In plain language, good documentation and well-constructed arguments can make a tremendous difference. While your own statement about what happened is evidence, it is rarely enough evidence, by itself, to overcome this "presumption of regularity."

DRBs and BCMRs consider administrative and ETS cases on the basis of the fairness and the legality of the discharge at the time it was given. The DRBs call these issues equity (fairness) and propriety (legal and technical

sufficiency), while the BCMRs use the terms injustice (unfairness) and error (legal error). Court-martial discharges are handled differently, though—here the Boards consider only clemency, not fairness at the time of the discharge or legal error in the court-martial. Clemency may mean mitigating circumstances at the time of the offense(s) leading to the court-martial. Rehabilitation and good conduct after discharge are usually the principal consideration in an upgrade.

One of the nice legal things about these boards is that the rules of evidence do not apply. You can submit evidence which would not be admissible in court, including second-hand information, testimony and statements that are not given under oath, and very informal evidence. This gives you a lot of freedom to introduce not only character letters, but informal statements from people who were generally aware of the circumstances surrounding the discharge, or who have an opinion about the fairness of the discharge. (This does not mean that formal, notarized statements are unimportant.)

Getting Started

You probably don't want to start with just an application to the Discharge Review Board. Applications are submitted on an "Application for the Review of Discharge or Dismissal from the Armed Forces of the United States," Form DD-293. The form looks straightforward and simple, with a little box where you can state your arguments and issues, and another little box to list any evidence you submit. In reality, just filling out the form and sending it in is not the best way to present your case, and isn't a very good way to start.

Before you submit the form, get educated. In addition to this chapter, you may want to look at the DRB website for your branch of service, and look at information available on civilian websites such as www.nlgmltf.org and usmilitary.about.com/cs/generalinfo/a/dischargeupgrade. If you are interested in more serious research for your case, you might want to look at the Discharge Upgrading Manual and the Veterans Benefits Manual published by the National Veterans Legal Services Program; you'll find their contact information at www.nvlsp.org. The manual on upgrades, even

though it has a supplement, is very much out of date, but it is the most detailed discussion of discharge upgrades around. If you read it along with the discharge upgrade chapter of the National Veterans Legal Services Program's *Veterans Benefits Manual*, you can put together a thorough picture of how the boards work. This is not a substitute for good representation, but it can be valuable in putting together your case.

Then look for representation. (If this sounds very repetitious, it's because of its real importance.) The organizations listed in the Appendix can help you find an attorney or advocate in your area. Some cities have legal panels or legal clinics that will assist vets in discharge upgrades pro bono (on a volunteer basis) or at reduced fees. Several programs have been set up to work specifically with vets of the wars in Iraq and Afghanistan.

You and your representative should obtain the records, which the DRB will see, your personnel and medical records, before submitting your application. Once you apply to the DRB, its staff will order those records, and you will not be able to order separate copies of your own—your only way to see the records then is to review them at the DRB office or the hearing site.

Military records can be ordered with a Request Pertaining to Military Records form (Form SF 180), available at VA regional offices and on line at www.archives.gov/research/order/standard-form-180.pdf. The form includes instructions and a chart explaining where to send it for personnel and medical records.(See Chapter 17 of this book.) If you have been seen at a VA medical facility, that office may also have a copy of your military medical record, and can also provide you with a copy of all your VA medical records for additional information. Even if you came away from the service with a copy of your records, it is wise to order a copy officially, and then compare it with your own copy, as records are sometimes lost or miraculously "appear" in your official record after discharge.

The personnel records centers (except for the Air Force) are notorious for providing incomplete sets of records, so you may need to make a follow-up request for records you think should be there, such as performance evaluations, administrative discharge packets, and disciplinary records. In addition to this, it is valuable to look at the DRBs copy of the record at the DRB office or hearing site, before the case is decided, to check for differences between your copy and the board's. (This author has had a number of cases in which the boards received critical records which the

records centers did not provide to the veteran, including two in which "confessions" in personnel files were missing in the veteran's copy of the records, but not the board's.)

It is also important to obtain copies of other records which the review boards will not normally see, but which you may want to submit. Sometimes these records provide valuable evidence that would not otherwise be available to the board. For example it is worth ordering copies of the record of trial of your court-martial if you received a punitive discharge. If you were the subject of or a witness in an investigation by Naval Criminal Investigative Service, the Army Criminal Investigative Division, the Air Force's Office of Special Investigations or the Defense Investigative Service, you can request any investigative records they made or obtained. These records may include important facts left out of the official records, and the board won't be aware of them without your help.

If you were a hospital in-patient in the service, those medical records don't become part of your regular medical record, but can be ordered from the military hospital (or, if the hospital has 'retired' them to storage, you can ask the hospital for the name of the agency storing them). If any civilian or VA medical records have a bearing on your case, it is important to order them, as well. Local commands and military archives keep some other records, such as unit logbooks, which sometimes contain useful evidence. Perhaps the best discussion of military-related records can be found in the NVLSP's Veterans Benefits Manual. The Manual is pricey, but can often be found in local law libraries or through your attorney or advocate.

You and your representative should review these records carefully, and think about how to show the real story of your discharge. Service records provide the official version of the case, the version that the DRBs will accept as correct unless you prove otherwise. In many cases, commands will make a very careful paper trial of their version of events, often painting an incorrect picture of your service and conduct. Personnel and medical records are the starting point in case preparation—looking at them, you and your counsel can decide what equity and propriety arguments will make the most sense, and what other evidence should be gathered to overcome the picture in the official record.

It is important to consider the regulations which governed your discharge—those in effect at the time of the discharge, and the current version. Commands and separation authorities often overlook important

parts of the regs, and these failures may provide important arguments. In addition, if you were discharged some time ago, the current regulations may be more to your advantage, allowing an equity argument that you would have been given a better discharge under current standards, a contention that the DRBs are supposed to accept as equitable grounds for an upgrade. Finally, you can look at other decisions of the DRBs in cases similar to yours, available through the boards' electronic reading rooms. (You can find these by starting at the review board's website.) Unless these cases decided very basic legal issues, they are not binding on the boards, but can be "persuasive" in consideration of your case.

Early preparation….if you are about to be discharged

If you are reading this because you are about to receive a discharge you don't like, this may be the best time to start fighting the discharge or to start making a paper trail for a later discharge upgrade application.

If you're not already out the gate, stop for a minute and think about whether there are things you can do to challenge the discharge before it happens. Many GIs are so fed up at this point that they just want out, and are willing to take whatever they get. But down the road that discharge may be important in getting medical benefits or the job you really want. Even if the separation authority has already ordered your discharge, take a minute to talk with a military attorney (a Judge Advocate or JAG) and a civilian attorney or counselor experienced in military discharges. A good starting point is the national GI Rights Network's hotline, 877-447-4487 or the Military Law Task Force, 619-463-2369. If it is too late to stop the discharge, or you truly can't stand another day in the service, they can also talk to you about some initial steps to take to begin to document a discharge upgrade case.

For example, if the military has ignored medical or psychological problems that led to your discharge, such as Post Traumatic Stress Disorder or an injury or illness that you think might be related to 'misconduct' or poor performance during your service, you can help your case tremendously by getting an independent civilian medical evaluation right away. Documentation of medical problems right at the time of discharge is much more useful than documentation months or a year later. If there are others

in the command who know about the events or mitigating circumstances of the discharge or can speak to your good performance and character, ask them for written statements, If potential witnesses are hesitant to say anything, you can still get their permanent address. Once you are in the discharge upgrade process, their statements don't come back to haunt them; if they have been discharged by then, they may feel free to speak.

As you are being discharged, you can request complete copies of many military records that may be lost or discarded later—not only your complete personnel and medical records, but also the separate records kept by at base clinics or medical treatment facilities, your JAG's file, your Equal Opportunity (EO) officer's file on a complaint you made, or copies of ship's logs that may document facts important to your case. If you ask your command's personnel office for a copy of your record, beware the tendency to give you only your old transfer and assignment orders. There are many more important things in your record, such as performance evaluations, administrative data, and the documents made when your discharge was being considered, and these are among the things that tend to get lost in some cases.

In many cases, it is also helpful to make a written statement on the record about the discharge or any waiver of rights, even if you and the command have already completed the paperwork. With the help of a JAG, civilian attorney or counselor, you can write a letter explaining any medical, personal or family problems that affected your service, documenting in your own words any harassment or discrimination that led to the discharge, or explaining why you may have waived rights in the discharge proceedings. (Since the DRB starts out with a presumption that the command acted properly, it will often claim that you would have demanded all of your rights and fought the discharge if you had any grounds to do so. You may want to explain any mitigating circumstances or command action that caused you to waive your rights and accept the discharge.) You can give this to your command, your JAG, your medical officer or the command legal officer, asking that they sign a receipt for it and place it in your record. If they later 'lose' the statement, you'll have your own copy, hopefully with evidence that you gave it to the command.

More evidence

Whether you're a recent vet or were discharged 20 years ago, you can still gather other documentation about the circumstances leading to your discharge and about your good character, performance and conduct in the military and after you got out. You may be able to track down people from your command that can provide letters or statements about the circumstances or problems leading to your discharge, how they affected you, and, if it's important, how the command responded to the problems. People who have known you since discharge can describe the on-going effects of any medical, family or other problems you had in the military. In most cases, it's important to show that your overall service was good, and statements from co-workers and especially supervisors can be extremely helpful.

In almost every case, it's important to let the board know about your post-service good conduct. Character letters, certificates and awards, educational and good employment records, and police department statements showing that you have no criminal activity since discharge, are all helpful. But get creative here! If you're mentioned in a church bulletin as part of a group helping the homeless, get a copy! If you got a write-up in a school newsletter or local paper for some achievement, or charitable or community activity, use it. Get letters from people who know that you are a good person. In many cases, this type of evidence shows the board the sort of soldier or sailor you would have been if not for the problems that led to your discharge. Letters about your honesty and integrity can be important if the board will need to judge whether your statements in the military or to the board are trustworthy—this is especially important if your statement is the only evidence about a fact or situation that's important to your case. And whether or not it is related to an issue in your case, the boards are influenced by evidence of good character and conduct since your discharge.

Arguments

The board is required to consider every issue or argument that you raise. It's important to set out these issues clearly on the DD 293 form and as separate arguments in a written brief which you can present to the board with the application or at any time up before the decision on your case. Issues should be identified as "equity" or "propriety" issues, or as both.

There are many different ways to present arguments and issues, and you may want to defer to the style your advocate likes. If you are making the decision, you can look at examples in the Discharge Upgrading Manual and other resource materials. Some advocates like a "building-block" format in which each part of a propriety or equity argument is set out as a separate point or sub-point, while others prefer a more condensed approach. It is important to state the argument clearly and succinctly before discussing it, so that the board will not ignore the issue or get lost in the discussion. The board is required to address each separate issue that you raise, so clarity is important.

Just by way of example, some vets could make these arguments:

MY DISCHARGE IS INEQUITABLE, AND SHOULD BE UPGRADED TO HONORABLE AND CHANGED TO DISCHARGE BY REASON OF HARDSHIP/DEPENDENCY IN THAT SERIOUS FAMILY PROBLEMS LED TO MY A.W.O.L. AND OTHER THAN HONORABLE DISCHARGE.

and

MY DISCHARGE IS IMPROPER IN THAT I WAS DENIED THE RIGHTS AVAILABLE TO ME IN THE ADMINISTRATIVE DISCHARGE PROCEEDINGS.

A. MY COMMAND DENIED ME THE OPPORTUNITY TO SUBMIT A STATEMENT ON MY OWN BEHALF IN THE DISCHARGE PROCEEDINGS, BY FORWARDING THE DISCHARGE RECOMMENDATION PRIOR TO THE TIME ALLOWED TO SUBMIT MY STATEMENT.

B. I WAS DENIED PROPER REVIEW OF MY DISCHARGE IN THAT THE SEPARATION AUTHORITY WAS NOT PROVIDED A COPY OF MY STATEMENT AND MY EVIDENCE OF A SEVERE FAMILY HARDSHIP, AND WAS UNAWARE OF THE FACTS WARRANTING A MORE FAVORABLE DISCHARGE.

The first argument gives a general equity issue, under which you and your advocate can discuss the relevant evidence of the hardship and your efforts to solve it through proper military channels before going AWOL. The second argument divides a legal issue into specific sub-points about the denial of a basic right to submit a statement, and the result that the discharge authority wasn't allowed to see the whole picture….two violations

of the admin discharge regulations stemming from the same command mistake. In a brief, this could be followed by references to the specific regulations and an explanation of how the outcome might have differed if you had been able to use these rights.

Some common issues in discharge upgrade cases include:

- Alcohol-related misconduct. If a drinking problem led to an AWOL or other misconduct, it helps to show the severity of the problem and the relation between the alcoholism and the misconduct. This is more likely to be successful if you can show that the command failed to recognize the problem and offer you rehabilitation.
- AWOLs or other misconduct stemming from family problems. If you had to go home to take care of family problems, or the problems caused you stress that led to misconduct, it is important to document the problem and discuss the relationship between your concern about the problems and the misconduct. If you tried to go through the chain of command and didn't get help (for instance, if the sergeant told you not to apply for a hardship discharge because it would be turned down) it is very helpful to document both the fact that you tried, and the way in which the command responded. Medical records or statements documenting the problems are very important. And, of course, if you can show that you went home and helped the family while AWOL or after discharge, this is important.
- AWOLs or other misconduct related to a medical condition. Misconduct can sometimes be mitigated by the fact that you were ill or injured prior to discharge, and suffering from the effects of that condition. Command failure to let you get medical help, or military medical staff's failure to properly diagnose and treat the problem, will strengthen this argument a great deal. It helps if you can document the severity of the problem at the time of discharge—medical records or evaluations made then are the most persuasive—although later medical evaluations are also useful if they shed light on your condition while in the service. If you developed a medical problem like depression, and military doctors under-diagnosed

it as an adjustment disorder, or if doctors mistook your painful spinal injury for a muscle sprain, the board may be somewhat sympathetic to poor performance or conduct while the condition went untreated. It's important to show that the problems leading to discharge stemmed from the medical problems, not just that they happened at the same time.

- Post-Traumatic Stress Disorder (PTSD) misdiagnosed as a personality disorder. The military very often under-diagnoses PTSD, depression, and other serious disorders as personality disorders, which are among the very few psychological conditions which do not warrant medical discharge or retirement and compensation through the military or the VA when they are serious. This may result in a discharge by reason of personality disorder. In many cases, symptoms of the illness are treated as disciplinary problems, leading to a less than honorable (general or, more often, OTH) discharge for misconduct. To be sure that PTSD has not been overlooked, Congress has recently ordered the military to evaluate personality disorder diagnoses given to soldiers who have served or are currently serving in imminent danger pay areas. Military regulations are changing to require a second opinion and some oversight in these situations. This offers important new issues in some discharge upgrade cases. For vets discharged before the new regs went into effect, there may be an argument that better treatment and better discharge would have resulted under the current standards. Vets discharged after August 8, 2008, may argue that the new procedures weren't followed, or weren't followed effectively. In these cases, psychiatric evaluations challenging the military diagnoses will be very important.
- Discharge in lieu of court-martial. This discharge, which can be requested by GIs facing serious court-martial charges (lengthy AWOLs are most common), may be difficult to upgrade. The DRB will know you asked for the discharge, and may think that you did so because you had no real defense or mitigation, and just wanted the easy way out. But evidence of personal, medical or family problems can be helpful here. If you needed to take

this relatively quick admin discharge because the problem was still troubling you, you were needed at home to care for a sick family member, or the command threatened heavy punishment no matter what the circumstances, evidence of this is important. This is one of the places in which it is very helpful to document your reason for taking the discharge at the time.

- Misconduct/drug abuse. DRBs share the military's "zero tolerance" attitude, and this is a difficult discharge to upgrade. In some cases, you may be able to gather evidence that you were not abusing drugs (through evidence of faulty urinalysis testing, for example), If the drug use was proven, or admitted, it helps if you can show that drug use involved a real dependence or addiction, or stemmed from painful and untreated medical problems—or even that the problem began with drugs the military prescribed for an injury. While the command's failure to provide you with rehabilitation is seldom an issue by itself, the boards may be sympathetic if the condition was beyond your control and/or you really wanted help with it. It is useful to check both the discharge reg and your service's drug reg carefully to see if your case was handled properly by the command. In some limited situations, including self-referrals for drug treatment, some drug-related information cannot be used for characterization of your discharge, but not all commands can keep this straight.
- Fraudulent enlistment. Back in 1982, the regulations changed so that only a few limited kinds of fraud are grounds for OTH discharge, and most must be honorable, general or ELS. Many commands get this wrong, and try to give OTH discharges anyway. It's important to check the regulation to see if the discharge characterization was proper. Even with a general or ELS, you may have arguments for an upgrade if the fraud was quite minor or understandable. If, as often happens, the recruiter told you to withhold information, the board usually requires evidence of the recruiter's misconduct, or a pattern of such behavior in other cases involving the same recruiter. If the "fraud" was a simple misunderstanding of the questions asked at enlistment, if you didn't know the name of a medical

condition you had as a child, or were too young to know the doc you had seen was a psychiatrist, for instance, this lack of knowledge and intent to defraud can be shown through statements from your family or friends. In pre-1982 discharges, vets can argue that they would have received a better character of discharge under current policy, so that the discharge should be upgraded as a matter of equity.

- Homosexual conduct. Only certain "aggravating circumstances" listed in the regulations warrant an OTH; otherwise the discharge should be honorable or general (or ELS) depending on your overall service. Some commands can't accept this, and give an inappropriate discharge simply because of their bias. Some violate the "don't ask, don't tell" rules and base discharges on mere rumors, and arguments based on the regulations can show the discharge was improper. Many commands will "ask" questions and get information that they have no right or need to know under the regs. However, these violations of the regulation will not invalidate the gay discharge itself, though they may gain sympathy from a decent board. Again, in older discharges, especially those given before 1981 and 1982, you may be able to use a current standards argument for an upgrade. It's important to check the regulations in effect at the time of your discharge and the current regulations, and to look for technical errors as well as improper characterization. The DRBs are supposed to provide you with copies of these regulations if you request them.
- Racial, gender or other discrimination. Statistics show that race, in particular, tends to affect the character of discharges; people of color receive worse discharges for performance problems or conduct some supervisors and commands overlook in white GIs. The DRBs must admit that racism and sexual discrimination exist, but are allowed to presume that no discrimination occurred in your case unless they are presented with specific evidence. In most cases, this means evidence of bias shown towards you, though a pattern of command bias against other people of color, women, etc., can sometimes succeed. If the discrimination led to unequal treatment, or

caused the command to assume you committed misconduct when you did not, the board will be attentive if they have no way to ignore the discrimination.

- Sexual harassment or sexual assault. Current statistics show that women who complain about (or even threaten to complain about) sexual harassment or assault often end up with involuntary discharges, and these are often less than honorable. Again, it is important to overcome the board's presumption that the regulations were followed and the command acted properly in your individual case. But where command wrongdoing can be shown, the boards can be forced to admit that discharges are inequitable and improper. It is important to look at the limited protections offered by the Military Whistleblower Protection act and implementing regulations. (These are discussed in chapter 26.) If retaliation was not an issue, the boards may also be open to arguments that the psychological stress caused by harassment or assault mitigates poor performance or misconduct.
- Misconduct outweighed by a pattern of good service. It's not uncommon to see a well-respected soldier or sailor suddenly labeled a "dirt bag" after one or two incidents of misconduct, no matter how good his or her behavior was beforehand, and no matter what the circumstances. The DRBs will consider prior good performance and conduct, and particularly receipt of awards and decorations, when considering whether the misconduct outweighed the overall record of good service. In theory, only the performance and conduct in the last period of enlistment should be considered in characterizing discharges, but the boards will sometimes look sympathetically at prior periods of honorable service. The discharge regulations and DRB regulations encourage this, but you should still expect the board to treat even minor acts of misconduct as if they were major felonies, particularly for GIs with some years of service, or those who are E-4 and above. This argument usually works best if combined with another showing some mitigating circumstances leading to the misconduct.

Hearings

Personal appearances before the DRBs are considered very helpful in discharge upgrade cases, and the overall statistics bear this out. A hearing offers you an opportunity to tell the board what happened, to let the board members judge your character by your words and demeanor, to present witnesses who know the circumstances of the discharge or your character, and to hear oral arguments from you or your representative.

Hearings before the DRBs are informal and non-adversarial. The lowest-ranking officer on the board serves as a 'recorder.' He or she explains the board procedures to you before the hearing, and they are explained again when the hearing begins, to ensure that you know your rights in the proceedings and, in theory, to make you feel comfortable speaking to the board. Sessions are recorded by the board, and you are entitled to a copy of the recording if you request it. In theory, the board members want to hear from you, and no one is to act as a prosecutor to argue against you. In reality, board members may ask very difficult questions and respond to your arguments with their own views.

Veterans can give sworn or unsworn statements to the DRBs, as can witnesses. If you make a sworn statement under oath (or affirmation, if you believe it's wrong to take an oath), the board members are allowed to question you. They cannot do so with an unsworn statement. Presenting your case to the board can be a stressful experience. Some vets practice hearings with their advocate beforehand, or with a third person so that they can see how their advocate handles things. While some vets just make a statement from memory, or from notes, others read a statement prepared beforehand. Some give their statements in question-and-answer form with their representative; the questions highlight each of the points they want to make. Some vets choose to present a written statement or a statement made through their advocate. Boards do like to hear from veterans, however, and an oral statement can help not only to establish the facts of the case, but also to give the members a sense of the vet's character.

Some advocates start and end the hearing by making an opening statement and closing argument. If board members question you or your witnesses, your advocate can respond with other questions to clarify, and he or she can object if questions are improper or rude, if the members ask questions too quickly to allow answers, or otherwise make it difficult for you

to present your case. The advocate can also discuss the propriety or relevance of the members' questions, reminding the members if they are looking at issues they should not

consider. On those rare occasions when board members get carried away and become hostile, advocates can intervene. If you have troubles speaking to the board or answering questions, your advocate can help you to explain what you meant, give you a chance to catch your breath and collect yourself, or make arguments to emphasize the important parts of your statement.

Sometimes new issues come up during the hearing, or it becomes clear that the board members are focused on an unexpected issue. It is possible to present new issues before the hearing ends, and the recorder should ask that these be written on a DD 293 form to document them. On rare occasions, it may be useful to ask the board to defer its decision until new evidence or arguments can be submitted to address an issue that came up for the first time in front of the board.

At most hearings, the members end by thanking the veterans for presenting their case, and wish them well—but they don't make a decision then. Instead, the members discuss the case afterwards, and send the veteran a written decision, usually four to six weeks later. If they deny a case in whole or in part, they should explain why they disagree with each issue the vet raised, or why they feel it doesn't require an upgrade.

Further review

If the DRB denies all or part or your request, like upgrading your discharge to general rather than honorable, or changing the character but not the reason, you have several options. If you have had only a records review, or had a hearing without any representation, you can reapply by requesting a hearing at any time up to the 15-year deadline. If that doesn't apply, or doesn't seem useful, you can petition the Board for Corrections of Military/Naval Records. They can consider the case as you presented it to the board, along with any new evidence and arguments. You may want to add requests to your application that the DRB could not consider, such as a change in reenlistment code.

Some veterans take their cases to federal court. The courts can address major issues of law, but rarely decide the that review boards abused their rather broad discretion in deciding cases. Here the advice of an attorney is extremely important, to determine whether litigation would be useful.

In some cases, veterans feel that the boards did not act properly in applying their own legal standards or requirements. If this is the case, you may want to speak with your advocate about a complaint to the Joint Service Review Activity. The JSRA gives the military department an opportunity to review the case and, if the service does not take action, the JSRA makes its own review and provides recommendations to the Deputy Under Secretary of Defense (Program Integration) for a decision. Remember here that the complaint doesn't directly address the validity of an upgrade application, but rather whether the DRB acted properly in considering the case.

By way of conclusion

Discharge upgrade cases are obviously complex, and they involve a fair amount of work. But good representation can take much of that load off of your shoulders, and allow you to raise significant legal issues without spending a year in a law library. Although success rates are not high, a well-prepared and well-documented case can have a strong chance of success. The rewards can be important, in personal honor and in a "clean" DD 214 which opens the way to important benefits.

Kathleen Gilberd is a paralegal military counselor, who assists servicemembers and veterans in voluntary and involuntary discharge cases, discharge upgrades and Board for Correction of Military/Naval Records cases, sexual harassment and racial discrimination complaints, and medical (disability evaluation system) proceedings. Ms. Gilberd is a graduate of the University of California, Berkeley; she first became interested in military law there when soldiers at nearby Fort Ord asked for help with a demonstration against the Vietnam war at their base. This taught her a great deal about servicemembers' rights, and the lack thereof, and led to professional and pro bono work as a military counselor beginning in 1973. Her work has ranged from Navy sailors' protests of dangerous shipboard conditions to participation on the legal team for Col. Margarethe Cammermeyer in a successful lawsuit against the pre-"Don't Ask, Don't Tell" policy, and now

to challenges to the Army's and Marine Corps' efforts to discharge combat veterans with PTSD for misconduct or "personality disorder."

For more years than she cares to remember, Ms. Gilberd has served as the chair or co-chair of the National Lawyers Guild's Military Law Task Force, and she contributes regularly to its legal journal, *On Watch*. She has written extensively and, she says, boringly, on military administrative law, including

contributions to the military counseling manual, *Helping Out*, Clark Boardman Callahan's *Sexual Orientation and the Law*, and other legal manuals. She also serves on the advisory committee of the national GI Rights Network.

CHARACTER OF DISCHARGE
AND ELIGIBILITY FOR VETERANS BENEFITS

VA Benefits	Honorable	General	OTH*	BCD (SCM)	BCD(GCM) DD
Medical and dental care	Y	Y	TBD	TBD	N
Hospital & domiciliary care	Y	Y	TBD	TBD	N
Montgomery GI Bill Y	N	N	N		N
2009 GI Bill	Y	N	N	N	N
Other educational assistance	Y	Y	TBD	TBD	N
Vocational rehabilitation	Y	Y	TBD	TBD	N
Survivor & dependent educational assistance	Y	Y	TBD	TBD	N
Pension for non-service-connected disability or death	Y	Y	TBD	TBD	N
Pension for service-connected disability	Y	Y	TBD	TBD	N
Dependency & indemnity compensation	Y	Y	TBD	TBD	N
Insurance	Y	Y	TBD	TBD	N
Home loans	Y	Y	TBD	TBD	N
Burial expenses	Y	Y	TBD	TBD	N
Burial flag	Y	Y	TBD	TBD	N
Burial in national cemetery	Y	Y	TBD	TBD	N
Headstone marker	Y	Y	TBD	TBD	N
Civil service preference	Y	Y	N	N	N
Civil service retirement credit	Y	N	N	N	N
Job preference with public works projects	Y	Y	TBD	TBD	N
Unemployment compensation	Y	Y	N	N	
Naturalization benefits	Y	Y	N	N	N

*For OTH discharges, benefits are available for injuries incurred "in the line of duty."

Eligibility:
Y: yes
N: no
TBD: to be determined

Character of discharge:
OTH: other than honorable
BCD: bad conduct discharge
DD: dishonorable discharge
SCM: special court-martial
GCM: general court-martial

Chapter Sixteen
Correcting Military Records and Related Issues

By David F. Addlestone

There are countless types of military records. The records range from medical records to court-martial convictions. Military records can do the veteran a lot of good or a lot of harm, especially when applying for a job or for VA benefits.

This chapter will concentrate on the correction of military records, which generally is handled by the Boards for Correction of Military Records (BCMR). We will also discuss removing adverse information on discharge papers and old court-martial convictions. The previous chapter dealt with the upgrading of discharges, which generally is handled by the Discharge Review Boards (DRB), but which in some cases can be presented to a BCMR.

Both of these areas are full of technicalities. For this and other reasons, it is important that vets who want to correct their records or upgrade their discharges get advice from a service representative or service officer who works for a veterans organization, a state, or a county or from an attorney

with experience in veterans issues. The service rep or attorney will be especially well equipped to help the vet if the rep or attorney has access to the National Veterans Legal Services Program's *Veterans Benefits Manual*.

Boards for Correction of Military Records

The Army, Air Force, and Coast Guard each have a Board for Correction of Military Records (BCMR). The Navy (including the Marines) has a board that functions in the same way, called the Board for Correction of Naval Records

(BCNR). When this chapter refers to "BCMRs" it will mean both BCMRs and the BCNR.

BCMRs are composed of high-ranking civilian employees of a military department. Many BCMR members are veterans.

Under federal law, BCMRs have the power to "correct any military record" when "necessary to correct an error or remove an injustice." As a result, BCMRs have authority to resolve many disputes (except for most attempts to overturn a court-martial conviction) between a veteran and a military service.

For instance, BCMRs have the power to:

- Remove the effect (such as a bad discharge and forfeiture of pay) of a court-martial conviction (though the BCMR can only rarely erase the conviction from the vet's records).
- Void a discharge by changing its date of issue to a date.
- Reinstate a vet into military service (this is rarely done).
- Remove disciplinary actions (except court-martial convictions which occurred before 1951) from a vet's records or change the vet's performance marks (a vet may want to request a change in the performance records) before or at the same time as applying for a discharge upgrade.
- Credit a vet with service time or otherwise change a record to qualify a vet for VA benefits.
- Correct performance reports and order promotion.
- Correct records to show that medals should have been awarded.
- Grant disability retirement benefits.
- Overrule the results of line of duty investigations or overrule reports of survey.
- Correct any other error in a vet's service record.
- Remove other problems that stand between a vet and benefits provided by the VA and other agencies.
- Upgrade any bad discharge, including a dishonorable discharge or a bad conduct discharge issued by a *general* court-martial. (While Discharge Review Boards deal with most cases involving discharges, only BCMRs can upgrade the two discharges just mentioned.)
- Change the reason given for a discharge (such as from misconduct to medical reasons or from homosexuality to expiration of enlistment).

- Remove ("expunge") pre-Uniform Code of Military Justice court-martial convictions (that is, a pre-1951 conviction).

A BCMR cannot grant VA benefits but may correct records so as to make the VA more likely to grant benefits, for example, removing a military service finding that the vet's injury was due to his or her misconduct.

Deadline and Exhaustion of other Remedies

Technically, a BCMR can correct military records only if an application is filed within three years of the date the veteran discovers an error or injustice— unless the BCMR in the "interest of justice" excuses the vet's failure to meet the deadline.

In reality, however, most BCMRs almost never reject an application because it fails to meet the three-year deadline. However, all BCMRs require that you have a good explanation of why you missed the deadline. The courts have ruled that if relief would be granted, then the BCMR must, "in the interest of justice," waive the three-year statute of limitations. If this applies to your case, so state that in box 8a (date of error injustice) of the application form (DD Form 149).

If there is an agency other than the BCMR that can give the vet the desired relief, the vet must apply there and be turned down before applying to the BCMR. This is called "exhausting other remedies." For instance, if the vet is seeking the sort of discharge upgrade that DRBs can grant, he or she must first apply to a DRB. Unlike the three-year deadline rule, the rule requiring the vet to exhaust other remedies is a rigid one.

How to Apply for Correction of Records

To apply to a BCMR, you must send a Department of Defense Form 149 to the address shown on the form. (Although all BCMRs are in Washington D.C., the addresses are sometimes elsewhere.) You can get a Form DD149 from a VA Regional Office, your service rep, or online from the BCMRs' web sites.

ARMY: http://arba.army.pentagon.mil
AIR FORCE: www.arpc.afrc.af.mil

NAVY AND MARINE CORPS: www.hq.navy.mil/bcnr.htm
COAST GUARD: www.uscg.mil/legal/bcmr.htm

Do not file the DD149 until you have filed an SF 180 (a request for your military personnel and medical records) and have received an answer. See Chapter 17, "Getting Your Records."

If you are anxious to get your case decided by a BCMR, file your DD149 as soon as you get an answer to your SF 180, even if you are not yet ready to send documents and other materials you would like the BCMR to consider. You can submit your material later because it usually takes a BCMR several months to a year to get to a case. To be safe, though, send your additional materials within two months of the date you send your application. With your additional materials, attach a letter or note saying, "Please attach these materials to my application dated _____." If you are very ill, on active duty, or have some other reason the application is an emergency, so state and ask that your application be taken out of order. Be sure to include evidence of this condition to support your request.

You should also write a letter to send along with your original application. This letter is to request copies of all the materials the BCMR will consider in deciding your case. Some of these materials may include legal or medical opinions obtained from other branches of the military service. If you are not happy with the BCMR decision, you will also need these documents to decide what to do next and to prepare for any further step, such as a request for reconsideration or the filing of a lawsuit.

Your letter should include this statement:

"Prior to the BCMR's consideration of such documents, please furnish me copies of any (1) advisory opinions from any source, (2) staff briefs or memoranda, (3) military or civilian investigative reports (such as CID or OSI reports) or FBI "rap sheets" (arrest records) obtained or prepared for use and consideration by the BCMR on petitioner's application. Upon receipt of this material, I will determine if a rebuttal is to be submitted. This request is made pursuant to the Privacy Act, 5 U.S.C. Sec. 552a, and the Freedom of Information Act, 5 U.S.C. Sec. 552."

If the veteran is deceased or is otherwise physically or mentally unable to file the application, the spouse, parent, heir, or legal representative of the veteran may file the application. When filing the application, such a person

should file proof of the relationship with the veteran (and, if the veteran is deceased, should also file a copy of the death certificate).

Service representatives or attorneys can be of great assistance to the veteran or other person completing the application to be sent to a BCMR.

In filling out the application, you must indicate whether you want a hearing in which you would appear in Washington, D.C., before the BCMR (box 10, DD Form 149). BCMRs grant hearings in fewer than five percent of cases. Still, just requesting a hearing may help show your sincerity. If you are granted a hearing but cannot currently afford to travel to Washington for it, the BCMR in most cases will grant you a "continuance"—a delay in the case—until you can get the money you need to get to Washington. Even if you have to raise money to do so, it is important to attend a hearing if you have the opportunity to have one. If you have a hearing, be sure to get a service representative or attorney to attend with you as your counsel.

The only document you are required to file is the application itself. But your probability of getting what you want will be dramatically better if you also aggressively advocate your case. The BCMRs operate on the assumption that the burden is on you to demonstrate an error or injustice. You should usually submit, depending the relevancy to your case:

1. A typed argument explaining the reasons you should get what you are requesting. (In box 5, DD Form 149, be sure to clearly state the relief you are seeking. For example, "Upgrade my general discharge to a fully honorable one and change the reason for discharge from misconduct to expiration of term of service; remove my fitness report dated _____; show that I was promoted to E-5 on _____ and authorize back pay." Write very clearly: BCMRs are very busy and will pay more attention to cases "laid out" for them.
2. Evidence of good conduct after leaving the service and evidence of your other characteristics and experiences that may help the BCMR form a good impression of you. You may, for instance, get a statement from your local police department saying that you have no arrest record (this will likely trigger a BCMR request to the FBI for your "rap sheet"), a statement from the president of a community organization saying that you are a member in good standing, and a statement from your employer saying you are a

reliable employee. You may also attach other kinds of documents, such as newspaper articles about your good deeds.

3. Point out the good aspects of your service, especially in discharge upgrade cases.

If you have already been turned down by a Discharge Review Board or other agency and the agency has not given specific reasons for rejecting your application, you can simply photocopy (or retype) the argument you used in your previous application. If, however, the previous agency has given specific reasons for denying your application, you should change your argument so it effectively argues against the reasons given.

If, in response to your request to the BCMR, you have received copies of staff briefs, advisory opinions, or other documents that the BCMR will use in deciding your case, carefully check over these documents. If you find any errors or incomplete statements in them and the BCMR has not yet decided your case, immediately send a letter to the BCMR to point out the error(s) or incomplete statement(s). Because the BCMR relies heavily on staff briefs and certain other documents, your correction of, or rebuttal to, these of documents can provide critical help to your case.

Don't be alarmed if the BCMR has asked for a legal opinion from the Judge Advocate General and the JAG opinion just says "Applicant's contentions are without merit." Do be concerned if a JAG opinion specifically states why the JAG thinks your application should not be granted: if you can, respond to the JAG statement point-by-point. The same applies to opinions from the Surgeon General of the service.

Your application to the BCMR will be kept confidential: only you and the BCMR will know about it.

BCMR Decision Process

Once a BCMR is ready to act on an application, it will consider the application, materials you have sent, and military records it has obtained. It then will make one of three decisions:

1. To authorize a hearing
2. To recommend that the records be corrected without a hearing
3. To deny the application without a hearing.

Hearings

If the BCMR authorizes a hearing, you will have three choices:

1. To appear without counsel
2. To appear with counsel
3. Not to appear yourself but to have counsel represent you at the hearing.

If you want to be assisted by counsel, you can select an attorney, service representative, or any other person to act as your counsel. Because the hearing does not directly concern VA benefits, the rule limiting legal fees at the VA does not apply to hearings, assistance in preparing an application, or any other aspect of trying to get your records corrected. Your service representative may be able to advise you about attorneys and others who are well qualified to act as your counsel. Your service rep may also be able to help you prepare for your hearing.

If a lot of money (for instance, in VA benefits which would likely result after a records correction) is involved, seriously consider finding an attorney who is an expert in the records correction process. See the appendix to this book for advice on locating experienced attorneys.

If you have a hearing, you can ask witnesses to appear on your behalf. But the BCMR cannot require them to appear and will not pay the expenses needed to get them to Washington. Evidence is informal at the BCMRs; therefore, you may be able to use videotapes of your witnesses.

BCMR Recommendations: After it has completed its work, the BCMR in some cases sends its recommendations—for or against the requested correction(s)—to the secretary of the branch of the military in which the veteran served, or to another official designated by the secretary. In some cases, however, the BCMR has final say.

If the BCMR denies your application without a hearing, it will mail you a brief statement of its reasons for denying your request. If, after receiving a favorable or unfavorable recommendation from the BCMR, the Secretary or other official ends up denying part or all of the application, the secretary or official will send you notice of the decision and a brief statement of the grounds for denial. (The secretary or other official need not explain the grounds for denial if he or she uses the same grounds as the BCMR.) BCMRs take about seven months to a year to decide cases.

Changing a Bad Decision

You have two main alternatives if you want to challenge a BCMR decision that you think is wrong.

Reconsideration

A BCMR decision denying an application does not mean it is impossible for you to prove your case. It means only that you have not yet presented enough evidence to demonstrate that an error or injustice has occurred. In general, anytime after the BCMR decision, you may submit a new application along with evidence you did not submit before (and along with any evidence you did submit before that you want to submit again). If it agrees to reconsider your case, the BCMR will treat the application as though it were a case it has never considered. There can be problems at the Army BCMR if you file for reconsideration more than one year after the initial denial. Always try to get counsel in these cases and always try to submit new evidence, not just new arguments.

In their first applications to BCMRs, many vets have done little more than submit a DD Form 149: they have provided little argument and little evidence. These vets may succeed if they ask for reconsideration. This is true especially because BCMRs apply current standards, and in many cases current standards are more favorable to the vet than the standards under which a case was originally considered. Vets who previously did little more than submit a Form 149 should make a special effort to supply a complete argument and substantial evidence when they submit the DD Form 149 for reconsideration.

Court Review

Federal District Courts (and sometimes the U.S. Court of Federal Claims) will under certain circumstances review denials of BCMR applications. They will do so in:

1. Denials of money claims (such as claims for back pay) if the suit is file within six years of the date on which the error first existed (this is usually the date of discharge, with some rare exceptions). Claims for $10,000 or more must be filed in the Court of Federal Claims.
2. Denials of "equitable relief" (requested action such as a record change only, rather than for money), usually can be filed without

any limit on when the BCMR application was filed, but filed in only a Federal District Court and within six years of the denial by a BCMR.

Requesting court review means you have to sue the service branch with which the BCMR is connected. Anytime you're thinking about suing anybody about anything, check with an attorney experienced in this area of the law.

BCMRs and Courts-Martial

BCMRs can help the vet who has a less-than-honorable discharge due to a court-martial decision. But if you want to appeal the court-martial decision itself, you usually must appeal to the Judge Advocate General of the service branch in which you served (see discussion of Article 69, UCMJ later in this chapter).

Although Discharge Review Boards have jurisdiction over applications for upgrades of most types of discharges, BCMRs alone can deal with discharges that result from general courts-martial. These cases can be hard to win unless the discharges are very old and at a time when military justice was more harsh than today.

In evaluating an application for a discharge upgrade, the BCMR will generally not concentrate on a single event or a single time period. Instead, it will look at many factors over many years. As a practical matter, it is looking for whether the vet is a "good guy" or a "bad guy" and whether the offense he or she committed was "serious." If the BCMR thinks you're a "good guy" and that the offense was not "serious," it will in many cases grant you a discharge upgrade.

If you are requesting a discharge upgrade, the BCMR will evaluate not only your accomplishments and other experiences while in the service but also your civilian life both before and after the military. It will weigh your positive qualities and achievements against the offense that led to the bad discharge.

The BCMR will generally try to do what it thinks is fair, taking into account that you may already have suffered for years due to the stigma of a bad discharge.

Your chances of an upgrade will be greatest if your offense did not occur in a combat zone, if it did not involve violence, if it happened a long time ago, or if you served for a substantial time in the military without any other problems.

Disability Separation and Disability Retirement

The military's medical system has always had problems, but now war has strained it to the breaking point. Many servicemembers have trouble getting diagnosis and treatment for medical problems. Health care workers are under pressure to get people back to training or duty, or OK'd for deployment. More and more GI's find that serious physical and emotional problems are ignored by commands and medical personnel, under-diagnosed or misdiagnosed. Medical discharge and retirement procedures have become slow and sometimes unreliable.

Veterans for America and investigative journalists recently helped to expose a serious Army and Marine Corps scandal: soldiers and Marines with medical conditions like Post-Traumatic Stress Disorder (PTSD) or depression are being misdiagnosed with personality disorders (PDs) instead. Sevicemembers with PDs are often administratively discharged without proper benefits. In addition, investigation found that commands sometimes ignore medical problems and treat the symptoms as misconduct, which can lead to Other than Honorable (OTH) discharge and loss of VA benefits.

As a result of these problems, veterans may end up with untreated medical conditions, stigmatizing discharges for PDs, OTH discharges for misconduct or even courts-martial and bad conduct discharges (BCDs), and little or no VA health care or compensation. The Boards for Correction of Military Records provide an important way for veterans to correct these problems.

Some Background—the Disability Evaluation System.

The Secretary of each service branch may determine that a member of the service has a physical or psychological disability that disqualifies him or her from active military duty. The Disability Evaluation System (DES) is used to determine fitness for duty and the need for disability discharge or retirement, using Physical Evaluation Boards (PEBs) to evaluate each case.

If the Secretary makes such a decision, he or she will choose one of four alternatives for the servicemember:

1. Permanent disability retirement
2. Temporary disability retirement
3. Disability separation with severance pay
4. Disability separation without severance pay.

Disability retirement pays monthly benefits, while severance pay is a one-time payment. Vets on the temporary disability list are re-evaluated at least every 18 months for five years after retirement; if they are still disabled at that point, they are transferred to the permanent disability list. See Chapter 19 for the rules on calculating payments.

BCMRs and disability retirement.

If you were not separated from the service due to a disability but you have a physical or psychological condition that should have been detected on or before the date you were separated, you can apply to the BCMR to change your discharge to disability discharge or retirement. If you received a disability separation, but feel that the separation pay or retirement benefits are too low, you can ask the BCMR to correct these problems.

Getting armed services retirement from a BCMR is a complicated area. Legal assistance and lots of documentation are especially important in these cases, and it helps to begin working on them as soon as possible after discharge.

You must prove that, at the time of separation, you were unfit to perform military duties, according to military regulations, and should have been medically retired or discharged. If you were discharged at the end of your service, or for a PD (again, this means "personality disorder") or most other administrative reasons, medical discharge or retirement should take precedence over the other discharge; the BCMR can change the separation to disability discharge or retirement.

On the other hand, discharges which could result in an OTH, as well as disciplinary proceedings, take precedence over the DES process. To succeed at the BCMR in these cases, you will also need to show that you shouldn't have received a bad discharge. This may mean showing that the medical problems caused or mitigated the "misconduct," or that there were legal errors in the administrative discharge proceedings. These are very complex issues, and an experienced attorney or advocate can be extremely important.

Evidence about what really happened in the discharge proceedings and the events leading up to it is also important. Working on the case soon after discharge will allow you to get statements from witnesses and gather documentation that may disappear over time.

Persuading the BCMRs to change a discharge to medical retirement usually requires strong medical documentation from about the time of your discharge. You may be able to show that the service overlooked important evidence of medical problems or did not accord you a fair discharge proceeding. It is extremely helpful to get evaluations from medical specialists close to the time of discharge, giving correct diagnoses of the problems and describing their severity and effect on your ability to perform military duties. If military doctors misdiagnosed your condition, civilian doctors can review the military medical reports, explaining why the military diagnoses (or lack of diagnoses) were wrong. In addition (but not instead), it is very helpful to get letters from friends, family and especially other servicemembers who saw the symptoms or the effects on your life and your work while you were still in or immediately after discharge.

Thanks to recent Congressional action, the military is now required to give more thorough evaluations than before to servicemembers who are diagnosed with PD while serving or after serving in "imminent danger" pay areas. This is to be sure that PTSD has not been overlooked. New regulations require a second psychiatric evaluation and a review by the office of the secretary of the service when a PD diagnosis is made in those situations. If veterans discharged before August 8, 2008 fall into those categories, they may be able to argue that their evaluations would have been more thorough--and different--under the current standards. Vets in those situations who have been discharged after August 8 may be able to argue that their discharges were erroneous because the new procedures were not followed correctly. And other vets with personality disorder diagnoses may have an easier time with arguments that the PD was diagnosed incorrectly, showing that their situations are similar to the ones in the regulations. In all of these cases, further psychiatric evaluations showing different medical problems will be an important part of the argument.

If you received a PD discharge when more serious problems existed, you don't need to show the Board you had no PD. When serious PTSD, depression or other medical problems which warrant disability separation exist along with PDs, disability proceedings take precedence over

administrative discharge for the PD. The correction boards can change the incorrect discharge to disability discharge or retirement.

The services, particularly the Army, do not like to recognize they made a mistake, partly because of the amount of retirement back pay and future pay that you may be due. Often, any retirement pay is reduced by the amount of VA compensation you have already received. This is a rapidly changing area of the law, however, so consult a competent attorney or veterans advocate.

If you have a service-connected disability, you should also read Chapter 3 of this book, "Compensation," and Chapter 9, "VA Medical Care."

Changing or Deleting Adverse Entries on Your Separation Documents (DD Form 214)

Many citizens who have not served in the military think the only kind of "bad paper" that can hurt a vet is a bad discharge. Many vets, however, have learned that "bad paper" can include a discharge form (DD Form 214, Report of Release or Discharge from Active Duty) that reports a good discharge but bad—or seemingly bad—information such as a Separation Program Number (SPN) code, reenlistment (RE) code, or reason for discharge. Many employers have access to lists of these codes, some incorrect or outdated. While many of these problems were solved in 1974 and 1979 by changes in DoD policies, many vets with old DD 214s may need to have their 214s changed as described below.

SPN Codes

"SPN" means Separation Program Number. A "SPN code," pronounced "Spin code," is the series of numbers or letters, often beginning with "SPN," that appears on the DD 214 form in the block titled "reason and authority." As a matter of commonly used slang, codes similar in function to codes starting with "SPN" but beginning with other letters are also called "SPN codes." These include codes beginning with "SDN" (Separation Designator Number), "TINS" (Transaction Identification Number), and "SPD" (Separation Program Designator).

Beginning in May 1974, SPN codes have been deleted from the veteran's copy of the DD 214. (The veteran's copy is copy 1; if the veteran

requested it, he or she can also get copy 4, which, like all other copies, includes the SPN code.) But even veterans with discharges in May 1974 or later can be harmed by bad SPN codes, because copies of the DD 214 that are sent to the VA, the Department of Labor, the military records center in St. Louis, and the state department of veterans affairs do include the SPN code (as well as the RE code and the reason and authority for discharge; these will be explained later).

Vets usually must show their DD 214 when applying for VA benefits. The form must also usually be shown when applying for a job with the federal government or law enforcement agencies. Also, many private employers ask to see the form.

All this would be fine if SPN codes were a big secret: if nobody but the Secretary of Defense and his chauffeur had a list of what the codes meant. Unfortunately, however, *lots* of people have lists.

Worse still, many lists in the hands of people outside the military contain inaccuracies. SPN codes were revised over the years, so that in some cases numbers that used to mean a favorable reason for separation were re-assigned so they later meant something bad; most lists outside the military have not been changed to keep up with the new codes. So a vet who got what at the time of separation was a good number may now have a bad number.

There are other ways a SPN code can hurt a vet. Some employers are confused and think having any SPN code means the vet was discharged for unfavorable reasons. In addition, due to typographical or other error, the wrong SPN code sometimes appears on the DD 214.

To be sure what your code means, file Form SF 180, Request Pertaining to Military Records. In block I of the "Request" section, write, "Please supply narrative description of SPN (SDN/TINS/SPD) code(s) on Form DD 214." Cite DASD (M&RA) Memorandum of December 28, 1970 as authority for your request. You can get Form 180 at any VA Regional Office, from your service rep or online from the National Personnel Records Center Web site. www.archives.gov/st-louis. Send the form to the National Personnel Records Center, 9700 Page Blvd., St. Louis, MO 63132.

To give you a sense of how good or bad a SPN code can sound, here are a few "good" ones, followed by several "bad" ones (many can be found at http://members.aol.com/forvets/DD 214.htm).

Good:

SPN 41C: To accept a teaching position
SPN 202: Expiration of term of enlistment
SPN 414: To accept or return to employment.

Bad:

SPN 46B: Sexual deviate
SPN 263: Enuresis (bed-wetting)
SPN 280: Misconduct, fraudulent entry (enlistee not revealing criminal record)
SPN 287: Unclean habits, including VD many times
SPN 385: Pathological lying
SPN 464: Schizoid personality
SPN 489: Disloyal or subversive (Military Personnel Security Program).

Having one of these "bad" SPN codes would not exactly do wonders for your chances of getting a job.

There are also some SPN codes that would strike some people (such as employers) favorably and others unfavorably. These include SPN 318—conscientious objection—and eight different SPN codes relating to homosexuality.

To request removal of information on a pre-1974 214, write:

ARMY: Director, NPRC, ATTN: Chief, Army records Branch, 9700 Page Ave., St Louis, MO 63132-5100

AIR FORCE: NPRC, 9700 Page Ave., St Louis, MO 63132-5200.

NAVY: Same as Air Force.

MARINE CORPS: Commandant (MMSB-10), Hq. USMC,2008 Elliot Rd., Quantico,VA 22134-5030.

COAST GUARD: Military Personnel Command, USCG, 2100 2nd St. SW, Washington, DC 20593-0001

If your SPN code is inaccurate, you can apply to have it changed. When you are preparing your application, it is best to get help from your service representative. In summary, what you do is write a letter in which you say you are applying under the Privacy Act and that you are requesting that your

SPN code be changed because it is inaccurate. And you give reasons and information to demonstrate its inaccuracy. You may attach documents to support your case. You are not likely to succeed if you simply say your SPN code is unfair; it is better to argue the SPN code is illegal, contrary to regulations, or a mistake. Also give your name, Social Security number, and military service and identification number, and your dates of service, and attach a copy of your DD 214.

You have the best chance of getting your SPN code changed if it was assigned by mistake. Your next best chance is if there has been a change in the reason for your discharge. To request a change in the reason for discharge, you must first apply to a Discharge Review Board or a Board for Correction of Military Records. See Chapter 15, "Upgrading Your Discharge."

After preparing your request for a change of SPN code, send it to one of the following addresses, depending on your branch of service:

ARMY: Army Review Boards Agency, Support Division, St. Louis, 9700 Page Ave. St. Louis, MO 63132-5200. (314) 592-0820

Air Force: Board for Correction of Air Force Records, SAF/MRBR, 550 C St.West, Suite 40
Randolph Air Force Base, TX 78150-4742.

NAVY: Bureau of Naval Personnel (PERS-254), 5720 Integrity Dr. Millington,TN 38055.

MARINE CORPS: Headquarters U. S. Marine Corps, Manpower Personnel Management, Performance Evaluation Review (MMER),
3280 Russell Rd.,Quantico,Va. 22134-5103. (703) 784-9204.

COAST GUARD: Commandant; U.S. Coast Guard,
Commandant (G-WPM), 2100 2nd St.S. W. Room 5500,
Washington, DC 20593.

Whether or not your SPN code is "bad" and whether or not it is inaccurate, you may simply want to get it removed from your copy of the DD 214. To do so, write to one of the offices whose addresses were listed earlier in this chapter. Simply ask the office to remove your SPN code (and, if you want, also your RE code and the information in the "reason and

authority" block). Be sure to say you want a new DD 214, not a photocopy of the old DD 214 with the codes blocked out.

If you are applying for a job and have a bad, but mistaken or misleading, SPN code, the employer may learn about it from your DD 214 or by requesting information from the military (if you consent to the release of information). If this happens, tell the employer the code is wrong and give him or her a copy of your application seeking to get it changed.

RE Codes

RE codes deal with eligibility for reenlistment. RE codes are the letters "RE" followed by a number or a number and letter. Each RE code indicates how well qualified—in the eyes of the branch in which the veteran served—the vet is for reenlistment in that branch. Just like SPN codes, RE codes can be inaccurate and are often misunderstood by employers. For instance, some employers mistakenly think any code other than RE-1—the code given to almost all vets eligible to reenlist—is bad. (RE- 2 codes, for instance, may be given to servicemembers separated due to family hardship.) And, as with SPN codes, RE codes (and the regulation and paragraph giving the reason and authority for discharge), have, since May 1974, been deleted from the vet's copy of the DD 214 separation form.

Here are some examples of RE codes (in all, there are 10 common Army RE codes, ranging from RE-1 to RE-4A, and 23 common Navy and Marine codes, ranging from RE-1 to RE-4.(Some codes are listed at members.aol.com/warlibrary/policy.htm):

ARMY:

RE-1: Fully qualified for immediate reenlistment

RE-2: Fully qualified for immediate reenlistment; separated for convenience of the government under a separation which does not contemplate immediate reenlistment

RE-3: Not eligible for reenlistment unless a waiver is granted

RE-4: Not eligible for reenlistment. Disqualification is unwaivable.

NAVY and MARINE CORPS:

RE- 1: Recommended for reenlistment

RE-2: Recommended for reenlistment but ineligible because of status: Fleet Reservist Retired (except for transfer to TDRL), Commissioned Officer, Warrant Officer; Midshipman, Cadet

RE-3: Recommended for reenlistment except for disqualifying factor

RE-4: Not recommended for reenlistment.

(There are also Air Force RE codes, but no separate Coast Guard ones.)

If you simply want to have your RE code removed from your copy of the DD 214, apply just as you would to have a SPN code removed and apply to the same address (see earlier in this chapter). Again, be sure to say you want a new DD 214, not a photocopy of the old one with the codes blocked out.

If you want to have your RE code *changed*, what you should do depends on the circumstances. If you want to have it changed so you can reenlist, ask a recruiter for assistance. Recruiters can get certain codes changed, especially those that are temporary—those that can be waived after a specified period or after a particular cause no longer exists.

If you want to have your RE code changed because it is inaccurate, consult a service representative or attorney. Write a letter, saying you are applying under the Privacy Act and that you are requesting that your RE code be changed because it is inaccurate. Give reasons and information, attaching documents if you want. You will be more likely to succeed if you convincingly argue the RE code is illegal, improper under regulations, or a mistake. Arguments about fairness rarely work. Give your name, Social Security number, any military service and identification number, and your dates of service, and attach a copy of your DD 214. Apply to the appropriate address for your service listed above in the section on changing SPN codes.

As with SPN codes, you'll have your best chance for a code change if your RE code is simply a mistake, and your next best chance if there has been a change in the reason for your discharge. To get a change in the discharge reason, you must first apply to a Discharge Review Board or a Board for Correction of Military Records. See Chapter 15, "Upgrading Your Discharge" or the BCMR section of this chapter.

Before going to the trouble of applying for an RE code change, carefully evaluate the strength of your case: though it is easy to get an RE code removed from your copy of the DD 214, only rarely will the service grant an application to change an RE code, absent clear error.

Other Errors on DD Form 214

If your DD 214 contains a routine error, such as a misspelling of a name or a failure to mention decorations that you have received, you should have little trouble getting it corrected. Simply write to the National Personnel Records Center; 9700 Page Blvd.; St. Louis, MO 63132. Explain what is incorrect and how it should be corrected. Attach a copy of your DD 214. In some cases, the Records Center will change the DD 214; in others, it will issue a correction on a DD215.

Other errors—errors other than mistakes in a SPN code, RE code, or regulatory authority—can be corrected by filing a DD Form 149 with the appropriate BCMR. See the discussion of BCMRs earlier in this chapter.

Also, apply to a BCMR if you want to change the DD 214's statement of your name, the dates or places of your service, or your home of record. (The author of this chapter did the latter, thereby qualifying him for increased moving expenses upon separation from service.)

Appealing Old Court-Martial Convictions

The set of laws that govern members of the armed services is called the Uniform Code of Military Justice (UCMJ). This is Title 10 of the U.S. Code (the U.S. Code is the set of all federal laws). See Chapter 27 of this book for a summary of the UCMJ. As a result of a change made in 1968 in Article 69 of the UCMJ, many old court-martial convictions can be appealed. Appeals are made to the Judge Advocate General (JAG) of the service in which the veteran served. Since 1940, there have been over three million courts-martial!

There are, of course, limits. In particular, to be appealed, a decision must never have been reviewed by a military Board of Review, Court of Review, or a Court of Criminal Appeals. What this means is that the following kinds of court-martial convictions can be appealed:

1. Almost all decisions before 1951 (before the UCMJ existed)

2. All decisions in or after 1951 in which the sentence did not include a bad conduct discharge or dishonorable discharge (or dismissal) or a period of more than one year's confinement in jail.

Under these requirements, about 90 percent of all court- martial convictions can be appealed under Article 69.

But there still are problems. One is that in 1981 Congress amended Article 69 to require that an appeal be filed within two years of a conviction or by October 1, 1983, whichever is later. The same article allows an exception to the time limit if the applicant "establishes good cause for failure to file within that time." The armed services have not explained what "good cause" is, but the Army has said informally that if the applicant has not previously filed an appeal under Article 69, "good cause" will be interpreted liberally. The other services have not commented, except that the Navy has shown a willingness to find "good cause" in the case of a showing that the servicemember was mentally ill at the time of the offense. If you are applying more than two years after conviction, be sure to specify why you should be excused from the time limit. Reasons that might be useful to mention are that you did not have assistance of legally trained counsel (very frequent before 1968) at your court-martial or that you had assumed that no appeal was possible (the latter reason is especially appropriate for discharges occurring before 1968).

Grounds for Appeal

Under Article 69, there are only four grounds on which you can appeal a court-martial conviction. They are:

1. Newly discovered evidence.
2. Fraud on the court. (This would be the rare case where you can prove someone lied or presented false evidence to the court with the result that you were convicted.)
3. The court did not have jurisdiction over you or over the offense with which you were charged.
4. The court committed an error that was harmful to important rights you had as an accused person.

The fourth category—legal error—is the source for almost all successful appeals. It is not enough to say that you were innocent or that other people should have been charged with an offense instead of you or in addition to you or that the trial was unfair.

But there are countless arguments you might make to convince the Judge Advocate General that the court made an error. The most general argument would be that the evidence in the record of the trial does not support the court's findings *beyond a reasonable doubt*. As with criminal trials outside the military, the prosecutor must prove more than that it is more likely than not that the charged person is guilty; the prosecutor must prove it to the extent that the average person would not have a reasonable doubt about the person's guilt.

Other possible court errors include, but are by no means limited to, the following:

- The court permitted the consideration of evidence that was seized improperly.
- The court allowed improper morning reports to be used to prove you were AWOL.
- The court failed to excuse your show of disrespect for a superior even though the show of disrespect was in response to behavior that was inappropriate for a person of the superior's rank.
- The court failed to excuse your action even though it was taken in self-defense.
- The court failed to excuse your action in disobeying an order even though the order was illegal.
- The court gave incorrect instructions to the jury.
- The court lacked jurisdiction to try you because you were improperly called to active duty.

Showing that the court made an error is a way to *reverse* its decision: to change its decision from guilty to not guilty. If you cannot change a conviction to an acquittal, you may still be able to get a reduction in sentence. This is not easy to do. The Judge Advocate General usually will not reduce a sentence just because it is too harsh. It can, however, reduce a sentence and authorize you to receive pay you would have received if you were not in jail. But you must show the sentence was illegal. One way to do this is to show that the court made an error and if it had not made the error it would have convicted you of a lesser offense (for instance, assault rather

than assault with a deadly weapon), which carries a lesser sentence. You can also argue that a reassessment of the sentence is appropriate given the historically undue harshness of the sentence. That is, such a sentence would not be appropriate today.

Consult an Attorney

If you want to appeal a court-martial conviction, it's time to consult an attorney. This is no place for people not trained in the law. In fact, it's no place for attorneys not familiar with military law: so find an attorney who has handled a number of court-martial appeals. The VA rule limiting attorney fees does not apply to such appeals. Be sure the attorney gets a copy of the transcript of your court-martial (if it is still available).

Appeals must be under oath or affirmation and should be sent to:

AIR FORCE: AF Legal Operations Agency/JAJM, 112 Luke Ave., Room 343, Bolling AFB, Washington, DC 20032, (202) 767-1539. See AF Instruction 51-201 for application format.

NAVY AND MARINE CORPS: Navy-Narine Corps Appellate Review Activity,(Code 40), 716 Sicard St. , Suite 1000, Washington Navy Yard, Washington, DC 20374-5047, (202) 685-7070. See the Navy JAG Manual, paragraph 0162 for application format.

ARMY: Criminal Law Division, ATTN: DAJA-CL, Office of JAG, HQDA, 1777 N. Kent St. Rosslyn, VA 22209-2194,(703) 588-6751. Use Dept. of the Army Form 3499. Call or write the above address for a copy. See Army Regulation 27-10, ch.14 for more information.

COAST GUARD: Commandant (G-LMJ), USCG, 2100 2nd St., S.W., Room 1111, Washington,DC 20593-0001, (202) 372-3807. See Coast Guard Military Justice annual, M5810.1D, Ch.5.J for more information.

Special Cases

Discharge Review: If your discharge was issued by a court-martial, you can try to get your discharge upgraded by a BCMR or possibly by a Discharge Review Board (for a bad-conduct discharge issued within 15 years by a special court martial) or, rarely, by the Secretary of your service under Art 74(b), UCMJ. See Chapter 15 of this book, "Upgrading Your Discharge."

Other Courses of Appeal: BCMRs and federal courts can review any type of court-martial conviction, but reversals of convictions are rare. See

discussion above of some limits of the BCMRs' ability to affect a court-martial conviction. Check with your attorney.

Pardons: You may want to apply for a Presidential pardon. A pardon does not reverse a conviction, but it removes some of its consequences. (But not a bad discharge if one was part of the sentence. An upgrade would logically follow after a pardon and then an application to the appropriate board for an upgrade.) To have a chance for a pardon, you must have completed your sentence at least five years ago, you should not be on parole or probation, and you must have had a clean criminal record since the conviction.

To apply for a pardon, write a letter to the Office of the Pardon Attorney; Department of Justice; Washington, DC 20530. (202) 616-6070 and request a pardon petition. You can also print one out from the DOJ Web site(www.usdoj.gov/pardon/forms/pardon_form.pdf). The completed petition should be sent to your service. On the envelope, write "Executive Clemency Petition." Processing takes at least a year. The appropriate addresses are:

ARMY: Office of JAG, Criminal Law Div., 2200 Army Pentagon, Washington, DC 20310-2200.

NAVY AND MARINE CORPS: Navy Appellate Rev. Activity (Code 40), Bldg. 111, Washington Navy Yard, Washington, DC 20374-1111.

AIR FORCE: AF Legal Operations Agency/JAJR, Office of Clemency, Corrections and Officer Review, 112 Luke Ave, Bolling AFB, Washington, DC 20332-8000.

COAST GUARD: USCG, COMMANDANT, 2100 2nd St.,S.W., Washington, DC 20593-0001.

Faulty Drug Tests

In 1985, it was discovered that in 1982-83 each branch of service had used faulty procedures to detect drug abuse. Vets who were disciplined or discharged for alleged drug abuse supposedly detected by urinalysis conducted in 1982-83 may be able to get their records corrected. Some vets received notices from the military regarding the faulty tests; others have not. Some of the notices failed to fully advise vets of their rights. If you were

disciplined or discharged due to a 1982-83 drug test, you should apply to the BCMR of your former service.

Getting Your Medals

Some veterans never received the medals or decorations to which they were entitled. Sometimes the Form DD 214 indicates a medal was issued, but the veteran never received it. Other vets want to replace awards that were lost or destroyed. To request medals that were not received or to request replacement medals, veterans can write to these addresses:

ARMY: NPRC, Medals Section (NRPMA-M), 9700 Page Ave., St. Louis, MO 63132-5100.
AIR FORCE: National Personnel Records Center, Air Force Reference Branch (NRPMF), 9700 Page Ave., St. Louis, MO 63132-5100.
NAVY: Bureau of Naval Personnel, Liaison Office Room 5409,9700 Page Ave., St Louis, Mo. 63132-5100.
MARINE CORPS: Same as Navy.
COAST GUARD: Same as Navy

No special form is required. Still, be sure to include your full name, Social Security number, service number (if you served before 1970), date and place of birth, approximate dates of service, and medals or decorations requested. Because there is a long backlog of requests, you can expect to wait several months for a reply.

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Editor's note: We thank Kathy Gilberd for her assistance with this chapter.

Chapter Seventeen
Getting Your Military Records

By Dick Bielen

Documented records of a person's service in the U.S. military have been around since before the Revolutionary War. These records have come in many forms. Some are as simple as a handwritten roster of members of a unit or ship. Others are one or more thick folders containing page after page of paper accumulated over a period of many years of service. And still others being generated today are maintained in digital form, available only with the use of a computer.

Many of these records are individual files officially established on the servicemember's first day of duty. Beginning with an enlistment contract or a commissioning order, the file will be filled with information about important events and activities in the servicemember's life in the military—training completed, assignments, changes in rank and grade, awards and decorations, performance evaluations, and disciplinary issues among others.

Another important individual file that is established on day-one is the servicemember's health record. It should contain details of medical conditions and problems encountered on active duty and the treatment provided.

Obviously, these two individual records have been important in the accounting, administration, management, training, and care of personnel in the military. But even after the servicemember completes a period of military service, these records can still be extremely valuable.

The service record can provide the following:

- Proof of military service for employers, the VA, and the Social Security Administration
- Proof of service in a combat zone
- Proof of assignment to a particular unit or ship
- Identify and verify authorized awards and decorations
- Identify, by name, an immediate supervisor, or unit commander
- Results of disciplinary actions (Article 15, Captain's Mast, courts-martial, reprimands)
- Documentation related to early discharges

The health and dental record contain the following:

- Physical examination results from pre-entry to separation
- Reasons for out-patient clinic visits and treatment provided
- Lab work results
- Physical evaluation reports

Locating a military service or medical record will depend on the branch of service of the servicemember or veteran, his or her current military status, and the date of that status.

The following chart can be used to locate the records. It should be noted that the information is current as of September 28, 2008. Report any discrepancies to (314) 423-0860 or uslocator@earthlink.net.

To use the chart, first select the appropriate service branch on the left side of the page. Next, review and select the current military status of the servicemember or veteran. The two columns on the right contain location code numbers that are identified in detail below the chart.

Branch	Current Military Status	Personnel Record	Medical Record
Air Force	Discharged, retired with pay or died in service before May 1, 1994	11	10/11/14
	Discharged, retired with pay or died in service May 1, 1994—September 30, 2004	11	10/14
	Discharged, retired with pay or died in service on or after October 1, 2004	1	10/14
	Active duty, Air National Guard on active duty in the Air Force Temporary Disability Retired List (TDRL)	1	12
	Reserve, retired reserve without pay, Air National Guard officer not on active duty in the Air Force or Air National Guard released from active duty in the Air Force	2	10
	Current Air National Guard enlisted not on active duty in the Air Force	2/15	10
Army	Discharged, retired with pay or died in service before November 1, 1912 (enlisted) or before July 1, 1917 (officer)	6	
	Discharged, retired with pay, or died in service November 1, 1912 –October 15, 1992 (enlisted) or July 1, 1917—October 15, 1992 (officer)	11	10/11/14
	Discharged, retired with pay or died in service October 16, 1992–September 30, 2002	11	10/14
	Discharged, retired with pay or died in service on or after October 1, 2002	7/13/11	10/14
	Reserve or active duty records of current Army National Guard members who performed service in the U.S. Army before July 1, 1972	7/13	10/11
	Active duty enlisted (including Army National Guard on active duty in the U. S. Army) or Temporary Disability Retired List (TDRL) enlisted	13	12
	Active duty officers (including Army National Guard on active duty in the U.S. Army) or Temporary Disability Retired List (TDRL) officer	13	12
	Current Army National Guard enlisted not on active duty in the U.S. Army (including records of Army active duty performed after June 30, 1972)	13 / 15	10 / 11
	Current Army National Guard officer not on active duty in	13/15	10/11

	the U.S. Army (including Records of Army active duty performed after June 30, 1972)		
Coast Guard	Discharged, retired with pay, or died in service before January 1, 1898	6	
	Discharged, retired with pay or died in service January 1, 1898–March 31, 1998	11	10/11/14
	Discharged, retired with pay or died in service on or after April 1, 1998	11	10/14
	Active duty or Temporary Disability Retired List (TDRL)	3	12
	Reserve	3	10
Marine Corps	Discharged, retired with pay or died in service before January 1, 1905	6	
	Discharged, retired with pay, or died in service January 1, 1905-April 30, 1994	11	10/11/14
	Discharged, retired with pay or died in service May 1, 1994-December 31, 1998	11	10/14
	Discharged, retired with pay or died in service after January 1, 1999	4	10/14
	Active Duty or Temporary Disability Retired List (TDRL)	4	12
	Selected Marine Corps Reserve	4	10
	Individual Ready Reserve or Fleet Marine Corps	5	10
Navy	Discharged, retired with pay or died in service before January 1, 1886 (enlisted) or before January 1, 1903 (officer)	6	
	Discharged, retired with pay, or died in service January 1, 1886-January 30, 1994 (enlisted) or January 1, 1903-January 30, 1904 (officer)	11	10/11/14
	Discharged, retired with pay, or died in service January 31, 1994-December 31,1994	11	10/14
	Discharged, retired with pay or died in service on or after January 1, 1995	9	10/14
	Active Duty or Temporary Disability Retired List (TDRL)	9	12
	Reserve	9	10

Record Locations

1. **Air Force Personnel Center**
   HQ AFPC/DPRP
   550 C Street West, Ste. 19
   Randolph AFB, TX 78150-4721
   www.afpc.randolph.af.mil
   Phone: (800) 616-3775. Select option 1, 1, 2

Internet access to personnel record by servicemember only at: www.afpc.randolph.af.mil; click on "AF Contact Center" and then click on "Secure Apps" tab.

2. **Air Reserve Personnel Center/DSMR**
   HQ ARPC/DPSSA/B
   6760 E. Irvington Place, Ste. 4600
   Denver, CO 80280-4600
   Internet: www.arpc.afrc.af.mil
   Phone: (800) 525-0102. Normal business hours are 6 a.m. to 6 p.m. Mountain time, M-F, the first and third Saturday 8 a.m. to 4 p.m., and the first and third Sunday 9 a.m. to 1 p.m.

Internet access to personnel record by servicemember only at: www.afpc.randolph.af.mil , click on "AF Contact Center" and then click on "Secure Apps" tab.

3. **Coast Guard Personnel Command**
   ATTN: CGPC-adm-3
   4200 Wilson Blvd., Ste. 1100
   Arlington, VA 22203-1804
   Internet: www.uscg.mil/hq/cg1/cgpc/adm/adm3/
   Phone: (866) 634-0574. Normal business hours are from 7:30 a.m. to 4 p.m. Eastern time, M-F.

4. **Headquarters, U.S. Marine Corps**
   Manpower Management Support Branch (MMSB-12)

2008 Elliot Rd.
Quantico, VA 22134-5030
Internet: www.manpower.usmc.mil/
Phone: (800) 268-3710 Normal hours are 7:30 a.m. to 4:00 p.m. Eastern time, M-F. If you have a problem with the telephone options, try pressing *O* for a live person.
Fax: (703) 784-5792/3900.

5. Marine Corps Mobilization Command
(Code MMI)
15303 Andrews Rd.
Kansas City, MO 64147-1207
Internet: https://mobcom.mfr.usmc.mil/MOBCOM.asp
Phone: (800) 255-5082. Customer service agents are available from 7:30 a.m. to 4:30 p.m. Central time, M-F.

6. Old Military and Civil War Records (NWCTB)
Textual Archives Services Division
National Archives and Records Administration
700 Pennsylvania Ave., NW
Washington, DC 20408-0001
Internet: www.archives.gov
Phone: None available at book deadline.

7. U.S. Army Human Resources Command

ATTN: AHRC-PAV-V
1 Reserve Way
St. Louis, MO 63132-5200
www.hrc.army.mil
Phone: (800) 318-5298. Normal business hours are 7 a.m. to 7 p.m. Central time, M-F.

8. Commander USAEREC
ATTN: PCRE-FS
8899 E. 56th St.
Indianapolis, IN 46249-5301
Internet: www.hrc.army.mil

Phone: (866) 771-6357. Normal business hours are 7 a.m. to 4:30 p.m. Eastern time, M-F.

9. Navy Personnel Command

Requests must be in writing and include full name, Social Security number, address where record is to be mailed and signature. Requests can be mailed, faxed or made online. An entire file will be provided on CD-ROM. On request, a paper copy of a DD Form 214 can be provided.

Navy Personnel Command (Pers-312)
5720 Integrity Drive
Millington, TN 38055-3130
Fax: (901) 874-2664
www.bol.navy.mil

Phone: (866) 827-5672. Customer service representatives are available from 7 a.m. to 5 p.m. Central time, M-F.

10. U.S. Department of Veterans Affairs (VA)

If the veteran has ever submitted a claim for medical benefits to the VA, the service medical record may be at a VA regional office. Since 1992, most military medical records of members who are released, discharged or retired from active duty, have been sent to the following location:

U.S. Department of Veterans Affairs
Records Management Center
P.O. Box 5020
St. Louis, MO 63115-5020

Phone: (314) 538-4500. This office can tell you if the medical record is in the VA system and how to obtain copies. Normal hours are 7 a.m. to 4 p.m. Central time, M-F.

11. National Personnel Records Center

When making a request, the following minimum information is required: full name of veteran, Social Security number, Military service number (if available), branch of service, signature of veteran or next-of-kin, date of request, daytime telephone contact number and mailing address for records. Additional information that may be useful: dates of service, date of birth, place of birth (city and state) and requestor's e-mail address. If the veteran is deceased, you may be required to provide some sort of proof of death (certificate, obituary, Social Security Death Index printout, etc.)

Requesters of an entire file should note that the Records Center copies only those documents it considers "important." Requesters who want copies of "everything" should consider hiring a private researcher who is authorized to have *direct on-site* access to the

records. Review the list of researchers at www.vetrecs.archives.gov. Look for a small green arrow in a box on the right of the screen. Click on "Other Methods and Sources to Obtain Service Records." At the next screen, click on "Researchers Specializing in Military Records at the National Personnel Records Center." When contacting someone on the list, make sure that the researcher or someone working for the researcher actually makes the copies.

National Personnel Records Center
(Military Personnel Records)
9700 Page Ave.
St. Louis, MO 63132-5100
Internet: www.vetrecs.archives.gov
Phone: (314) 801-0800. Customer service representatives are available from 7a.m. and 5 p.m. Central time, M-F.

12. Normally maintained at a military treatment facility or in some cases by the servicemember's unit of assignment.

13. Army Knowledge Online (AKO)

Internet access to the service record is available only to the servicemember at www.us.army.mil. Log in to the site.

14. A retiree with pay may also have a current or recent medical treatment or pharmacy record at a military medical facility.

15. The Adjutant General where served (state, District of Columbia or Puerto Rico).

There is another type of medical record that may be of interest – the clinical or inpatient hospital record. This record contains information generated and maintained by a military hospital for any patient who is required to spend one or more nights in the facility. These records are kept by the hospital for various periods of time and then sent to the National Personnel Records Center, St. Louis, Missouri.

For more information about these kinds of records go to www.vetrecs.archives.gov and click on "Medical and Health Records" on the left side of the page. On the right side of the next page, click on "Clinical (Hospital Inpatient) Records".

Editor's Note: *It is beyond the scope of this book to explore every possible source of military and VA records which may be of interest to a veteran. An excellent discussion of locating other types of military and VA records is found in Chapter 17 of the Veterans Benefits Manual (VBM) from the National Veterans Legal Services Program. Also, see chapter 3.B.4.b of this book for a discussion of locating unit records and other relevant information that may be helpful in proving PTSD claims, or that may show that certain events occurred that the veteran asserts are relevant to support his or her claim.*

A veteran is entitled to one free copy of all his or her VA records. These records (claims and medical —permanent records or records of local treatment) can be obtained by filing VA Form 3288. Again, the Veterans Benefits Manual has helpful hints on locating obscure VA records.

Dick Bielen has been a St. Louis-based military records researcher since 1995. He is also a 26-year veteran of the U.S. Army. He can be contacted at (314) 423-0860 or at uslocator@earthlink.net.

PART THREE
Issues Relating to Active Duty Service Members and Their Families

Chapter Eighteen
Early Discharge or Separation

By J. E. McNeil

Introduction

Over ten thousand of all Army enlistees leave the service before their normally scheduled period of enlistment. Thousands more Army servicemembers are involuntarily discharged during subsequent periods of service. And this is just the Army.

Despite the best of intentions many servicemembers leave active duty early due to matters of hardship or conscience, medical reasons, inability to adapt to military life, misconduct, drug or alcohol abuse, or a variety of other reasons. Some of these discharges are self-initiated, some are initiated by the military service, and some are essentially by mutual consent.

This chapter will cover the most common types of early discharge or separation recognized by military regulations. Included will be hints about how to initiate a voluntary discharge or how to resist an attempt to involuntarily discharge you. More strategies to avoid discharge or at least a bad discharge can be found in Chapter 15 (Discharge Upgrading) or 16 (Military Records Correction).

Nothing in this chapter is meant to suggest that servicemembers violate their legal obligations to their service or to even suggest that they do so.

To a certain extent, discharge and separation is straightforward. Some things are the same regardless of the discharge sought or the branch of service. For most of the routes for discharge or separation, the general processes are the same regardless of the service. There are regulations specific to each branch and cultures related to each branch that make for significant differences in the actual practice.

Let's assume you want to be discharged.

In all branches the overall process is the same for each type of discharge. First, determine the requirements for the discharge; second, gather the documentation and support necessary to go forward. If this is a type of discharge which can be applied for by the servicemember, the documentation should be given (in the Army it should include a personnel change form [DA 4187]) to the command. If this is a discharge that can only be started by the command, determine how best to bring the circumstances warranting discharge to the attention of the command.

This generally means that sometimes your recommend yourself for discharge and sometimes you get someone else such as a doctor to recommend to recommend this. In either case, recommendations must be made to the commanding author who decides. But more important, you need to make the command WANT to discharge you. Do not assume you will be discharged just because you think the regulations warrant a discharge and you want one. There is a great deal of command discretion.

This last element is essential to virtually every discharge. The reality is that very few discharges or separations are a matter of right for the servicemember. Generally, discharge regulations indicate a decision to discharge will be made "based on the best interest of the service." This language means nothing more than that if they want to retain you, they have great discretion despite the language of the discharge regulation. In times of pressure for numbers, the "best interest" of the service more often than not trumps the underlying issue—thus, the need to make the command WANT to discharge you.

To succeed at this you need to know a bit about how your command views these matters. Some commands respond better to an approach of "I am so disappointed that I cannot continue as a Marine. There is nothing else I would rather do. But my problem makes it impossible. I am so

desperate to leave because of this problem; I cannot think nor do anything else. I would do virtually anything to avoid release from service to solve my obligation to take care of my problem."

But in any case, being a squeaky wheel is essential. You must make sure that every one in the chain of command is aware of your problem. You should repeatedly bring it to their attention when the problem (or worry and depression over the problem) interferes with your ability to perform or perform your best. While you should avoid refusing orders, you should nevertheless constantly point out when you cannot comply because of your problem. To the extent you can, you need to make your problem everyone's problem—waking people up in the middle of the night to keep you company if needed. This is not the time to follow the frequent advice from chaplains to "Buck up." Sometimes you have to adopt the "whine, whine, all the time" attitude.

Let's assume you do not want to be discharged.

Get familiar with the discharge regulations and your basic rights under these regulations if involuntary discharge proceedings seem to be starting. Go seek legal counsel from JAG, if possible—often they are too busy to help before proceedings are actually begun. See the appendix to this book for civilian legal and counseling resources. Collect support from your superiors and co-workers. Above all do not lose your cool and set yourself up for disciplinary action. More tactics are described below and in Chapters 15 and 16.

Delayed Entry Program and Delayed Training Program

Before we discuss discharges subsequent to formally swearing in to active reserves or active duty, we will review the rules for "discharge" prior to that moment.

The delayed entry program (DEP) for active duty is the primary route of entry into the U.S. military. Over 90% of the servicemembers in today's all
voluntary military join through DEP. DEP comes under various names including "Future Soldiers," but the basic facts are the same. If you have signed to join the active-duty military and you did not report to be inducted,

you are still in the DEP.

DEP is a gold mine for recruiters. It provides recruiters the ability to bind recruits to apparent contracts long before they graduate from school or are prepared to go to basic training. In addition, it allows recruiters to appear to sign recruits up for particular critical Military Occupational Specialty (MOS) MOSs. The recruiter can time basic training in relation to particular Advanced Individual Training (AIT) Finally, it provides an opportunity for the recruiter to get recruits to bring in other recruitment prospects in exchange for a promise of a bonus.

But the important thing for you to know is that in ALL branches, failing to report for duty and to be sworn in to active duty results SOLELY in you not being in the military. You have signed a contract and sworn an oath to join the military under the military's regulations. The military's regulations state that a recruit who fails to report will be "discharged" from DEP and will NOT be inducted into the military. There is not only no exception to this rule for active duty, but the recruiters are forbidden to threaten you with arrest, bad credit or any number of other things. (Should this happen, see the resources appendix to find help.)

For reserves and National Guard the DEP rule is similar, but very few reserves or Guard units fall under that "escape clause." However, see Entry Level Separation discussion below.

Discharges Overview

Characterization of Discharges

Many people in the military are aware of only two characterizations of discharge: honorable and dishonorable. You are often led to believe that your command can give you a dishonorable pretty much at will. But it is more complicated than that. Each DD 214 (discharge papers) has three elements related to the discharge or separation. First, the DD 214 will show one of five distinct characterizations of discharge, an entry-level separation, or a separation into a different part of the service. Second, it will show one of a large number of reasons for discharge. Third, it will show a reenlistment code.

When you change your status in the military from active duty to reserve or the Individual Ready Reserve (also called Future Soldier) you are "separated" from the status you were in rather than discharged. This is in part what leaves you vulnerable to recall for deployment. What to do about it will be discussed below in the AWOL section.

The characterizations of discharge and how they affect your entitlement to veterans benefits follow:

1. **Honorable**: all benefits including veteran's preference and Montgomery GI Bill. Approximately 75% of all discharges are fully honorable.
2. **General under Honorable Conditions**: not eligible for Montgomery GI Bill.
3. **Discharge under Other Than Honorable Conditions (DUOTH or OTH, also called an undesirable discharge until 1980):** not eligible for payment for accrued leave, wearing military uniform, burial rights, health benefits, commissary access, (still receive transportation home!). Sometimes VA compensation or other benefits are possible with an OTH (See Chapter 15). This discharge is slightly more than the equivalent of being fired from a job. It will often keep you from working in jobs that require a security clearance. While some police departments and fire departments will still hire you, it may affect your career advancement, but generally over time this has less and less negative effect. Sometimes, however, it may impose a lifetime stigma that some veterans never overcome.
4. **Bad Conduct Discharge (BCD)**: This always requires a court-martial conviction (the previous discharges are all administrative discharges and have nothing to do with the Uniform Code of Military Justice). The BCD can be given by a special or general court-martial.
5. **Dishonorable (DD)**: This requires a conviction by a general court-martial and imposes a serious lifetime stigma and even prohibits the recipient from certain civilian activities, e.g., possessing a firearm. Very few people receive a dishonorable discharge absent a rape, murder, desertion, or another serious offense. The DD is a bar to all veterans benefits with a few, rare exceptions.

Reasons for Discharge

The reasons for discharge include homosexuality, conditions present prior to enlistment, discreditable incidents whether civilian or military (including drugs), certain civil convictions, "misconduct," conscience objection, failure to support dependents, or the Army's current favorite: having a so-called "Personality Disorder." The reason for the discharge has not been on the short DD 214 since the 1970s. However, if the prospective employer has you sign a release for them to obtain your military records and knows to ask for the long form DD 214, they can see the reason for discharge.

RE Codes

RE Codes or Reenlistment codes are a numbering system that dictates the likelihood of your rejoining the military. These codes range from: "We'd love you back" to "Don't ever darken our door again."

Some RE Codes (Army but other branches are MOSTLY similar) but to give you the idea:

1. RE-1 - Individuals who were fully qualified when last separated. Fully qualified for enlistment.
2. RE-2 - Individuals separated for the convenience of the government in accordance with Chapter 5, AR 635-200, (Chapter 5, 6, 8, 9, 11, and 12) and reenlistment is not contemplated. Fully qualified for enlistment/reenlistment (AR 635-200).
3. RE-3 - Individuals who are not qualified for continued Army service, but the disqualification is waiverable. Ineligible for enlistment unless a waiver is granted.
4. RE-4 - Individuals separated from last period of service with a nonwaiverable disqualification (refer to AR 601-280). Ineligible for enlistment except as provided for in paragraphs 2-7c and 2-7d. Disqualification is nonwaivable.

Uncharacterized Discharges

Entry Level Separation

The principal exception to the concept of characterized discharges is the Entry Level Separation (ELS). ELSes, created in 1980, are always uncharacterized. The regulation states that they are not applicable to someone "who has less than 181 days of continuous active military service, has completed initial entry training, has been awarded an MOS, and has reported for duty at their permanent duty station." But in reality the first element is generally the controlling element: someone who has had 180 days of continuous active military service can receive an ELS. Although it is labeled a "separation" rather than a discharge, it is a full discharge from the military.

You cannot initiate it. It is entirely within the discretion of the command. In times when recruits are scarce, the best tactic to receive an ELS is the "whine, whine, all the time" tactic. The services usually do not want to keep servicemembers on active duty who clearly do not want to continue to serve—absent a severe troop shortage.

The Army Reserve and Army National Guard have a slightly different rule for an ELS. The triggering event for them is: (1) 180 days after beginning training if the soldier is ordered to Active Duty for Training for one continuous period of 180 days or more; or (2) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty. If you fail to report to basic, you will receive an ELS. If you are in a split-option training program (AIT is several months after basic), failing to report to AIT (Advance Individual Training) will have the same result. Basically, if an Army reserve fails to report to basic or if in a split option program and fails to report to AIT, the reserve will receive an ELS.

But (and this is a BIG but!) members of the National Guard are governed both by Army regulations (and sometimes Air Force regulations) **and state law**. It is important to check with the GI Rights Hotline at (800) (80487 to make sure that the state regulations do not put you at risk of a court-martial

Void Enlistments.

Void enlistments are also uncharacterized. The very short list of voidable enlistments is:

(a) If it was affected without the voluntary consent of a person who has the capacity to understand the significance of enlisting. This includes enlistment of a person who is intoxicated or insane at the time of enlistment. By insane, the regulations mean being in such a delusional state that you cannot make rational decisions or you cannot understand facts up which you might make rational decisions.

(b) If the person is under 17 years of age.

(c) If the person is a deserter from another military service.

(d) If an enlistee's erroneous enlistment is discovered prior to the soldier's departure from the Military Entrance Processing Station (MEPS). See erroneous enlistment below.

Lest you have had one of these problems and are ready to run to the command to get your enlistment voided, be aware that these cases are all resolved by the rule of "constructive enlistment." That is, you sobered up or grew up and continued to participate in military training and pay. In the case of a deserter from the other branch, you will be handed over to the appropriate authorities for disposition.

Discharges

Enlistment Irregularities:

Defective, erroneous, fraudulent

Recruiters are often so eager to fill their quotas that they will enlist people who are not actually eligible for enlistment. You may be entitled to a discharge for "erroneous enlistment" if you can show that you were not fully qualified for enlistment, that you yourself did not lie in order to enlist, and that you are still unqualified. You must show that your enlistment would never have occurred if the facts had been known or if recruiting personnel had followed regulations. Some examples of this are: you did not meet the medical standards; your test scores were not high enough but the recruiters changed them to get you in; or you were sworn in by a noncommissioned officer rather than a commissioned officer.

There is another discharge for "defective enlistment agreements." Suppose you enlisted only because your recruiter promised you a specific kind of training or job assignment—but the military could not or would not give you what the recruiter promised. If you enlisted as a result of such a "material misinterpretation" by a recruiter, you may request a discharge; but you must do so within 30 days after you have, or should have, discovered the defect.

But be sure that the erroneous or defective enlistment did not occur because you knowingly concealed or gave false information. If so, you run the risk of being charged with "fraudulent enlistment" and getting a bad discharge or other punishment. This rarely actually happens, but is frequently threatened.

Compile as much evidence as you can: a copy of your enlistment document (especially useful if the recruiter's promise appears on the document); notarized statements from family or friends who were "witnesses" at your enlistment or can testify that you would never have enlisted if it were not for the recruiter's promise; medical records to confirm a medical condition; school records to help contradict strangely high military test scores; and a statement from recruits, friends, or counselors who have had similar problems with the same recruiter.

Gather all of your evidence and submit it to your commanding officer with a letter requesting an honorable discharge for erroneous or defective enlistment. Such discharges are difficult to obtain due to strict time limitations and the fact that qualifications for enlistment and recruiting promises can be "waived" rather than resulting in discharge.

Minority

Those who are under 18 (but more than 17) and enlist must have parental permission to enlist.

Occasionally, an overzealous recruiter will forge a parent's signature. More often this issue arises in the case of a recruit whose parents are separated or divorced and only one parent signed the papers. If you are under 18 and had only one parent sign, you may be able to obtain a discharge based on the failure of the other parent to sign if the other parent had joint custody. Have the parent who did not sign call up the command and demand your discharge.

In the case of a recruit who has had both parents consent and who later changes his or her mind, there is some authority that the parent can withdraw his or her permission. Some National Guards, Pennsylvania for example, have explicit policy stating that once permission is given it cannot be withdrawn. It is likely that there will be no clear case law, as it would take longer to litigate the issue than it would take the recruit to turn 18.

This brings us to the most important point of this type discharge: when you turn 18 and you are in the military you once again fall under the "constructive enlistment" rule. So be sure if you seek to invoke this policy that you do it promptly and vigorously. Don't let time run out.

Discharges for Disability (often erroneously referred to as "medical discharges") and "Other designated physical or mental conditions."

These discharges are dealt with in depth in Chapter 19 of this book. A few points are worth noting here:

Getting outside medical help is essential. On the other hand, the military personnel office workers will tell you that you will have to pay for it out-of-pocket. This is not strictly true. TRICARE is like any other medical insurance. If you do not follow their guidelines there will be co-pays. If you ask for outside referrals they will complain: but if you insist, you will generally get them. Don't let the threat of TRICARE's not paying the bill keep you from getting the help you need.

Secondly, this is very much the time to apply "Whine, whine, all the time." You have a right to medical treatment even though you will be told from time to time that you do not. If you are continuously thwarted in your attempt to get the treatment you need, seek redress. Article 138 of the Uniform Code of Military Justice (UCMJ) allows you to start a formal investigation of such abuse.

Another recurring problem is the Army's overuse of the finding of a "personality disorder" instead of a more service-connected mental disorder. Such a finding if you feel you are suffering from PTSD or depression should be resisted at all cost. See the PTSD section in Chapter 3, "Compensation."

Finally, be aware of the differences between these overlapping

discharges. Disability takes longer but you get disability pay. "Other Designated Physical and Mental Conditions" is faster, but you get nothing extra.

Hardship and Dependency Discharges

The first thing to understand about hardship is that a sad spouse is not hardship. Nor is a dying grandparent a hardship. Those are just sad stories. Nor is the need to be with your children. That is handled under dependency care plans discussed below. A hardship discharge is provided where separation from the service will materially affect the care or support of the family by alleviating undue and genuine hardship *to your immediate family* because of financial, physical or emotional dependency**.** Your immediate family is defined as parents, spouse, children, siblings or "only living blood relative" or anyone who stood in the place of your parents for at least five years prior to you turning 21.

For a hardship discharge you have to show three basic things;

1. The hardship arose after you joined the military.
2. The hardship is not short-term.
3. You are the ONLY person who can alleviate the hardship.

The last element is essential. You are most likely to be denied the hardship discharge on that basis. If you are denied, you should resubmit the hardship claim, answering any factual faults or questions raised by the denial, EVEN IF DOING SO RESULTS IN YOUR SUBMITTING THE SAME FACT OR DOCUMENT TWICE.

Documentation is likely to make or break a case. Military officials who don't know your family's situation will review the request for discharge. The decision of whether to grant discharge will be based on the information supplied by you; because of this, the application must be as clear, factual, and complete as possible. If both dependency and hardship conditions exist, make clear the severity of both the hardship and dependency conditions. You can ask the Red Cross office for your base to help gather documentation for your application, but while the Red Cross has been extremely helpful with obtaining compassionate leave, there has not been as much success in helping with a hardship discharge.

The regulations of each service provide specific information on the documentation they require. DoD Directive 1332.14 Part 1 §C.4.c. (2); DoD Directive 1332.14 Part 1 §C.4.c. (1); AR 635-200 Chapter 6; AR 135-178 Chapter 5; MILPERSMAN §3620210.2; MARCORSEPMAN §6407; AFI 36-3208 §3.20. Those regulations also require the command to inform you of the correct procedures to follow and often ask that the command assist you in gathering and preparing documentation. Don't count on it, though. Do your own work. It is your problem that is at stake.

The documentation generally required by all the services is:

Your statement, which should include:

- A complete and specific description of the hardship or dependency using names, dates, and places. Include a history of the problem, if any.
- A specific description of what actions have been taken to solve the problem and why they have failed.
- A description of specifically how you expect to improve or resolve the hardship or dependency if request for separation is approved.

You must also provide the:

- Names, addresses, and ages of you and your family.
- Names, addresses, and ages of other immediate family members.
- Dates of any previous requests for emergency leave, humanitarian reassignment, or hardship discharge.

Supporting Statements

A statement by, or on behalf of, the person(s) experiencing hardship or dependency (your family) must be submitted for proof of the claim. Family members should write letters that explain the situation, describe in detail why they cannot give financial or personal help (including, where appropriate, statements of income and expenses), or why the help that family members do provide is not enough. Usually it is not enough for you to state that relatives cannot or will not help with the situation. You must ask relatives to provide their own statements for your application. If you cannot get them to do that, get a third party, such as a doctor, lawyer or minister or even another family member, to attest to the fact that that family member will not or is unable to help. Also provide statements from at least

two people who know of the situation, but are not members of the family (such as doctors, employers, neighbors, et al.).

A claim of financial hardship must be supported by a carefully prepared and itemized budget. You will be expected to visit a base financial counseling service, where available. These service centers assist with budgeting and debt relief and can help draft an itemized budget. If possible, provide a notarized letter from a prospective employer with a job offer after discharge, including the salary, type of work, and hours of work per week.

If there is an illness or disability in the family, include a statement from all involved physicians or psychologists giving the history (including the date when the illness became serious or acute), diagnosis, and, most importantly, the prognosis of the illness.

If dependency is the result of a death in your family, provide a copy of the death certificate or other valid proof of death. Death certificates are usually kept in the city hall of the town where the person died or at the state capital. If you have trouble getting a copy, ask a doctor or minister to write a statement saying when the person died.

If your family works a farm and you are needed there, a statement from the county farm agent or farm bureau can be submitted. It should report the size of the farm, the area under cultivation, the numbers of livestock, the availability of other farm labor in the area, and any other relevant information.

People asked to make statements will write most effectively if you explain the extent of the problem and the standards the military sets for discharge. All letters and documentation should be sent to you, not directly to the commander. After gathering the documentation, check that the information is complete, accurate, and consistent. Keep a copy of what you submit.

Request for Humanitarian or Compassionate Reassignment

If the hardship or dependency is of short duration, the member can apply for "humanitarian reassignment" (or "compassionate reassignment" in the Army) to a duty station closer to home. The military may also provide for a delay of a scheduled reassignment for 90 days. But the reality here is that if you want a compassionate reassignment it is in your best interest to find a

base, look for a job for which you qualify and speak to the command at the base to which you want to be transferred.

Surviving Son or Daughter

Many people think that they could be eligible for discharge because they are the only son or daughter in their family. There is no such provision for discharge.

There is a discharge for a member of the military whose father, mother, sister, or brother was a member of the U.S. military and, ***after*** the member enlisted, was any of the following:

- Killed in action;
- Died in the line of duty as a result of wounds, accidents, or disease;
- Was captured or determined to be missing in action; or
- Was determined by the VA to be permanently 100% disabled.

Furthermore, this is not available during times of declared war or national emergency as declared by Congress. Some servicemembers have been released on these grounds during the most recent conflict. DoD Directive 1315.15; AR 635-200, Chapter 5; AR 135-178 Chapter 5; MILPERSMAN (NAVPERS 15560 C) §3620240; MARCORSEPMAN (MCO P1900.16 E) §6410; AFI 36-3208 §3.12.

Even for the very few people who qualify, discharge is unlikely unless you act quickly after the death, capture, etc. of your family member. If you think you qualify, call the G.I. Rights Hotline to be sure. The number is (877) 477-4487.

Pregnancy and Childbirth

A woman on active duty or called up to active duty from the Reserves may request separation because of pregnancy. Each branch deals with this discharge differently. None of the branches—except during the first few weeks of enlistment—will entertain a pregnancy discharge in the first trimester. On the other hand, they will not remind you during the second trimester to apply.

Pregnancy that is verified while in Entry Level Status will result in an uncharacterized Entry Level Separation. Post-ELS status will result in an

honorable discharge. Pregnancy verification should result in counseling in which the woman is told of her right either to discharge or to remain in the military for a slightly longer term of service to make up for the time lost for the birth and recovery. A diagnosis of pregnancy during a previously begun involuntary administrative discharge proceeding for "misconduct" will not necessarily stop the adverse proceeding.

Reality is that you will frequently have to bring both your pregnancy and your desire for discharge to the attention of your command. Write your commanding officer a letter requesting an honorable discharge and describing how your pregnancy or childbirth makes it important that you be discharged. You may also need a military physician's certification of your pregnancy.

If your request is approved you will either be discharged or separated from active duty and transferred to the Individual Ready Reserve (IRR).

In the Army the right to discharge is absolute, but ends the moment the child is born or dies *in utero*. AR 635-200, Chapter 8. The discharge date must be no later than 30 days prior to the expected date of birth or the last date the woman's physician declares she can safely travel—whichever is first.

In the Navy and Marines, discharge will not be granted in the first five months of pregnancy; however, the right to discharge lasts for the first three months of the life of the child. MILPERSMAN 1910-112. In the Navy and the Marines, separation may also be requested up to the expected date of birth.

The Air Force considers "the impact of the member's loss to the duty section and consider whether she can be effectively employed during her pregnancy." AFI36-3208 3.17. Further, a pregnancy which began before enlistment or entry into service does not qualify the servicemember for discharge on this basis. However, should the discharge be granted, the discharge is still possible even if the child is born or if the child is born dead before the final processing. If the child is born dead, the servicemember can also withdraw her request for discharge.

Parenthood

All military personnel on active duty or in the Active Reserve must be ready to deploy throughout the world on short notice and be able to fully execute

their military duties. For this reason, each member of the military with children (including adopted and stepchildren) under 18 years of age (19 for the Navy and Marines) or other family members unable to care for themselves in the member's absence, is required to provide a dependency care plan. This plan [DA Form 5305-R; NAVPERS 1740/6; AF Form 357] basically states what the plan is for taking care of your dependents if you are deployed. [AR 635-200, Chapter 6; MILPERSMAN 1910-124; MCO 1740.13A; AFI 36-2908]

If you are a single parent, you might have trouble performing your duties effectively, be absent frequently, or be unavailable for worldwide assignment. This might hurt military "readiness," and you can be separated if parenthood interferes with your work and availability. If you are married you may still qualify if your husband or wife has medical problems, which prevent him or her from being solely responsible for the children. One case involved a mother with severe post-partum blues. Or if both parents are in the military, one may be able to obtain a discharge in order to make the other deployable.

The process is fairly straightforward, but has similarities with the hardship discharge claim. The first thing to do is to obtain a Dependency Care Plan form. You can find this form online or at the personnel office on base. When you fill out the form you should answer the questions: "Cannot comply." Make sure that you have the documentation that backs up what you claim. Use as many official records as you can and supplement with letters from family, friends, co-workers, teachers, childcare workers, doctors, ministers—whoever can logically support the claim.

Next give the dependency care plan to your commanding officer and discuss the problem with him or her. Don't make a case for how your parenthood has already kept you from doing your duties, because that may lead to a less-than-honorable discharge. But discuss how much of a problem your parenthood may be in the future and how separation would be in the interest of the military as well as you.

If you are denied, submit the plan again. In the meantime, make sure everyone knows about the problem you are facing with taking care of your children. If it is a real problem only if you deploy, state that. But if it is a new and ongoing problem, let everyone know when an incident happens. In an extreme case, bring the child to the base—when the babysitter falls

through, for example. No command of which we are aware, has ever held out after that.

Be aware that the military may have control over you, but it does not have control over your children. It cannot take them away from you or tell you that you must put them in foster care. It cannot insist that a particular family member be made guardian of your children. Your command may order you to do so, but it is an order with no teeth. You are the final arbiter of who takes care of your children and don't let anyone tell you otherwise.

But there is one exception to this rule: if both parents are in the military. Then both parents should file a dependency care plan with the words "Cannot comply" and acknowledge the military service of the spouse. The commanding officers, not the parents, will decide which parent gets the discharge. But there is no reason that you cannot push for a particular outcome. You still should be the person who decides who takes care of the children, even if the military reserves the right to decide who receives a discharge.

Failure to file this plan and to update it annually, or more frequently as needed, is grounds for an involuntary discharge. But the reality is that the military seldom will discharge merely for failing to file one, as long as your dependents are, in fact, being taken care of and are not a problem to the command.

Misconduct

While courts-martial for misconduct are out of the scope of this chapter, there are some basic areas, which fall under this administrative discharge area, that need to be mentioned. Misconduct that may lead to discharge from the military is a very broad concept. It includes actions that any person would normally consider misconduct (illegal drug use, for example) as well as misconduct in your personal life outside the military (such as failing to pay child support) and misconduct that is viewed uniquely by the military (being late to work or AWOL/UA). Generally, if you are facing this kind of discharge, you will want to consult with an attorney—either a defense JAG or a civilian attorney with military law experience.

Generally, you should know that a civilian conviction with a sentence of six months or more (even if suspended for probation) could result in a

discharge at the discretion of your command. The discharge can either be a general under honorable conditions or an OTH, depending on the circumstances.

You can receive a discharge if you have abused drugs. Although all of the branches claim to have zero tolerance for drug use, the reality is that it is entirely at the discretion of your command. The regulations state that you should normally receive an OTH discharge. Often you can fight this discharge if you can show it was youthful experimentation and/or you are willing to enter a treatment program.

You can also receive a discharge for "a pattern of misconduct." This is a fairly broad and vague basis that is defined in the Army regulations as:

> *Discreditable conduct and conduct prejudicial to good order and discipline include conduct which violates the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.*

You can, of course, fight this discharge by showing that you are a good soldier, have had lengthy service, or that the incidents were minor or otherwise mitigated. See Chapter 15 (Discharge Upgrading).

A discharge for misconduct can occur as a result of a conviction in a foreign court. However, if you are sentenced to a foreign prison, the military will generally hold off discharging you until you are released from prison and returned to the United States.

Unsatisfactory Performance

This discharge relates primarily to members of the reserves or National Guard. Most people are aware that if you miss a number of drills without excuse, you are to be discharged for "failure to participate" if the commanding officer has reason to believe that you will not improve. [AR 630-10 and AR 135-178 Chapter 13; MILPERSMAN 1910-158; MCO P1001R.1J; AFI 36-3208 Sec. 5E] The number of drills to miss in the Army is specific (a minimum of nine) but vague in the other branches.

But what is not clear to many is that this rule of missing drills applies only after completing training. Also, each weekend training counts as a maximum of four drills.

Many active-duty servicemembers are discharged for " unsuitability," for example, ineptitude, a personality disorder and other vague reasons. The discharge given is almost always, or should be, fully honorable.

Discharges for AWOL or UA

There are, obviously, consequences to going AWOL or UA. The consequences will vary from branch to branch and from base to base and from rank to rank. Each commanding officer has the ability to make independent decisions about military personnel who are coming back from

AWOL/UA. But a few things are universal: After the AWOL/UA is officially reported, a misdemeanor warrant will issue. This is a military warrant and generally is not posted on CODIS, where the civilian police will look, but it is a real warrant. After thirty days of AWOL/UA the warrant is changed to a felony deserter warrant. This does not make the person who is AWOL/UA a deserter, however. This warrant does go on CODIS and can result—especially in a small town—in the arrest of the servicemember by the local police. However, generally, the military and police are not actively looking for you—except in small towns and periodically the Marines.

This warrant NEVER GOES AWAY. Being AWOL/UA is a "continuing offense" and each day you are AWOL/UA the statute of limitations begins anew.

From this point on the rules are completely different depending on the branch, your status in the military, your rank, your assignment, and your base. In addition, the rules have lots of exceptions.

Other than the Navy, the branches generally do not grant discharges while you are AWOL ("in absentia" discharges). The Navy will entertain such a discharge after one year in some cases and grant in most cases after two years absence. But that is a long time to avoid getting picked up by the police with a felony warrant outstanding. Although the Air Force provides regulations for "in absentia" discharges, they require approval at the Secretarial level. Neither the Army nor the Marines have regulations providing for such discharges.

So regardless of what you have heard about going AWOL/UA for 30 days getting you an automatic OTH, you may or may not. The best thing you can do if you are thinking about going AWOL/UA is to contact a qualified GI Rights Counselor at (877) 477-4487 for current information.

REMEMBER: GOING AWOL OR ADVISING SOMEONE TO DO SO IS A CRIME.

If you do not want to be discharged, there are numerous defenses or mitigating factors that may persuade the command that you should not be discharged. You should bring any documents in explanation of the AWOL/UA (medical records, etc.) in multiple copies when you return to base. Make clear to the command that you are contrite (more or less meaning feeling bad about your mistake) and that you wish to be retained.

Don't Ask; Don't Tell: Homosexuality

This discharge is also not what most people believe it to be. The DADT policy originally was an attempt early in President Bill Clinton's administration to provide a safe haven for gays who wanted to serve in the military. The idea was that as long as you did not act on your sexual preference (and you did not talk about it if you did) the military was no longer empowered to ask you if you were gay or to seek evidence that you are. All of this was an attempt to recognize the service being provided by thousands of gay men and women in the U.S. military without attempting, in the face of overwhelming opposition, to change the law prohibiting openly gay men and women from serving in the military. It was an attempt to end the witch-hunts.

The way most people believe the policy works is that if you "come out" to your command you will receive a discharge that will be based on your overall service record in the military (unlike in the past, when an OTH was common for those discharged for homosexuality. See Chapter 15, "Upgrading Your Discharge." Essentially it normally is an "easy" out, although there are reports of retention of gays in critical skill jobs.

The actual policy is based on SAM: speech, act, and marriage. If it comes to the command's attention that you have declared yourself gay, are caught engaging in a "homosexual act" or if you marry someone of the same sex, you are to be discharged. Homosexual acts that occur because you are drunk or that are "youthful" one-time experimentation can be ignored by the command according to regulation.

The way it actually works is that if you "come out" to your command, your command can discharge you or not according to what the command wants. If your command needs and wants you and your skills, they will not (and cannot be compelled to) discharge you. The regulations explicitly state that this discharge is in "best interest of" the military rather than mandatory. So if your command doesn't discharge you, you are now "Out" in the military. And depending on the branch, that can put your well-being at real risk.

The Servicemembers Legal Defense Network (SLDN) has kept track of DADT since its inception. SLDN reports an ever-declining percentage of discharges for those who attempt to use DADT to obtain one. The statistics

as of 2006 show slightly fewer than 50% of those persons who came out, got out.

One route that has been used with some success to force the command's hand if you want to be discharged is to react to a denial of discharge with glee and invite the command to attend a press conference that you will give to let the world know that DADT is no longer being enforced in the particular branch of which you are a member.

On the other hand many gay servicemembers wish to continue to serve. Contact SLDN for advice in such cases. Many commands could care less if you are gay as long as you act like an appropriate adult. (Most adults—gay or heterosexual—do not touch other people in a sexual manner in public).

Conscientious Objectors

Many people believe that conscientious objection to war is relevant only when there is a draft. The all-voluntary military would seem to obviate the possibility that someone who is a conscientious objector to war is in the military. After all, if you are a conscientious objector to war, all you need to do is not join. Nevertheless all the branches of the military provide for the discharge or change to a non-combatant for someone who meets the criteria of a conscientious objector.

Many people in the military believe that while filing for a CO discharge is somewhat shameful and cowardly, it is an easy and relatively quick discharge and can keep you from being deployed, if you are sincere.

But, once again the reality is vastly different from the myth.

The definition on which a conscientious objector discharge is based is specific and the process is long and drawn out—it can take a year or longer to go through the entire process. During the process the member is still in the military for all intents and purposes except for two things: In the Army he or she cannot be transferred out of the unit. Second, in all branches you are to be reassigned to duties which do conflict in the least with your stated CO belief. Generally, this means that you do not use or train with weapons.

Because of the length of time involved and the reality that you are still subject to deployment and all lawful orders, many choose a different route out of the military.

The following is a brief overview. We strongly recommend that you work with a trained military counselor such as those at the Center on Conscience and War at (800) 379-2679.

Definition

The legal definition of a conscientious objector is: a person who by reason of a sincerely held religious, moral or ethical belief, conscientiously objects to their own participation in war in any form.

To obtain a CO discharge from the military you must additionally show that you have had a change of heart since joining the military. As you probably do not recall, part of the paperwork you signed when you joined the military included the specific language that you were not a conscientious objector.

Process

The process in each of the branches is done in slightly different order, but has essentially the same elements. All of them begin with a written application. [AR 600-43; MILPERSMAN 1900-020; MCO 1306.16E; AFI 36-3204; COMDTINST 1900.8] Then an investigating officer (IO) who is under your commanding officer, but not over you in the chain of command, is appointed to handle the process; you meet with a chaplain who is to determine your sincerity and a psychiatrist who determines if there are some underlying psychological problems causing you to seek discharge. (The process goes forward regardless of what the psychiatrist says. The doctor's report is just one piece of the process.) The IO also presides over a fairly informal hearing at which you can present witnesses on your behalf. The IO writes a recommendation to your command that, along with the chaplain's and psychiatric report, you are entitled to rebut. The command makes a decision on your application. Then—unlike any other discharge process in the military—the command's decision is sent up the chain of command with recommendations for approval or denial all the way to the Pentagon, where a panel of officers reviews it and makes the final decision.

If your application is denied, you have four choices: file a new application based on a **material change in your circumstances**, go to federal court and file a *habeas* petition, refuse an order and face court-martial, or just ignore your conscience and finish your service obligation.

Application

Again, we strongly recommend that—if you have time—you work with a trained counselor to help you prepare the best CO application that you can, based on yours beliefs. If you feel you must file something immediately, then contact a trained counselor as soon as possible thereafter. The application is the start of a request for discharge or reassignment as a CO.

The application in each of the branches has multiple questions that are of little importance—these include every job you have had and every address where you have lived. But there are six or seven core questions to which you must pay particular attention.

A description of the nature of the belief that requires the applicant to seek separation from the military service or assignment to noncombatant training and duty for reasons of conscience.

Be aware that they are asking you to describe a belief. The words do not have to be traditionally religious. You do need to use "judgment" words such as "good" or "evil"; "right" or "wrong"; "sinful" or "Godly." The application cannot be based on a political belief that war is imperialism or a practical belief that war is ineffective.

An explanation as to how the beliefs changed or developed, to include an explanation of the factors (how, when, from whom, or from what source the applicant received training or acquired a belief) contributing to conscientious objection beliefs.

An explanation as to when these beliefs became incompatible with military service, and why.

These two questions are asking you to tell your story. Why did you change? Remember the law requires that you have changed from not being a CO prior to enlisting in the service to being a CO. Be aware of timing issues here. Did you bring this to the attention of the military when you first realized you were a CO? Was there a delay? Why? Often there is a delay while COs sort through their loyalty to their promise to serve and their loyalty to their own personal beliefs.

An explanation as to the circumstances, if any, under which the applicant believes in the use of force, and to what extent, under any foreseeable circumstances.

This is, to an extent, a trick question. The law doesn't require you to be against all use of force. You could, for example, be willing to use deadly

force against someone who is threatening your spouse or child and still object to participation in war. But take care to be consistent and do not over-state your case in either direction. If the belief that you wrote about was a respect for all human life, you cannot show a lack of respect in this question. But if you would really use any means possible to protect your child, do not pretend otherwise.

An explanation as to how the applicant's daily life style has changed as a result of the beliefs and what future actions the applicant plans to continue to support the applicant's beliefs.

A description of what most conspicuously demonstrates the consistency and depth of the beliefs that gave rise to the claim.

These two questions are asking you to give concrete examples of how your life has changed with the change in beliefs. Do you swear less? Go to church more? Have you become a vegetarian? Be as concrete as possible here.

You will go through three interviews during the process. The order will be determined in part based on the branch of service and in part the availability of the interviewers. You will speak with the chaplain who is generally limited to determining your sincerity, a psychiatrist who is to determine if there are psychiatric issues (such as depression or PTSD) driving your application for discharge, and a hearing before the IO from whom the basic recommendation will be issued.

Preparing for the CO Hearing with the IO

You will want to identify helpful witnesses, such as: your civilian friends and your family; military co-workers and friends; clergy, teachers, coaches, librarians, other adult figures of leadership and authority.

Identify and if possible interview likely hostile witnesses (the investigating officer may tell you whom s/he will be calling) and anticipate their adverse evidence and prepare to rebut it, especially witnesses who will testify about poor military conduct, if any.

Be prepared to demonstrate your depth and sincerity of belief using testimony and documents such as correspondence, e-mails, and excerpts from influential readings. Especially, think through the timeline you should

make up of the development of your beliefs. You can use this timeline to show the onset of your beliefs, your date of final conclusion that you are a CO (so-called "crystallization"), in particular as compared to when you were notified of deployment.

Be sure to show respect for military and those who serve, to the extent that you can. Consider the impact of the IO's personal religious beliefs or knowledge on his/her assessment of the credibility of your religious beliefs.

After the Hearing

You have time to rebut a bad decision, or to clarify gaps in the record, or rebut the summary. The time available varies from branch to branch. You have a continued right to duty that does not conflict with your asserted beliefs–be vigilant.

If the Decision is Adverse: Consider a Second CO Application

A second application must be "materially different" from the original one. On the other hand, CO status is sometimes granted by the military as a way to get rid of a servicemember of little use to the service. Reapplying is sometimes offered as SOP (standard operating procedure). The command asks you to reapply when they realize they have made a mistake in turning you down and want to make it right.

If the Decision is Adverse: Consider Filing in Federal Court for a Writ of Habeas Corpus.

These actions are often successful, but you will need an attorney to do this.(See the appendix on legal resources.)

Miscellaneous

There is any number of other possibilities of reasons for discharges, either rumored or real. Early discharge for educational or business opportunities (only a maximum of 90 days prior to end of service), for example, is a discretionary ground for discharge. Moving more than 100 miles from your unit, for reserve and National Guard personnel, may be grounds for discharge.

For IRR who have been called up to active duty to deploy, they can ask for a waiver (which seems to have about a 50% success rate) or they may fail to report. If they fail to report, they can receive an OTH from the IRR, *which has no effect on any prior earned benefits or discharges.*

This chapter could go on for a lot longer trying to cover every available option. But these are the basic possibilities for the vast majority of situations. Theses discharges all have one more thing in common that we have not discussed: to happen, they all require that the servicemember be under the control of the military.

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Chapter Nineteen
Disability Separation and Retirement

Imagine a nightmare in which you, a new recruit, are called into your commander's office and told that you are being ordered to a combat zone to fight an unfamiliar enemy. Your commander can't disclose the rules of engagement but does tell you that you are deploying by yourself and after you are halfway to your destination you will get further information and some help from someone who knows more about the enemy than you do. Eventually, if things aren't going well, you will get some help from someone with expert knowledge. You hope that "if things aren't going well," there will be enough time to turn things around. But for now, you wonder, "What do I need to do to win this battle?" Your commander asks, "Any questions? Good, dismissed!"

This nightmare is similar to the situation that many servicemembers who are injured or become ill on active duty face if they are referred to the military Physical Disability Evaluation System (PDES). The stakes are very high for those found unfit for continued service. In a worst-case scenario they may be separated without any benefits. If, however, they are eligible for military disability retirement, they will receive lifetime retirement pay and health insurance for themselves and their eligible dependents. The most important thing to know about the PDES is that *by being actively involved in your case you can influence the outcome*. You cannot change the facts of your case

but you can ensure the information that helps your case is included in your file and you can maximize the chances of your arguments succeeding by following the guidance found in this chapter.

Outcomes and Ratings

Before this chapter discusses the PDES in detail, it is important to understand the possible outcomes from the PDES. There are five basic outcomes. They include a fit-for-duty determination, an unfit finding with severance without benefits, an unfit finding with severance pay, an unfit finding with permanent retirement and an unfit finding with temporary disability retirement. In addition to these outcomes, there are also administrative determinations that affect other benefits and taxes.

Fit for Duty—This finding basically means that you can reasonably perform the duties of your grade and career field. A fit-for-duty determination means that you will be returned to regularly assigned duties and will be expected to perform those duties within the limits of your physical profile, if you have one. For reasons discussed later in this chapter, it is best to reach 20 years of service before being medically retired. While it is not always possible to reach 20 years, it is important to keep this in mind if you are reasonably close to being retirement-eligible. If you want to be found fit, it is important to demonstrate that you are able to successfully perform your duties. You can submit statements from supervisors, evaluation reports, awards and anything else that tends to show that you are not limited significantly in the performance of your duties.

Unfit findings generally—For all unfit findings, Department of Defense (DoD) Instruction 1332.18 requires that the Physical Evaluation Board (PEB) determine that the servicemember is unable "to perform the duties of the member's office, grade, rank or rating because of disease or injury." This determination requires a finding of two things. First, the servicemember has at least one condition that is disqualifying for retention. This is first addressed at the Medical Evaluation Board (MEB), but must later be confirmed by the PEB. Second, that this same condition prevents reasonable performance of the duties expected of someone of his or her grade and career field. Either one is not enough; an unfit finding requires both of the above. Also, note that each condition must by itself be the

cause of the unfitness. If you have three conditions, but only two of them affect your duty performance, you can be compensated only for those two conditions.

Unfit and separation without benefits—In order to be eligible for compensation, a condition must have been incurred while the servicemember was entitled to basic pay and not as a result of intentional misconduct or willful negligence. If a condition existed prior to service (EPTS) and was not service-aggravated, or was incurred while absent without leave (AWOL) or was the result of misconduct or willful negligence, the military will not compensate you for your disability. The result is that you are separated without payment of any kind. The law presumes that conditions that arise while a servicemember is in-service are incurred while the servicemember is entitled to basic pay. In order to overcome this presumption there must be evidence showing that it is *more likely than not* that the condition existed prior to service. Even if condition EPTS, the law presumes that military service aggravated the condition and that it is compensable. To overcome the presumption, there must be evidence that more likely than not the condition is a natural progression of the condition that EPTS. Usually this evidence is in the form of a generally accepted medical principle that can be found in textbooks, scholarly articles or medical journals.

Unfit and separation with severance pay—This finding requires that one or more of your conditions are "unfitting" (making you unfit for service) and rated according to the Veterans Affairs Schedule for Rating Disabilities (VASRD) at 0%, 10%, or 20%. A sometimes confusing point is that 0% is a compensable rating. All ratings 20% or below are compensated with severance pay. Severance pay is calculated by multiplying two times years of service performed (with six months or more counted as a whole year) up to a maximum of 19 years multiplied by base retired pay. A recent change in the law credits all servicemembers with a minimum of three years and those with injuries incurred in the line of duty in a combat zone with a minimum of six years of service for the purposes of calculating severance pay. A Retired base pay for those who entered the military after September 7, 1980 is the average of the highest 36 months of basic pay.

Unfit and placement on Permanent Disability Retirement List (PDRL). If you are a servicemember with less than 20 years of service, you must be unfit due to stable conditions rated at 30% or more to be

permanently retired. If you have more than 20 years of service, the military will grant retirement if you have a condition that is unfitting and compensable (i.e., rated at least 0%). If these conditions are met, you will be medically retired. If you have less than 20 years of service when permanently retired, your retired pay is calculated by multiplying the retired base pay times the percentage awarded. For servicemembers with more than 20 years of service, actual retirement pay is either the retired base pay multiplied by the percentage awarded for disability or 2.5 multiplied by years of service multiplied by retired base pay, whichever is higher. Nevertheless, not more than 75% of retired base pay can be awarded under any calculation. In addition to retired pay, medical retirees get the same benefits as length-of-service retirees. This includes Tricare health insurance coverage for the retiree and eligible dependents, access to PX/BX and commissary and issuance of a retiree identification card.

Unfit with placement on Temporary Disability Retirement List (TDRL)—If the PEB finds you unfit due to disabilities that are rated at 30% or higher, but the disabilities are unstable, you will be placed on the TDRL. DoD Instruction 1332.18 defines "unstable conditions" as those conditions that are likely to change over the next five years enough to warrant a change in rating. In practice, many unstable conditions are found by PEBs to be stable. TDRL status is limited to a maximum of five years. Servicemembers on the TDRL have the same retiree benefits as length-of-service retirees. However, TDRL retired pay is calculated under different rules. The minimum payment while on TDRL is 50% of retired base pay. If the servicemember is rated at higher than 50%, he or she gets the benefit of the higher rating. The maximum on TDRL is also 75% of retired base pay. While on TDRL, the servicemember is periodically re-examined to determine if his or her condition has stabilized. If so, he or she will be referred to the PEB, which can find the servicemember fit for duty, unfit with severance pay, unfit and permanently retired, or continued on TDRL with no change in rating. While on TDRL, the percentage of disability rating may not be changed. Since a servicemember on TDRL is technically retired, no time accrues for purposes of time in service or regular length of service retirement.

Other Administrative findings—Title 5, United States Code, section 3501, gives hiring preference for Civil Service positions to those injured as a

result of armed conflict or an instrumentality of war. The Tax Reform Act of 1976 makes compensation from combat-related injuries tax-free. The PEB can make these administrative findings in any case where a servicemember receives compensation. *The important thing to recognize is that regular military retirement pay is normally taxable. (VA disability compensation if not taxable.) With findings by the PEB that your injuries are combat-related, your pay becomes tax-free. If you believe that the informal PEB has not correctly addressed this issue, you can submit evidence, such as sworn statements, award citations, and in some cases even your own testimony. You would submit this evidence through your Physical Evaluation Board Liaison Officer or at the formal PEB hearing.*

The DoD and the VA use the "whole person concept" in rating multiple disabilities. The idea is that a "whole person" who is uninjured is 100% able to perform. When you rate two or more conditions, you must first put them in order from highest to lowest. The next step is to subtract the highest number from 100%. The next condition is then applied to this remaining percentage before being combined with the first rating. For example, a servicemember with two conditions, one rated at 40% and one rated at 20%, would be rated at 50%. This is arrived at by subtracting 40% from 100% leaving 60% remaining. The condition rated at 20% is then multiplied by the remaining 60%, which yields 12%. The next step is to combine the 40% and 12% to come up with 52%. The last step is to round the number to the closest number divisible by 10, which in this example would be 50%.

Physical Disability Evaluation System (PDES)

Title 10 United States Code, Sections 1201 through 1221 contain the body of federal law that authorizes the services to separate or retire members and to award or deny benefits. Each service administers the PDES using different regulations. However, the services all use similar procedures to process disability cases. The common steps are medical evaluation, physical disability evaluation, servicemember counseling, and final approval by personnel authorities.

Medical Evaluation Board

Overview

The services administer the medical evaluation portion of the PDES by having a Medical Evaluation Board (MEB) evaluate the Servicemember's medical status and duty limitations. The use of the term "Board" in MEB is a misnomer, as there is no opportunity for the servicemember to appear and the members of the MEB simply review the documentation in the case and then make their findings. The MEBs are typically made up of two or more medical doctors. The purpose of the MEB is to determine if you have a medical condition which requires further processing through the PDES and to document your condition. While the Physical Evaluation Board (PEB) can gather and consider new evidence, the MEB is the crucial first step in assembling the evidence that will be considered later if your case is referred to the PEB. It is important that the MEB's report is accurate if the PEB is to have the best information to make the right decision in your case.

Who can refer a case to the MEB? For Air Force, Navy, and Marine Corps cases, the decision to initiate an MEB is made by a medical officer. In the Army and the Coast Guard, MEBs can be initiated by commanders or medical officers. In most cases, the route to an MEB begins after you seek medical care for an injury or illness. If your condition does not improve or gets worse and you have limitations on your duty performance that are likely to last more than a year, you will be referred to an MEB. Once the process is initiated, the MEB will determine if you have a disqualifying condition and if so, its impact on duty performance.

What is a condition that is disqualifying for retention? Department of Defense Instruction 1332.38, Enclosure 4, lists the conditions that are cause for referral to an MEB. The list is not all-inclusive and the services have supplemented this list in their own regulations. Other medical conditions are cause for referral if they significantly affect the performance of the duties expected of someone in your grade and career field.

What is the outcome of an MEB? The MEB recommends whether you can return to duty (with or without limitations) or need to be referred to a PEB. The MEB process results in the issuance of two documents. The first is the findings and recommendations. The services use different forms to document the MEB's findings and recommendations, but they all use a

form which contains the recommended disposition. This form states the conclusion of the MEB. The other document produced is the Narrative Summary (NARSUM). The NARSUM is a report that lists the servicemember's medical history, current diagnosis, prognosis, and impact on duty performance, and whether the conditions are disqualifying for retention, among other things. DODI 1332.38, Enclosure 4, Attachment 1, lists the requirements for a complete NARSUM.

Common Issues

The single most important thing you can do at the MEB phase of the process is to decide what outcome you want and then act accordingly. Your actions will vary greatly if you want to eventually return to duty as contrasted to if you believe your condition makes further military service impossible. If the goal is to return to duty, you want to make sure the MEB has information tending to show that your duty performance is not significantly limited by your conditions. If the MEB does not already have them, submit copies of your most recent evaluation report, awards, or letters from supervisors—if they tend to show that you are performing your duties well. If you believe that your condition makes further service out of the question, it is important that the MEB considers all conditions you have that interfere with your duty performance. It is not unusual for a servicemember to be referred to an MEB for one condition and to have other disqualifying conditions not considered. This can happen for many reasons, including loss of relevant medical records, misdiagnosed or undiagnosed conditions, feeling shame about certain conditions, or medication which may mask certain conditions. If you are aware of a condition that is not documented, it is important to discuss it fully with your physician so the proper diagnosis and evaluation can take place and your records can be updated to reflect the diagnosis.

Sometimes servicemembers are unsure about what outcome they want or is likely from the PDES. It is certainly better if you are consistent in your position throughout the PDES. At the MEB, you may think that you will be unable to continue to serve. But later some of your conditions may be found not to be disqualifying, and you may want to qualify for duty. So to have argued at the MEB that you are unfit may undermine your ability to argue later that you are fit.

Early in the process it can be hard for you to evaluate your case without help from someone with experience. Talking with an attorney or veterans service officer (VSO), also known as a "service representative" or "service rep" can help you in coming to a better understanding of the likely outcome based on the facts of your case. (You can find a VSO by contacting a veterans organization, such as the American Legion, the Veterans of Foreign Wars, or the Disabled American Veterans.) Remember that if you are asked if you want to remain in the military, saying "Yes," will not hurt your case. If the facts later show that due to your condition you are unable to remain on duty, your desire to continue to serve will not hurt your case. However, if you state, "No," when asked about your desire to continue to serve and your condition is borderline, this can sometimes be viewed as your wanting to get out of your obligations or as a desire just to get benefits.

Another common issue at the MEB stage of the process is failure to disagree with the findings of the MEB. Each service provides an opportunity to disagree with the findings. If you agree that the MEB findings accurately describe your condition, it is difficult to later argue that you have other, "unfitting" conditions. For this reason it is a good idea to thoroughly review the MEB's findings. If you disagree with them, you should submit a statement explaining what errors should be corrected. This could state your belief that you have additional conditions, that the extent of your conditions is not fully described, or that you believe additional testing is needed to identify other conditions. Also, you should correct any administrative errors in the MEB's findings, including dates of service, units of assignment and awards that are incorrect. By ensuring that the MEBs findings are as complete as possible, you will have provided the necessary information for the Informal PEB, which is the board that issues a preliminary rating, to rate you correctly.

Counseling

DoD Instruction 1332.18, paragraph 3.13. states that "servicemembers referred for physical disability evaluation shall be afforded, at appropriate stages of processing, comprehensive counseling on the significance of the actions proposed and the related rights, entitlements, and benefits." Throughout the process, this counseling is provided by the Physical Evaluation Board Liaison Officer (PEBLO). Most PEBLOs are

professionals who perform their jobs well. Early in the process, the PEBLO is oftentimes the first and only source of information for servicemembers.

What you should realize is that PEBLOs do not have a duty to advance your interests. The PEBLO works for the military service. His or her job is to provide you information, track your case for administrative completeness, and to be a conduit of information between you, your MEB and physicians, and the PEB. In these functions there is no issue and PEBLO can be very helpful. However, recognize that PEBLOs do not have a duty to act in your best interests in your case in the same way that your attorney does. Similarly, information that you provide the PEBLO is not confidential, as it is with your attorney. The PEBLO can and often does communicate with the PEB and shares information. Because of this you should be pay careful attention to what you say to your PEBLO. Finally, PEBLOs are not supposed to provide advice about the correctness of a rating. If you need advice, it is advisable that you discuss your concerns with a qualified attorney.

Physical Evaluation Board

The Physical Evaluation Board is actually composed of two separate boards. The PEB (both formal and informal) is generally composed of three members. The president of the board is usually a senior commissioned officer in the grade of 0-6. The remaining members are usually an additional line officer and a medical member physician. If the PEB is considering the case of a reservist, at least one voting member will also be a reservist. In the Army, the practice is that the same members will sit on the informal and formal boards. The Air Force and the Navy use different board members at the informal and formal PEBs.

If the MEB refers your case to the Physical Evaluation Board, the first step is the informal PEB's record review of your case and issuance of findings and recommendations. If you accept the findings, then your case will be forwarded through personnel channels for approval. If you disagree with the informal PEB's recommendations, you can demand a formal hearing where you will have an opportunity to appear, present evidence and witnesses, ask questions, and testify if desired.

The informal PEB receives your packet from the MEB, reviews it for completeness and makes an initial decision in your case. You have no right

to personal appearance at the informal PEB and the board decides the case based solely on the records in the case packet. This should serve to underscore the importance of evidence to support your case. The only way the informal PEB knows about your case is from what they read in your case file. While informal PEBs can and sometimes do return cases to Military Treatment Facilities (MTF) for further testing and evaluation, it is much better if evidence of your condition is already in your file when they get it.

The best thing you can do to improve your chances of success at the informal PEB is to thoroughly understand the criteria that the PEB will use to decide your case and to try to provide it with the information it needs to justify a proper rating. To do so, you should do two things. First, try to gather evidence of how each condition you have limits your duty performance. Commanders' letters, statements from supervisors and physical profiles are good examples. You should also look up your conditions in the Veterans Affairs Schedule for Rating Disabilities (VASRD) and see what the criteria are for rating each unfitting condition. If there is a test that is required by the ratings criteria that has not been performed, consider asking your treating physician or primary care manager to arrange the test. If there are some other criteria, think of ways to document them so as to provide the PEB with evidence that justifies a proper rating.

After the informal PEB makes its findings, you will be given an opportunity to agree or disagree with the findings and recommendations. If you accept the informal PEB's findings, your case will be forwarded to your service's approval authority. If you disagree with the findings, you can demand a formal hearing. You also have the opportunity to submit a statement explaining the basis for your disagreement. It is a good idea to submit a rebuttal, especially if you have additional evidence to support your position. The reason for this is that if you submit additional information or evidence, sometimes the informal PEB will reconsider its findings and issue revised findings.

The formal PEB is the servicemember's opportunity to have a full and fair hearing before separation for physical disability as required by the law. If you demand a formal hearing, you will have the option to be represented by assigned military counsel at no cost to you, or you may elect to be represented by a civilian attorney of your choosing (or an experienced veterans services officer—if one is available). While your personal

appearance is not necessarily required, it is definitely to your benefit to appear. Similarly, you cannot be forced to testify or answer questions, but it is highly recommended that you do. That is because oftentimes you have the information that the formal PEB needs in order to grant a higher rating. Without your testimony, oftentimes the PEB will defer to its earlier judgment. If you have concerns about testifying, you should discuss them with your attorney or VSO.

The formal PEB procedures vary between the services, but generally begin with the servicemember reporting to the board. Then there is a brief discussion of administrative matters and the servicemember's attorney may give a brief opening statement that covers what the evidence will show and what the servicemember desires that the PEB find. After that, there is a presentation of evidence and testimony. Once the attorney has asked questions, the board members may also ask questions of the witness. After all the witnesses and evidence has been discussed, there is an opportunity for the servicemember to make a statement and the attorney to make a closing statement. The board will then close to decide the case in private.

When you appear at a formal PEB you should be respectful and courteous to the board members. Remember that they are your audience and you need their recommendation to get the result you want. You want to make a good impression on them. Wear a clean uniform and only wear awards and badges properly awarded and documented in your service record. Address the board members as "sir," or "ma'am," as appropriate or by their military title. It is important for you to be consistent in your testimony and to project credibility. It is better to say that you do not know the answer to a question than to guess or to say what you think the board wants to hear. The members of the PEB hear many cases each week, so they are familiar with many of the common issues facing disabled servicemembers. By providing them with credible testimony, you can help them to properly rate the severity of your conditions. You should be prepared to discuss the history of your condition(s), the demands of your military job, how your condition affects your military job, your treatment and medications, and your current duty and functional limitations.

The PEB commonly asks servicemembers about their plans if separated from the military. You should be prepared to discuss this. A good answer will be consistent with your functional limitations due to your disability. For example, if you have a back condition and you have testified

that this causes you to be unable to perform many of your military duties, telling the PEB that you plan to work in construction may undercut your credibility and send the signal that you just want to leave the service or get higher benefits. While you want to answer truthfully, be aware that sometimes concrete plans such as acceptance at a college or a job that starts in the near future can also send the same message. It may be better to state that you would like to attend school or work in a particular field in the future and leave it at that.

If at all possible, do not appear at the formal PEB with assistive devices such as canes, crutches, or braces without having them noted in your medical records. If you need these items, be sure to talk about them with your physician before the formal hearing and get their use prescribed and documented. This is not to discourage their use if you need them. It is only to ensure that if the board questions you about your use of a device (which it likely will if it is not in your records), you can show that it is part of your treatment. Otherwise, it can appear that you are trying to make your condition appear worse than it is. If you need these items, normally your physician will approve their use.

The appearance at the formal PEB can be stressful for anyone. There is a lot riding on the outcome and sometimes the stress and frustration of the process can make you want to lash out. Sometimes servicemembers feel like the board members are responsible for their predicament or represent a system that is denying them benefits. While this is understandable, remember to remain respectful and do not direct your anger toward the board. You will be given an opportunity to make a statement and if you choose to, you may mention your frustration with the system, but generally it is best to just thank the board for listening to your case.

If the PEB does not give you the result you hoped for, it is important to remain respectful. The PEB will rule on your rebuttal, which you would submit later, so antagonizing them will not help your case. If they have made legal or factual errors or rated you lower than you think you deserve, you and your attorney can still appeal. Later administrative or judicial appeals may be where errors at the formal board are corrected but you want to maximize the chance that the board will reconsider their findings later. Keeping your military bearing will help.

After the formal PEB has made its decision you will have to decide whether you want to accept its findings or disagree. If you accept, the case

will be forwarded directly to the intermediate authority, which is each service's agency with oversight of the physical disability evaluation process, for review and approval of findings. You should be aware that acceptance of the findings may bar later review because you may have "waived" your rights. If you disagree, you will have an opportunity to submit additional statements or other evidence that will accompany your case when it is reviewed by the service secretary's designated approval authority. Appeals to fit findings (when you disagree that you are fit to perform your duties) are accepted as a discretionary policy, but there is no statutory right to appeal. You have a right to a copy of the PEB's proceedings if you request them in writing. You should request a copy, as this will help you and your attorney in any later appeals.

Generally, there are three types of submissions. The first and most effective at the administrative level is additional objective evidence. This may be in the form of medical tests, medication profiles, or statements from the chain of command or supervisors that were previously unavailable. This is the best evidence because it shows new facts and may sway the reviewers to conclude that your case was not correctly decided. The next type of submission that is effective is a legal argument identifying errors made in the processing of your case or by the PEB in deciding your case. Oftentimes this type of submission will carry more weight in later administrative or judicial appeals than in the PDES, but it is still advisable to identify legal errors early in the process. Common legal errors include not following service regulations in deciding a case, failure to properly explain the board's rationale and failure of the PEB to cite to medical treatises when they make a finding based on "accepted medical principles"

The final type of submission is the servicemember's disagreement with the findings or the law. Since this is usually a statement of opinion, it tends not to be very helpful in changing the decision. However, it is a servicemember's right to submit this type of personal statement and it can help in identifying systemic issues that may later be changed. If at all possible, try to focus your energy on gathering the first type of new evidence and then get assistance in drafting a good legal argument. Lastly, if the first two are not that strong and especially if you simply disagree with the policies under which your case was judged, then consider telling the service how you feel about the handling of your case. It may make you feel better and could possibly affect future policies.

Review and Final Action

PEBs make findings and recommendations in physical disability evaluation cases. They do not make the final decision. After the PEB issues its findings and recommendations, there is a further review by their higher headquarters, which is the agency within each service with oversight of the PEB (for the Army it is the Army Physical Disability Agency; for Navy and Marine Corps cases, it is the Navy Council of Review Boards; for the Air Force it is the Air Force Personnel Council). This review encompasses both factual and legal sufficiency of the PEB's findings. Up until final action in the case, you can submit additional matters. The higher headquarters can make changes to the PEB's findings, but if the change results in a lower award, you must be given an opportunity to submit additional matters. Once approved by the PEB's higher headquarters, the case is forwarded for approval. At this point, it is extremely rare that a change of decision would be made by the service. The last step in the Physical Disability Evaluation System is approval by the Service Secretary's designee.

Post-PDES Options

Each service has a Board for Correction for Military Records (BCMR). The BCMRs were created by Congress to correct errors or injustices in servicemembers' records. The servicemember bears the burden of showing that there is an error or injustice in his or her records. The BCMR has a three-year filing period after the alleged error or injustice occurs but it often waives this requirement if there is an error and it is in the interest of justice to correct it. In PDES cases, the three-year time limit runs from the date of discharge and not from the date of the PEB's decision. Be aware that as the highest administrative review boards in each service, the BCMRs are *often, but not always,* the last step before filing a suit.

Challenging a PEB Rating in Federal Court

Normally it is best to go to the BCMR, so long as you have no time issues with meeting the federal Court of Claims statute of limitations discussed below. The BCMR has a mandated goal of issuing decisions in 10 months or less and must act on a case within 18 months. Currently, the majority of cases are being decided within eight to ten months.

Another option in some cases is to file suit in federal court. There are many complex issues in these cases involving choosing the correct court and when to file suit. For this reason, you should consult an attorney to discuss these issues before filing any suit. For appeals of PEB rating decisions, the proper court is usually the federal U.S. Court of Federal Claims. Nevertheless, in some cases you may want to file in a federal district court; this should be your lawyer's call

In most cases you will want to go to the U.S. Court of Federal Claims. The burden is on you to show that the decision in your case was "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." This is a technical legal standard that you should discuss with a qualified attorney if you have questions. There is a six-year statute of limitations for filing cases in the U.S. Court of Federal Claims. Unlike the BCMR time filing requirement which may be extended, the U.S. Court of Federal Claims statute of limitation is a strict requirement. If you have questions, ask an attorney familiar with cases such as yours.

For a discussion of handling PDES cases before the BCMRs, please see Chapter 16, "Correction of Military Records and Related Issues."

Relationship Between DOD and VA Benefits

Title 38 USC, Sections 5304 and 5305, prohibits veterans from receiving compensation from both the DoD and the VA for disability compensation. As a result, for most veterans, any award from the DoD will have to be deducted from VA compensation they would otherwise receive before the veteran receives any money from the VA. The veteran has the choice of electing which payment he or she will waive. In most cases, since VA compensation is non-taxable, the veteran will elect to waive the DoD compensation. What this means in many cases is that the main benefit of getting to a 30% rating from the DoD is the lifetime medical coverage for the servicemember and his or her eligible dependents. Note that the waiver of DoD compensation will not affect the receipt by the servicemember of medical benefits, including for eligible dependents. However, in some cases, depending on the facts, getting a higher disability rating from the military does result in more money for the servicemember. Also, for those servicemembers who have more than twenty years of creditable service

when retired medically, there is a phased-in elimination of the offset under a law that allows for Concurrent Retirement and Disability Pay (CRDP), sometimes called "concurrent receipts." In order to qualify, you must be eligible for a normal retirement (for reservists, this means in receipt of a "20 year letter" and to have reached age 60) and have a VA rating of at least 50% for service-connected disabilities. Under a similar law, those retirees with twenty years or more of service, who have conditions rated by the VA at 10% or higher that were the result of combat, simulated combat, hazardous duty, or instrumentalities of war, will be eligible for restoration of their offset pay. With Combat Related Special Compensation (CRSC), sometimes called "special combat pay," there is no phase-in and the money paid may be retroactive. Veterans who are eligible for both benefits may elect which one to receive.

Finally, for those cases decided after January 28, 2008, if the servicemember's injuries were incurred in the line of duty in a combat zone or were incurred during performance of duty in combat-related operations, as designated by the Secretary of Defense, there is no offset of VA or DoD compensation for the injuries.

You must understand some of the differences in DoD and VA compensation before you are able to determine if appealing a DoD rating will increase your benefits. First, the DoD rating is applied to the servicemember's base retired pay. This means that the higher the grade and years in service the servicemember has, the more a rating percentage will earn him or her. Compare this to the VA rating which assigns compensation based on a set schedule, with some additional compensation based on the number of dependents. To illustrate how this works, if two servicemembers with the same dependents, one an E-4 with only three years of service and the other an 0-5 with 14 years of service, are assigned the same rating by the DoD, the 0-5 will get a much higher amount of compensation than the E-4. Now assume the same two servicemembers are awarded the same rating by the VA. Given that they have the same number and type of eligible dependents, they will receive the same compensation from the VA. The rationale for this is that the DoD system is designed to compensate for a career cut short, while the VA system is designed to compensate for loss of function and impact on civilian earnings. In order to know how the two systems will interact to determine the best outcome for the veteran, it is necessary to calculate the outcomes under various scenarios. In many cases,

the calculations will have to be based on assumptions, as most servicemembers (with the exception, perhaps, of those on TDRL [Temporary Disability Retirement List, as mentioned early in this chapter]) will not have a VA rating until after the PDES process is completed. Below are some examples of possible outcomes, calculated using pay rates and VA schedules for 2007. Note that these calculations do not consider various other VA compensation programs which may significantly increase the VA benefits and were done using the concurrent retirement and disability pay calculations program. A similar calculation under CRSC combat special pay may yield different results.

DoD Retirement with Less than 20 Years of Service

An O-5 with over 18, but less than 20, years of service and base pay of $6968.10 is retired with a disability rating of 30%. He or she (we will go with "he" here because most servicemembers and vets are male) will get $2090.43 in military retirement. Later the VA awards him a 70% rating, which gets him $1303, because he is married with one child. Since he is not eligible for regular length-of-service retirement, he loses out on CRDP. He gets only $2090.43. If he is successful in appealing his military rating and gets 50%, he now is eligible for $3484.05. Appealing the military decision in his case earned him an extra $1393.62.

An E-5 with nine years of service and base pay of $2454.90 is retired by the DoD with a disability rating of 30%. He will get $736.47 in military retirement. He then is rated by the VA at 70%, which gets him $1303 because he is married with one child. Since he is not eligible for regular length-of-service retirement, he loses out on CRDP. Unless he can up his rating from the military to 60%, he gains nothing. This veteran would be better served by trying to increase his VA compensation to 80%, which would garner him $1511.

DOD Retiree, More than 20 Years of Service, Rated at 50% or Higher by Military and CRDP-Eligible.

In January 2007, an E-7 with 20 years and one day of service is permanently retired at 50%. He draws military retirement pay of $1822.50 ($3644.10 x .50). Had he been regularly retired, he would have drawn the same amount. He is rated 90% disabled by the VA. He is married with one child and thus is entitled to $1699 in VA compensation. Take the $1699 and subtract his

CRDP computation rate of $500 and you get $1199. Multiply that by the 2007 restoration rate (the phase-in is complete in 2014) of 49.6% and you get $594.70. That amount plus the CRDP table rate of $500 equals $1094.70. Next, subtract the difference between the military retirement rate and the regular length-of-service retirement pay calculation. That figure is $0. (We need to account for the difference between regular retirement and military physical disability retirement under Title 10 USC, Sec. 1414 (b).) He should receive a total amount of $2917.20 monthly in 2007 (his military retired pay plus CRDP equals $2917.20). At the full phase in 2014, he would be entitled to $3021.50 ($1822.50 + $1199).

The same servicemember submits an appeal to his service's Board for Correction of Military Records, which rules in December 2007 that he will be rated at 70% by the military. He is now entitled to $2550.87 in monthly military retired pay. This means the difference between his Chapter 61 retirement and length of service retirement has now grown to $728.37 ($2550.87 - $1822.50). His VA entitlement does not change; it remains at $1094.70. Add $2550.87 and $1094.70 and you get $3645.57. Subtract $728.37 (the difference between length of service and Chapter 61 retirement) and you end up with the same amount, $2917.20. For this servicemember, there is no financial advantage to appealing under these facts.

As mentioned earlier, there are other VA compensation programs which may result in increased compensation from the VA schedule calculations in the previous examples. In order to make an informed decision, you must calculate the relationship between disability compensation from the military and disability compensation from the VA. Sometimes this can be difficult because you will have to make some informed guesses about what you may be rated at by the Department of Defense (DoD) and the VA.

Conclusion

Revisit the nightmare scenario from the beginning of this chapter. This time, your commander tells you exactly where you are going, what you will be doing there, what the rules of engagement are, and that you will have time to prepare for your mission. With that information, you feel confident that you will be able to accomplish the mission. I hope that this chapter has

provided much of the same information to those of you going through the military PDES. The main lessons you should draw from this chapter are that you should decide early what your goals are and should work to provide evidence supporting your goals. Each case is unique, so you should not rely on this chapter alone. Many times your individual conditions will affect how you should present your case. There is no substitute for getting good legal advice when navigating the PDES. What you should do is use the information as a starting point and then discuss with an attorney. The earlier you do this, the better. If you follow this advice you will maximize your chances for success. The system may seem daunting at times, but remember that you can have a great impact on the outcome. In closing, I hope each and every servicemember going through the disability evaluation system gets the best possible outcome and that this chapter helps you to that end.

References

Statutes

Title 10 USC, Sections 1201-1221
Title 10 USC, Sections 1553-1559
Title 38 USC, Sections 5304 and 5305

DoD Instructions

DoDI 1332.18
DoDI 1332.38
DoDI 1332.39

MEB Regulations

Army AR 40-400, Patient Administration, Chapter 7
Navy/USMC Manual of the Medical Department, Chapter 18
Air Force AFI 41-210, Chapter 10
Coast Guard COMDTINST M1850.2D

PEB Regulations

Army AR 635-40
Navy/USMC SECNAVINST 1850.4E
Air Force AFI 36-3212

Coast Guard COMDTINST M1850.2D

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Mr. Perry graduated from the Quinnipiac University School of Law in 2001, where he was a Dean's Scholar and recipient of the American Jurisprudence award for evidence. He is a graduate of the University of Massachusetts at Amherst, where he earned his bachelor's degree in political science in 1997. Prior to his service as a Judge Advocate, he enlisted as an infantryman in the National Guard in 1992. He was later commissioned through Officer Candidate School and from February 2002 through May 2003 he commanded the 1166th Transportation Company at Fort Bragg, N.C. In June 2003 he accepted a direct commission in the JAG Corps.

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Chapter Twenty
Advice for Families and Caregivers of Wounded Servicemembers and Veterans

By Cheryl R. M. Lynch

Introduction

Being the family member of someone who is serving in the military is daunting, particularly if the servicemember is deployed in a combat zone. You are probably reading this chapter because, by way of a phone call or someone knocking on your door, you have received the unthinkable information no one wants to hear: that your loved one has suffered an injury or debilitating illness.

With that one conversation, you were thrust into a litany of uncertainty and possibly placed in a new role as a family caregiver. Depending on the severity of the injury, this role may last days, months, years or a lifetime. You will be balancing your own emotions and family obligations with trying to ensure the emotional and physical well-being of the wounded servicemember, all while maneuvering through a maze of governmental bureaucracy. The following is to offer you some guidance and provide the

tools to make this most difficult situation a little easier. And all this comes to you from someone who has been a caregiver herself (more on that at the end of the chapter).

Travel and Transportation Orders (T&Tos)

Immediate family members of a wounded servicemember may be invited to travel to the bedside, at the expense of the branch of service, if the attending medical officer determines that it is in the patient's best interest to have family members present. Once the physician files the request, the process of obtaining official government travel orders is set in motion.

Government regulations determine which family members are offered government paid travel. Travel and Transportation Orders (T&TOs) are prepared for the family members and most often flight reservations are made by emergency DoD personnel of the particular branch of service of the servicemember. T&T Orders are also known as Invitational Orders, because as a civilian you would be traveling at the *invitation* of the government. These are temporary orders and last 15 to 30 days and grant you entitlement to reimbursement of some expenses. If it is necessary for you to assist the wounded veteran beyond the time limit, these orders may be extended or a new set of non-medical attendant orders (NMAOs) will be issued. *More on Non-Medical Attendant Orders in this chapter.*

Travel arrangements for family members, who are not at the invitation of the military, may be requested through the Fisher House™ Foundation's Hero Miles Program. Airline tickets, provided by many airlines, have been donated to the Fisher Foundation for distribution. These tickets are provided free to wounded servicemembers and their families. Requests are handled on a need basis and approval varies depending on availability. The e-mail address for Fisher House may be found later in this chapter, in a list of many resources for caregivers.

Emergency Numbers

You should have been given a point of contact including name and phone numbers when you were informed of your servicemember's injury. Over the next weeks you will be given many more, and it is important to start an address book *now*. It's very easy to lose all those slips of paper with names and numbers, so having them readily available, in one place, will be very helpful. Additionally, it's a good idea to attach an envelope for business cards to the inside cover of the address book.

Suggested emergency numbers to put in your book:

- **Military OneSource** (A Department of Defense 24/7 service helping in almost unlimited areas; see the description near the end of this chapter); it is not for veterans but is for active-duty servicemembers, National Guard members, reserve troops, and especially their families: (800) 342-9647.
- **24/7 Family Support All Branches: Military Severely Injured Center** (888) 774-1361
- **Department of the Army Wounded In Action (DA WIA):** (888) 331-9369
- **Wounded Soldier and Family Hotline:** (800) 984-8523
- **Army Wounded Warrior Program (AW2): Information Line:** (800) 237-1336
- **Department of the Navy-Marines: Wounded Warrior Regiment:** (866) 645-8762
- **Marines for Life:** (866) 435-7645
- **Injured Marine Semper Fi Fund:** (760) 725-3680
- **Navy: Navy Safe Harbor:** (877) 746-8563
- **Air Force: Air Force Palace HART (Helping Airmen Recover Together):** (888) 774-1361

It is important for you as a family member to be aware of the servicemember's military and unit information. Write it down in your address book and have it with you at all times. This information should include the servicemember's *full* name, rank and Social Security number, as well as military command information, including the chain of command with phone numbers. The unit can be helpful in supporting you and the servicemember during the time of being hospitalized, in rehab and much

later on. Even if the unit is currently deployed, liaisons are normally available. The servicemember's unit will be the one to which he or she was directly attached prior to injury or illness. Most likely, the unit's title is part of the address to which you would have been sending mail.

Contacting Family and Friends

Most likely you have already called your immediately family, yet it is suggested to have *one* person whom *you* contact and who will set up a *communication tree* to inform others. Whether this communication is done via phone, e-mail or setting up a Web page, arranging this early on will alleviate the need to tell your story over and over again, which takes precious time away from the more important things that are pending and has a tendency to make you more emotional than you currently need to be.

Numerous free web sites like www.caringbridge.org and www.carepages.com are available to connect family and friends during injury or illness and are a great way to keep the lines of communication open.

Family Dynamics: Who is in charge?

First and foremost, the person in charge of decisions regarding the servicemember is the servicemember himself or herself. Yet when servicemembers are incapable of speaking for themselves, difficulty may arise among family members. Everyone wants what is in the best interest of the servicemember, but there can be conflicts in regard to what that is. If the servicemember has signed an Advanced Medical Directive or Power of Attorney assigning powers to a particular individual, the answer to this dilemma has already largely been decided. Yet if that is not the case, most often the *next of kin* listed in military records will be consulted. For a servicemember who is married, *next of kin* is the spouse. For unmarried servicemembers, commonly this will be one or both parents or a sibling. It sounds rather cut-and-dried but it's not, and consulting a legal adviser may be necessary. Overall, the doctors and military personnel will want a person in charge who will act in the best interest of the veteran, but they do not have the authority to assign someone. Numerous medical and governmental

decisions will need to be made, and legal documents may need to be signed. Therefore it is important that someone be legally appointed to act in the best interest of the servicemember who cannot speak for himself or herself. Keep in mind that family members know the person; the government knows the regulations. Also keep in mind as an *active duty servicemember*, the patient is still under the command of the military. See "Medical Holding Companies," below. Regarding decisions and documents, it is important to know the following:

Durable Power of Attorney (POA) & Advanced Medical Directive (AMD): To act in another's behalf, legally you will need a Durable Power of Attorney or, in the case of medical issues, an Advanced Medical Directive. If the veteran agrees, it is important for family members to participate in treatment and in some cases a family member *must* make decisions in regards to treatments. Whenever possible, the servicemember should make his or her wishes known in writing—ideally before any injury has occurred. If the servicemember is capable it is important that this be taken care of, as complex injuries are very unpredictable. If the servicemember has appointed you in a POA or AMD, and you have such a document, be sure to have a copy (not the original) with you. Advanced Medical Directives and further information are available through the social worker or case manager (every injured servicemember is assigned one of each), and additional assistance can be provided in most Military Treatment Facilities (MTF) through the local office of the Judge Advocate General (JAG).

Capability and Competency: Simply put, being "incapable" means you do not have the physical ability, and "incompetent" means you do not have mental ability. Being declared incompetent is a legal term and has long-term consequences; it should not be considered in the case of a temporary condition for a person who is incapable. Too often, servicemembers and veterans are declared incompetent and placed under the care of a permanent guardian. No one should be declared incompetent because of an injury that leaves the person *temporarily* incapable.

If needed, additional information can be obtained by consulting with the office of the Judge Advocate General (JAG), an attorney or a Veterans Service Officer (VSO). VSOs are associated with veterans service organizations, such as the American Legion, AMVETS, the DAV, the VFW, and Vietnam Veterans of America, if needed.

Dealing with Hospitals, Doctors and Medical Staff

Doctors in a Military Treatment Facility (MTF) are busy people and can be intimidating, especially when their uniforms are adorned with oak leaves, eagles or stars. They often travel in packs and this adds to that intimidation, as it's difficult to talk to one person when there are five or ten sets of eyes staring at you.

Understand you have the *right* and *responsibility* to get answers about your servicemember's condition. You are an equal member of your servicemember's medical team and should be treated that way by the doctors and staff, but when you seek answers there is a fine line between being assertive and being bothersome.

Like the members of any other profession, doctors have their own vocabulary, which can be confusing, or even unintelligible, to the layperson. This is particularly true when you're trying to cope intellectually and emotionally with the complexity of a loved one's injury. All too often, doctors respond to your questions with medical terminology. Unfortunately, for many families, they may as well be speaking a foreign language.

The following are some suggestions and recommendations that should make your relationship with medical staff more congenial and productive.

- Be persistent, but polite. Going off the deep end won't get results and it may get you an escort to the door or home. Although the doctors and staff are aware that you are under stress and possibly distraught, you are allowed to stay only if you are helping the situation, not worsening it. Remember that you are there at the invitation of the doctor (the doctor has the overall responsibility for the patient and signs the official invitation, but the military or the VA enforces his or her authority). Even if a family member visits a facility without an invitation, he or she is considered to be there under an open invitation from the military or the VA. Also, he or she is on government property.
- Don't always wait for your doctor to come to you, but make every attempt to be there during daily rounds. You should expect and demand (nicely) a comprehensive briefing from the doctor at least every two days. The briefings may last only a few minutes, but they should include diagnosis, prognosis, and currently administered medications and/or treatments. Briefings may also include

upcoming treatment options, if any are included in the doctor's current treatment plan. If the condition of the servicemember is not yet stable, you should expect a full briefing from someone on the medical team every day (see the next paragraph for more on medical teams). Still, do not telephone or page the doctor unless there has been a drastic change in the servicemember's condition.

- If someone other than the doctor (for instance, a nurse or other medical staff member) can handle your concern, don't call your doctor. The servicemember's medical team commonly includes a social worker and/or case manager, nurses, therapists and possibly many different doctors, each with his or her own specialty. There will also be the ward staff with a head nurse or senior officer in charge; the senior officer is the *go-to* person when you have questions or if you encounter problems. Any concerns, questions and complaints that cannot be resolved should be directed to the Patient Representative Office. That office will handle most patient-care-related complaints. Although its staff work for the hospital, they are the liaison between patient and the medical staff and the hospital's chain of command.
- Have another person with you when you speak to your doctor. This person can take notes, provide another perspective on the issues addressed, and help you digest the information later. If this is not possible, get permission from your doctor to tape-record your conversations. One way to get authorization to record is to tell the doctor that you have a hard time digesting all the information he or she is providing and that you would like to be able to review it later. Still, doctors have the right to refuse to have a conversation recorded. You will then be able to review the recordings. If you can listen to a recording later and without distractions, you will probably hear more than you would without recording the conversation.
- Always be well prepared to speak with your doctors. Continually maintain a written list of questions or comments of your observations. Arrange your questions in a logical order and try to anticipate some of the answers, so you're ready with a follow-up question. Your doctors will appreciate your preparation and will, generally, take the time to speak with you until all of your questions

are answered. If you feel rushed or do not get complete answers to all your questions, submit your written questions to the head nurse and request that someone provide you with answers.

- Your observations of the servicemember's level of comfort and behaviors are an important factor in enhancing the care received. You may notice side effects from medication, signs of discomfort before pain medication is due, restlessness while sleeping or other issues that concern you. Write down your observations and be specific about the when, what and how. The healing process involves both the physical and emotional, so speak up about changes you notice of both types. You will spend more time with your loved one than the health care team can, and your insight is valuable in obtaining proper treatment.
- Try not to ask leading questions that can result in incomplete answers. For example, rather than asking, "Is my son going to be OK?," ask, "What is my son's prognosis?" Also, keep in mind that injuries, particularly combat injuries, can be multi-faceted and very complex. Doctors give a prognosis based on experience and science, but sometimes there just isn't a definitive answer and the best answer you'll get is "We just have to wait and see."
- If you don't understand your doctor's answers, ask him or her to try explaining it again. You might say something simple like "I'm having a hard time understanding what you just said. Can you explain it using an example, or can you use simpler language?"

Always look for opportunities to speak with the other doctors treating your loved one. Talking with these doctors will give you the benefit of hearing more than one perspective. Also, some of these doctors, such as an orthopedist or a neurologist, are more knowledgeable than the primary doctor about certain areas of treatment.

Ask if there are alternatives to the treatments your doctor has chosen. Playing out alternative treatment scenarios is an appropriate topic of discussion with all other members of a medical team. If you have concerns about the treatment plan for the servicemember, ask for a second opinion. Some doctors may not like it but *YES*, you can ask for another opinion, even in a Military Treatment Facility. Approach the primary physician with your request for an "advice only" or "evaluation" consultation. This

approach normally will not insult the primary doctor, as you are not assigning the patient to another doctor–you're just asking for an opportunity to get another opinion.

Know your rights and what level of care should be expected. Every hospital, including Military Treatment Facilities (MTF) and hospitals operated by the Veterans Health Administration (VHA), has a *Patients Bill of Rights*. When you arrived, you were most likely given a pamphlet about rights. If not, request one from the social worker or case manager. Not only should you be familiar with the rights and responsibilities noted in that publication, but you should also know what level of care can be expected for your loved one, on a day-to-day basis.

Do not expect more than what the standards are for the hospital, but do make sure the patient gets what he or she is supposed to. Asking the senior officer or head nurse what the daily routine of care is will alleviate many problems. Ask the department heads of physical therapy, occupational therapy, speech, etc., how many times the patient will be seen per day or per week. This information is sometimes posted by the nursing station, but it is better to get it from the person in charge, rather than wonder if something has been wiped from a board. This gives you a point of contact and grounds to complain if something isn't being done properly.

Ask what you can do to help in the servicemember's recovery. As a caregiver you may need to fill in areas not covered, and it's going to be up to you to ensure that the care is what it's supposed to be. Ask questions to make sure you understand what you can do to help. Staff is required to do only so much; you on the other hand have a vested interest in this person; learn now what *you* can do to help your loved one recover. This *on-the-job training* may be very helpful in the months to come.

As you follow these recommendations, some doctors and medical personnel may be miffed that you're taking too much of their valuable time; however, most will appreciate the fact that you're trying hard to understand the servicemember's status and doing what you can to aid in his or her recovery.

Understanding the ABCs of Military Acronyms

For those family members who have not had experience dealing with the military or VA systems, the use of series of initials, which sometimes look like words, can make a caregiver feel like he or she is dealing with a foreign language. Many of the medical terms are ones you may be familiar with, like CAT scan or MRI. But being told you need to go to what sounds like "*peblo*" may mean absolutely nothing to you, when in fact where you are being told to go is the Physical Evaluation Board Liaison Office (PEBLO). Quite honestly it can be one of the most frustrating things to deal with when you have no idea what someone is talking about. Throughout this book, explanations include the complete name and then the appropriate acronym. If at any time you don't understand what someone is talking about, then ask him or her to give a full explanation.

Military Medical Holding Companies

An active-duty member of the U.S. Armed Forces who has been injured will have a *profile* filled out by the attending physician stating medical limits or inability to perform military duties. Along with this profile and dependent on the expected length of recovery, the servicemember may receive Temporary Duty (TDY), Temporary Change of Station (TCS) or Permanent Change of Station (PCS) orders attaching him or her to a Medical Holding Company also known as Med Hold.

These Medical Holding Companies or Units have a variety of different names, depending on the branch of service, i.e. Marines: Wounded Warrior Regiment and Army: Wounded Warrior Battalion, but no matter the title, they function in the same capacity as temporary means of upholding military order. The holding companies act as a normal military unit in terms of administrative oversight for issues such as leave, finance, accountability and other normal military functions. Under the Wounded Warrior Assistance Act (H.R.1538), these companies are responsible for assisting in the overall recovery efforts of the servicemember, and this includes assigning care coordinators or case managers to oversee medical matters. You need to fully understand that as long as the servicemember remains on active duty, he or she is accountable to a Military Unit and its chain of command and therefore is subject to the regulations of the Uniform Code of Military Justice (UCMJ). Still, the physical and emotional well-being of

the servicemember must remain the top priority. Assuming everything might *not* go as expected or as it should, stay reasonably involved as your loved one's advocate, *especially* if medications and emotional or cognitive difficulties (as in the case of traumatic brain injury) impair the servicemember's ability to fully understand necessary medical information or what the military unit requires of them.

Bombarded by the Media and Organizations

You may have found that you are constantly approached by the media and numerous personnel from veterans organizations or agencies. There is a balance between learning how to use them effectively and at the same not wanting to become a commodity (some organizations sometimes use stories of the wounded to raise money), but first and foremost you are under NO obligation to talk to any of them.

The following are some tips you may find helpful.

- Public Information: When you put information out to the public, there is no calling it back. No matter if it is in print, on the news or on the Internet, whatever you say can be repeated and pictures can be reprinted. So consider carefully what details you may want to reveal.
- Media: Always be aware that the media are looking for the story they think America wants to see or read and it is your choice if you want to be part of that story. This includes news reporters who may be accompanying officials. You also have the right to refuse photographs being taken. If you are on government property, and, under rules posted an entry points, photography is not allowed at all, unless approved by the Public Affairs Office (PAO) of a facility on government property. If you try to take pictures anyway, you run a real risk of having photographs or photography equipment confiscated. Caregivers and others might prefer to show photos and provide information privately rather than to provide such at a military facility. Some families need to use the media to get facts out to the public. But even if the caregiver doesn't get in trouble, the servicemember might. Military Treatment Facilities (MTF) and the VA Hospitals and Clinics are government property

- Organizations: You may be visited by many different veterans agencies and nonprofit organizations. The information they have to share can be very valuable, and you may need their help at some point. See "Where to Get Help" under "Build a Support Network," later in this chapter. But too often they may come at the wrong time or you're only hearing half of what they are saying. Ask them for a business card and have them write on the back of the card where they met you and a date. (Some caregivers find that if they don't do it this way, they end up with dozens of cards and have no idea where or when they got them.). File the card in your Emergency Address book. Again, remember that you have no obligation to tell your story or have photographs taken, even if the organization or person requesting that you do so has provided you or your loved one with gifts.

Your new title: Caregiver

At some point during the past days or weeks you may have realized that you are constantly tending to the needs of your loved one and that the recovery process is going to take a lot longer than you may have originally expected. Possibly you've realized that your role as a family member has just taken on a new dimension and you are now considered a "*caregiver*." The title caregiver is rather ambiguous and may mean you help with changing bandages or that you must assist in all aspects of the servicemember's well-being. Meeting the daily needs of another person is an enormous job and yet it has no job description. You may be a spouse, parent, sibling or friend who now has had to assume the position of case manager, benefits coordinator, advocate, claims adjuster and health care provider, all of which you probably have no experience with.

Focus on what you can control

After spending days or weeks at someone's bedside, it's easy to feel you have no control of your life or the situation. Each day you may be in a routine and going through the motions but in reality everything may feel somewhat out of your control. Helping your servicemember recover from an injury

will be a long, challenging and exhausting trial of your patience, flexibility, creativity, stamina, selflessness and love. You should begin preparing yourself physically, emotionally and intellectually, right now.

Taking care of yourself: Physically

Adrenalin is a wonderful thing, for a while, but eventually it tapers off and what you are going to be left with is a mentally and physically exhausted body. The advice that you're going to read in this paragraph will seem impossible, but if you are the primary caregiver for someone who has been severely injured, you're going to need every bit of energy you can muster, and you can't help anyone else if you're sick or run-down. The best suggestion is to start by following the advice Mom gave you:

- Get enough sleep. Yes, you can, if you don't spend 24 hours at the hospital! If you find it impossible to get restorative sleep, then talk to a doctor, he or she may be able to prescribe something to help you.
- Eat nourishing meals *every day*. Stealing the Jell-O off a food tray does not count as a meal. Your body will eventually fight back if you don't eat properly, and if you get sick you can't help your loved one.
- Get some exercise. Most likely you are walking back and forth from your lodging to the hospital each day: good exercise, but not quite enough. You might consider a fast-paced walk or a run around the grounds before heading to your room, or using the stairs rather than the elevator.
- Learn how to relax. This is as important as the first three. It can't be overstated how important it is for you to take regular breaks from the world of the hospital. Be kind to yourself. Do something you enjoy: read or listen to a book on tape, knit, meditate, pray or go to a museum, and laugh. You may wonder; "What do I have to laugh about?," but humor is great medicine and it can reduce stress.

Taking care of yourself: Emotionally

The watching, waiting and wondering—and the caregiver's traumatic experience itself—produce an emotional shock and may cause many different emotional and physical reactions. Each individual handles or reacts to emotions differently and it's impossible to address every possible

scenario. You might experience obvious emotions (shock, denial, panic, anger, guilt, grief, helplessness, loneliness, fear or depression) and these emotions can manifest themselves as physical reactions; headaches, stomach aches, rapid heartbeat or muscle tension. Some emotions are a lot less obvious and unfamiliar; not being able to recall the previous day's events, feeling like you're in a *fog* or dream state, uncontrollable crying or not being able to cry at all. You need to know that your feelings are normal and the reactions are real, and although you may think you're alone, you're not.

Military Treatment Facilities and the veterans hospitals recognize the need for family support and offer a range of counseling services, yet you may feel the services offered are not adequate or that you don't need *professional* help. No matter what your situation, it's a good idea to express how you are feeling; otherwise the wave of feelings can create an uncontrollable tsunami of emotions.

Find a pressure-release valve. Find someone you can talk with unconditionally or do something that will allow you to vent the frustration. Sharing your feelings with clergy (a military chaplain or a civilian clergy member), a favorite relative, a good friend or someone who will just listen and not feel the need to *tell you what to do,* can make all the difference in the world. Some things to reduce the frustration may include keeping a journal or taking a run.

It's also important for you to recognize when you can't handle things by yourself. The American Psychiatric Association lists the following warning signs and suggests that a person with one or more of the following be evaluated by a professional.

- Marked personality change.
- Inability to cope with problems and daily activities.
- Strange or grandiose ideas.
- Excessive anxieties.
- Prolonged depression and apathy.
- Marked changes in eating or sleeping patterns.
- Extreme highs and lows.
- Abuse of alcohol or drugs.
- Excessive anger, hostility, or violent behavior.
- Thoughts of hurting yourself or others or of suicide.

Build a Support Network

Supporting someone through the grueling and lengthy process of recovery and rehabilitation is, for many or most caregivers, a more-than-full-time job. Most individuals are unable to devote all of their time to being a caregiver while continuing to maintain their sanity and uphold their responsibilities to children, household and employers and shouldn't even try (see "The Family and Medical Leave Act" under "Paying the Bills: Emergency Funds and Disability Insurance," later in this chapter). Recognize *right now* that you can't do it alone and that you *must* recruit others to help you.

Needs come in two basic forms: material *things* that are needed to sustain you or your family and the assistance of *people* that may take a considerable amount of their time.

How to Get Help

- Identify and record your needs. Yes, write them down: you will in fact forget what you need until you need it again.
- Make your needs known. There are people out there willing and anxious to help you. Some will even feel honored that you've turned to them in a time of great need. Give people the opportunity to help and accept their assistance without embarrassment. Someday, you may be able to return the favor or help someone else in need.
- Broadcast your needs widely. People live busy lives and are not always available when you need them. So ask for help from many people. Periodically send an email message to family, friends and the servicemember's unit, or let someone in your circle of friends organize a network of support.
- Be prepared with specific requests. When people ask, "What can I do to help?," pull out your list and tell them what you need. This goes for the multitude of organizations that come to visit wounded servicemembers.
- Let others do tasks that might be emotionally too difficult for you. Identify a trusted person to turn to for things you just can't handle. Personal effects like clothes, letters or photographs, may be very difficult to deal with and yet casting them aside, even temporarily, can cause important belongings or paperwork to be lost. Ask the trusted person to maintain items and paperwork for safekeeping. This keeps the items available for us at a later date.

Where to Get Help

- Agencies and organizations: This is when all those saved business cards come in handy. Over the past years there have been scores of nonprofit organizations formed to assist wounded servicemembers, veterans and their families, and there is no shame in asking them for help. Many organizations can offer financial assistance, veterans advocates, legal advice and personal support, but not all organizations do everything. If the particular organization you have called cannot provide you with what you need, then ask it to refer you to someone who can. Most organizations know which other organizations are doing what.
- Think outside the box: Your family members may be supportive and willing and able to help, but meeting others, who have dealt with similar injuries, is a great way to learn from the folks who've been there. They can give you valuable advice about practical matters and resource options and can help you sort through the tsunami of emotions you're struggling to control. Asking your social worker to put you in touch with another family can result in building a relationship with someone who truly understands what you're going through.
- Hometown help: Being a caregiver to a wounded veteran is often a logistical nightmare, as you are miles away from your home. Taking care of yourself is difficult enough and it's impossible to think of tending to household maintenance or the lawn back home. Consider having a friend contact your hometown church, recruiter's office or high school ROTC program. Most often they are understanding, and they may have the "manpower" to do chores that otherwise would go unattended.
- Military command help: Don't forget to include contacting your servicemember's military unit or command. No matter if he or she is active-duty or retired, still assigned to his or her original command or attached to a medical holding unit, the servicemember is always considered *family* to the command he or she was attached to when the injury or illness occurred.
- Keep asking for help as long as you need it. It's easy to feel somewhat embarrassed by constantly appealing for help, but helping a loved one recover from injuries may be a very long process and it's totally understandable that you may need the assistance of others for a long time too. Undoubtedly, there may be times when you think you're

abusing the kindness of others, but always remember they have the right to say NO.

Empower Yourself

You are not going to learn everything you can about an injury, the Department of Defense (DoD) or the Department of Veterans Affairs (the VA) in a *one size fits all* booklet, yet you must get educated and empower yourself with knowledge.

If you are like most other family members, you know very little about the servicemember's injuries. You may in fact know of someone who suffered a similar injury, but you don't really know about the lasting effects, the treatments or what the recovery process is, particularly for someone who is serving in the armed forces. Read and research everything you can that pertains to the type of injury and become very familiar with the predictors, treatments and recovery expectations. Also make yourself familiar with the DoD and VA health care options. *Read more about health care insurance and options in this chapter.*

Much of what you already know about the Department of Defense (DoD) and the Department of Veterans Affairs (the VA) you learned on a *need-to- know basis* and it will probably continue to be that way. The important thing to understand is that both departments are governed by the Code of Federal Regulations (CFR), which is established and approved by the federal government. Each branch of service has its own standards and regulations, but overall they still fall within the confines of the CFR. The Code of Federal Regulations is available to the public and can be found online at National Archives and Records Administration. "National Defense" is title 32 and "Pensions, Bonuses, and Veterans' Relief" are title 38. Unfortunately, doing research in the CFR is the only way some will get truthful answers to questions.

The more information you obtain about the reality of the injuries sustained and the complexity of the military and the VA systems, the more empowered you become to be an advocate. If doing it *all* seems overwhelming, you may feel more comfortable being an emotional supporter and allow another family member or trusted person to be the advocate. It's your choice on how involved you want to be, but keep in mind

that no one knows your loved one as you do, and the *systems* do not always work as they should.

How to Advocate Effectively

Government is filled with bureaucracy and consequently the regulations that cover servicemembers, particularly when they are wounded, can be applied bureaucratically. Situations may arise that need you to advocate for your loved one, but do not confuse this task with becoming a lobbyist for change. You may in fact feel strongly enough about issues to invoke change, but this is not the time to get sucked into that battle. The task at hand is ensuring proper treatment and fair determinations for your loved one. The more you know about being an advocate, the more effective you will be. Whether you are advocating by telephone, letter, e-mail or in person, the following may help you advocate effectively:

- Know your basic facts. Whether you're advocating in regard to health care, medical board proceedings or veterans benefits, the subject at hand is the single most important aspect.
- Know the regulations, agency and person that you are approaching. Be sure you are dealing with the person or place that can actually invoke the changes you are seeking. Moving up the chain of command to senior officers or supervisors may be necessary; don't be afraid to ask *who is in charge*.
- Be organized. Organization is an important part of being an effective advocate. You must be able to present necessary information in a short amount of time, so listen carefully, take good notes and keep your information organized.
- Be brief. The person you are addressing may not have much time to talk to you, so present him or her with only the necessary points for which you are advocating. List for them (as you speak to him or her or by handing him or her a list) why your issues are so important and what the possible adverse effects are if the status quo is not changed.
- Be clear and accurate. Be sure that you speak and write clearly about your points, and of course, be sure that you are accurate and

factual on the information that you are presenting. If you are not sure about facts, *do not* pretend to know the answers.

- Be timely and follow up appropriately. This is usually the most difficult when you have a million things pending. If you are asked to submit additional information, do it as soon as possible. Once you're out of sight, you're out of mind.
- Be persistent and persuasive. It is important that you get your point across, so have confidence in yourself and refuse to give up. There is no need to be argumentative or demanding; this type of approach will *not* likely encourage anyone to support you. Of course, never make empty promises or empty threats. Be grateful. Thank people who have helped correct issues that you have advocated for; you never know when you may need their assistance again.
- Know when you're in over your head and may need the assistance of others. There are many veterans organizations that offer advice and advocates; don't hesitate about asking for help.

Two areas in which your servicemember may need your assistance and advocating skills are in receiving continued and appropriate rehabilitation for severe injuries and during the disability evaluation process.

- Military Treatment Facilities, VHA Poly Traumas and/or civilian health care: A wounded servicemember may be transferred to another Military Treatment Facility, VA hospital, or the Center for the Intrepid, usually in an effort either to get the servicemember closer to home or to connect the servicemember to a specific type of care. In 1992 the Department of Defense (DoD) entered into a memorandum of agreement (MOA) with the Veterans Health Administration (VHA) to send wounded active duty members to the Veterans Administration for treatment. Originally this was done through the Defense and Veterans Brain Injury Center (DVBIC) for continued rehabilitation of brain injuries, yet in recent years this agreement was expanded to include multiple injuries and multidisciplinary treatments. VA facilities dealing with these are also known as Poly Traumas.

There is in fact another option that is often *not* posed to the family of *active-duty* servicemembers. This option includes civilian health care hospitals

and rehabilitation facilities by utilizing the *active duty* servicemember's TRICARE Prime benefits (CHAMPUS). Keep in mind that an active-duty servicemember is attached to a military unit or company and transfer outside of the military's health care system must also be approved at a command level.

Being retained on active duty status or retired: When a military member has a medical condition which renders him or her unfit to perform his or her required duties, he or she may be retired or discharged from the military for medical reasons. The process to determine medical fitness for continued duty involves two boards. One is the Medical Evaluation Board (MEB), and the other is the Physical Evaluation Board (PEB). For complete information about the MEB/PEB process, see Chapter 19, "Disability Separation and Retirement."

Be advised of all your veterans rights, benefits and entitlements *before* signing MEB/PEB evaluations. First and foremost is that the servicemember is entitled to *optimal care* (sometimes called being entitled to be "rehabilitated to the fullest extent") before proceeding with being retired or discharged.

(Note: Per the National Defense Authorization Act for FY 2008 (NDAA) Sec. 1618, signed into law January 28, 2008, includes the requirement that servicemembers with Traumatic Brain Injury and/or PTSD be provided the highest quality, evidence-based care in facilities that most appropriately meet the specific needs of the individual and be rehabilitated to the fullest extent possible using up-to-date, evidence-based medical technology and physical and medical rehabilitation practices and expertise. They must be informed of all options available, including a second opinion and authorized treatment facilities..)

Non-Medical Attendant Orders

During recent weeks, it may have become apparent that you're going to be assisting your loved one for quite a while longer than the original forecasts had predicted. Because the original travel and transportation orders likely are due to expire, you may be issued a new set of orders identifying you as a non-medical attendant. Also known as non-medical attendant orders, these will be issued if the servicemember is now being seen on an out-patient basis *or* being sent to another facility for rehabilitation *and* the physician deems your assistance necessary *and/or* in the best interest of the

servicemember. Non-medical attendant orders entitle you to benefits similar to those under travel and transportation orders and may remain in effect until the time the active-duty servicemember becomes retired or is discharged. These orders may help support you financially by paying you authorized per diem (a daily amount), but will not be enough to pay for the other debts you may be incurring.

Paying the Bills: Emergency Funds and Disability Insurance

If you are unable to meet your personal financial obligations, contact your social worker or case manager or review the section in this chapter under "Build a Support Network."

Traumatic Injury Protection under Traumatic Servicemembers' Group Life Insurance (TSGLI)

Effective December 1, 2005, every servicemember who has SGLI also has TSGLI. This coverage applies to active-duty members, reservists, National Guard members, funeral honors duty and one-day muster duty. TSGLI coverage pays a benefit of between $25,000 and $100,000, depending on the qualifying loss incurred. *Note:* The servicemember is the beneficiary of TSGLI. The member cannot name someone other than himself or herself as the beneficiary. If the member is incompetent, the benefit will be paid to his or her guardian or attorney-in-fact. Additional information may be found at www.insurance.va.gov/sglisite/ and www.military.com/benefits/veteran-benefits/traumatic-injury-protection

Social Security Disability (SSD)

Servicemembers are entitled to receive Social Security Disability (SSD) benefits when they are no longer able to perform *substantial gainful activity* as the result of a physical or mental impairment that is expected to last at least 12 months, or possibly result in death. How does military pay or VA compensation affect eligibility for disability benefits? You cannot engage in substantial work activity for pay or profit, also known as *substantial gainful activity*. Active-duty status and receipt of military pay does not, in itself, necessarily prevent payment of disability benefits. Receipt of military

payments should never stop you from applying for disability benefits from Social Security, and you should apply as soon as possible. If the servicemember is receiving treatment at a military medical facility and working in a designated therapy program or on limited duty, the Social Security Administration will evaluate the servicemember's work activity to determine his or her eligibility for benefits.

This is actually the best time to apply, as medical documentation is readily available and can be provided rather quickly to the Social Security Administration. The *actual work activity* is the controlling factor and not the amount of pay the servicemember receives or his or her military duty status. The sooner an individual gets approved for SSD benefits, the sooner he or she may become entitled to one or more types of Medicare insurance. For more about Medicare coverage, see "TRICARE for Life" later in this chapter. Minor children of disabled servicemembers and veterans may also be entitled to benefits. For more information, visit www.socialsecruity.gov/woundedwarriors/

Also visit www.socialsecurity.gov/woundedwarriors/ regarding measures in place to expedite claims.

Private disability insurance

Are you entitled to disability income? You, as an immediate family member, may also be entitled to privately held short-term disability insurance if carried by your employer. Much will depend on the policy, the employer, and the type of work you do and can only be enacted if a physician has deemed you incapable of working due to your temporary emotional state, but it is worth looking into.

The Family and Medical Leave Act

Not surprisingly, many employers try to ignore the Family and Medical Leave Act or may be ignorant of the 2008 changes. If this happens to you, you have the right to sue your employer. Although this may not be the time to sue, consulting a private attorney or a JAG officer may offer you the assistance you need to correct the problem. Also, employers who lack common human decency have been known to retaliate against folks who take this leave when they return to their jobs. If this sounds like your boss, be prepared for this to happen and know your rights; an attorney could advise you about this. Helping your loved one through the recovery and

rehabilitation may be the most critical and rewarding job of your life, despite the lack of financial compensation.

Under the original Family and Medical Leave Act of 1993, you may have taken up to 12 weeks leave from work every year, yet, on January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA). Section 585 of the NDAA amended the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 work weeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. Unfortunately, your employer is not obligated to pay your wages when you miss work, which prevents many caregivers from benefiting from this legislation. Your employer, however, must continue to provide the same level of benefits, including your health insurance, when you miss work to care for an injured family member. You are covered by The Family and Medical Leave Act if:

- your employer has 50 or more employees within 75 miles of your job site,
- you have at least one year's job tenure with your employer,
- you have exhausted all your sick and vacation days,
- you have worked for your employer for at least 1,250 hours in the prior year, and
- you intend to return to work at the end of the leave.

You must request leave at least thirty days in advance, but the law permits notice to be given *as soon as practicable* when unforeseen events, such as a combat injury, arise. Some states have their own laws which provide rights in excess of those required by the federal law.

For a complete explanation of benefits, visit the Department of Labor Web site, www.dol.gov/esa/whd/fmla/fmla/amended/htm and view Title I of the Family and Medical Leave Act, as amended by the National Defense Authorization Act for FY 2008.

Department of Defense and Veterans Health Insurance

Servicemembers' health care benefits are very complex. This section offers basic information and should not be used to make a decision as to what insurance an individual should carry. For a full explanation of health care insurance, entitlements, coverage, and benefits, consult your local TRICARE and VA offices or visit www.TRICARE.mil and the www.va.gov .

***TRICARE Prime while on Active Duty*:** The insurance coverage a person has while on active duty falls under Title 32 of the CFR, section 199, the Uniform Code of Federal Regulations (UCFR), www.access.gpo.gov/nara/cfr/waisidx_06/32cfr199_06.html, also known as Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This insurance coverage entitles an active-duty servicemember to get medical treatment at any Military Treatment Facility, and additionally allows coverage to get treatment with civilian medical providers. *For additional info, see "Military Treatment Facilities, VHA Poly Traumas and/or civilian health care*." in this chapter.

***TRICARE Prime* that is offered when a servicemember retires or is retired due to his or her injuries**[1] should not be compared to TRICARE Prime under CHAMPUS. Once retired[2], a veteran must select TRICARE Prime or default to TRICARE Standard. TRICARE Prime is a dividend-based plan; in other words, you pay for it. Cost is currently $230 per year for a single individual and $460 for a family. It is an HMO and has minimal co-pays when going to the doctor and no deductibles. Specialty services must be a*uthorized* through your Primary Care Physician, but you can only go to TRICARE Network providers. TRICARE Prime may be a good option IF:

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[1] Legislative suggestions from the recent *President's Commission on Care for America's Returning Wounded Warriors* suggests that TRICARE benefits should be extended for those seriously injured in combat or combat-related activities. This is currently under consideration by Congress and would extend the CHAMPUS TRICARE benefits for those seriously wounded in combat.

[2] The term *retired* is used for those who were found to have a 30% or greater physical disability rating and *retired* with military benefits. The term *discharged* is commonly used if a person left the service with no military benefits or entitlements. *More information, especially on the Disability Evaluation System (DES), is provided in Chapter 19, "Disability Separation and Retirement."*

- you are generally healthy.
- the doctors you want to see are *Network* providers.
- it's necessary to keep your annual costs at a minimum.
- you don't have to travel long distances for specialty care, as Prime does cover some travel expenses where standard does not.

TRICARE Standard is free to those who are in the Defense Enrollment Eligibility Reporting System (DEERS). You are in the DEERS system if you carry a military ID (active duty, retired, dependent, etc.) TRICARE Standard offers much more flexibility of seeing the physicians you want, as you can go to any doctor who is a TRICARE *Authorized* Provider vs. *Network* Provider. TRICARE Authorized Providers are any who have been qualified to treat Medicare patients as well, which means pretty much every public facility is an Authorized Provider. Although Standard is free, it comes with co pays and deductibles. There is an annual catastrophic cap, currently $3000, so it should not cost the veteran more than that annually. Standard may be a better choice IF:

- you need specialty services.
- you live in a small town or somewhere where TRICARE Network providers are not readily available.
- you have the financial means to pay the co-pays and deductibles.

TRICARE for Life: this program works in conjunction with Medicare. Once a person is 65 or disabled and Medicare Part B-eligible, TRICARE for Life becomes the secondary payer to Medicare. Veterans who are found to be *disabled* and entitled to SSD become eligible for Medicare two years after their SSD eligibility date. Eligibility date is 90 days after the date of injury disability. Anyone who is Medicare Part A- and B-eligible MUST elect Part B of the Medicare plan to be entitled to TRICARE for Life. This is something you pay for (approximately $80-$90 per month) and is deducted from your SSD or SS monthly benefits. TRICARE for Life is free, but as you probably already figured, you're paying for the Medicare Part B, so in fact it is costing you more. Yet, once you have Medicare and TRICARE for Life, the co-pays and deductibles are pretty much non-existent, so the annual costs are less. Medicare also has a pharmacy program, Part D. Service-connected disabled veterans should not need this program, as all

pharmacy needs can be filled through the MTF, the VA clinics and local drug stores using TRICARE benefits.

All TRICARE plans come with restrictions for extended services–therapies (of all types), specialized doctors, hospital stays, etc.—which can be supplemented by programs offered by the VHA.

And what if the veteran has a family? You can in fact choose to have TRICARE Prime for the family, and the veteran can be on Standard. This way the spouse and children have the benefit of a regular family doctor and coverage under a HMO.

Veterans Health Administration (VHA)

Veterans have entitlements to health care at the VA, but it is based on a priority rating. With a veteran who was injured *in the line of duty* and has been rated by the VA as having the highest priority, the higher the percentage of service-connected disability, the higher the priority. A person with service-connected injuries should always be entitled to free health care. ("Should" was used as no one ever knows what the future holds for a veterans benefits).

Within the VHA health care system there are many services and programs, and for the most part, these can be provided for a lifetime, where the TRICARE and Medicare insurances may have limitations on how much of those services they will provide and/or may provide them for a limited time. Some of these services include: cognitive speech therapy, physical therapy, occupational therapy, prosthetic devices, recreational therapy, and in-home care (sometimes referred to as "aid and attendance). Although these services can be provided by the VA, many VA clinics don't have all the services a person needs, and utilizing fee-basis may be an option.

VHA fee basis or fee-based services can be utilized:

- For treatments and services they do not provide,
- If the veteran lives too far away from a VA facility,
- If the services can't be provided by the VA hospital or clinic in a timely manner,
- For treatments outside the *normal* scope of rehab that are deemed necessary for recovery.

Record-keeping: No matter what type of medical treatments the veteran may seek or what medical benefits you use, it's important that you keep a list of all physicians treating the veteran and the facilities where they were seen. Get copies of all medical records, including both physical and psychological. This information may be very helpful when filing disability compensation claims. The VA will in fact request records to support a claim but too often people forget *all* the medical facilities where they were treated or are unable to get all the records relating to the case. Keep in mind that even when an injury is not directly service-connected, injuries or illnesses may in fact be a result of the time in service or aggravated because of service-connected injuries. For information on filing a claim, see Chapter 5, "Explaining the VA Claims and Appeals Process."

Note: Under previous eligibility rules, combat veterans who served in a theater of combat operations after November 11, 1998 were eligible to be enrolled in Priority Group 6 and receive cost-free health care for two years after discharge for conditions potentially related to combat service. The law has changed to extend eligibility for VA health care for eligible combat veterans! On January 28, 2008, the National Defense Authorization Act (NDAA) became law. This new law extends health care eligibility for combat veterans as follows: Currently enrolled veterans and new enrollees who were discharged from active duty on or after January 28, 2003 are eligible for the enhanced benefits for five years post-discharge. Veterans discharged from active duty before January 28, 2003, who apply for enrollment on or after January 28, 2008, are eligible for the enhanced benefit until January 27, 2011. So even though someone was not *retired* from the service or previously rated by the VA, he or she can seek medical attention at a VA facility. It is *strongly* recommended that *every* newly separated veteran get registered at his or her closest VA health care facility for his or her health care benefits. Even if the veteran is getting medical care elsewhere, having a doctor at the VA can be very beneficial and you are currently entitled. Here are just a few of the reasons: prescriptions, prosthetic devices, annual physicals, daily medical needs (catheters, food supplements, etc.), disability evaluations, referral for fee-basis, etc.

To learn more about health benefits for combat veterans, see the Combat Veteran Eligibility fact sheet at
www.va.gov/healtheligibility/Library/pubs/CombatVet/

Airline Travel: TSA Assistance for the Severely Wounded Servicemember or Veteran

The Transportation Security Administration (TSA) offers a program in conjunction with the Department of Defense (DoD) to develop a process to increase TSA awareness when injured servicemembers and veterans are traveling through airports. TSA has placed staff in the Military Severely Injured Joint Services Operations Center Program on a 24-hour, seven-day-a-week basis.

Here is how the process works:

- Once flight arrangements are made with the airline, the injured servicemember or veteran and/or his or her family can call the Operations Center's 24/7 toll-free number, (888) 774-1361, with details of the itinerary. The number is also available to representatives acting on behalf of the injured servicemember.
- The caller will be connected to or receive a call back from a TSA liaison team member via the center's care managers.
- The TSA liaison person will then notify the appropriate Federal Security Directors at the involved airports to ensure that any security screening required at those airports will be conducted by TSA screening experts with empathy and respect in order to make the overall experience for the servicemember or veteran as expeditious and pleasant as possible.

Planning for the Future

The first thing about preparing for the future needs of you and the veteran is to have a clear and realistic understanding of the prognosis. Make sure that you thoroughly understand both the diagnosis (what medically has occurred and is occurring) and the prognosis (the impact this will have on the veteran, the outcome). There are no certainties or absolutes in predicting the future, but being prepared, based on what you *do* know, can alleviate many difficulties when you return home. Consider if you will need assistive devices, home alterations or additional in-home health care.

- Assistive Devices: numerous types of assistive and prosthetic devices are available. A few you may need to consider are: safety accommodations, mobility tools or transportation. The MTF, VA and TRICARE may provide you with needed tools before leaving the hospital but additional devices may be obtained through special programs.
    - *Computer/Electronic Accommodations Program (CAP)* (www.TRICARE.mil/cap/Initiatives/WSM.cfm) may provide accommodations for wounded servicemembers with vision or hearing loss, upper extremity amputees as well as persons with communication and other disabilities, to access the computer and telecommunication environment.
    - RollxVans (www.rollxvans.com) became aware of the lag in time from when an injured veteran returns home and when he or she receive his or her benefits and developed a means for *temporary* transportation through their Wounded Warrior program. For more information contact Monica Delie at (800) 956-6668.
- Home Alterations: VA grants for home modification or alterations are available for veterans under the Home Improvements and Structural Alterations (HISA) program. *More information can be found in Chapter 8, "VA Housing Programs,"* or by reading the VA HISA document www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1580. The building regulations for this grant program are very specific, and it is suggested that you speak to a housing benefits counselor for full explanation of entitlements. Additional services may also be provided by non-profit organizations like Homes for Our Troops at www.homesforourtroops.org , Homes for Heroes at www.buildinghomesforheroes.com/ or Wounded Heroes Foundation at www.woundedheroesfund.net/ , to mention just a few. *For more on housing adapted for disabled veterans, see Chapter 8, "VA Housing Programs."*
- Home-Based Care: In-home health care can provide medical care to chronically ill or injured veterans in their own homes under the coordinated care of the VHA or TRICARE benefits. *Read more below under "Caregiver Assistance."*

Caregiver Assistance

As you've probably already discovered, no one benefit is going to supply everything or meet all of your veteran's needs. Recovery coordinators are now being introduced to help with this, but family caregivers are in fact constantly managing the multitude of case managers, and the health care programs listed below may give you a little relief.

Aid and Attendance and Special Monthly Compensation (VHA and VBA): While meeting the needs of your loved one, you should have a full understanding of the VA benefits, and/or compensation they may be entitled to, particularly aid and attendance. Two types of aid and attendance may provide additional assistance to the veteran, which in turn may relieve you, the caregiver. Health care *services* are provided through the Veterans Health Administration (VHA) and *compensation* is provided directly to the veteran through the Veterans Benefits Administration (VBA).

VHA Aid and Attendance: this is available for a veteran who needs the help of a health care professional and is a benefit that is paid to that professional. This type of service may also be provided via *fee-basis*. Example: if someone needs respiratory therapy or injections of pharmaceuticals that must be performed by a registered health care professional, the VHA hires someone to come into the home and provide these services. This is a *health care* benefit and is normally contracted through the VA physician, hospital or clinic. The regulations covering this benefit are outlined in the Code of Federal Regulations. We suggest reading 3.353 carefully and understanding the provisions stated under numbers 3 and 4, as it covers what it means to have these services performed by a *health care professional* or *under the supervision of a health care professional*. Family caregivers, in some cases, may become *qualified* to perform these services and may be entitled to compensation through the VHA for services rendered.

Special Monthly Compensation (SMC), which is administered through the Veterans Benefits Administration (VBA), is a Rating for Special Purposes. This is compensation, paid directly to the veteran, in addition to (for example, SMC [K]) or in place of 0% to 100% combined degree compensation. To qualify, a veteran must be disabled beyond a combined degree percentage or due to special circumstances (for instance, need for aid and attendance, loss of use of one hand, etc.). These codes can be very

confusing, but even more confusing is how the funds can be used. This additional compensation is intended to be used by the veteran to pay for the services he or she can no longer do for himself or herself, due to an injury or illness.

This is not commonly a problem if the veteran is spending the funds, but if someone has been found incompetent for pay purposes by the VA and has a *fiduciary*, it can get very sticky. Understanding the regulations yourself or consulting a veterans advocate can be very helpful, as some VA representatives (fiduciary watchdogs) are confused or misinformed and may *improperly* regulate how funds can be spent. A few regulations pertaining to this can be found in CFR Title 38, read under 3.350 and 3.352. Also read 3.353, 3.353 c, particularly as it covers attendance by a relative

Respite Care: Respite care may temporarily relieve the spouse or family caregiver from the everyday caring for a disabled veteran at home. In the past, respite care admission was limited to an institutional setting, typically a VA nursing home. Recently the Veterans Millennium Health Care and Benefits Act expanded respite care to home and other community settings, and home respite care is provided at some VA medical centers. VHA Respite Care is usually limited to 30 days per year and can be broken into two 15-day sessions. Signed into law January 28, 2008, additional respite care is provided under Section 1633 of H.R. 4986, the National Defense Authorization Act for FY 2008. Although currently these benefits are not clearly defined, it is expected that TRICARE respite care and aid and personal attendant benefits would be provided to servicemembers seriously wounded in combat under the Extended Care Health Option (ECHO).

Daily Assistance and Alternatives: The Department of Veterans Affairs (VA) offers a spectrum of daily and extended care services to veterans enrolled in its health care system. Veterans can receive home-based primary care, contract home health care, adult day health care, homemaker and home health aide services and home respite care, to mention a few. These programs are an effort to support veterans living at home versus being placed in Skilled Nursing Facilities (SNF), and are available on a temporary basis if needed. Most are offered through the VHA but some are also offered through the Veterans Vocational Rehab (VBA) entitlements. *Contracted Home Health Care / Home Health Aide:* Professional home care services, mostly nursing services, are purchased from the private sector and obtained through *fee-basis* home care. Current efforts are underway for

changes in these regulations to include family caregiver training and compensation. *Adult Day Health Care (ADHC):* Adult Day Health Care programs provide health maintenance and rehabilitative services to veterans in a group setting during daytime hours. Although not ideally suitable for young veterans, this is an alternative daily care that can be provided.

Long-Term Care: Long-term care may be the only alternative. The following programs are offered through VHA.

- ***Community Residential Care:***
  The community residential care program provides room, board, limited personal care and supervision to veterans who do not require hospital or nursing home care but are not able to live independently because of medical or psychiatric conditions, and who have no family to provide care. The veteran pays for the cost of this living arrangement. VA's contribution is limited to the cost of administration and clinical services, which include inspection of the home and periodic visits to the veteran by VA health care professionals. Medical care is provided to the veteran primarily on an outpatient basis at VA facilities. Primarily focused on psychiatric patients in the past, this program has increasingly focused on older veterans with multiple chronic illnesses.
- ***Domiciliary Care***
  Domiciliary Care is a residential rehabilitation program that provides short-term rehabilitation and long-term health maintenance to veterans who require minimal medical care as they recover from medical, psychiatric or psychosocial problems. Most domiciliary patients return to the community after a period of rehabilitation. Domiciliary care is provided by VA and state homes. The VA also provides a number of psychiatric residential rehabilitation programs, including ones for veterans coping with Post-Traumatic Stress Disorder (PTSD) and substance abuse, and compensated work therapy or transitional residences for homeless chronically mentally ill veterans and veterans recovering from substance abuse.
- ***Compensated Work Therapy Program:***
  Recently the work therapy program has been redirected to developing programs that will provide care and supervision in supportive living environments to veterans with brain injuries. Additional information about this program can be provided

through Vocational Rehab Counselors who specialize in independent living programs.

- ***Skilled Nursing Facilities* (SNF)**
  Skilled Nursing Facilities (SNF) home care units are located at VA hospitals where they are supported by an array of clinical specialties. The community nursing home program has the advantage of being offered in many local communities where veterans can receive care near their homes and families. VA contracts for the care of veterans in community nursing homes approved by VA. The state home program is based on a joint cost-sharing agreement between VA, the veteran and the state.

Who is Eligible for Nursing Home Care?

- Any veteran who has a service-connected disability rating of 70 percent or more;
- A veteran who is rated 60 percent service-connected and is unemployable or has an official rating of "permanent and total disabled";
- A veteran with a combined disability ratings of 70 percent or more.
- A veteran whose service-connected disability is clinically determined to require nursing home care;
- Non-service-connected veterans and those officially referred to as *zero percent, noncompensable, service-connected* veterans who require nursing home care for any non-service-connected disability and who meet income and asset criteria; or
- If space and resources are available, other veterans on a case-by-case basis with priority given to service-connected veterans and those who need care for post-acute rehabilitation, respite care, hospice, geriatric evaluation and management, or spinal cord injury.

Adjusting to the Family Impact

Living with a the results of a severe injury over the next months and years will become your *New Normal* as you settle into a routine. Over time, we hope you get the supports in place to accommodate both you and your

loved one, but a couple of things that are inherently difficult are being over-stressed to the point of burn-out and finding time for a social life.

- Caregiver Stess—Personal Burnout: Overtime stress can become a problem and repeated stress drains and wears down your body and mind. Burnout occurs when repeated stress is not balanced by healthy time-outs for genuine relaxation. Stress need not be a problem if you manage it by smoothly and calmly entering or leaving life's fast lane occasionally, but that is seemingly impossible when you're constantly anticipating the next medical crisis, bureaucratic issue or unexpected bill to come in the mail. Stress management involves responding to major life events and everyday hassles by relaxing as well as tensing up. Relaxation actually is a part of the normal stress response. When faced with life's challenges, people not only tense up to react rapidly and forcefully, but they also become calm in order to think clearly and act with control. If you are unable to find that time to relax, burnout can *and will* occur eventually.
- Social life and Reintegration: Sadly, many families find themselves separated from the life and friends they once knew. Lives take on a new direction and purpose and the isolation can become rather mundane, if you allow it to. It is imperative for you and your veteran to find new ways to be involved socially. Whether this means joining local chapters of veterans or civic organizations, joining church groups, taking an extension class or traveling to be involved with adaptive sports programs, finding something outside of your home will give both of you an opportunity to move forward and explore new hobbies and gain meaningful relationships.

This chapter has tried to provide you with some helpful information and solutions to the issues you may have encountered over the past months, but be reminded that *you are not alone* and support may be only a phone call, e-mail or Web site away. Below are listed a few resources where you may find further information or assistance.

Support Organizations for Veterans and Families

America Supports You www.americasupportsyou.mil
Brain Injury Peer Support AVBI www.avbi.org
Brain Injury Association of America www.biausa.org
Coming Home Project www.cominghomeproject.net/ComingHome
Coma Recovery www.waiting.com
Fallen Patriot Fund www.fallenpatriotfund.org
Family Caregivers www.familycaregiving101.org/index.cfm
Homes for Heroes www.hohf.org
Military Officers American Association www.moaa.org
Semper Fi Fund www.semperfifund.org
Wounded Heroes Fund www.woundedheroesfund.net
Wounded Warrior Project www.woundedwarriorproject.org

Sports Programs

Achilles Track Club www.achillestrackclub.org
Adaptive Adventures www.adaptiveadventures.org
Disabled Sports USA www.dsusa.org
National Veterans winter sports clinic www.wintersportsclinic.va.gov
World Team Sports www.worldteamsports.org

Legal Assistance

Enduring LAMP
www.abanet.org/legalservices/helpreservists/lamphrdirectory.html
Veterans Legal Assistance www.nvlsp.org

Medications and Treatments

Med Line www.medlineplus.gov
National Treatment Studies www.clinicaltrials.gov

Rx List www.rxlist.com/script/main/hp.asp

VA Fact Sheet for Health Care Eligibility

www.va.gov/healtheligibility/Library/pubs/CombatVet/CombatVet.pdf

MTF and VA Housing

Fisher House www.fisherhouse.org/

State Veterans Benefits

www.military.com/benefits/veteran-benefits/state-veterans-benefits-directory

Personal Note from the Author, Cheryl R. M. Lynch

Given the amount of time I've spent in Military Treatment Facilities and Veterans Hospitals and with Neurological Specialists over the past years, I should have some type of medical diploma decorating my wall, but I don't. I am not a doctor, nor a medical professional, of any kind. It was not my intent to offer you medical advice, but to make you a more educated consumer of medical services available to you and the veteran. I'm not a professional on matters concerning the Department of Defense or Department of Veterans Affairs either, but my life as a daughter, wife, sister and mother of career Military personnel has given me a vast knowledge of the matters concerning our active duty personnel and veterans.

I have walked *and continue to walk* in the shoes of a family caregiver and became very aware of the difficulties and bureaucracy surrounding injured servicemembers and their families when in July 2000, my own son suffered a Traumatic Brain Injury (TBI) while serving in the Army. As I look back over the years since my son's injury, all too often I ask, *Why didn't I think of that?* Or, *Why didn't someone tell me that?* My reason for writing this chapter was so I could hopefully answer, for you, some of the things I wish I had thought of or been told earlier on.

Cheryl R. M. Lynch

Cheryl R. M. Lynch is a peer support advocate and founder of *American Veterans with Brain Injuries* (www.avbi.org).

Editor's Note:

For the sake of efficiency, you may want to try (among other services) a Department of Defense 24/7 service called Military OneSource. You can call (800) 342-9647 or visit www.militaryonesource.com. Other hotlines and Web sites may be better in certain areas, but Military OneSource will try to help with *almost anything* that active-duty servicemembers, National Guard members, reserve troops, and especially their families, need to know, particularly regarding issues for families with servicemembers deployed abroad. (The service is NOT really for veterans, but if a veteran or family member calls regarding a veteran, Military OneSource will try to direct him or her to services that ARE for veterans.) This service receives 1000 phone calls and its Web site receives 6000 hits PER DAY. Issues on which it provides advice (and sometimes referrals) include medical (including psychological) care for family members (especially those suffering from loneliness or who may otherwise be distressed because their loved one is not at home), crisis intervention (including suicide prevention), problems of caregivers, child care, elder care, marital problems, educational issues, educational loans, personal financial management, legal issues, spouse employment training, career management, tax preparation, and self-help groups focusing on drug and alcohol abuse, gambling addiction, and eating disorders.

To find out more about Military OneSource, go to the site and also read the *USA Today* article on the service: To find the article, click here: www.usatoday.com/news/nation/2008-02-24-hotline-help_N.htm.

Chapter Twenty-One
The Servicemembers Civil Relief Act

By Mark E. Sullivan

On December 19, 2003, the Servicemembers Civil Relief Act (SCRA) became law. This law is a complete revision of the statute known as "The Soldiers' and Sailors' Civil Relief Act," or SSCRA.

Until the passage of the SCRA, the basic protections of the SSCRA for the servicemember(SM) included:

- Postponement of civil court hearings when military duties materially affected the ability of a SM to prepare for or be present for civil litigation;
- Reducing the interest rate to 6% on pre-service loans and obligations;
- Barring eviction of a SM's family for nonpayment of rent without a court order for monthly rent of $1,200 or less;
- Termination of a pre-service residential lease; and
- Allowing SMs to maintain their state of residence for tax purposes despite military reassignment to other states.

The SCRA was written to clarify and update the language of the SSCRA. Here's an overview of what the SCRA does:

General Relief Provisions

The SCRA expands the application of a SM's right to stay court hearings to include administrative hearings. Previously only civil courts were included, and this caused problems in cases involving administrative child support determinations as well as other agency determinations which impacted servicemembers. Criminal matters are still excluded.

In a case where the SM has not made an appearance in the lawsuit, the SCRA requires a court or administrative agency to grant a stay (or continuance) of at least 90 days when the defendant is in military service and—

a. the court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence, or
b. with the exercise of due diligence, counsel has been unable to contact the defendant (or otherwise determine if a meritorious defense exists).

In a situation where the military member has notice of the proceeding, a similar mandatory 90-day stay (minimum) of proceedings applies upon the request of the SM, so long as the application for a stay includes:

A. A letter or other communication that:
    1. States the manner in which current military duty requirements materially affect the SM's ability to appear, and
    2. Gives a date when the SM will be available to appear, and
B. A letter or other communication from the SM's commanding officer stating that:
    1. The SM's current military duty prevents appearance, and
    2. That military leave is not authorized for the SM at the time of the letter.

An application for an additional stay may be made at the time of the original request or later. If the court refuses to grant an additional stay, then the court must appoint counsel to represent the SM in the action or proceeding.

Interest Rates

The Act clarifies the rules on the 6% interest-rate cap on pre-service loans and obligations by specifying that interest in excess of 6% per year must be forgiven. The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6% is merely deferred.

The SCRA also specifies that a SM must request this reduction in writing and include a copy of his or her military orders. Once the creditor receives notice, the creditor must grant the relief effective as of the date the servicemember is called to active duty. The creditor must forgive any interest in excess of the 6% with a resulting decrease in the amount of periodic payment that the servicemember is required to make. The creditor may challenge the rate reduction if it can show that the SM's military service has not materially affected his or her ability to pay.

Rent, Installment Contracts, Mortgages, Liens and Leases

The SSCRA provided that, absent a court order, a landlord could not evict a servicemember or the dependents of a servicemember from a residential lease when the monthly rent was $1200 or less. The SCRA modifies the eviction protection section by barring evictions from premises occupied by SMs for which the monthly rent did not exceed $2,400 for the year 2003. The Act also provides a formula to calculate the rent ceiling for future years. Using this formula, the 2007 monthly rent ceiling is $2,720.95.

Previously the statute allowed a servicemember to terminate a pre-service "dwelling, professional, business, agricultural or similar" lease executed by or for the servicemember and occupied for those purposes by the servicemember or his dependents. It did not provide help for the SM on active duty who is required to move due to military orders. Section 305 remedies these problems. Under the old SSCRA, a lease covering property used for dwelling, professional, business, agricultural or similar purposes could be terminated by a SM if two conditions were met:

A. The lease/rental agreement was signed before the member entered active duty; and

B. The leased premises have been occupied for the above purposes by the member or his or her dependents.

The Act still applies to leases entered into prior to entry into active duty. It adds a new provision, however, extending coverage to leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

It also adds a new provision allowing the termination of automobile leases (for business or personal use) by SMs and their dependents. Pre-service automobile leases may be canceled if the SM receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the SM is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

Life Insurance

Article IV of the SSCRA permitted a SM to request deferments of certain commercial life insurance premiums for the period of military service and two years thereafter. If the Department of Veterans Affairs approved the request, then the US government guaranteed the payments and the policy continued in effect. The SM had two years after the period of military service to repay all premiums and interest. There was a $10,000 limit for the total amount of life insurance that this program could cover. The SCRA increases this total amount to the greater of $250,000 or the maximum limit of the Servicemembers Group Life Insurance.

Taxes

The SCRA adds a provision that would prevent states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the servicemember's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has the effect of increasing the military family's tax burden.

Guard and Reserve Members

Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status, that is, called to duty under federal orders by the Department of Defense. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense. This continues in the SCRA.

Special Considerations–Mobilization, Deployment and Family Support

When a Guard or Reserve unit is called up, there is no law, federal or state, that stops or suspends payments of child support or alimony. The SCRA offers some protections to a SM who is being deployed or mobilized while court proceedings are pending or who cannot assist in the preparation or presentation of his or her court case due to military duties. These protections are explained in general above.

There is no automatic reduction of child support when a Guard or Reserve member is called to active duty. The reason for this is that a SM doesn't necessarily have a reduction in income when going to active duty from civilian life.

Let's look at the situation of Captain Jane Green, USMC. She is divorced and pays child support to her ex-husband. In civilian life she works as a public school teacher at $30,000 a year. But with eight years of creditable service, when she goes on active duty her base pay alone is more than $45,000 a year. When you add in the *tax-free* Basic Allowance for Subsistence (BAS) and Basic Allowance for Housing (BAH) that she earns, it comes to more than $50,000 annually, almost twice her civilian salary. She probably wouldn't get a reduction in child support when she is recalled to active duty. In fact, her ex-husband might even apply for an *increase* in support!

Nor does the law require a reduction if the activated SM receives less pay. There are many other factors that can play a part in the judge's decision

about granting your motion to reduce support. What if the other parent just lost his or her job? What if you have income from other sources—such as interest, dividends or rental income? What if the child's needs have recently increased due to medical or educational reasons and the child needs *more*, not less, in child support? What if child support was set low to begin with (several years ago) and there hasn't been any increase since then?

And finally, what about your own expenses? Maybe they will be lower while you are on active duty. What if you apply for a reduction in your home mortgage rate to 6% and you ask for a stay (that is, a suspension) of your loan payments due to your lower income on active duty (both of which are allowed by the SSCRA)? All of these circumstances would have to be considered by the court in ruling on a petition to reduce your support.

If none of the above applies and your income has been cut in half, does that mean that your child support gets halved as well? Don't count on it. When a court considers a motion to reduce support, it looks to see whether there is a *substantial change of circumstances* since the entry of the last order for support. If there isn't, then the motion is denied. If there is such a change in financial circumstances, however, then the court will usually "wipe the slate clean" and start all over again to determine a fair amount of child support.

In such a situation, the judge will consider primarily the *child support guidelines* to see what the presumptive amount of child support would be if those were applied. All 50 states (plus the District of Columbia) have guidelines, and these are usually used in determining child support (unless one or both parties have requested a variance up or down from the "guideline amount" of child support).

To get more information on child support guidelines, you can visit this website: www.supportguidelines.com. There you can see what the rules are for child support guidelines in your own area. You can also find useful articles there on college expenses, linking child support and visitation compliance, support for adult disabled children and the like.

If you are facing deployment or mobilization, plus an impending court hearing on support, you may be entitled to a stay of these proceedings. You may obtain a stay of at least 90 days when your request includes a letter or other communication that states the manner in which your current military duty requirements materially affect your ability to appear and gives a date when you will be available to appear. This must be accompanied by a letter

or other communication from your commanding officer stating that your current military duty prevents your appearance before the court and that you are not allowed military leave.

If the court finds that your ability to prosecute or defend an action is "materially affected" by reason of your active duty service for a longer period of time, additional extensions may be granted. Remember that courts are reluctant to grant long-term stays of proceedings and tend to require SMs to act in good faith and be diligent in their efforts to appear in court. To prove that your ability to prosecute or defend a civil suit is "materially affected," you need to show the court that your military duties prevent you from appearing in court (or in any part of the legal proceedings, such as a deposition) to present or defend your case.

If you file a petition with the court, the judge may "stay" or suspend payments on obligations incurred prior to active duty. To obtain relief, you must make application to the court during the period of military service, or within six months after release from active duty, and must establish that your ability to pay the loan is *materially affected* by reason of your active duty service. This applies not only to loans, but also to "any obligation or liability" that you incurred prior to military service, as well as any tax or assessment that comes due before or during your period of military service. The Act allows you to apply for "prospective relief" rather than waiting for the other party (creditor, former spouse, mortgage lender, et al.) to take action against you once you fail to make your payments.

Timing of Stay Requests

It's never too early to request help from the court. The *real* question is, *when is it too late*? As a general rule, you cannot obtain a change in child support that extends back before you filed your motion. These payments are due and, in general, cannot be modified by the court. Modifications are prospective only—they apply to future payments. So the earlier you file that motion for modification, based on a financial change of circumstances, the better chance you'll have for an *early effective date* for any change that applies.

And remember, help is never far away. If you're on active duty, you may want to consult a legal assistance attorney at the base legal office. The child support enforcement agency can also help. Or you can hire a private attorney of your choice. Whatever your decision, you should do it as soon

as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives.

Here are some sample questions and answers which may help you to understand the many protections offered by the Servicemembers Civil Relief Act.

1. Q. I'M ABOUT TO GO ON ACTIVE DUTY. CAN I GET OUT OF A RENTAL AGREEMENT?

A. Yes. You can get out of a lease or rental agreement covering property used for dwelling, professional, business, agricultural or similar purposes if:

- You signed the lease before you went on active duty; and
- You or your family members occupied the leased premises for one of these purposes.

2. Q. HOW DO I GO ABOUT TERMINATING THE LEASE?

A. To terminate the lease, you must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not enough. The effective date of termination is determined as follows:

- For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the first of the month and notice is mailed on August 1, then the next rent payment is due on September 1. Thirty days after that date would be October 1, the effective date of termination. However, if notice had been given on July 30, the next rent payment would be due August 1 and the effective date of termination would be September 1.
- For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example, if the lease calls for a yearly rental and notice of termination is given on July 20, the effective date of termination would be August 31.

3. Q. CAN I GET A REFUND OF A SECURITY DEPOSIT OR PREPAID RENT?

A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded upon termination of the lease. You must pay rent only for those months before the lease is terminated. If you damaged the rented premises, however, the landlord may withhold an appropriate amount of the deposit for repairs.

4. Q. CAN I STOP AN EVICTION ACTION BY MY LANDLORD?

A. If the rent is no more than $2,720. 95 per month for the year 2007 (it's indexed to go up each year by the amount of inflation), your landlord cannot evict you while you are on active duty unless he or she first obtains a court order. If your landlord attempts to obtain such an order, you may ask the court to delay the eviction for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by either your military service or your spouse's military service.

5. Q. DOES THE SCRA ALSO COVER DEPLOYMENTS AND VEHICLE LEASES?

A. Yes. A new provision extends coverage to premises leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also adds a new provision allowing the termination of automobile leases (for business or personal use) by SMs and their dependents. Pre-service automobile leases may be canceled if the SM receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the SM is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

6. Q. DOES THE ACT APPLY TO TIME PAYMENTS OR INSTALLMENT CONTRACTS?

A. If you signed an installment contract to purchase or to lease with intent to purchase real or personal property before active duty, you will be protected if your ability to make the payments is "materially affected" because of active duty service. Remember—

- You must have paid, before entry into active duty, a deposit or installment payment under the contract.
- If you are unable to make payments because of his or her military duty, the Act applies.
- The vendor (seller) is then prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
- The court may determine whether your financial condition is "materially affected" by comparing your financial condition before entry on active duty with your financial condition while on active duty.

7. Q. WHAT ABOUT MY CREDIT CARDS—CAN I STOP PAYING ON THEM?

A. No–you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

8. Q. WHAT ABOUT THE INTEREST RATES ON MY DEBTS AND MORTGAGE PAYMENTS—DO THEY GO DOWN WHEN I ENTER MILITARY SERVICE?

A. Yes—when an obligation was incurred before entry into active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the SM's ability to pay was *not materially affected* by military service. The term "interest" includes service charges.

9. Q. ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES?

A. The Act protects you against foreclosures of mortgages, deeds of trust and similar security devices, if these conditions are met:

- The debt involves a mortgage, deed of trust or similar security on either real or personal property;
- The obligation originated before you went on active duty;
- You (or your family member) owned the property before your entry on active duty status;
- You (or the family member) still own the property at the time relief is sought;
- Your ability to meet the financial obligation is "materially affected" by your active duty obligation.

10. Q. CAN JUDICIAL PROCEEDINGS BE DELAYED?

A. If you are involved in civil (not criminal) proceedings in court, as either a plaintiff or defendant, you may be entitled to a stay of these proceedings. You may obtain a stay of at least 90 days when your request includes a letter or other communication that states the manner in which your current military duty requirements materially affect your ability to appear and gives a date when you will be available to appear. This must be accompanied by a letter or other communication from your commanding officer stating that your current military duty prevents your appearance before the court and that you are not allowed military leave.

11. Q. WHAT ABOUT A STAY AFTER THE INITIAL 90 DAYS? MY ORDERS TO KUWAIT ARE FOR 12-18 MONTHS!

A. If the court finds that your ability to prosecute or defend an action is "materially affected" by reason of your active duty service for a longer period of time, additional extensions may be granted. Courts are reluctant to grant long-term stays of proceedings and tend to require servicemembers to act in good faith and be diligent in their efforts to appear in court. To prove that your ability to prosecute or defend a civil suit is "materially affected," you need to show the court that your military duties prevent you from appearing in court (or in any part of the legal proceedings, such as a deposition) to present or defend your case. You'll probably need to sign and

file an affidavit setting out all the facts and circumstances to help make your case for a stay of proceedings.

12. Q. IF SOMEONE SUES ME, CAN A DEFAULT JUDGMENT BE ENTERED AGAINST ME IN MY ABSENCE?

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing your response. If you have not entered an appearance in the case by filing an answer or motion, then there are some rules in the SCRA which apply to the taking of a default against you. Here are the main points to remember:

- Before any default may be taken, the SCRA requires the other side to sign and file an affidavit with the court stating that you are not serving in the military.
- When the affidavit shows that you are in the military, no default can be taken until the court has appointed an attorney to represent you; this representation is in a very limited capacity: the court-appointed attorney will represent you under the SCRA only in determining if a request for a stay of proceedings should be made to allow you an opportunity to appear and defend.
- When you are in the military and haven't entered an appearance in the legal proceeding, the SCRA requires a court or administrative agency to grant a stay (or continuance) of at least 90 days when—
    - the court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence, or
    - with the exercise of due diligence, counsel for the SM has been unable to contact him or her (or otherwise determine if a meritorious defense exists).
- To accomplish this, it is generally best to hire an attorney.
- If a false affidavit is filed, that can subject the filer to misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of $1,000, or both. Any such matter should be brought to the attention of the U. S. Attorney's office, as well as your civilian attorney.
- If a default is entered against you during military service or within 30 days afterwards, you can apply to the court to set it aside. To obtain this relief, you must show you were prejudiced by not being

able to appear in person, you have a legal defense to the claim, you've filed for reopening within 90 days after ending military service and you've made no prior appearance in court, either representing yourself or through an attorney.

13. Q. I'M IN A DISPUTE WITH MY LOCAL HOUSING BOARD AND MY DEPLOYMENT ORDERS JUST ARRIVED. DOES THE SERVICEMEMBERS CIVIL RELIEF ACT ALSO APPLY TOADMINISTRATIVE AGENCIES?

A. Yes. The 2003 changes to the Act included expanding the protections regarding a stay of proceedings and default. These protections now cover, in addition to civil courts, all administrative agencies of the United States, of a state or within a state. Does this mean the Pottstown, Nevada Safety Commission? The North Carolina Department of Economic and Community Development? The federal Environmental Protection Agency? The answer is YES to all the above!

14. Q. WHAT IF I CANNOT PAY MY INCOME TAXES BECAUSE OF A CALL TO ACTIVE DUTY?

A. Quite possibly your ability to pay the federal or state income tax may be "materially affected" (or seriously impaired) because of active duty service. If you can show that this is the case, the SCRA defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

15. Q. WHAT IF I CAN'T PAY MY LIFE INSURANCE PREMIUMS?

A. If you can no longer pay your premiums on commercial life insurance purchased prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon leaving active duty, you would have up to two years to pay the premiums.

16. Q. DOES THE SCRA ALSO PROTECT ME FROM DOUBLE TAXATION ON MY MILITARY INCOME?

A. Yes. Your military income is taxable only by your state of legal residence, or "domicile." You neither gain nor lose your domicile based on your presence in a given state pursuant to military orders. Thus if you are a legal resident of North Carolina—voting there, paying N. C. income taxes, living there, possessing a North Carolina driver's license—you are entitled to retain your N. C. residency even though you might be stationed at Naval Submarine Base, Pearl Harbor, or Camp Pendleton, California. The latter states cannot impose state income taxes upon your military pay so long as you've retained North Carolina as your state of residence. Merely being stationed in another state does not make that state your domicile.

17. Q. ARE THERE OTHER TAX PROTECTIONS?

A. The SCRA prevents states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the servicemember's military income for the limited purpose of determining the nonmilitary spouse's tax bracket.

18. Q. DOES THE ACT COVER VOTING RIGHTS ALSO?

A. The SCRA states that you are allowed to keep your original legal residence, or domicile, for voting purposes (as well as for income tax purposes), just as if you were living there. It doesn't matter if you're currently residing at Travis AFB, California or Camp Lejeune, North Carolina—you can still vote through the board of elections back at your home in Possum Hollow, Arkansas (or wherever else it may be).

19. Q. WHAT IF I CANNOT AFFORD TO MAKE PAYMENTS ON MY LOANS BECAUSE I WAS CALLED TO ACTIVE DUTY?

A. If you file a petition with the court, it may "stay" or suspend payments on obligations incurred prior to active duty. To obtain relief, you must make application to the court during the period of military service, or within six months after release from active duty, and must establish that your ability to pay the loan is "materially affected" by reason of your active duty service.

20. Q. ARE THERE ANY OTHER PROVISIONS OF THE SCRA?

Yes. Here are several examples:

- The fact that a servicemember has asked for or received a stay or certain other types of relief under the SCRA cannot, in itself, be the basis for a denial or revocation of credit by a creditor, a change in the terms of an existing credit arrangement, a refusal to grant credit to the member, an adverse report on creditworthiness of the member, or the creditor's annotating the member's record to identify him or her as a member of the Guard or reserves.
- The statute covers professional liability insurance for certain persons ordered to active duty, such as doctors, dentists and other professionals; it allows for suspension of policies while on active duty, refund of premiums attributable to active duty time and guarantee of reinstatement of insurance upon termination of active duty service.
- Provisions are made for reinstatement of health insurance coverage upon release from service.

21. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. Consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your rights and your options.

Mark E. Sullivan is the principal of Law Offices of Mark E. Sullivan, P. A. in Raleigh, North Carolina. He has limited his trial practice to family law since 1981, and he has been certified by the North Carolina State Bar as a specialist in family law since 1989. He is a member of the American Academy of Matrimonial Lawyers (AAML) and a past chair of the North Carolina Chapter of the AAML. He has been certified as a family law mediator by the AAML. He is also a member of the Family Law Sections of the North Carolina Bar Association and the American Bar Association. He served as director or member of the North Carolina State Bar's military committee since it was founded in 1980. He has been chair or co-chair of the Military Committee, ABA Family Law Section, since 2000. His book, *The Military Divorce Handbook*, was published in 2006 by the American Bar Association and it immediately became a best-seller. He is the editor of the *Family Law Practice and Procedure Manual* (N. C. Academy of Trial Lawyers) and has written numerous articles on trial advocacy and the practice of family law.

Mr. Sullivan is a retired JAG colonel, U. S. Army Reserve. While in the Army Reserve he created the Army's computerized separation agreement program, and he teaches several times each year at the Army JAG School and Naval Justice School on custody, separation agreements and other aspects of family law. He also served on a Department of Defense team tasked with review of, and proposed revisions to, the Uniformed Services Former Spouses' Protection Act, and he also served on the Working Group for Protecting the Rights of Service Members, appointed by the president of the American Bar Association. He has written numerous "Silent Partner" information letters for JAG officers and civilian lawyers, explaining points of military family law, and his client handouts, called "Legal Eagle," on military family law issues, are also popular; they can be found at www.nclamp.gov. Upon his retirement, Mr. Sullivan was awarded the Legion of Merit with an inscription that described him as "the Army's foremost expert in family law."

Chapter Twenty-Two Benefits for Active-Duty Servicemembers' Families

(This chapter is reserved for later expansion.)

Many of our other chapters cover information relevant to the needs that many servicemembers' families have in common. Some of these chapters contain information important to families of servicemembers about to be discharged and who will need to rely on the VA for assistance. We urge that you carefully review this whole book for issues that may relate to you or your family.

In particular, we point out the following chapters for your possible needs:

- For finding legal or other advocacy assistance, see the appendix that covers law school clinics and other types of legal services.
- To understand how the VA system for service-connected disabilities works, see Chapters 3, "Compensation," and 5, "VA Claims and Appeals."
- To understand recognition, treatment, and compensation for Post-Traumatic Stress Disorder (PTSD), see Chapter 3 B.4(a), which is the first part of a subchapter on PTSD that appears in the chapter titled "Compensation." Also see Chapter 9, "VA Medical Care."

- For information about VA pensions for low-income veterans and their families, see Chapter 4, "Needs-Based Pensions for Low-Income Veterans or Survivors."
- For survivors' benefits, see Chapter 10, "VA Programs for Veterans Family Members and Survivors."
- For VA-sponsored housing programs available to active-duty servicemembers, see Chapter 8, "VA Housing Programs."
- For protection from creditors and other legal problems that may affect an active- duty family, see Chapter 21, "The Servicemembers Civil Relief Act."
- For practical advice for caregivers of the severely injured servicemember or veteran, see Chapter 20, "Advice for Families and Caregivers of Wounded Servicemembers and Veterans."
- For divorce, child custody, and related matters, see Chapter 25, "Family Law Issues for Servicemembers."
- For obtaining citizenship for survivors of deceased servicemembers, see Chapter 28, "Immigration, Obtaining U.S. Citizenship through Military Service."

Chapter Twenty-Three
Voting Rights Issues

By Captain Samuel F. Wright, JAGC, USN (Ret.)

Vote, and Make Sure Your Vote is Counted

In a 1952 letter to Congress, President Harry S. Truman wrote:

> *About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.*

What President Truman wrote of the brave young men and women who were fighting the Korean War in 1952 is equally true of their grandsons and granddaughters, and great-grandsons and great-granddaughters, fighting the wars in Iraq and Afghanistan today. Unfortunately, today, as in 1952, military personnel and their family members are often disenfranchised through no fault of their own. In the 21st century, most states still conduct absentee voting essentially as they did

during the Korean War, by shipping pieces of paper around the world by "snail mail."

Whether you are voting from a nursing home in your own country or from Iraq or Afghanistan, there are three time-consuming steps in absentee voting. First, your absentee ballot *application* must travel from you to the election official in your hometown. Second, the *unmarked absentee ballot* must travel from the election official to you. Finally, your *marked absentee ballot* must travel from you back to the election official and must be received (not just postmarked) by the deadline imposed by state law. In most states, the deadline is the time set for the close of the polls on election day.

Each of these steps can take weeks if the mail must be used, but only seconds if secure electronic means were authorized. Every day, huge sums of money are transmitted by electronic means. In the military, *classified* information is transmitted electronically, via a Department of Defense (DoD) system called the SIPRNET (Secure Intranet Protocol Routing Network). If electronic systems are secure enough for billions of dollars and for our nation's most sensitive secrets, it should be possible to establish a system enabling the servicemember to vote by electronic means, no matter where the service of our country has taken him or her. Unfortunately, there is still a lot of resistance to this necessary step, both among election officials and in DoD itself.

The purpose of this chapter is to explain what *you* can do to vote while on active duty, and to maximize the likelihood that your ballot will be counted. Federal law gives you the right to vote and to register to vote by absentee process, in primary, general, run-off, and special elections for federal office (President, U. S. Senator, and U. S. Representative). The pertinent federal law is called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and it is codified in Title 42, United States Code, sections 1973ff and following (42 U. S. C. 1973ff *et seq.)* .

UOCAVA applies to "absent uniformed services voters" and to "overseas voters." An absent uniformed services voter is a member of the uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, or the National Oceanic and Atmospheric Administration commissioned corps), or the spouse or family member of a uniformed services member. The absent uniformed services voter has the right to vote under UOCAVA *whether inside or outside the United States*. The individual does not even need to be absent from his or her home

state; he or she must just be absent from the county or other local election unit where the individual is eligible to vote. For example, the sailor from Arlington, Virginia who is serving on active duty in Norfolk, Virginia is an "absent uniformed services voter" for purposes of UOCAVA.

UOCAVA applies only to federal elections, but most active-duty service members and their voting-age family members are eligible under state law to vote for *all* offices, including governor, state representative, mayor, etc. I urge you to vote in all elections, and for all offices, for which you are eligible. Voting by absentee ballot is a good way for you to maintain an attachment to your hometown while you are away from home serving our country, whether for 30 days or 30 years.

In 1997, I initiated the "Law Review" column in *The Officer,* monthly magazine of the Reserve Officers Association (ROA). You can find more than 300 back articles on ROA's Web site, www.roa.org. Click on "ROA Law Library" above the scales of justice on the right side of the ROA (Reserve Officers Association) main page. I invite your attention to Law Reviews 3, 23, 43, 44, 49, 83, 96, 97, 109, 143, 144, 145, 146, 193, 194, 195, 204, 0601, 0602, 0603, and 0618, concerning voting rights.

Where am I to vote?

If you are serving at sea or outside the United States, you must of course vote by absentee ballot, if you are to vote at all. If you are serving within the United States, you have a choice to make—you can register to vote at the place where you are serving, or you can vote in your hometown by absentee ballot. Of course, you are limited to just one vote per election. There is one place that constitutes your *domicile,* and you must vote only in that place.

Every human being has one and only one domicile, even if it is something of a legal fiction. The billionaire who owns 20 houses and sleeps in all 20 during the course of a year has one domicile—he or she does not earn additional votes by buying additional houses. The sailor who sleeps and keeps all his worldly possessions in a rack and wall-locker on a submarine likewise has one and only one domicile.

When you enter active duty, you start with a *domicile of origin* at the place where you lived and were domiciled immediately before entering active

duty—the place that is also called your *home of record*. Some career service members remain on active duty for 20 years or more and keep the domicile of origin at the home of record for the entire time. You have the right to do that—see Law Review 144.

You can change your domicile while on active duty, but to do so you must *simultaneously* have a *physical presence for a significant time* at the place where you wish to establish your new domicile (called a *domicile of choice)* and the *intent* to make that place your home. Neither intent alone nor physical presence alone is sufficient to bring about a change in your domicile.

I know that must sound like legal mumbo-jumbo, so let me offer a tangible example. Seaman Joe Jones, U. S. Navy, grew up and graduated high school in Boston, Massachusetts. He joined the Navy while in his senior year, and he reported to boot camp a few days after the graduation ceremony. The home in Boston where he lived with his parents is his domicile of origin. When he votes by absentee ballot, he must use that address as his "voting residence address" in item 3 of the Federal Post Card Application (FPCA).

Jones' domicile and voting residence address is the place where *he* lived and was domiciled just before entering active duty. It is not necessarily the current domicile of his parents. It is likely that at some point during Jones' military service, if he remains on active duty for a full career, his parents will move away or even pass away. Such a change does *not* affect Jones' domicile. Jones can maintain his domicile of origin and voting residence address at that address for his entire career, even 30 years. It does not matter that Jones no longer has relatives living at that address. It does not matter that Jones cannot receive mail at that address. It does not matter that the house was torn down to make room for a new commercial development.

Now let us say that Jones completes boot camp and is assigned to the naval station in Corpus Christi, Texas for his first duty station. While Massachusetts has a high state income tax, Texas has no state income tax. Jones can change his domicile to Texas and avoid paying the Massachusetts state income tax, and many service members do exactly this. But remember that there are important consequences of changing your domicile. State income tax liability is an important consideration, but it is not the only consideration.

For example, let us say that instead of remaining on active duty for a career, Jones decides to leave active duty at the end of his four-year active-

duty commitment. He returns home to Massachusetts and enrolls in the University of Massachusetts. He seeks the in-state tuition rate, which is substantially lower than the rate charged to students who were not residents of Massachusetts immediately before enrolling. The university informs Jones that he is not eligible for the in-state tuition rate because he was domiciled in Texas, not Massachusetts, for the last three years before enrolling.

The point is that you should not change your domicile lightly, just to save a few bucks on state income tax. You need to think this through carefully, and you may need legal advice. So long as you are on active duty, you are eligible for military *legal assistance* from a military legal assistance *attorney*. Please see Law Review 125.

A military legal assistance attorney is a judge advocate, or in some cases a civilian attorney employed by DoD, whose specific assignment is to assist service members and their families with *civilian* legal problems. Not all judge advocates are legal assistance attorneys—some are prosecutors or defense counsel in courts martial, some serve as staff judge advocates advising military commanders, and some serve in other important ways.

If you are assigned to a major military installation, there is probably a military legal assistance office located there, or go to legalassistance.law.af.mil. This site is operated by the Air Force, with input from all the services. Using your zip code, the site will show you the closest military legal assistance office, with the telephone number. You need to call and make an appointment. Military legal assistance attorneys are instructed not to try to give legal advice by telephone or e-mail.

Remember that, like so much in the military today, military legal assistance is *purple* (meaning joint—applying interchangeably to all five services). You are eligible to make an appointment and get assistance at any military legal assistance office. You are not limited to legal assistance offices operated by your own service.

Now let us return to Seaman Jones, the sailor from Boston who changed his domicile to Corpus Christi, Texas while assigned there on active duty. Let us say that he decides to reenlist at the end of his initial four-year active-duty commitment. He remains on active duty for 28 years and retires as a warrant officer. Having made a *bona fide* change of his domicile, from Boston to Corpus Christi, he is entitled to *maintain* his new domicile in Texas for the entire period he is on active duty. He has the right to continue

voting by absentee ballot in Nueces County, Texas until the day that he leaves active duty by retirement. This assumes, of course, that he remains on active duty continuously and does not establish a new domicile of choice at some other place during his military career.

I know that this must sound complicated, but it really is not that difficult. You need to know, at each point in your career, the exact address that constitutes your domicile. It may be the place where you currently sleep, if you are assigned to duty within the United States, or it may be the place where you lived before entering active duty, perhaps many years ago, or it may be a place where you were assigned earlier in your career, and where you established a new domicile of choice.

Please understand that you have *one and only one* domicile, for all legal purposes. You cannot have it both ways. You cannot simultaneously vote in Virginia, where you are stationed, and claim to be exempt from Virginia state income tax because you are domiciled in Texas. When you registered and voted in Virginia, you became a Virginian, and you gave up your Texas domicile. You cannot have it both ways.

Under a law formerly known as the Soldiers' and Sailors' Civil Relief Act (SSCRA), and now (since a 2003 rewrite) as the Servicemembers' Civil Relief Act (SCRA), the active-duty service member cannot be required to pay income tax on military salary and benefits to the place where he or she physically resides *unless that place is the member's domicile*. (For more on the SCRA, please see chapter 21. The SCRA also exempts the servicemember from having to pay personal property tax (on a vehicle, for example) to the state where the member physically resides but is not domiciled. This assumes that the vehicle is titled in the servicemember's name alone and is not utilized in a trade or business.

Let us take Colonel Mary Smith, on active duty in the Marine Corps for the last 25 years and domiciled in California. She is transferred from Okinawa to Marine Corps Base Quantico, in Prince William County, Virginia. She buys or rents a house in Stafford County, two exits south of Quantico on I-95. The SCRA precludes Virginia and Stafford County from taxing her military salary or her personal automobile. But if she registers to vote in Stafford County she is thereby waiving her claim to California domicile and her exemption from the Virginia state income tax and the Stafford County personal property tax.

Now let us take Joe Smith, Mary's husband. He lives with Mary and the children in the Stafford County house. Unlike Mary, Joe is not on active duty in the armed forces—maybe he has already retired, or maybe he never served. It does not matter for this purpose. Joe commutes every day to Washington, DC, where he has a good job.

Because Joe is not on active duty, the SCRA does not protect him from having to pay Virginia state income tax on *his* salary. He must pay that tax regardless of whether he votes in Stafford County, or votes somewhere else, or does not vote at all. Accordingly, Joe seeks to register and vote in Stafford County. He has every right to do so, and his choice to register to vote in Stafford County has no effect on Mary's domicile or her exemption from having to pay Virginia state income tax on her salary.

It may seem odd, but it is entirely possible for a married couple to live together in the same house but be domiciled in different states, if one or both of them are on active duty in the Armed Forces. And don't think that the result would be different if we made the husband the active-duty colonel and the wife the civilian. All of these issues are gender-neutral. The domicile of the husband does *not* control the domicile of the wife, or vice versa. Please see Law Review 204.

When you vote by absentee ballot, while on active duty or while married to an active-duty service member, you must put your voting residence address in item 3 of the FPCA and your "mail my ballot to" address in item 4. The election official receiving your completed FPCA needs the *exact address* of the place that you claim as your domicile, even if you have no relatives living there today and you cannot receive mail at that address. The election official needs the exact address in order to "precinct" your absentee ballot application, in order to send you the correct ballot for that precise location. Within the city of Boston, for example, there are parts of three congressional districts and multiple state legislative and other districts. You can understand that telling the election official that your home is in Boston is not sufficient—the official needs your exact home address.

Let us say that Bob Williams, an active-duty soldier, is from a rural area in western Massachusetts. He had no street address (just a Rural Route and box number) at the home where he lived with his parents when he graduated from high school and joined the Army, more than 20 years ago. Let us assume that Williams has maintained his domicile at that place for his whole career and is still on active duty. When he completes his FPCA, he

needs to provide a concise description of the location of his permanent home, even if the house at that place no longer exists. For example: "On the south side of State Highway 14, 750 yards west of the Conoco station."

How am I to vote?

If you are within the United States, and if you have chosen to become a domiciliary of the place where you physically reside, as described above, then you must register and vote in the same way that all other eligible voters vote. In such a situation, you are not an "absent uniformed services voter" as defined by UOCAVA, because you are not absent from the county or other local election unit where you are eligible to vote.

Except in a handful of states, like North Dakota and Wisconsin, it is necessary to register to vote before you vote. The voter registration deadline is generally about four weeks before election day. If you are not already registered, and if you allow the voter registration deadline to pass, you will almost certainly be disenfranchised. And if you move, you must register to vote in the new county or change your voter registration to your new precinct within the same county. If you fail to do this by the voter registration deadline, you will likely be disenfranchised. Please see Law Review 0601.

On the other hand, if you are on active duty in the uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, or National Oceanic and Atmospheric Administration commissioned corps), or if you are the voting-age spouse or family member of an active-duty servicemember, and if you are away from the county or other local election jurisdiction (city, township, parish, etc.) that qualifies as your domicile, then you qualify as an absent uniformed services voter under UOCAVA. In that case, you are eligible to use the FPCA as a *simultaneous* voter registration application and absentee ballot request.

For example, let us take Airman Barney Barnes, on active duty in the U. S. Air Force and stationed at Elmendorf Air Force Base in Alaska. Barnes graduated from high school in Florida 18 months ago and reported to boot camp the next month. He has maintained his Florida domicile. He has never voted or even registered to vote. But if he submits a properly completed FPCA to the county supervisor of elections in his home county in Florida,

the supervisor is required by federal law to send him an absentee ballot for each federal election (including primaries and special elections, as well as the November general elections) through the next two biennial (every two years) general elections.

For example, let us assume that Barnes submitted the completed FPCA in February 2008. The election official must send him (without new applications on his part) absentee ballots for the 2008 and 2010 primaries and general elections, and if there is a special election for a federal office (for example, if his U. S. Representative were to die or resign), the election official must send him an absentee ballot for that election as well, all from that one completed FPCA.

Federal law requires the election official to send you multiple absentee ballots, for multiple elections, all from a single completed FPCA, but I strongly recommend that you submit a new FPCA for each election, or at least for each year. Two years later, you are likely to have a new duty station, and a new mailing address, even if you are still on active duty.

There are three time-consuming steps in absentee voting. First, your absentee ballot *request,* usually in the form of the completed FPCA, must travel from you to the election official in your hometown, perhaps thousands of miles away if you are serving outside the United States. Second, your *unmarked absentee ballot* must travel from the election official back home to you, wherever the service of our country has taken you. Finally, your *marked absentee ballot* must travel from you back to the election official back home, and the ballot must arrive (not just be postmarked) by the deadline, which in most states is election day.

Most states still conduct all three steps entirely by "snail mail." Accordingly, you must build in sufficient time for all three steps to be completed by election day. UOCAVA permits you to apply for your absentee ballot, using the FPCA, *at any time during the calendar year of the election*—you can apply in January for the November general election. The problem is that you may not know in January, or even in July, where you will be in October, when your general election ballot must be delivered to you. I suggest that you apply early in the year and that you try to make contact with the local election official. Perhaps you can inform the election official by e-mail or telephone if you are deployed or redeployed, making it necessary for the election official to mail your ballot to a different address.

Every state is required by federal law to accept the FPCA, if the applicant is an "absent uniformed services voter" or an "overseas voter" as defined by UOCAVA. But the instructions for completing that federal form vary from state to state. Your military unit must have a voting assistance officer (VAO), usually a junior officer or a mid-grade non-commissioned officer. Go see the VAO to obtain the blank FPCA and the *Voting Assistance Guide*, published by the Department of Defense (DoD) every two years. The *Guide* will give you detailed instructions about how to complete the FPCA for your home state, and it will provide you the mailing address for the election official in your hometown. You can also find an online version of the FPCA and the *Guide* on the Web site of DoD's Federal Voting Assistance Program (FVAP)—www.fvap.gov.

Thanks to the non-partisan Overseas Vote Foundation (OVF), there is now a *new and better way* to complete the FPCA voter registration form. Go to www.overseasvotefoundation.org to access an online Registration and Absentee Voter Application (RAVA) tools and instructions. The OVF Web site will provide you all you need to register to vote, request a ballot, obtain the correct mailing address and more—all in simple, easy-to-follow steps with no special training required. The OVF Voter Help Desk (VHD) will help you with personalized answers—online and directly to you.

OVF has the most current database available for election jurisdiction addresses—the OVF Election Official Directory (EOD), which provides mailing and physical addresses, e-mails, fax and telephone numbers for all election jurisdictions in the United States. The EOD is the most up-to-date directory listing available.

Of the three time-consuming steps in absentee voting, the most difficult step, especially for the military voter, is the second step—the transmission of the unmarked ballot from the election official to the voter, for two reasons. First, until all uncertainties about the candidates and issues on that ballot have been resolved, the election official cannot print, much less mail, the ballots. Late primaries, ballot access lawsuits, and other problems often delay the printing and mailing of absentee ballots and thereby result in their delay in getting to you. This can result in overseas voters (military and civilian) losing their effective right to vote. Improvements may come in 2008, with earlier primaries in many states. Also, please note the discussion below of the Federal Write-in Absentee

Ballot (FWAB), an alternative voting method for military and overseas voters whose ballots do not arrive on time.

Moreover, the military voter is often in transit or redeployment. Lance Corporal Connie Cox is on active duty in the Marine Corps and is serving in Iraq. She is eligible to vote in Sayner, a very small town in far northern Wisconsin. In July, while in Baghdad, she mails her completed FPCA to the town clerk back home. On October 1, on the same day that the town clerk mails the absentee ballot to Cox in Iraq, Cox suffers a serious injury when an improvised explosive device explodes near the vehicle in which she is traveling. She is transported to the National Naval Medical Center in Bethesda, Maryland. The ballot is in Iraq, but Cox is not. It may be months before that ballot catches up with her.

The Federal Write-In Absentee Ballot—What To Do If Your Ballot Is Late

Fortunately, there is a solution to the late ballot problem. The solution is called the Federal Write-in Absentee Ballot (FWAB). This is a special federal ballot provided for by Federal law and pre-positioned at U. S. military installations at home and abroad. The blank FWAB is also available on the FVAP website, www.fvap.gov, or through OVF at www.overseasvotefoundation.org. The FWAB is not a complete ballot—it is limited to federal offices (President, U. S. Senator, and U. S. Representative). You can use the FWAB to vote in any state or territory, and you can download it at any time.

In October of 2007, OVF will release improved, online, automated FWAB services. I suggest that you use those services if you have not received your regular state absentee ballot by one month prior to Election Day.

The FWAB is limited to federal offices (President, U. S. Senator, and U. S. Representative) in the general election. The FWAB is a blank ballot—it does not contain names of candidates. You mark the ballot by writing in the names of candidates or by expressing a party preference. For example, you can write that you want to vote for the "Republican Nominee" or "Democratic Nominee" for the U. S. House of Representatives. The local

election official must count that ballot for the nominee of the party, in the general election.

The FWAB is a pretty poor substitute for a ballot, but it beats being wholly disenfranchised. The beauty is that you do not have to give up on the regular ballot when you submit the FWAB. If you submit the FWAB and later receive the regular absentee ballot, you should complete and submit that ballot as well. If your regular absentee ballot arrives on time to be counted, your FWAB will be set aside and not counted. The regular absentee ballot is clearly preferable to the FWAB, because it includes all offices, not just federal offices, and because it lists names of candidates, not just titles of offices.

In 2004, Congress amended UOCAVA to permit the absent uniformed services voter (including military family members) to submit the FWAB *from either within or outside the United States*. Because of this 2004 amendment, Lance Corporal Cox can submit her completed FWAB from the National Naval Medical Center in Bethesda, Maryland.

If you receive your regular absentee ballot very close to election day, or even after election day, please mark it and send it in. Even if you receive the ballot a year after the election, please mark it and send it in. You can at least make the point that you wanted to vote and that through no fault of your own you did not have the opportunity to vote. And sometimes federal courts order extensions of the deadlines for the receipt of ballots mailed in from UOCAVA voters, as a remedy for the untimely mailing of those ballots by election officials.

Absentee ballots that arrive after the deadline are not opened, much less read. So when you receive and submit an absentee ballot long after election day please send a separate letter, in a separate envelope, to the election official back home. Explain when you applied for that absentee ballot, and when you finally received it. I hope that we can lay the groundwork for *electronic transmission* of absentee ballots to and from deployed or wounded servicemembers.

Voting Information Center

If you are on active duty and voting by absentee ballot, you will be hundreds if not thousands of miles away from the community where you

vote, on election day and in the weeks leading up to the election. Accordingly, you will probably miss out on a lot of the sources of information about candidates and elections that other voters take for granted. You do not have the opportunity to watch local television, or listen to local radio, or read local newspapers for the community where you vote by absentee ballot. During the campaign season, you will not receive "get out the vote" calls from political "phone banks." Political volunteers will not knock on your door with campaign literature, and you probably will receive little if any political mail.

In 1988, DoD established the Voting Information Center (VIC) to give military personnel and family members the opportunity to learn about elections and public affairs in their home states and congressional districts, in order to enable them to cast *informed* absentee ballots. Service personnel and family members call the VIC toll-free from all over the world at DSN (Defense Switched Network) 425-1584, or at (800) 438-VOTE.

Callers have the opportunity to listen to messages recorded by incumbent U. S. senators, U. S. representatives, and governors. If your senator, representative, or governor has not bothered to record a message for this free service, you will hear the default message saying, "No message has been recorded." During the last 30 days before the election, you can also hear, in a different part of this same system, from *candidates* for senator, representative, and governor. Candidate messages are available only for a few days before the election, but incumbent messages are available all the time, in odd-numbered years as well as even-numbered years.

You can also use the VIC to communicate with your U. S. senators, your U. S. representative, and your governor, at no cost to you. After you hear the official's message or the default message, press 1 on your touch-tone phone, and you will be connected with the main office of the senator, representative, or governor. If you leave a message on the official's voice mail, please speak clearly, and please provide your complete home address in your the hometown, as well as your military mailing address and e-mail address. It is likely that the official will want to contact you, to respond to your concerns.

Captain Samuel Wright, JAGC, USN (Ret.) recently retired from the Navy Reserve Judge Advocate General's Corps, with more than 37 years active and reserve service. In 1981, he initiated an ongoing effort to reform absentee voting laws to facilitate the enfranchisement of military personnel and their families. He has recruited more than 3,000 volunteers, mostly military reservists and retirees, and each state has made at least some progress toward simplifying absentee voting procedures and providing more ballot transmission time.

Chapter Twenty–Four National Guard and Reserve Call-Up Issues

Or: Uncle Sam Wants You . . . Back!: Recall and Mobilization from Inactive Duty

By Brian Baldrate

Imagine the following scenario: After serving four years honorably in the Army Reserves you complete your military duty, hang up your boots, and return to civilian life. Three years later you are operating your own landscaping company when you receive a Western Union telegram ordering you to report for military duty in 30 days! Far-fetched? Unfortunately, it is not. In fact, since 9/11, thousands of former servicemembers have faced this exact situation and have been recalled to active duty as part of the wars in Iraq and Afghanistan. The Army and Marine Corps both recently announced plans to involuntarily activate thousands of additional "former" servicemembers in Summer 2007. This chapter explains the concept of inactive duty service obligations, details how servicemembers are recalled from an inactive status, and explains your options if you receive a mobilization order recalling you to active duty.

Inactive Duty

While some members choose to remain in the military for an entire career, others complete their active or reserve duty thinking their military service is complete. In reality, upon completion of active or reserve service, most members of the armed forces are transferred into some form of inactive duty, typically the Individual Ready Reserve (IRR). [3]This is because regardless of the length of your active or reserve contract, typically four years, everyone entering the United States military incurs a minimum eight-year military service obligation. Therefore, following completion of a four-year initial enlistment period, servicemembers are automatically transferred into the IRR for the remainder of their service obligation.

It is understandable that many members of the IRR may not feel like they are still part of the armed forces. Typically members of the IRR have had little or no interaction with their respective military services for months or even years. While the Pentagon has recently made efforts to bolster the readiness of the IRR, and a 2004 law requires that members of the IRR provide the armed forces with both their home address and the name of their civilian employer, the IRR remains essentially a completely unstructured organization. Members of the IRR do not receive pay or benefits, do not drill or train, and do not interact with the military at all. [4]Despite the fact that some members of the IRR may not feel like they are part of the armed forces, it is important that every member of the IRR understand their status as an inactive duty soldier and know their options in the event they receive an unwanted Western Union telegram or letter. [5]

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[3] Members of the National Guard may be placed in the inactive National Guard instead of the IRR.

[4] IRR members can request to participate in training operations but most do not. IRR members can also receive retirement credit if they meet basic eligibility criteria through voluntary or involuntary mobilization.

[5] Of course some members of the IRR relish their role as a member of the armed forces. These servicemembers can volunteer to be mobilized to active or reserve duty, and once mobilized, can volunteer to extend the length of their mobilization. This chapter focuses on situations where the military involuntary mobilizes members of the IRR without their consent.

Involuntary Mobilization from Inactive Duty

There are three different ways that members of the IRR can be involuntarily recalled to active federal duty: a Presidential Reserve Call Up, a Partial Mobilization, or under a Full Mobilization.

Presidential Reserve Call Up (PRC)

The Presidential Reserve Call Up (PRC) is the most frequent tool used to recall servicemembers to active duty. It was used to recall forces during the early 1990s during the First Gulf War, and again throughout the nineties for a limited number of mobilizations to Bosnia, Kosovo, and Haiti. The PRC has been used repeatedly since 9/11 in fighting the current two wars. The PRC, 10 U. S. C §12304, gives the president the authority to recall servicemembers to active duty whenever he deems it necessary to augment the active forces for any mission or to provide assistance in responding to an emergency involving weapons of mass destruction or a terrorist attack.

Despite this broad presidential authority, there are important limitations on the PRC. First, under the PRC, the president can activate up to only 30,000 members of the IRR. [6]Second, servicemembers recalled under the PRC can be mobilized for a maximum of only 270 days. Third, servicemembers cannot be recalled to active duty to help establish law and order or to provide assistance during natural or man-made disasters. In 2006, following continued mobilizations for the wars in Iraq and Afghanistan, and in the aftermath of Hurricane Katrina, Congress amended the PRC and authorized the president to mobilize servicemembers for up to a maximum of 365 days and, in limited circumstances, allowed mobilized servicemembers to assist in national disasters. Nevertheless, the president is still limited to recalling a maximum of 30,000 members of the IRR.

Partial Mobilization

Despite the president's frequent reliance on the PRC, following 9/11 the Defense Department has used partial mobilization as an additional means of recalling inactive reservists to active duty for longer periods of time. During a national emergency *declared by the president*, partial mobilization, 10 U. S. C §12302, allows the United States to recall up to one million reservists

[6] Under the Presidential Reserve Call Up, the President can recall up to 200,000 total reservists, only 30,000 of whom can come from the IRR.

(from either the Select Reserve or the IRR) for up to 24 months. This 24-month mobilization, however, is tied directly to the national emergency declared by the President. For example, following 9/11, President Bush declared a national emergency relating not just to the defense of domestic homeland sites such as the World Trade Center and the Pentagon, but also to the overall wars in Iraq and Afghanistan. Therefore, any servicemember recalled under a partial mobilization relating to these wars can be mobilized only for a period of 24 months. Exactly what it means to be mobilized for "no more than 24 months" has shifted over time. Under DoD's longstanding policy, no servicemember recalled under a partial mobilization was allowed to be involuntarily mobilized for more than 24 *cumulative* months. This period included travel time, training and leave, and multiple deployments. In February 2007, however, the Pentagon altered its partial mobilization policy and extended mobilizations for 24 *consecutive* months with no limit on the number of *cumulative* months a servicemember could involuntarily be required to serve. Under this approach, servicemembers are de-mobilized before reaching 24 consecutive months and sent home; but then are subject to an indefinite and unlimited number of additional mobilizations thereafter.

Full Mobilization

Although it has not been used since the Vietnam War, a full mobilization is a third method of mobilization that can be used to recall members of the IRR back to active duty. 10 U. S. C §12301 provides that during a war or national emergency *declared by Congress* the entire reserve forces of the United States, including the IRR, can be recalled for the duration of the war or national emergency plus six months. A full mobilization is the largest form of mobilization. In addition to allowing the recall of the entire armed forces for the duration of the conflict and six months, a full mobilization would also enable the United States to mobilize any person conscripted into service if the United States ever decides to reinstitute a draft. Because a full mobilization is such a powerful tool, however, it cannot be used without a congressional declaration. To date a full mobilization has not been used to mobilize servicemembers in support of the wars in Iraq and Afghanistan and the Pentagon has made no requests seeking such a mobilization.

Recruiters and the Imminent Recall Myth

While not an actual recall, military recruiters have led servicemembers to re-enlist under the pretense that a "call-up" was imminent. For example, in the summer of 2003, IRR members received letters from reserve recruiters stating that a call-up was imminent for IRR. The letters stated that IRR soldiers who "voluntarily" joined a National Guard unit could pick one with the "help" of the recruiter that would not be called up, but IRR members who did not "voluntarily" join a National Guard unit by mid-June would be placed in a unit that was going to be called up immediately.

Thousands of IRR members joined the National Guard prior to the June deadline trying to find the units that were not on the short list to be deployed. Later, the new reservists were notified that the recruiters had "misunderstood" an order from the Pentagon and the letters were a mistake. Members of the IRR who ignored the recruiters' letters and chose not to "volunteer" were left untouched. While such recruiting tactics are dubious at best, variations on this scenario continue to occur. Numerous members of the IRR have reported receiving calls and letters from recruiters purporting to be able to "help" them in the face of impending call-ups, which ultimately did not materialize. The bottom line is that you should beware of recruiters bearing gifts. If you do receive a legitimate call-up, it will not come from a military recruiter.

Failing to Report, Delays, Deferment, Exemption, & Separation

Failing to Report

Military policy is that a member of the IRR who fails to comply with an order to active duty can be reported to civilian authorities as Absent Without Leave (AWOL).[7] Moreover, IRR servicemembers ordered to active duty typically become subject to the UCMJ on their reporting date, regardless of whether they actually report to duty.[8] A servicemember found guilty by a court-martial of these charges could face jail of up to five years,

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[7] See, e. g. , Army Regulation 635-10, para. 6-4 (Jan 2006)
[8] UCMJ 802. 2(a)(1)

loss of pay, loss of rank, and a dishonorable discharge.[9] While the Army has recalled thousands of IRR members since 2002, more than 25 percent have failed to report. To date, no known IRR member has been arrested or court-martialed for failing to appear.[10] The most negative reported event has been for a member of the IRR to receive an administrative discharge of "other than honorable" from the IRR—a discharge that does not affect the benefits previously earned by a servicemember. Of course, this policy can change at any time. A servicemember who considers failing to report should review the section on failure to report to activation of a reserve or National Guard discussed in detail in Chapter 18, "Reasons for Early Discharge or Separation."Members of the IRR not wanting to take any risk of criminal sanction must either report to duty for their mobilization or seek a delay, deferment, exemption, or separation.

While each service has its own specific procedures and rules for granting delays, deferments, exemptions, and separations, they generally follow a similar template. Under these general guidelines, the ability of any servicemember to receive a delay, deferment, exemption, or separation is left to the discretion of the commanding officer of the call-up unit. Therefore, it is important that servicemembers seeking any modification to their mobilization orders are knowledgeable of the rules and their rights. If you feel you have been wronged by the military and are unable to get your issue resolved with the command, there are additional steps you should take, including filing a complaint with the appropriate inspector general or equal opportunity office, contacting nonprofit, non-governmental organizations that provide information to military members, and consulting various other resources including veterans advocacy groups, military legal assistance officers, and, in some instances, your member of Congress or a private attorney.

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[9] Manual for Courts Martial Appendix 12

[10] In fact, to date no known member of the IRR who failed to report has had an AWOL or deserter warrant issued. Nevertheless, the Marines have recently indicated that, for purposes of conducting an administrative board, they plan to recall several members of the IRR who were wearing their uniforms during political demonstrations.

Delay

A delay is a change in a servicemember's initial report date that does not cancel his or her mobilization orders. Delays are usually authorized for two months and are rarely given for longer than four months beyond the initial report date. The military grants delays in several situations including those where the servicemember:

a. is a new birth mother or new adoptive mother;
b. is a single parent, or in some instances, a dual military parent;
c. is facing pending minor criminal charges or confinement;
d. is hospitalized or is recovering under the direction of a doctor for a temporary health problem; and
e. has a temporary hardship or personal hardship that would threaten the health, welfare, or safety of another. While there is no exact definition of what constitutes a hardship, it usually involves an extreme financial, physical, psychological, or emotional problem of one of your family members that requires your active assistance. Examples include: the death or severe illness of a spouse, leaving the servicemember responsible for the care of a child; disability or severe mental illness of a parent; or a serious accident or injury to multiple family members that places important responsibilities on the servicemember.

Deferment

Unlike a delay, a deferment usually requires the cancellation of a servicemember's initial set of mobilization orders even though another set of orders may be issued at a later date. Deferments are generally given when a servicemember's situation is expected to last beyond a few months but is not seen as a permanent limitation. The most common forms of deferment are for medical injuries, illnesses, or family hardships that will extend beyond several months. For example, servicemembers who are battling cancer may receive an extended deferment until they are able to recover from their illness. Similarly, servicemembers dealing with short-term psychiatric conditions are often granted deferments because their disorders and medicines would preclude them from any deployment. (Theoretically, that would cover PTSD from previous deployment.) Likewise, servicemembers attending college, graduate school, or medical residency training often seek deferments until completion of their studies. While these

deferments are given much less freely than cases involving hardship or illness, they are still viable options for IRR servicemembers to consider.

Exemption

An exemption occurs when a servicemember's orders are cancelled and will not be re-issued, but the servicemember is still not fully discharged from the military. These instances are very rare because short-term problems usually result in a delay or a deferment while permanent difficulties result in a complete separation. Nonetheless, in rare circumstances exemptions will be given. Currently, servicemembers receive an exemption if they are HIV-positive, or if they are enrolled in divinity or theological school. While each service determines its own policy on exemptions, and these policies can be modified from time to time, exemptions are the exception to the rule and are rarely granted.

Separation

The fourth option preventing a servicemember from being mobilized to active duty is administrative discharge from the military. There are several reasons soldiers can be discharged from the IRR. Most of the reasons for separation from inactive duty mirror the reasons for separation from active duty. These include:

a. a permanent physical or mental health disability,
b. a physical or mental condition short of a disability that still interferes with your duty performance, such as a personality disorder, obesity, or allergies,
c. homosexual conduct,
d. conscientious objector, pregnancy and childbirth, dependency,
e. hardship,
f. the surviving son or daughter of a parent or sibling killed, captured or 100 percent disabled in the line of duty. [11]

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[11] Contrary to popular belief, you no longer need to be a sole surviving son or daughter to request a discharge. Rather, you need only be a surviving son or daughter or even a surviving brother or sister. The only requirement is that someone in your immediate family was killed, captured, missing, or 100% disabled while serving in the armed forces.

Approaching the Command

A servicemember who believes he or she qualifies for a delay, deferment, exemption, or full discharge will find the best result if he or she approaches the command prior to reporting. In some cases, the servicemember ideally should approach the command prior to receiving orders. Nevertheless, approaching the command prior to receiving orders is problematic. First, approaching the command early puts the servicemember on the command's radar. Second, it is often difficult to determine just who is the commander of members of the IRR.[12]In the army**, y**ou should be able to identify your IRR command from the army human resources Web site at https://www.hrc.army.mil/site/Reserve/contact_rssc/default.asp. To approach the command, the servicemember should first gather evidence and support for the request. Kinds of support to gather are letters from appropriate professionals, family members, and friends; medical or court records; and official records such as birth certificates, marriage licenses, and adoption papers. More detailed information on kinds of support can be found in Chapter 18, "Reasons for Early Discharge or Separation."

Getting Help

The Department of Defense and each military service has specific guidance on mobilization and involuntary active duty. In response to the wars in Iraq and Afghanistan, the Army has set up a toll-free Mobilization Hot Line at (800) 325-4361 that may be able to answer some of your mobilization questions. Additionally, many of the directives and regulations concerning mobilization can be found at www.defenselink.mil/ra/html/mobilization.html. In the alternative, these regulations can be found by doing an Internet search for the specific service regulation you are looking for. The primary regulations concerning mobilization are below:

DoD Directive 1200.7, Screening the Ready Reserve (November 18, 1999);

DoD Directive 1235.10, Activation, Mobilization and Demobilization of the Ready Reserve (July 1, 1995);

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[12] The army is attempting to resolve this problem by creating the Individual Warrior system. Currently, there is not enough information about this system to see if it adequately resolves the problem.

AR 601-25, Delay in Reporting for and Exemption from Active Duty and Active Duty Training (July 15, 1984);

BUPERS 1001. 39 D, Administrative Procedures for Naval Reservists on Inactive Duty (February 20, 2001);

MCRAMM (MCO P1001R. 1J), Marine Corps Reserve Administrative Management Manual (March 10, 1999);

AFI 10-402, Mobilization Planning (January 1, 1997);

AF Manual 36-8001, Reserve Personnel Participation and Training Procedures(January 1, 2000).

You should visit www.veteransforamerica.org and other veterans Web sites. In addition to having an abundance of information on their WebPages, these organizations can help you reach out to other veterans or to veterans groups as well as counseling groups to help ensure you understand your rights and to help assist you in resolving your specific problem.

Major Brian Baldrate received his B. S. from the United States Military Academy in 1995. After graduation, he served as Armor officer in the First Cavalry Division. As a scout platoon leader, Brian deployed to Kuwait and trained coalition forces in developing a plan for Kuwaiti national defense while performing reconnaissance and security of the Iraqi-Kuwaiti border. In 2000, Brian earned his J. D. and M. P. A. from the University of Connecticut. He was valedictorian of the law school and editor-in-chief of the *Connecticut Law Review*. Following law school, Brian served as a criminal prosecutor for the Third Armored Cavalry Regiment, where he prosecuted numerous federal felonies including drug distribution, rape, and attempted murder. In 2003, Brian deployed to Iraq as part of *Operation Iraqi Freedom*. There he advised commanders on the laws of armed conflict and led sensitive investigations involving fratricide, war crimes, and allegations of detainee abuse.

Brian received the Bronze Star Medal for his efforts in bringing the first-ever trial before the Central Criminal Court of Iraq and leading efforts to restore the Iraqi judicial system in Anbar Province. Upon returning from Iraq, Major Baldrate earned his LL. M from the U. S. Army Judge Advocate General's School. After spending a year working at the Army's Litigation Division, Brian was detailed to the Department of Justice, first as a trial attorney in DOJ's Civil Division, and currently as a Special Assistant U. S. Attorney in the D. C. United States Attorney's Office.

Editor's note: We acknowledge J. E. McNeil for her very helpful comments on this chapter.

Chapter Twenty-Five
Family Law Issues for Servicemembers

By Mark E. Sullivan

For many people, separation and divorce rank second only to the death of a loved one in terms of emotional turmoil, pain, and stress. The purpose of this chapter is to provide an overview of the process and clarify the legal procedures. A good lawyer can help in establishing your goals and propose a positive strategy to achieve realistic results.

There are five issues which may be involved in the breakup of a marriage: property division, alimony, child support, custody/visitation, and divorce. Each of these can be resolved by consent (a negotiated settlement) or contested in court (resorting to what is called "litigation").

At the outset it is important to note that not all states handle divorce in the same way. In some states, such as New York and Wisconsin, divorce is a package deal. All issues must be resolved by the parties (through agreement) or by the court (through trial) before the divorce is granted. "My wife/husband won't give me a divorce" is sometimes heard in these states, because the only alternative to a long, messy and expensive trial is a deal driven by the other party. Divorce is the end result of the process. When you get your divorce, everything else is already in place. The other issues in the case are raised by law or court rule, and when one party files for divorce, all issues are presented to the court for a decision.

In other states, such as Delaware and North Carolina, a lawsuit for divorce is not necessarily joined with the other issues. These other issues may be presented to the court before or after the lawsuit for divorce is filed. Custody may be contested or settled in a different lawsuit or joined in the divorce suit. The same applies to child support, alimony (also called "maintenance" or "spousal support") and property division (also called "equitable distribution"). (See "Property Division," below.) In these states, divorce is not necessarily the *end* of the case; it may be the *beginning*. Parties may resolve these and other issues through court decision or out-of-court agreements. Each of these issues can be heard by the court on different timetables, before or after the divorce.

Understanding the impact of filing for divorce, the issues that are involved (or kept separate), the timetables and the deadlines would be the starting point.

Going to Court

If you must litigate (participate in a lawsuit), you need to know something about the process. You can't play ball if you don't know the rules. Litigation always starts with the filing of a complaint or petition along with a summons. The complaint or petition states the facts of the case and what relief is requested. The summons states that the other side has been sued and has a certain period in which to respond. Following the service of these papers, the other side usually files an answer.

Depending on state or local rules, additional documents may have to be filed by the parties. They include financial affidavits or declarations, stating the incomes and expenses of each party, or property inventories, showing what each party claims to be marital or separate property and debt, as well as the value claimed for each item. Sometimes courts also require parties to file a copy of tax returns, pay stubs or other financial documents.

Contested divorce cases can take a long time to resolve. While the entire case is pending, temporary, interim, or emergency hearings may be requested. For example, a party may ask for an emergency ruling on issues of custody or visitation, especially when the parents are engaged in a 'tug of war' or the children are in serious danger. Courts often consider the need

for interim spousal support or child support at a temporary hearing in the weeks or months after a case is filed. This is a short hearing, perhaps a couple of hours in length, to allow immediate decisions on important matters which need to be decided promptly. This is often done to protect the financially disadvantaged spouse during the divorce process. Some courts use the time after filing to conduct a hearing on *interim allocation*, which means a temporary division or distribution of marital assets pending the final hearing. This also can be useful in providing each party with sufficient means to pay the lawyers, psychologists or accountants required to assist in resolving the case or preparing for trial.

Getting information for your case

How to do you get information which you'll need to assist in preparing your case? You might find the answer in the "discovery" stage of litigation. "Discovery" means finding out information that the other side has. Many state court rules allocate to discovery the first 90-120 days after the lawsuit has been filed. Even more time is allowed in complex cases. This is probably the most important part of trial preparation—finding out what the case is all about from the other side's perspective.

"Informal discovery" usually means obtaining information from the other side without formal notices or requests. This can be done secretly by making a copy of a spouse's bank statement and then returning the original to the original file folder back at home. It can also involve getting copies of your joint bank statements or financial statements from the bank, your joint tax return from the tax accountant or IRS, or your joint deed and real estate closing statement from the attorney who closed your home loan. These are quick and inexpensive ways to get the documents your attorney needs.

An attorney can also request certain papers, receipts, titles, or deeds from the other side. If the adversaries are friendly and the marital dispute is under control (which often depends on the personalities of the attorneys and the level of animosity between the parties), it is possible to save hundreds or even thousands of dollars by agreeing on a "discovery plan." This allows each party to request in writing relevant documents, within reason, from the other side. Although no penalties or sanctions are incurred for failure to produce or reply (as is the case with formal discovery),

considerable time and money can be saved if the parties and their lawyers are willing to cooperate.

Formal or traditional discovery, on the other hand, has structures, deadlines, definitions and rules that must be obeyed. Here are some examples:

Interrogatories are written questions that are sent to opposing counsel. They must be answered by the opposing party under oath within a certain number of days (usually around 30).

Document requests require the other side to produce documents at a specified place and time for inspection and copying.

A *request for entry upon land* can be used to get into the office or residence of the other party to inspect, inventory, appraise or photograph (or videotape) what's there.

A *deposition* is oral testimony given under oath in front of a court reporter. Generally the deposition is taken in a lawyer's office and no judge is present. It results in a computer-printed transcript of the testimony and it can be very useful in exploring what facts or data the other side has, what accusations will be made, and how the other side is thinking about the case.

"We're going to court!"

Going to trial doesn't just happen. It is the end to a long process that includes meeting with your attorney, rehearsing for the court appearance, getting an overview of questions that *will* be asked and that *may* be asked, reviewing documents that will be introduced as evidence, preparing witnesses and exhibits for introduction, and setting the case on the court's calendar for weeks or even months in the future. Lawyers frequently prepare written briefs that summarize and explain points of law that may be at issue in the case. Sometimes there is a pre-trial conference with the judge to organize the case and focus the issues.

On the day of trial, the judge will usually "call the calendar," which means announcing the names of the cases for that day. Yes, there are *other* people getting a divorce, and yes, they also have *their cases* set on *your day*! It is the job of the judge to figure out which ones can be tried that day and which ones must be rescheduled ("continued"). If a continuance is not ordered, your case will be tried. The trial usually consists of several sections:

The plaintiff's (or petitioner's) case involves his or her testimony, immediately followed by opposing counsel's cross-examination. At this point, the plaintiff's exhibits and documents often are introduced. Then the witnesses for the plaintiff testify and are cross-examined by the other side. Likewise, they may offer documents into evidence.

The defendant (or respondent) has the same opportunity—to give testimony, present evidence, and offer witnesses. Likewise, the plaintiff's attorney may cross-examine (ask questions of the defendant during the defendant's part of the trial).

Most divorce or domestic relations cases are heard by a judge. Occasionally state law allows parts of the case to be heard by a jury. The lawyers will have the opportunity for final argument or "closing statement," in which they summarize their evidence and argue for the results they seek. Then comes the court's decision. This may follow closing statements, or it may come days or weeks after the trial has concluded if the judge spends some time thinking about the decision to be rendered (often called "taking the case under advisement."

Once the decision has been made, it is noted in the court record and announced (formally in court or sometimes informally in a meeting with the attorneys in the judge's office or through a telephone conference). If the parties do not participate in the decision conference, they will be notified by their attorneys.

Entry of the order, judgment or decree is the next stage. Sometimes this is done by the court, and sometimes the attorneys write up a decision for the judge to sign. This often requires their meeting together or with the judge while they are preparing *findings of fact* for the judge on contested issues. This process can take days, weeks, or even months in a complex or hotly contested case.

Alternatives to trial

There are several non-trial options worth considering: mediation, collaborative law, coaching, and negotiation. If handled correctly, these options generally are less expensive and less time-consuming than a trial.

Mediation is informal dispute resolution in which a neutral third party, a trained mediator, helps you and your spouse reach an agreement. The

mediator's role is to assist the parties in resolving their conflicts. Choosing sides or giving legal advice is not a mediator's role. The mediator does not make decisions, but rather encourages both parties to work together to make their own decisions. Mediation is an increasingly popular option and generally much cheaper than a trial. Sometimes a free or inexpensive court-sponsored mediation program is available for part or all of a case. Every state has its own requirements for mediation. In some states or counties it is optional, in others the court may require it. Independent of the courts, the parties can hire a mediator to conduct a settlement conference if they are willing to share the cost.

A *negotiated settlement* can be a productive way to settle the parties' dispute. In this scenario, both parties and their lawyers attempt to resolve all or some issues in the case. Taking some of the issues off the table will likely make the trial shorter and the process less expensive and less stressful than it otherwise would be. It is also a good way to bargain through the items on the table and see if there is room for negotiation. Negotiations usually involve phone calls, e-mails and letters; they may even involve a "four-way conference" that brings everyone into the same room to try to get the case settled.

Collaborative law means agreeing to negotiate a settlement without going to court at all. The parties agree to cooperate fully in the settlement negotiation process and to provide freely and promptly any documents or information requested. The attorneys help to facilitate the negotiations and craft the settlement document, but they cannot go to court; they are fired and new counsel is hired if litigation is desired by either party.

Coaching involves hiring an attorney to advise you on how to handle your own case without a lawyer. When a case is simple and straightforward, this can save you money while teaching you how to present your case to the judge on your own. If your case is a basic uncontested divorce without other issues, this could be effective. It could also be useful if your ex-spouse has charged you with missing a child support payment but you have a legal excuse (such as loss of your job), or if you want to defend yourself in a simple visitation dispute. It is *not* a good idea for complex cases; that would be more like do-it-yourself brain surgery!

Mediation, collaborative law and negotiation are give-and-take situations. Nothing can be demanded and usually a good deal of compromise is necessary. It is important to examine exactly what you want

to happen in your case and to be aware of your "bottom line." Fair negotiations, flexibility and an open mind are essential to the success of these alternate resolutions. Bringing your anger over past events into the ring will ensure the failure of any settlement offers.

When will these alternatives work? They work best when both parties are willing to work together to reach an amicable settlement that is in the best interest of all concerned. When are these three options not desirable? They are less likely to be successful if a case involves physical abuse, substance abuse, persistent anger or passivity, or mental health problems for one or both spouses (such as severe depression). In these situations, attempting to reach agreement may be a waste of time and money for both parties.

Getting the other side to agree to one of these alternatives might involve your pointing out the large amount of money and time to be saved if there is no trial. It could involve your agreeing to pay for the cost of the procedure, either fully or else as an advance till the parties agree otherwise. And it might involve your pointing out, if this is true, that the rules of court in your district require the parties to attempt mediation in good faith before they can get into a contested court proceeding.

Paternity

What about paternity— what can be done through the armed services? Paternity is considered a civil matter by all five branches of military service—Army, Navy, Air Force, Marine Corps and Coast Guard. They will not get involved in deciding whether a child belongs to a servicemember or not. To determine paternity, you'll have to get a court order for paternity tissue-testing (also known as "DNA testing", and formerly known as "blood tests"). Once you have that, the military will require the servicemember to cooperate. Upon completion of the testing, you can go forward with the support case if the member is found to be the father of the child.

Custody and Visitation

Gone are the days when mothers automatically get custody of their children. While most agreements today still give the mother custody, fathers

obtain custody in about half of the contested custody cases in the United States today. The courts of most states do not establish a preference for either mother or father, but they do look very closely at which parent will best promote the welfare and interests of the children of the couple.

To help make a decision on custody, the courts usually look at several factors. Among these are:

- Who has primarily taken care of the child during the marriage (washing, feeding and clothing the child, for example, or helping the child with homework),
- Who has the best approach to discipline,
- Who has cared for the child since separation (if the couple has already separated),
- What work schedules either or both parents have, and
- How each parent can provide for the physical, emotional, educational, religious and social needs of the child.

Custody—Where To File

Ordinarily a custody suit is filed where the child is presently residing, so long as that is the "home state" of the child (that is, where the child has lived for the last six months). If there is no such state, then the fall-back place for filing is any state where the child and one parent are living and which has significant contacts and connections (such as former or present neighbors, teachers, doctors, relatives and so on) with the child. Under the Uniform Child Custody Jurisdiction and Enforcement Act (a state law) and the Parental Kidnapping Prevention Act (a federal law), the court in a custody case must always inquire into whether the child or children have been the subject of custody litigation in any other state. If a judge finds that another court has made a proper award of custody, the judge should ordinarily refuse to rule on the case. Only if the first court has released or transferred jurisdiction to the new state court, because no one lives in the first state anymore, may that court assume jurisdiction to hear the custody case.

Modification of Custody

No custody order is ever *permanent*. However, once a parent is awarded custody in a court order, the judge can change the custody order only if there is a substantial change of circumstances affecting the best interest and welfare of the child or children.

Child-Snatching

No agreement or court order can prevent parental kidnapping. If you suspect this might happen, be sure to go to court for a court order; although the order cannot stop a kidnap situation, it can result in serious consequences for the wrongdoer, including contempt of court and possibly arrest. Court orders of one state can be filed and registered in another state and thus, for purposes of enforcement, be treated as if they were issued by the second state.

Visitation Rights

The one who doesn't get custody—the "noncustodial parent"—ordinarily is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the times and terms of visitation, or it can be detailed and structured, with certain days and times set out with great specificity. It is usually best to obtain a fall-back visitation schedule instead of relying on or hoping for agreements on "reasonable and liberal visitation" when the parties might have disagreements about what this means.

Joint Custody

Joint custody may, in some states, mean shared physical custody. In other places, it means shared decision-making. Since there's no single definition of "joint custody," let's look at some *general information* on what it means:

Joint legal custody. This term means that the parents will share in making all major decisions that affect the child. These decisions might include whether or not the child will go to private or public school, undergo elective surgery, or move with one parent to another state. It does not mean that the parents will jointly make day-to-day decisions. Neither does it mean that the child will spend the same amount of time with each parent. Joint legal custody means that both parents will need to cooperate with each other and reach agreements where the child is concerned. This may not be easy to do. Joint legal custody will require both parents to discuss the child's needs more frequently than with a sole custody arrangement. If you and your spouse have been able in the past to set aside your other differences and discuss and agree on matters concerning the child, joint legal custody may be an acceptable solution. However, if your disagreements include issues concerning the child, the arguments and disagreements will continue well beyond your divorce and will frustrate any attempt at true joint legal custody.

Joint physical custody. Sometimes referred to as "shared custody," this means that each parent will have an equal or nearly equal amount of time with the child. This can be accomplished in many ways. For example, the child can alternate weeks with each parent or spend three and a half days of each week with each one. However, the child must have a permanent address for purposes of school and medical records, so one parent's home should be designated as the "primary residence."

Joint physical custody was at one time seen as a wonderful answer to the problem of a child's growing up without the opportunity to spend equal time with both parents. Ideally, a shared custody arrangement means that both parents maintain a "real home" for the child, including a room, toys, and clothes. This helps reinforce the idea that families are *forever*. In sole custody arrangements, the non-custodial parent's every-other-weekend visits may not allow a real parent-child relationship to form or continue. Both parent and child are trying to do everything in one weekend.

A joint physical custody arrangement can allow both parents to spend real parental time with the child and thus develop a better relationship. On the other hand, recently it has become apparent that joint physical custody is not the ideal solution it was once thought to be. Too often the child may be shuttled back and forth between parents and have no real feeling of a "home." Consistency is often difficult to achieve in such an arrangement.

The rules may be different at each parent's home—bedtime is 8:30 at Mom's but 10:00 at Dad's. Schoolwork sometimes suffers. For example, homework assigned while the child is staying at one home, but due to be turned in when he is at the other, can be inadvertently overlooked. Friends are different at each home and harder to keep up with, the babysitter may be different each time, and so on. Children who have difficulty adapting to change may find joint physical custody too chaotic. Generally, the parents must work very hard at such an arrangement. Joint physical custody seldom reduces hostility between the parties and may even increase it. It requires two parents who maintain a commitment over time to put the needs of the child first and are able to create a conflict-free zone for their child. Parents who choose joint physical custody must be willing to have open and frequent communication with each other. Joint physical custody requires two parents committed to be co-parents.

Joint physical custody is not advisable where there is a history of domestic violence, drug or alcohol abuse, child abuse or neglect by a parent, or where a parent suffers from a debilitating mental illness. Since joint physical custody requires joint decision-making and a tremendous amount of cooperation between the parents, joint physical custody is not appropriate where there is a history indicating that the parents are unable to agree on child-rearing. In addition, joint physical custody is not a good choice where the child involved becomes overanxious or confused when asked to cope with numerous things or has a temperament that makes it difficult for him or her to adapt easily to change.

Getting Joint Custody in Court

If you and your spouse cannot reach a decision concerning joint custody, you will have to ask the court to award joint custody. You should first decide whether you want joint legal custody, joint physical custody or both. Here are some pointers:

If you want joint physical custody, you must have a workable schedule to propose.

You must also be able to show that you have the time, the room and the ability to care for the child, and that such an arrangement will be the least disruptive to the child.

Beyond that, for both joint legal and physical custody, you should be able to show to the judge that you have always been substantially involved with the child's upbringing and have previously helped care for and make decisions concerning the child.

You should be able to demonstrate that you and the other parent have usually been cooperative and communicative as to the child and that you have the ability to continue this part of your relationship during your separation and divorce.

Finally, all of your evidence should indicate to the judge that a joint custody arrangement would be in the best interest of the child.

Attorney Fees

Sometimes the court can award attorney fees in a custody case. Whether the judge can do this is a question of state law to discuss with your lawyer. Frequently the state laws or rules require that the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit. The amount of the award and the means of payment are usually in the court's discretion, which means that you shouldn't count on anything.

Custody, the Single Parent, and Enlistment

An important fact for single parents to know is that you cannot have custody of a child or children during your first enlistment. Single parents with custody can't enlist. DoD Instruction 1304.26 states the "The Military Services may not enlist . . . unmarried individuals with custody of any dependents under the age of 18." The reason is that the armed forces view single-parent custody as inconsistent with the training and mobilization needs of the military at the initial enlistment stage. The Army regulation, for example, states:

Persons who are sole parents would be placed in positions, as any other soldier, where they are required at times to work long or unusual hours, to be available for worldwide assignment, and to be prepared for mobilization, all of which would create conflicting duties between children and military requirements for the sole parent.

So if you want to enter the armed services, you'll need to get an order to transfer custody of your child or children. A power of attorney will not suffice. You must have a court order transferring custody.

Suppose that the mother wants to enlist and proposes that *her mother* (the children's grandmother) receive custody. Can you transfer custody to a relative instead of the father? If you comply fully with state law requirements, then state law will probably let a judge transfer custody of the children to the grandmother if, for example, the father doesn't appear and contest, or if he consents to the transfer. The requirements of state law would include:

a) you have located the father and properly served him with the initial complaint and summons;

b) you also gave him reasonable advance notice of the hearing; and

c) you filed suit in compliance with the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act), which requires that (ordinarily) the children must have lived in your state for at least the last six months preceding the filing. In other words, your state court must clearly have *custody jurisdiction*.

The usual route you would take to move forward in this case is to *obtain the father's consent*. The general rule is that the other parent—in this example, the father—cannot be excluded from custody, without his consent, unless he is unfit due to abandonment, abuse, neglect or other conduct inconsistent with parental rights and responsibilities.

If he is *not unfit* but will agree to give custody to a relative, then you should file for custody, serve the father and grandmother, and prepare a consent order or "agreed order" for the transfer of custody to the grandmother. Make sure you have secured the father's *unconditional consent*.

The order cannot state that it is granting "temporary custody" to the grandmother. These words amount to a *red flag*! The order needs to be for full, final, permanent custody to the other party. In fact, the Army's discharge regulation, "Active Duty Enlisted Separations," AR 635-200, has a special provision covering discharges based on misrepresentation of intent with regard to legal custody of children. If you receive such a discharge, you will lose all the benefits you were hoping to gain by serving in the armed forces. All your work will have been for nothing.

What if the other parent isn't unfit and won't consent to a transfer of custody? Then you should consider transferring custody to him or her.

Deployment and Family Care Plans

Since they have to be prepared for deployment on short notice, certain servicemembers must have a family care plan to provide for the care of dependent children. A servicemember, upon first becoming a single parent or marrying another military member, must notify his or her commanding officer immediately (i.e., within 30 days for active duty members and within 60 days for Guard or Reserve personnel). After that, the member has 60 days (90 for Guard/Reserve members) to submit to the individual's commanding officer an acceptable family care plan that complies with military regulations. This means that it must include provisions for custody to the other parent when his or her identity and whereabouts are known. This same rule applies to servicemembers who are transferred from one base to another; they have 60 days to find a short-term child care provider who lives in the local area and who will agree to be listed on the family care plan.

Each branch of service has its own family care plan form. A military member must include in his or her family care plan plans for:

Short absences (30 days or less), such as TDY (temporary duty assignments) and Guard/Reserve annual training; and

Longer absences, such as advanced schooling, deployments, extended TDY, and other assignments.

The instructions for preparing an acceptable family care plan include requirements for:

A special power of attorney to allow the designated agent to execute documents in the absence of the SM-parent; and

An agreement signed by the caregiver that he or she will provide care to the child or children and has been given all needed legal documents for this purpose.

Family care plans also should include proof that a caregiver has been briefed on her or his responsibilities, procedures for accessing military and civilian facilities and services (such as schools, tutoring, doctors, clinics, and hospitals), use of a health care power of attorney, arrangements to ensure the self-sufficiency and financial security of family members, and arrangements for child care, education, dental and medical care, and family activities (e.g., sports, religious activities, schools, scouting, and clubs).

The family care plan should specify the complete arrangements for care of the family members—logistical, legal, medical, educational, religious, and social. It should make provisions for current ID cards for family members and medical care for them. The latter means their enrollment in the Department of Defense computerized database, which keeps information on servicemembers and their family members for medical care purposes; this is known as DEERS (Defense Eligibility Enrollment Reporting System). The medical insurance plan which provides for servicemembers and dependents is known as TRICARE. It provides reimbursement for covered medical costs after payment, in most cases, of an initial deductible amount and a co-payment for the medical expense, just as with Blue Cross and other private medical plans. The family care plan should contain the names and phone numbers of pediatricians and dentists.

Failure to prepare, execute, and have approved an acceptable family care plan within the deadlines shown above can result in involuntary separation from the armed forces for enlisted members, discharge for officers; or processing for discharge or transfer to an inactive status for Guard/Reserve members.

The biggest legal mistake in family care plans is designating as the child's caretaker or custodian someone other than the child's other parent. Typically a divorced servicemember will choose his or her new spouse as the child's guardian rather than the former spouse. This often is done out of fear that the former spouse later will get legal custody of the child and then apply for child support.

Such an exclusion of the other parent from temporary custody during mobilization or deployment often leads to unnecessary litigation and increased legal fees for everyone. In a typical case, the ex-husband finds out that his former wife, now remarried and in the Guard or Reserve, has been activated and is on her way to Fort Swampy or perhaps to Iraq. He then turns up at the courthouse (to request custody) or at the house (to take custody). Imagine the time, expense, and burden for the new husband and his military wife in defending against this custody claim. Consider the cost and work involved for the ex-husband and his attorney in filing a motion for change of custody, locating the mother, serving her, setting an immediate hearing, and then struggling with the claim of the servicemember-mother that, under the provisions of the Servicemembers Civil Relief Act, this motion cannot be heard because she is entitled to a

stay of proceedings. Think about the difficulties imposed upon the mother, who often must drop or defer her military duties to assist in the defense of a lawsuit.

Child Support

There is no set amount that is "enough child support" in any given case. Child support varies according to, among other things, the needs of the child or children, the incomes of the parents, the parents' reasonable needs and the accustomed standard of living of the child (or children).

When one parent is in the armed forces, however, there are some rules for setting child support. Each of the military services (except the Air Force) has regulations for interim family support in the absence of a court order or written agreement between the parties. The local JAG office can provide you with specific guidance for "regulation support." If this is too much or too little, the courts can enter an order which will supersede the interim support amount and be binding on both parties, usually by means of a garnishment order.

If you need help in getting immediate support, you should contact a military legal assistance attorney. Legal assistance is provided irrespective of the location or branch of service of the servicemember. Thus a Navy wife whose husband is stationed in San Diego can get help at a Coast Guard legal assistance office in New Orleans, and the husband of a sailor at Naval Sub Base Pearl Harbor can obtain legal assistance from the Army at Fort Hood, Texas.

Legal assistance attorneys at military bases are well versed in nonsupport procedures, and they can also help with the name and location of the unit of the sponsor (or military party). The legal assistance attorney will even write the nonsupport complaint letter for you.

If the parties can reach agreement on an amount of child support, then a less expensive resolution would be to set out that amount in a separation agreement. If the separation agreement sets out a specific sum, that figure is what should be paid as child support. The agreement may be incorporated into a divorce decree, which would then make it the same as a court order.

Child support is usually decided by a court in the United States if one of the parents lives there or has moved back to the U.S. A child support case is

usually heard in the county where the child is living, but there are some complicated rules which come into play if the parties are in different states. If, on the other hand, the child remains overseas, then the lawsuit for a determination of support may usually be brought there, that is, in the country where the child lives at present. Here's a simple rule to remember: if you want to be able to enforce the child support decision "stateside," then you should bring the lawsuit in the U.S. If (on the other hand) you want to enforce the lawsuit in Germany (Italy, Korea, etc.), then you should consider filing the action overseas.

A military legal assistance attorney can help you contact a servicemember's commander about nonsupport, but he or she cannot start a court action for you. You will have to hire a civilian attorney, but a JAG officer can help you to find a lawyer to handle the child support problem or else refer you to a child support enforcement agency.

Child Support Guidelines

While there is no "right amount" of child support, all states have adopted child support guidelines to give some general guidance on the "usual" amount of child support in most cases, and these are usually used by the judge in setting child support, as well as by the parties or attorneys in settling support cases. In many cases both of the parents' incomes are considered, along with day care expenses and medical costs. Some guidelines base child support on a percentage of the noncustodial parent's income.

What is "income?" Federal and state laws define this very broadly. In addition to base pay, income includes all entitlements, both taxable and non-taxable. Thus the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS) are included in the calculations, even though they are not subject to state or federal taxes. In addition, disability compensation from the Department of Veterans Affairs (VA) and Combat-Related Special Compensation are subject to the income guideline computations.

Timing is everything. Beware of child support being set at a time when the servicemember has a temporary peak in pay. Such a time might be when he or she is serving in a combat zone. Not only may the servicemember be getting a family separation allowance, combat pay and/or hostile fire pay, but also the member's regular pay in a combat zone is exempt from federal income tax up to the highest level of enlisted base pay, which at this writing is more than

$6,000. Setting the support temporarily high will only impose a hardship on the servicemember when he or she returns from the battlefield and is required to file a motion to reduce the support. The high level of support will continue while the reduction motion is pending. A servicemember can sometimes avoid such a high support setting by using, if appropriate, the Servicemembers Civil Relief Act to ask for a stay of proceedings in order to put off a support hearing while he or she is unavailable.

The guidelines of most courts are flexible and allow for a child's special needs, extremely high or low income and other factors the court finds to be important. If you are the custodial parent and believe that the guideline amount is not sufficient, start by making a list of all monthly expenses for your household and apportion the expenses between yourself and the child or children. Be sure to set aside a certain portion of the housing payment (whether rent or mortgage), utilities and food for each child. Also consider whether to apportion such expenses as car payments, gasoline and medical bills for each child. *You* are responsible for support of the child or children, and *you* are the one who best knows the facts, needs and expenses. The judge can go outside the guidelines, but it is *up to you* to prove the need for a variance from the guidelines.

Visitation and Child Support

Reducing child support because of the other parent's refusal to allow visitation is not allowed unless the court order or separation agreement specifically provides for a reduction. If it doesn't, then the child support payment should remain the same. Similarly, the supporting parent cannot reduce the child support by other amounts, such as the cost of a plane ticket for visitation, or the cost of gifts, food, travel or clothing for the child, unless the court order specifies that he or she can do so.

Just as denial of visitation is not a legal excuse or justification for withholding child support, neither is lack of child support a legal excuse for refusing the other parent visitation rights. The parents do not have the right to try to link together these separate obligations. Even if a parent is not paying any child support, he or she is still entitled to visitation. And even if a parent is not allowing visitation, the children are still entitled to child support. That is the general rule.

Termination of Child Support

In general, child support ends at the child's eighteenth birthday (or twenty-first, in some states) according to state law, unless it is extended or reduced by agreement of the parties or by court order. It can be extended in some states through high school graduation (if that is later than age eighteen) or even through college, depending on state law. Regardless of what state law says, a separation agreement may set at a later specific date for the end of child support, such as upon graduation from college or at age twenty-one.

Child support may end earlier than the above if the child is emancipated, such as by joining the military, moving away from home or getting married. Child support doesn't automatically end if a child goes to live with the other parent; the parent who has been paying support must petition the court for an order to terminate the current payments of child support and to start the other parent paying child support. In some states the judge can decide whether to extend child support to a later date without the agreement of the parties, such as when the child is incapable of self-support due to a mental or physical disability.

Modification of Child Support

If the child support set out in a court order is not enough, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was filed. Such a change may consist of increased living expenses, reduction in your income, the impact of inflation or an increase in the earnings of the other parent. When the parents cannot agree, the court must resolve the matter and the parent who has custody (the "custodial parent") must prove that present child support is inadequate.

The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his or her job or has had a substantial pay cut could petition the court to reduce the child support payments that he or she is making.

Methods of Payment

If the court order says so, the child support may be made payable through the court or through a state agency. Payment in this manner is the preferred method (for both fathers and mothers, regardless of who's paying) because:

- It allows the parents to be sure that payments are properly recorded or credited; and
- It also avoids problems over whether the money was paid (as when child support payments are made in cash directly to the custodial parent and there is no receipt or other document to show proof of payment).

In no event should you pay the other parent in cash; this may be impossible to prove without a receipt. Nor should you pay the minor child or children directly. Be sure you make your payments according to the agreement or the court order.

Medical Care—A Hidden Factor

Military dependents are entitled to medical treatment at military hospitals and are covered for civilian health care purposes by TRICARE, which covers a portion of allowable medical expenses. There is an annual deductible amount (per person and per family). For more detailed information, contact the TRICARE office at the nearest post or base.

Dental insurance is also available. This is a voluntary election that the military member may choose; the premium is deducted from the member's pay.

There are several alternatives for health care coverage:

One option for parents who are both working is to have each parent maintain insurance. This provides "double coverage" (through TRICARE and a less expensive employer-sponsored plan) and reduces uncovered medical expenses to a small amount. You should be cautious in selecting this option if the employer plan doesn't provide good coverage or has a high deductible amount. When this option is used, the private plan must be used first since TRICARE is always considered the secondary carrier.

Another alternative is to have the noncustodial parent maintain medical coverage (either through TRICARE or private insurance) while both parents split the uncovered portion equally. The advantage of this option to the noncustodial parent is that it puts part of the financial burden on the

custodial parent—who is the one most likely to "take the child to the emergency room with the sniffles," according to the complaints of some noncustodial parents. If there is a wide disparity of incomes between the parents, consider dividing the medical expenses in the ratio of the incomes, such as 80:20.

Another factor to consider is the payment of *extraordinary* unreimbursed amounts on behalf of the child. In case of a catastrophe, it would appear that the party earning more income should be liable for excess payments. Where, for example, the father earns more than the mother, such a clause might state that medical insurance would be maintained by the mother, that the uncovered part would be shared equally by the parties up to an annual per-parent ceiling of, say, $350, and that any uncovered expense in excess of this amount would be paid by the father.

A Problem of Definitions

What are these "uncovered health care expenses?" Depending on the policy language, the finances of the parents and the needs of the children, they might include prescription drugs, psychological counseling, dental checkups, orthodontia, eyeglasses, routine physical examinations and cosmetic surgery.

Not all of these costs can be readily foreseen. And it is just as difficult to decide whether to "spell it out" or leave it to the parents (or the judge) to work out who pays for what. A custodial mother, for example, may be wise not to specify what "uncovered health care costs" means if doing so would jeopardize an otherwise fair and generous order or agreement. A noncustodial father, on the other hand, might want to exclude specifically the areas of orthodontia and elective health care procedures from "uncovered expense" treatment. Or he might want to share in the co-payments so long as he is consulted in advance and agrees to the medical or dental procedures.

A final word is necessary about when payments are due. It is important to include a clear statement of how soon after the bill is given to the other parent that reimbursement is required. This can be ten days, two weeks or one month, for example. There is no "right" answer or choice here—just the importance of *choosing a due date,* that is, a deadline when the

reimbursement is to be made to the parent who incurs the initial expense (or to the medical provider) instead of leaving this unspecified and therefore unenforceable.

College Expenses

College expenses may be an important financial consideration if you think your child will go on to college. You should try to get the other parent to agree in writing—in a separation agreement or court order—to pay for a specified portion of these expenses for each child who attends college. Many states do not allow the court to impose a requirement on separated or divorced parents to pay for college, so this is extremely important for any agreement you negotiate with the other side.

Here are some of the items and issues that a good separation agreement will address:

- How long should the obligation last? Four years? Eight semesters? Until the child attains age 23? Some ending point should be set.
- What costs will be covered? The usual ones are room and board, books, tuition and fees. Some parents also agree on a monthly allowance for spending money for the child, or for travel to and from home, or for summer expenses.
- What are the spending limits? Few parents want to agree to finance a college education for a child at *any* college or university. The cost of some private colleges would bankrupt the average parent. Consider putting a ceiling or "cap" on the college costs, such as by specifying that the maximum shall be "the then-prevailing rate for in-state tuition at XYZ State University" or some other nearby public institution. This is fair to everyone and does not force either parent to go broke financing a college education.
- What other limits should be set? For example, some agreements state that the child must attend an accredited institution, in pursuit of a generally recognized undergraduate degree, on a full-time basis, while maintaining at least a "C" average.
- What part of the college costs will each parent pay? Be sure to set some specific percent or amount so that it will be enforceable in court if you need help in the future. Clauses that provide for the other side

to pay "a reasonable share of the child's college expenses" are *worthless* since they don't say exactly what the other parent has to pay and a judge is not going to guess what the parents meant by this language. When in doubt, *spell it out!* Even if you just divide the college costs 50-50 between both parents, it's still better than a vague and unenforceable clause.

Children and Taxes

If you're divorced or legally separated under a decree of divorce or separate maintenance, then the parent who had custody of the child for more than half of the years can claim the tax exemption and the child tax credit. For all other situations, the one who provided more than half of the child's support during the tax year can claim the exemption and the credit. These rules can be waived and the exemption can be transferred if the parents agree to do so in writing, either in a separation agreement or on Treasury Form 8332. The form is available on-line at the website of the IRS, which is www.irs.gov. The child tax credit is available only to the parent who can claim the dependency exemption.

To determine how to handle the credit and exemption, consider the following issues:

Should the exemption be "traded," instead of *given*, to the other parent in exchange for an increase in child support? Even a small increase in support would help offset the tax increase that will be paid by the custodial parent, and the other parent can better afford such an increase due to the taxes he or she saves by claiming the exemption on federal and state tax returns.

Should you alternate the exemption between parents? For example, if the father wants the exemption, he could claim it in even-numbered years (2008, 2010, 2012 and so on) and the mother could do so in odd-numbered years. Or the father could claim one child and the mother could claim the other. Such alternation would lessen the impact of higher taxes on the custodial parent.

Should you condition the transfer on the other parent's regular and full payment of support? Instead of transferring the exemption *permanently* without regard to the timely payment of child support, some custodial

parents agree to transfer the dependency exemption only if the other parent is current in child support payments (that is, not in arrears) by December 31 of each year. This would be very useful to the custodial parent in getting prompt payment of child support each year (at least by year's end) without hiring an attorney when the other parent "gets a little behind."

Attorney Fees

Whether the court can grant attorney fees for child support enforcement depends on the law where the case is being tried. If you have to hire an attorney to take the other parent to court because he or she won't pay you any child support, most courts will allow you to request attorney's fees. The amount granted is at the discretion of the judge.

Note that child support may not necessarily be resolved when the divorce is granted. In some states, this may be the case, but elsewhere the courts treat divorce or dissolution decrees separately from child support, custody and the like. In those states, a support order can be entered before or after a final decree of divorce. In any event, you should remember that you must file a request with the court (sometimes called a complaint, petition or motion) in order to get the court to consider the issue of child support regardless of whether it's at the time of divorce or at another time.

Final Pointers

A few final points are in order. First the *DO'S:*

- DO separate parenting issues from money issues—they're not related!
- DO talk to your children about their fears of not being adequately cared for if they express a concern about this.
- DO be concerned, sensitive and caring as to your children's loyalty to BOTH parents.

There are some *DON'TS* as well:

- DON'T put your children in the position of asking for child support payments; and
- DON'T burden your children with problems they cannot control or solve.

Divorce

Domicile, or the state of your legal residence, is an essential element in a divorce case. One of the parties to the divorce must call your state "home" for legal residence purposes (such as paying state taxes and voting there) if the divorce is to be valid. The Servicemembers Civil Relief Act (see chapter twenty-one) gives military personnel the right to retain their original domicile (the one they had when they entered military services) for voting and state income tax purposes, regardless of where they are stationed. If your spouse files for divorce in someplace other than his or her legal residence state, be sure to hire competent counsel there for advice as to how to proceed. Often your legal assistance attorney can help you with this. Look closely to see if that other state really is his or her domicile. It may just be a convenient place to get a divorce. On the other hand, it might be a place where your claim for alimony is jeopardized (such as a state which severely restricts alimony, one which only grants it if the petitioning spouse is substantially without fault, or one which only allows it for a limited period of time. It might be a state where the other side could get a ruling that the military pension cannot be divided there, or that all of the property (such as your pre-marriage property) will be divided during the divorce proceedings.

The grounds for divorce vary from state to state. In some places, the grounds are stated as an irretrievable breakdown of the marriage or irreconcilable differences. In others there might be a year's separation with the intent that it be permanent, or six months' separation along with a separation agreement. Ask your lawyer about grounds for divorce.

In some states, "divorce" means all claims related to the marriage, such as child support, alimony, custody and property division. You get your divorce only when the claims are either litigated or settled. In others, the claims are handled separately and the divorce can be granted apart from the resolution of the other marital claims. Ask your lawyer about the procedures in the state where the divorce has been, or will be, filed.

In addition, ask your lawyer about the process of obtaining a judgment of divorce (or dissolution) and how long this will take. When you obtain a divorce, it means that you will be able to claim a tax filing status of *single* or *head of household*. It also means that the wife may resume the use of her maiden name if she goes through the proper legal procedures.

In a military divorce case, there's more. The nonmilitary spouse will lose his or her military entitlements in most cases—ID card, base housing, commissary and post exchange privileges, medical care at on-base facilities. The military ID card will need to be turned in. Arrangements must be made for future medical care and insurance since the spouse will not be eligible for TRICARE (except for certain long-term marriages; see below for further information).

Separation Agreements

Settling a case out of court usually means writing down the promises in a separation agreement. A separation agreement is a contract between a husband and wife when they separate from each other in which they resolve such matters as property division, debts, taxes, custody and support. No law requires a separating couple to execute a separation agreement, but it is a wise idea if there are debts, children, support claims or property involved and the parties want to settle these matters in writing with binding and enforceable promises. It is best to have your attorney (civilian lawyer or legal assistance attorney) prepare it for you. Never try to prepare such a complex and important document yourself.

Separating spouses can agree on a division of property in their separation agreement. The property to be divided consists of real property (land and the buildings on it), tangible personal property (cars, jewelry and furniture, for example) and intangible personal property (such as bank accounts, stocks and bonds, pensions, retirement accounts and life insurance).

Procedures

No one can force you or your spouse to sign a separation agreement. An *agreement* means that both parties sign voluntarily.

Can a separation agreement be helpful in obtaining a divorce? There's no way of answering this question without knowing the state or country that's involved. While a separation agreement *is not a divorce* and doesn't make you "single again," it can make your divorce faster or easier in some states. If you'll tell your legal assistance attorney where your home is, as well

as that of your spouse, he or she can check the laws of those jurisdictions to tell you the grounds for divorce and whether a separation agreement would help you to get a divorce there.

A separation agreement can specify who gets the tax benefits for a child or children of the marriage. Without a written agreement, the parent who has physical custody of a child for more than half the year will usually get the dependency exemption and the tax credit.

Specifying what happens to taxes owed or refunds is a very important provision; it can be expensive to leave it out or draft it improperly. A good example would be a clause that required the parties to file jointly so long as they are eligible to do so (usually until the year they are divorced) and to divide the refund or liability for taxes in a specified way, such as 50-50, or 75-25, depending on the incomes of the parties. It should also state that if a party does anything that results in more taxes, penalties, fines or interest from the IRS, that party must pay those items, any additional tax, and any other associated costs or damages.

Limitations of a Separation Agreement

Don't count on a separation agreement to relieve you of money owed to others. A separation agreement is a contract between spouses. It cannot bind third parties (such as banks or finance companies) that have not signed it. If, however, your spouse promises to pay a bill and then breaks that promise, resulting in your having to pay, you can then sue your spouse for breach of contract for the amount of money you had to pay.

There is no such thing as a "dating clause" in separation agreements if the purpose of such a clause is to allow adultery. Any sexual relations with a person who is not your spouse is adultery if it occurs before you are divorced. And no "dating clause" will make legal something that in a particular state is illegal. In some states, adultery is a bar to alimony or may be used to severely limit it in amount or length of time. Most separation agreements do, however, contain a clause that allows each spouse to be left alone as if single and unmarried.

While separation agreements usually have a non-harassment clause in them, you should understand that no piece of paper—be it agreement or court order—is going to stop a person from doing something he or she

wants to do. If the problem involves physical violence, attempted injury or threats of bodily harm, a court order would be better than a separation agreement and could be used to punish the wrongdoer if he or she violated the order.

While it is a good idea to settle the custody, child support and visitation issues between yourselves in a separation agreement, note that the courts are not necessarily bound by what you say in your agreement. The terms you include for child support, custody and visitation can always be modified by the court in the best interest of the children. In the absence of proof to the contrary, however, there is a presumption that the agreement's terms concerning the children are fair, reasonable and necessary for the best interests and welfare of the children.

Alimony

Alimony is spousal support, and it can be set out in a separation agreement. It is money paid by one spouse to the other to help with food, shelter, transportation, clothing and other living expenses. It is not the same thing as child support.

Alimony usually ends at the death of either party or the remarriage of the recipient (usually the wife). Sometimes clients have a provision added to the alimony terms in a separation agreement that alimony will also end if the recipient starts living with an unrelated person of the opposite sex on a regular basis as if they were husband and wife. On other occasions, alimony is set for a limited term, such as "for ten years."

If the two of you have agreed on some measure of temporary or permanent alimony, you should definitely put that in the separation agreement. Such a provision might state, for example, that the husband shall pay the wife alimony of $500 per month until either one dies or until she remarries. Or it could state that the wife shall pay the husband alimony of $100 per month for a total of four years, at which time alimony will terminate forever. These are just examples. Your attorney can advise you about the specifics in your particular case.

If the agreement is drafted properly, alimony can be deductible for the payer and therefore taxable to the recipient. One essential condition of deductibility is that alimony payments *must end* at the recipient's death. Tax

treatment is a particularly important term and should be spelled out clearly in the agreement.

If no alimony is payable, it is always best to set out such a term clearly in the agreement. Don't just leave it out or let the agreement be silent on this issue. A waiver of alimony is such an important term that it should be clearly spelled out in the agreement so that there is no misunderstanding.

Property Division

How to divide the parties' property is another part of the process of separation and divorce. This is also known as "equitable distribution" in some states. The property can be real estate, furniture, bank accounts, clothing, retirement benefits or motor vehicles. Be wary— the rules vary quite a bit among the states. In some states, usually in the west, all property acquired during the marriage is called "community property" and must be divided equally between the parties. In other states, such as Connecticut, all property of the parties—even that obtained before the marriage—can be divided by the courts. Most of the states consider only property which was acquired during the marriage, called "marital property," to be divisible between the parties. In many states there is a presumption that all property acquired during the marriage is to be divided equally between the parties; other divisions, such as 60-40 or 75-25, are certainly legal if the parties agree that the division is fair and reasonable (or if you go to court and the judge finds that an unequal division is legal and justified).

Pensions and retirement rights are property which can be divided by the court during the divorce process. This type of property can be very valuable. Often a spouse's pension is the most valuable asset of the entire marriage.

If the parties are settling the pension terms, this can be done in a separation agreement. If there is to be no division, the agreement should say so. If the decision on pension division is to be put off or deferred because there is no present agreement, *that also should be stated clearly.* Make sure your agreement is very specific and clear in this area; a poorly worded agreement may be challenged in court as vague and unenforceable.

The division of pension rights in a separation agreement can be done in two ways: a present-value offset, or a future percentage of payments. The

former of these involves calculating the value of the pension right now and setting it off (or trading it) against the value of another asset, such as the other spouse's pension or the marital residence. The second approach postpones the division until whenever the employed spouse starts receiving pension payments. At this time the other spouse would receive a share of each check equal to one-half (or some other percentage) of the portion acquired during the marriage.

Division of Debts

In your separation agreement, you should set out a schedule for who pays what debt, including the creditor's name, account number, purpose of the debt, approximate balance and monthly payment amount. This will not stop the creditor from suing both of you if your spouse doesn't make the required payments and both of your names are on the obligation. But it allows you to ask the court to hold your spouse (and not you) accountable for the debt as set out in the agreement.

There is no *right way* to divide your debts. In one case, the husband may take on payment for all the debts because his is the sole source of income in the family or because he created the debts in the first place. In another case, the wife may take over certain debt payments for things she charged or purchased or for things that she is being given in the property division. For example, if the husband is getting the station wagon and the wife is getting the washer and dryer, it might seem fair that each should assume the debt payment for the items he or she is receiving. Be sure to specify the name of the creditor and address, the present amount owed and the monthly payment.

No single attorney should represent both husband and wife in a separation agreement. When parties are divorcing, their priorities are usually different, and their interests are often opposed. The more property one gets, the less the other will have. The less support one receives, the more available money the other will have. It is best to have two attorneys involved, one to advise each partner. In this way, the husband and the wife both know that they have received independent legal advice regarding their individual situation from a lawyer who does not have a conflict of interest in trying to represent two clients with different goals and needs.

Military Pension Division

The Uniformed Services Former Spouses' Protection Act (USFSPA) is a federal law which allows the divorce court to divide a military pension. It allows some former spouses (through a court order) to be awarded a share of *disposable retired pay* by direct payment from DFAS (Defense Finance and Accounting Service).

Disposable retired pay is the total monthly pay to which a retired SM is entitled, minus most disability pay, federal debt repayments, fines, forfeitures and Survivor Benefit Plan premiums.

A court order can also provide for the payment of spousal or child support from retired pay. The court order and/or other documents served with the court order must identify the military retiree and state, if possible, his or her Social Security number.

Garnishment from DFAS

To obtain payments from DFAS, you must meet the "10-year test." You, the former spouse, must have been married to the servicemember for at least 10 years. During that ten-year period, the other party must have performed at least 10 years of creditable service for retirement purposes, which means ten "good years" for a Guard or Reserve retirement (at least 50 retirement points per year) or ten years of active duty if the other party is retiring from active duty. Further, if you meet the test, you must get a *court order* specifically stating that the award is made as a direct payment of retired pay. If these conditions are met, then you can get monthly checks from DFAS after you serve the order on DFAS with the appropriate accompanying documents (DD Form 2293 and your divorce decree).

To determine what state can divide your spouse's military retired pay, you should first determine your spouse's *legal residence* (or domicile). That state always has jurisdiction over the military spouse's pension division. A court can also divide your spouse's retired pay if he or she is residing in that state for reasons other than military assignment, or if he or she consents to the jurisdiction of that state's courts over the division of retired pay in a property division lawsuit or divorce.

How much, how long?

How much can be granted? The court can divide only the "marital portion" of the pension, that is, the portion that was earned during the marriage. The rest of the pension (the portion that was earned before marriage or after separation or divorce) is usually the spouse's separate property. In addition to this, USFSPA says that no more than *half* of the pension can be paid under one order in a garnishment for pension division. Many states presume an equal division of all marital property, including retirement rights. Other than this, there is no way of telling how much marital property will be awarded or how much of the pension will be granted to you.

A pension division award usually provides for a lifetime share of the spouse's retired pay. Under USFSPA, your rights to a portion of military retired pay end upon your death. Payments cannot be made to your estate, survivors or heirs.

Payments can continue, however, if there is a survivor annuity. Federal law states that, in the event the military retiree dies first, the former spouse shall receive no further benefits unless the Survivor Benefit Plan (SBP) has been elected. Payments will continue if SBP coverage has been chosen (but not necessarily in the amount of payments under USFSPA). The court can order a spouse to provide SBP coverage for the former spouse.

Survivor Benefit Plan

The Survivor Benefit Plan is an annuity paid to the surviving spouse or family member of a deceased servicemember. It's similar to insurance in that it enables retired military personnel to provide monthly income to beneficiaries after the retiree's death. The beneficiary of your SBP can be your spouse, former spouse, or your dependent children.

To determine how much the beneficiary will receive, you must designate a "base amount." The minimum base is $300 per month, but you can select any greater amount, in $100 increments, up to the full monthly amount of your retired pay.

The annuity for your spouse or former spouse is 55% of the base amount. Until 2004, there was an offset for Social Security, which was available as early as age 62. The law stated that the SBP benefit would

decrease from 55% to 35% of the base amount when the beneficiary reached age 62, unless you were eligible to retire on or before October 2, 1985, in which case there is a complex set of rules which establishes the annuity amount. In the fall of 2004 this changed; under current law this offset will be phased out over 3 ½ years so that it is eliminated in 2008.

"Locking In" SBP

To be sure of SBP coverage, here are some important points to remember:

First of all, it's not automatic. For SBP to be effective, you must ask for it, and the two of you must agree on this coverage (or the judge must order it).

Secondly, if you want to be sure that this option will be honored, it must be included in a court order and sent to DFAS (Defense Finance and Accounting Service). And the order must be sent to DFAS *within one year of the divorce* (if by the retiree or servicemember) or *within one year of the SBP order* (if by the spouse).

If retirement is approaching soon, see an SBP counselor or a legal assistance attorney now so you can make an informed decision.

SBP is not necessarily resolved in your divorce. For example, if your divorce is in an overseas court, such as in Germany or Japan, then the court *cannot do anything* about military retirement benefits, including retired pay and Survivor Benefit Plan. No order from an overseas court will be obeyed by DFAS regarding SBP. You'll have to ask a court in the U.S. to make provisions for SBP if you want to be covered.

Sometimes the spouse's attorney is unaware of the benefit and fails to mention it in the settlement agreement or divorce judgment. Be sure that your attorney is aware of the SBP. If you are proceeding with a divorce in an American court, and in case your spouse dies before you, your divorce complaint or petition should specifically ask for division of any military pension rights and coverage under the Survivor Benefit Plan. If DFAS is served in a timely manner with the SBP order by the spouse or former spouse, then it will honor that "deemed election" request, even if the former spouse refuses to sign an application to that effect.

Costs and Participation

Your cost will depend on who your beneficiary is and what base amount you select. Former spouse coverage, for example, costs 6.5% of the selected base amount, deducted from the retiree's gross retired pay.

SBP participation is optional, but if you are on active duty and married, you will not be able to reject SBP coverage without your spouse's consent. There is also a Guard/Reserve SBP program; once enrolled, a member of the Guard/Reserve must elect the maximum coverage unless the spouse consents to a lesser amount.

There are three points to remember about signing up:

If you are married and on active duty, you must make your SBP election before you retire. If you elect to participate, you cannot cancel the SBP coverage later, except under very limited circumstances.

If you are a Reservist, you have two chances to select SBP coverage—first when you complete 20 years of service and again when you turn 60. If you elect to participate at the 20-year point, however, you cannot "un-enroll" at age 60.

You are allowed only one adult SBP beneficiary. You can't reserve part for a present or future spouse and part for a former spouse. Multiple beneficiaries are permitted only if you choose "child coverage" and there is more than one child, or if you choose "spouse and child coverage."

SBP Benefits and Disadvantages

SBP is generally a good plan, but there are some situations in which it may not be the most economical plan. For example, the minimum SBP plan premium for $300 per month as the base amount is cheaper than almost every private insurance program. But at larger amounts, SBP coverage may be more expensive than commercial insurance. Also, if you're going through a divorce and the SBP has not been designated for your "soon-to-be-ex," consider preserving the SBP for a future spouse if your soon-to-be former spouse is likely to remarry before 55. SBP is available for a former spouse only if he or she is unremarried at age 55.

Commercial life insurance or a private annuity may also provide better or cheaper protection for a younger surviving spouse. But SBP is a lifetime annuity and it'll never become "too expensive," as might be the case with

life insurance. For better comparison information on life insurance, check with an insurance agent who is familiar with the costs and benefits of SBP, such as a military retiree or an agent who is in the Reserves or the National Guard. The bottom line here is "Shop around!"

Medical Benefits

If you are a former spouse and meet certain requirements, you may be able to receive full or partial medical, dental, commissary and post exchange benefits.

You can receive *full* benefits (including medical care on a "space-available" basis and TRICARE coverage) if you meet the "20/20/20 test." This three-part test requires that you have been married to the servicemember for at least *20 years*. The member must have performed at least *20 years* of creditable service toward retirement. Finally, at least *20 years* of the marriage must overlap at least *20 years* of creditable service. You must meet *all three parts* of the test. If you meet all three, you are eligible to receive full benefits regardless of the date of the divorce decree.

You may be able to receive full medical benefits if the divorce decree was final before *April 1, 1985* and you meet the "20/20/15 test." This means that you must have been married to the servicemember for at least *20 years* and he or she must have performed at least *20 years* of creditable service towards retirement. Finally, at least *15 years* of the marriage must be during military service. Again, as with the "20/20/20 test," you must meet all three parts of the test.

Under either test, if you receive full benefits you cannot be covered by any type of employer-sponsored medical coverage. However, you can refuse your employer-sponsored medical benefits and retain the military medical benefits. You would also be disqualified if you have individually obtained medical insurance.

You must remain unmarried under either test. Any subsequent remarriage eliminates the benefits, *even if* you are *widowed* or *divorced* later.

What if a spouse or former spouse meets the 20/20/15 test but the divorce decree is final after April 1, 1985? In that situation, you are entitled to one year of transitional benefits, after which you have the right to convert to a private health plan set up by the Defense Department.

However, you must remain unmarried and not be covered under employer-sponsored medical coverage.

Other important points to remember are:

If the nonmilitary spouse for some reason loses eligibility to medical care, he or she may purchase a "conversion health policy" under the DOD Continued Health Care Benefit Program (CHCBP). CHCBP coverage must ordinarily be purchased within 60 days of the divorce or end of military service, and it's usually available for 36 months. CHCBP is *not* part of TRICARE. For further information on this program, contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator; P.O. Box 1608; Rockville, MD 20849-1608, (800) 809-6119. You can visit CHCBP's Web site at www.humanamilitary.com.

A former spouse who qualifies for any of these benefits may apply for an ID card at any military ID card facility. He or she will be required to complete DD Form 1172, "Application for Uniformed Services Identification and Privilege Card." The former spouse should be sure to take along a current and valid picture ID card (such as a driver's license), a copy of the marriage certificate, the court decree, a statement of the servicemember's service (if available) and a statement that he or she has not remarried and is not participating in an employer-sponsored health care plan.

The benefits we are discussing *are statutory entitlements*; they belong to the nonmilitary spouse if he or she meets the requirements as set out above. They are not terms that may be given or withheld by the servicemember or retiree, and thus they should not ordinarily be part of the "give and take" of pension and property negotiations since the member has no control over these spousal benefits.

Finding a Lawyer

Getting a smart and competent lawyer is essential. There are lots of military cases where rights and advantages have been *lost* due to the attorney's lack of knowledge of the subject matter. As a practical matter, there are very few attorneys in any given state (and even fewer overseas) who know much about this little-known corner of the law—USFSPA and

the division of military retirement benefits. And since you get only *one chance* to do it right, it makes sense to find the right lawyer right off the bat! Here are a few tips to help you:

Ask a legal assistance attorney to help you; he or she will sometimes know lawyers near the military base who specialize in "military divorce" cases.

Ask a friend who's been through this already; if he or she has had a good attorney, this kind of "word-of-mouth" advertising may help you hook up with the right attorney.

If you already have a lawyer, ask him (or her) how much experience he or she has in the area of military pension division. A good lawyer should never hesitate to answer a question like this; an honest attorney will not flinch at giving you a straightforward answer. Be careful, however, if your lawyer is "offended" or becomes defensive.

If you're generally satisfied with your current lawyer but he or she needs some help, don't hesitate to suggest that another attorney be hired *to act as co-counsel* in the area of USFSPA and military pension division. The code of ethics in virtually every state requires attorneys to be competent in the area in which they practice or else to associate competent co-counsel. Maybe if your lawyer has a "silent partner" to help out when the going gets rough, your case will be settled (or tried) more effectively and fairly than if your lawyer tried to go it alone.

Try to get a member of the National Guard or Reserves who practices in the field of family law as your attorney. Members of the Guard or Reserves are frequently the ones who are the most "up to speed" on current law and regulations in this area.

Find out from the state bar or bar association if there are "certified specialists" in family law in your state. A majority of states have "specialty" designations for lawyers who concentrate their practices in a particular field, and these lawyers (although charging a premium for their services) will be more likely to be able to handle your case competently than will a general practitioner.

Contact the family law section of your state's bar association or the American Bar Association to see if they can recommend the names of some attorneys who have spoken or written in the area of military divorce law.

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Mr. Sullivan is a retired JAG colonel, U.S. Army Reserve. While in the Army Reserve he created the Army's computerized separation agreement program, and he teaches several times each year at the Army JAG School and Naval Justice School on custody, separation agreements and other aspects of family law. He also served on a Department of Defense team tasked with review of, and proposed revisions to, the Uniformed Services Former Spouses' Protection Act, and he also served on the Working Group for Protecting the Rights of Service Members, appointed by the president of the American Bar Association. He has written numerous "Silent Partner" information letters for JAG officers and civilian lawyers, explaining points of military family law, and his client handouts, called "Legal Eagle," on military family law issues, are also popular; they can be found at www.nclamp.gov. Upon his retirement, Mr. Sullivan was awarded the Legion of Merit with an inscription that described him as "the Army's foremost expert in family law."

Chapter Twenty-Six
Women Servicemembers and Veterans

By Susan Edgerton with Kathy Gilberd and Pat Koritta

Introduction

Women now account for a larger percentage than ever before of the military and the veteran population. The VA estimates that by 2020, women will make up 20% of active-duty troops and 10% of all veterans. Since World War II, when women were first acknowledged as a formal part of the uniformed services, women's roles in the military have grown and diversified. Although women are still restricted from taking positions that serve primarily ground combat missions or that serve adjacent to ground combat units, the changing nature of war has effectively exposed many more servicewomen to combat. The military seems to be learning from the operations in Iraq and Afghanistan (OIF/OEF) that there is no clear "front line" and that servicemembers in all occupations in theater can be exposed to danger at any time.

Because of the growing women's population and the advocacy of women from other eras, women of the Gulf War and current deployments may find systems improved to meet their needs. Greater female representation in the military and veteran ranks means that women's needs

will likely get more attention and women can have a greater voice. Conditions for women in the military will continue to improve only if women keep fighting for what they need.

Women in the military face continuing problems of sexual harassment, sexual assault and rape. Gender stereotypes have caused problems for women in many areas, including promotions, voluntary and involuntary discharges, medical care and veterans benefits. Women veterans seeking veterans benefits have had to confront a bureaucracy designed to serve the needs of a mostly male population. This chapter addresses these concerns and women's rights under military law and regulations ("regs"), to help servicewomen and veterans combat gender-based harassment, discrimination and misconduct, and to help women obtain the benefits they have earned.

Women in the Military

The Defense Advisory Committee on Women in the Services (DACOWITS) was created in 1951 for the purpose of recommending strategies for recruitment, retention and advancement of women in the Armed Services. Its latest full report (found at www.dtic.mil) identified significant challenges for women in the military. Foremost, in this time of war, was the unpredictability and duration of deployments. Sexual assault, sexual harassment, and sexual discrimination and receipt of high-quality benefits they deserve clearly also remain a problem for many women.

Sexual Harassment in the Military

Sexual harassment continues to be one of the most serious problems facing women in the military. Despite an official policy of 'zero tolerance,' harassment is often ignored and sometimes condoned in military culture. The Department of Defense (DoD) considers sexual harassment a form of sexual discrimination, prohibited under its Equal Opportunity (EO) policy, which is set out in DOD Directive 1350.2. The Directive defines harassment as:

"[a] form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

"Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

"Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

"Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment."

Each branch of the service has regulations to implement the Directive; each is required to follow DoD policy. In theory, all EO officers assist in implementing the policy, and information about making complaints and local, service-wide or DoD hotline numbers should be posted at every command. Unfortunately, the policies are not always followed; sexual harassment complaints are sometimes shunted aside, hidden under bureaucratic paperwork, or just ignored; women making complaints run the risk of official and unofficial reprisals.

USEFUL REGULATIONS ON SEXUAL HARASSMENT:

- Department of Defense: DoD Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program"
- Army: AR 600-20, "Army Command Policy," Chapter 7, "Prevention of Sexual Harassment," and Appendix D, "EO/Sexual Harassment Complaint Processing System"
- Navy: SECNAVINST 5300.26C, "Policy on Sexual Harassment"
- SECNAVINST 5354.1, "Policy on Military Equal Opportunity Complaint Processing"
- Marine Corps: MCO 1000.9, "Sexual Harassment"
- MCO P5354.1D "Marine Corps Equal Opportunity (EO) Manual"

Veterans For America (VFA) encourages servicewomen to obtain help from a civilian attorney or legal advocate, or one of the organizations listed in one or more of the appendices of this book, before making a complaint. Help and information can be also be found through the Miles Foundation,

which specializes in sexual harassment and assault cases, at http://hometown.aol.com/milesfdn or (203) 270-7861. A detailed discussion of harassment and complaint procedures can be found on the Military Law Task Force Web site, www.nlgmltf.org. It is useful to have an independent attorney's or advocate's help from the beginning of the case in documenting the harassment, deciding which complaint procedure(s) to use, preparing a complaint, monitoring the investigation and taking further action if necessary.

DoD 1350.2 says that "the chain of command is the primary and preferred channel for identifying and correcting discriminatory practices," including sexual harassment. If you have been harassed, EO policy suggests that you to first talk to the harasser to resolve the problem, though this is not required. When this fails, the policy emphasizes requests for help through the chain of command, starting at the lowest level. This may work if the command turns out to be sympathetic, but may not be worth the effort when the harasser is in (or *is)* the chain of command.

Sexual Harassment Complaint Procedures

Formal sexual harassment complaints are taken more seriously; done in writing, they require a written response and create a better record if an appeal or other complaint is necessary. The Army uses DA Form 7279 for complaints; the Navy uses NAVPERS 5354/2; the Marine Corps has no form; the Air Force uses a Formal Complaint Summary, AF IMT 1587.

The complaint should describe the sexual harassment in detail, with names of those involved and witnesses, and should include the result you want—anything from a public apology to a transfer. It is useful to write out a detailed complaint in advance, instead of sitting down with an EO officer to write out a complaint on the spot. (And there's no need to limit your comments to the spaces on the form.) This reduces the chance that the person receiving the complaint will put his or her own spin on the case, or tell you what you can and cannot say.

Complaint procedures vary from service to service; it is important to look at the regs for specific procedures and time limits. Complaints should be made within a specific time after the incident (usually 60 days) unless circumstances prevent that. In the Air Force, complaints are made through the local OE officer. In the Army, formal complaints may be made to the Commanding Officer (CO), the Inspector General (IG), chaplain, provost

martial, Staff Judge Advocate or others. The Marine Corps has no separate harassment complaint procedure, so complainants choose among traditional grievance procedures such as request mast, IG complaints or complaints under Article 138 (see below). You can also report harassment and make the initial complaint directly to the DoD Inspector General hotline, (800) 424-9098 (or hotline@dodig.mil), or to your service's IG or sexual harassment hotline.

No matter where a complaint is made, it is usually referred to the command for investigation and resolution—your immediate CO, unless he or she is named in the complaint. The CO should assign an independent officer to investigate the complaint, unless the IG or other agency which received the complaint has assigned its own investigator. In the Air Force, the local EO officer conducts the investigation. Each service sets time limits for investigation and response, and you should receive periodic updates if the investigation is lengthy.

In theory the investigator should speak with every witness you mention and consider each issue you raise. Investigators may question other witnesses, look into your own truthfulness or conduct, and add their own take to the incident. To avoid tampering by the investigator or command, it helps to obtain written witness statements and gather other evidence in advance.

The investigator makes a written report, with findings of fact about the incident and recommendations for corrective action. This goes to the CO, who decides whether the complaint is "substantiated" (except in the Air Force, where the EO officer makes this decision). The CO decides what action to take, if any, and is not bound by the investigator's recommendations. You are entitled to a redacted (sanitized) copy of the investigator's findings and recommendations, but not necessarily the underlying investigative report or witness statements. The services vary on what you will be told about the CO's corrective action.

If you are not satisfied, you have the right to appeal. In most services, that means taking the complaint to the CO exercising general court-martial convening authority (GCMCA) over the CO handling the complaint. The Air Force keeps the appeal in the EO system, and the Army says the highest appeal is to the GCMCA. But the DoD Directive, which is controlling, states that you may make a final appeal to the office of the Secretary of your service.

Other Complaint Procedures

Sexual harassment complaint procedures have limited success, particularly if the command is biased. For this reason, you may want to use other traditional grievance procedures instead of or in addition to the EO procedures, to give you more control over the case and its outcome.

One such option is a personal meeting with the CO to discuss the harassment; the Navy and Marine Corps call this a "request mast." If the command has no "open door" policy, you may need to walk a written request for a meeting up the chain of command; you are not required to tell anyone other than the CO what it is about, and you can simply ignore NCOs' or lower officers' attempts to "deny" your request. You may also request this meeting "with counsel present," and bring your attorney or advocate. If the CO does not help, you can make the same request to his or her CO, and so on up the chain of command.

Your attorney or advocate, who is not bound by the chain of command, can write directly to your CO, his or her CO or military headquarters, demanding the problem be resolved or that the command be investigated for inaction. If higher military authorities find the problem embarrassing, they may simply lean on your command to resolve the problem and get your advocate out of their hair.

One very useful option is a request for redress of grievance under Article 138 of the UCMJ. (The services have parallel procedures for complaints when the harasser is in another command, for example, Navy Regulation 1150.) In a 138, you begin by asking your CO (preferably in a letter referencing Article 138) to correct a problem of harassment within the command. The letter states how you have been wronged and asks for specific relief, giving details and attaching any evidence. The CO must respond within a reasonable time, set by the regs. If you are not satisfied, you file a formal 138 complaint to the officer with special court-martial jurisdiction over your CO, submitted via your CO, complaining about your CO's failure to solve the problem.

Article 138s get serious attention because they must be reported to service headquarters and can leave a permanent mark in an officer's record. This tends to concern COs and, as with a formal EO complaint, creates a good paper trail of your effort to solve the problem through proper channels. 138 complaints sometimes end in a compromise: the complaint is denied and the officer's record remains clean, but you are given most or all

of what you requested. Detailed information about Article 138 complaints can be found at www.girightshotline.org, www.girights.org, and www.nlgmltf.org. As with EO complaints, use of an independent advocate or attorney is very helpful.

You have an absolute right to ask a member of Congress to investigate and stop the harassment. This can be very effective *if* the Congressional office involved is willing to skip the normal inquiry methods and directly ask your command or military headquarters to take the specific action you request. Routine Congressional inquires go only to the military's Congressional liaison officer and usually just ask for an explanation, not specific action about the problem; they often receive a boilerplate reply from the liaison officer saying that your rights have been respected and all is well. While this is sometimes helpful, a direct request for action has much more impact.

In some cases, you may choose to speak to the media, directly or through your advocate, using your name or speaking anonymously. "Going public" places greater pressure on the command to resolve the problem, but often results in retaliation. Legal assistance is extremely important here.

Harassment cases can be taken to federal court, where you may ask for the same corrective action you requested in the original complaint, but not for money damages for pain and suffering caused by the harassment. Courts seldom step in unless a servicemember has tried all available administrative remedies such as an EO complaint, and judges often defer to military discretion about personnel matters. But a court can order the military to enforce its own regulations or order it to do more than the regulations require.

Retaliation

Women often decide not to report harassment out of fear of retaliation. This is a real concern—women who file harassment complaints, or even mention the idea, may face "adverse personnel action" such as denial of promotion, disciplinary action, or reassignment (allegedly unrelated to the complaint). Unofficial harassment—bullying, threats, or even hazing—can also be a problem. Occasionally commands respond with unwanted mental health evaluations. A hostile CO may use psychological problems (or invent them by giving doctors misinformation) to discredit your complaint, affect your career, or process you for involuntary discharge.

Reprisals for making or threatening to make a complaint about sexual harassment violate the EO regs and Article 92 of the UCMJ (failure to obey a lawful regulation). All of the complaint procedures mentioned above can be used to protest reprisals and ask that any "adverse personnel action" be withdrawn. In addition, you can complain to the IG under the provisions of the Military Whistleblower Protection Act, discussed in DoD 7050.6. This policy makes it illegal for anyone to retaliate if you complain to a Member of Congress, the IG, or others who should receive reports about violation of regulations (like sexual harassment or retaliation for reporting harassment). The IG must investigate not only the retaliation, but also the original harassment complaint. Here, too, documentation and outside assistance are extremely helpful. If the retaliation has affected your career or record, the Whistleblower policy allows an expedited petition to the Board for Correction of Military/Naval Records. (See chapter 16.)

Because retaliation by psychiatrists has become a significant problem, DoD now has special provisions to protect servicemembers subjected to involuntary psychiatric evaluation or treatment. Under DoD Instruction 6490.4 and related service regulations, a CO must give advance written notice of the evaluation and a written statement of the behavior that allegedly warrants evaluation. If you're ordered to see a mental health worker, the CO must inform you of the right to consult a JAG or other attorney and to complain to the IG if the evaluation seems inappropriate or retaliatory. You are also entitled to a second opinion from a military or civilian professional. As under the whistleblower policy, the IG must investigate the original complaint as well as an evaluation you consider to be retaliatory.

Harassment complaints, and complaints about retaliation, are not simple. Commands often ignore complaints or "solve" them with band-aid measures, and the danger of retaliation is real. Complaints require good documentation and a lot of determination. But with advocacy and support from Veterans for America (VFA) or other groups concerned with servicemembers' rights, listed in the Resources appendix of this book, they can have a real impact.

Sexual Assault and Rape In The Military

The current DoD Sexual Assault Prevention and Response policy, in place since 2006, represents the most recent attempt to "solve" the very serious problem of sexual assault in the military. Under Department of Defense Directive 6495.01, sexual assault is defined as:

> *…intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. It includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. 'Consent' shall not be deemed or construed to mean the failure of the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion, or when the victim is asleep, incapacitated, or unconscious.*

Department of Defense (DoD) policy requires all commands to take action to prevent sexual assaults, prosecute offenders and treat victims with dignity and respect for their privacy. Unfortunately, assaults remain commonplace, and many commands downplay or ignore them. Some use creative methods to claim that assaults weren't assaults, and some harass or punish those who report assaults.

Sexual assault is punishable under the Uniform Code of Military Justice. Article 120 covers rape, aggravated sexual assault and similar offenses; sodomy (oral and anal sex) is punishable under Article 125; and some related offenses are charged under Article 134, the general article. DoD policy emphasizes court-martial of assaulters, but commanding officers (COs) have almost total discretion in deciding whether or how to punish them. The policy has limits, and local commands are not consistent in enforcing it. Veterans for America (VFA) urges women who have been assaulted to report the assault and get legal assistance and personal support as soon as possible. Help is available from rape crisis centers, organizations listed in the Resources section at the end of this book, and particularly the Miles Foundation, which provides legal and other support in these cases. (Miles can be reached at

hometown.aol.com/milesfndn, and (203) 270-7861.) VFA has compiled a database of rape crisis centers at www.veteransforamerica.org. A detailed discussion of sexual assault reporting and complaint procedures can be found at www.nlgmltf.org. These resources can help you use the military's assault reporting system and other military services effectively.

It is useful for all readers, women and men, to become familiar with the policy and their rights, whether or not there is an immediate need. If you know the policy, the correct military procedures and some sources of help, you protect not only yourself but other servicemembers.

DoD Directive 6495.01 and DoD Instruction 6495.02 are the highest military authority on sexual assault policy. They can be found on a dedicated DoD Web site, www.sapr.mil. (Regs can be found under "policy" on the home page.) Each military service has its own regulations, which must comply with DoD. No branch of service or command can deny a right available in the DoD regulations.

Useful Regulations on Sexual Assault:

- Department of Defense: DoD Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program"
- DoD Instruction 6495.02, "Sexual Assault Prevention and Response Program Procedures"
- Army: AR 600-20, "Army Command Policy," Chapter 8, "Sexual Assault Prevention and Response Program"
- Navy: SECNAVINST 1752.4A, "Sexual Assault Prevention and Response"
- Marine Corps: MCO 1752.5A "Sexual Assault Prevention and Prevention Program"
- Air Force: An Air Force Instruction is pending; the AF uses the DoD Instruction and Directive in the interim.

The regs are not always clear or easy to read, and the "commander's checklist" and sample forms in the regs may be the best starting point in understanding the policy. Service regs and information on the policy can be found on a number of military Web sites:

Army: www.sexualassault.army.mil

Navy: www.persnet.navy.mil/pers66/savi/html/savi.html

Marine Corps: www.usmc-mccs.org/sapro
Air Force: USAF uses the DoD Web site, www.sapr.mil

Although these Web sites are helpful, they reflect a military point of view and may make the procedures sound easier and more effective than they are.

In theory, each base, ship and major command must assign a Sexual Assault Response Coordinator (SARC) and Victims Advocates to respond to sexual assault complaints. In 2005, the military reported it had trained a thousand SARCs and Advocates and had an office available at each major installation. A SARC or Advocate is supposed to be on call 24/7, even in deployed areas, so that response to sexual assaults should be immediate. Local contact information and service sexual assault hotline numbers should be posted publicly at all commands.

The current policy is designed to encourage reporting of assaults, by allowing confidential (restricted) as well as non-confidential (unrestricted) reports; only unrestricted reports permit investigation of the assault and prosecution of the offender. If you report a sexual assault, a SARC or Advocate should respond at once, to help you get immediate medical care if needed, ensure on-going access to medical and psychological care and provide information about the policy, reporting and your rights. In addition, an Advocate should offer to accompany you to all medical appointments and to interviews or legal proceedings if you have made an unrestricted report and there is an investigation. He or she should assist in maintaining as much privacy for you as possible whether the report is restricted or unrestricted.

While the SARC or Advocate should offer this information and help, you are not required to accept it. You have no obligation to speak with him or her, and he or she should leave if you ask. While these personnel can be helpful, it is important to remember that most Advocates have limited training and are performing collateral (additional) duties. They are not advocates in the legal sense and do not argue on your behalf about your rights, but they should provide information to help you make decisions about the case and be your own advocate. If the case goes to court-martial or other legal proceedings, a SARC or Advocate can be ordered to testify about statements you have made to him or her.

Restricted Reporting

You have the right to make a restricted (confidential) report by reporting the assault directly to a SARC, Advocate or medical personnel. Some services have added to this list—the Marine Corps uses Uniformed Victims Advocates in addition to the Victims Advocates available through its family services programs. Chaplains may be able to receive restricted reports, though the DoD regulations are unclear. A restricted report provides the greatest privacy, as only these individuals should know that you have been assaulted. While the CO will be told that an assault has occurred, he or she should not be given your name or that of the assaulter. But this means the person will not be investigated or prosecuted, unless independent evidence exists.

Your report won't be restricted if you tell the "wrong" person about the assault. A report to military law enforcement personnel or other command personnel will normally be reported in full to the CO. Civilian law enforcement often forward their reports to your command or base/ship security, and confidentiality is lost. If the command receives information about the assault from an independent source (for example, a friend of the assaulter), it may investigate the case on the basis of that information.

With restricted reporting, you still have full medical and psychological care. You can request (or refuse) a "sexual assault forensic exam" or rape kit to document the assault. Information and evidence you give will be kept for a year, identified by a number rather than your name. You are not required to talk to investigators or other law enforcement personnel, or to anyone from the command. Since a report can be changed from restricted to unrestricted at any time within a year, some women choose to start with a restricted report and then take time to consider their options. However, an unrestricted report cannot be changed to restricted. SARCs and Advocates are supposed to encourage unrestricted reporting, but in theory will not pressure you about this.

If you make a restricted report, the SARC, Advocate or medical personnel will ask you to sign a "Victim Reporting Preference Statement" (DD Form 2190). The form explains your rights and the limits of restricted reporting, describing some of the circumstances in which you may lose confidentiality. For example, if medical personnel think that you pose a danger to yourself or others, or that your performance of duties may be affected, they are allowed to inform the CO.

Unrestricted Reporting

An unrestricted report may be made to any personnel. If you report the assault to law enforcement or command personnel, they should notify the SARC as well as the command, and the SARC or Advocate should respond immediately with the same assistance as in a restricted report.

This form of reporting allows you to request a no-contact order or other protection from the assaulter. The SARC or Advocate should explain the process for requesting a military protective order and the possibility of moving or transferring you or the assaulter for your safety, and should assist you in making the request. But these decisions rest with the CO, who is not required to confine the assaulter or take any other action. If the CO fails to protect you, you can make a separate report and complaint about this. Civilian legal help is often useful in persuading the command to provide necessary protection.

Although you have less confidentiality than with a restricted report, the policy still requires that your privacy be respected. The CO and other personnel involved are supposed to ensure that information about the assault is limited to those with a need to know. Unnecessary and repetitious questioning is not allowed, and the regs say that and gossip and rumors should be dealt with firmly.

The CO and law enforcement personnel must investigate assault reports; you are not required to cooperate in this process, but should expect some pressure to do so. Reporting a sexual assault and cooperating in legal proceedings can be a painful experience, even if the military follows all of the rules. Sexual assault response training materials advise law enforcement, commands, and legal personnel to be sensitive about the trauma caused by an assault and avoid "re-victimization" with unnecessary, repetitious or humiliating questions. You should not be questioned about unrelated sexual behavior or your personal sexual preferences or orientation. If any of this occurs, you can halt the interview and speak with an attorney or advocate before deciding whether to continue. Military investigators or police who violate these provisions of the regs can be subject to disciplinary action.

Security and law enforcement personnel do not decide whether or how to prosecute the offender. This is left to COs, usually those with authority to convene special or general courts-martial. If the offender is court-martialed or processed for misconduct discharge, you may be asked to be a witness. An Advocate or another support person of your choice can

accompany you to meetings and legal proceedings. Civilian rape crisis centers often have trained volunteers who can support and advocate for you during investigations and prosecutions. While attorneys for the accused have some leeway in trying to disprove your report, under military law they may not raise unrelated personal issues or badger or humiliate you in interviews or in court.

Throughout the investigation and legal proceedings, you are entitled to monthly updates from the SARC about the status of the case. If you feel the case is being ignored or handled improperly, you can complain higher in the chain of command. Some of the complaint procedures described in A.2, above, can also be used to encourage prompt action.

Protecting Yourself

Retaliation and harassment, specifically prohibited by the sexual assault policy, are nonetheless common. While some reprisals may be minor, others can hurt chances for advancement or lead to involuntary discharge, and some women have been verbally abused or hazed for filing reports. The problems and complaint procedures parallel those discussed in subsection A.3, above, about harassment.

Sometimes an assault report or investigation reveals that you violated regs, as by illegal drinking at the time of the assault. Under current policy, COs have discretion to postpone legal action against you for such "collateral" misconduct until the assault case is concluded, and are encouraged to consider this. The regs do not suggest such legal action be dropped permanently. Hostile commands sometimes exaggerate or invent collateral misconduct, and assaulters have been known to claim that women who report assaults are lesbians who rejected friendly flirting.

The sexual assault regs have explicit provisions for complaints about harassment and reprisals. These complaints can be made through the SARC, the CO, their superiors or the IG. Retaliation for complaints or reports also violates the Military Whistleblower Protection Act, and warrant Whistleblower complaints to the IG, as discussed in subsection A.3, above.

One of the best ways to protect your safety and your rights is to learn about the sexual assault policy when you don't need it. You can jot down military Web sites and the hotline numbers for your service, find out who the local SARC and Advocate are and locate civilian legal groups and the nearest rape crisis center. If your command is not publicizing the policy and

training members in sexual assault prevention, or hasn't set up a real SARC and Advocate system, you can request that they do so, make a formal complaint, or ask a civilian legal rights group to complain about the problem. If the command permits inappropriate language, sexually degrading comments about and pornographic pictures of women, or any sort of sexual harassment, indicating that sexual abuse may be tolerated,, you can use the complaint procedures discussed in subsection A.2, above. This pro-active approach will help you later if you need it, and will also help other victims of assault.

Women's Health Care in the Military

Women in the service use military treatment facilities for their health care needs. There are several regional "flagships" for health care, but most military treatment facilities are primarily equipped to address general medical and surgical needs. Specialized care (beyond "babies and bones") is generally available by referral to community providers or from flagships. It is important to receive a "Non-Availability" Statement (NAS) anytime you need inpatient care that is unavailable from the military facility or TRICARE may not pay its share. For military retirees or dependents, TRICARE or TRICARE for Life are intermediaries that reimburse care generally contracted from community providers. The TRICARE Web site details eligibility and coverage for services (www.tricare.mil); also see Chapter 9 of this Guide.

Essentially, there are three options for beneficiaries—TRICARE Standard, TRICARE Extra and TRICARE Prime. TRICARE for Life is a plan that is available only to people who are eligible for both Medicare and TRICARE. It works as a "wraparound" for Medicare's part A and B, covering out-of-pocket expenses that Medicare does not cover, including a prescription drug benefit. For all of the TRICARE packages there are also additional coverage options for prescription drugs, mental health and dental care. Generally, out-of-pocket costs are highest for Standard coverage and lowest for Prime, but Standard gives you the most flexibility in picking providers. With Standard you can generally choose any civilian provider (within or outside of the TRICARE provider network) and TRICARE will reimburse its share.

For more information about TRICARE options, another Web site, www.military.com, offers a detailed explanation of TRICARE packages and benefits, including how to file claims and copayment requirements under each plan and guidance for how to choose the best plan. It also spells out maternity benefit options.

In a DoD study of women in service, women dependents of non-active-duty servicemembers expressed a far greater tendency than active-duty
servicewomen to have a personal doctor; to receive needed health care services; and to get care quickly. Consequently, active-duty servicemembers gave lower overall satisfaction ratings to the DoD health care they received than did civilians. If you are active-duty you must use the military network (TRICARE Prime), but you can choose a point-of-service option. The Point-of-Service coverage option allows active-duty servicemembers to receive care outside of the network (much like TRICARE Standard), but it is subject to significant out-of-pocket payments. However, if flexibility in choosing providers is a priority for you or your family and, if you, like many other servicewomen, are dissatisfied with military health care, TRICARE Prime's Point-of-Service coverage may be worth the additional expense.

Regional TRICARE Service Centers, staffed by TRICARE intermediaries (the organizations that arrange networks and administer claims) handle any questions or concerns about coverage, claims or eligibility. Most TRICARE Service Centers are located in military treatment facilities, but some are elsewhere. There are three regions—north, (877) TRICARE), south, (800) 444-5445, and west, (888) TRIWEST). Complaints about care in military facilities are subject to the review of the service branch or Department's IG.

Deployment Concerns

Clearly, the threat of deployment in wartime overshadows almost any other concern among servicemembers and their families. Congress has responded to concerns raised by DACOWITS and mental health task forces regarding stabilizing and supporting military families during deployments. Many sections of the recently enacted National Defense Authorization Act of

2008 attempt to ease life for family members with deployed loved ones. In particular, with regard to single parent families, Congress stated:

> (1) single parents who are members of the Armed Forces with minor dependents, and dual-military couples with minor dependents, should develop and maintain effective family care plans; and (2) the Secretary should establish procedures to ensure that if the single parent or both spouses of a dual-military couple are required to deploy to an area of hostile fire or imminent danger, appropriate steps are taken to ensure adequate care of the minor dependents.

Stay tuned to VFA's Web site to learn more about the policy the military puts in place.

The MilitaryOneSource web site, www.militaryonesource.com, and 24/7 hotline, (800) 342-9647, are resources you should be aware of if you or a loved one are deployed. There are also family service centers, some which host support groups for children on most major military bases. DACOWITS states that deployment concerns account for most women now leaving service and for families encouraging loved ones to leave. It is important to be aggressive in seeking the benefits and information that are due you and your family regarding deployment. Don't take "no" for an answer—at least not at the lowest command levels—and obtain legal assistance if you need it.

Discharges Related to Family Concerns

Because family responsibilities often fall primarily on women, it may be important for you to know about discharges related to pregnancy, parenthood and family hardship or dependency. Some commands are completely unsympathetic to family needs, and some ignore their duty to help members take care of those needs. If you need to get out of the service to attend to family problems, it will pay to look at all of the reasons for discharge, even those unrelated to families. Pregnancy, parenthood and hardship and dependency discharges may be most appropriate, but many soldiers qualify for other discharges as well.

You can find the regulations and information on discharges on several Web sites, including www.girights.org, www.sdmcp.org and www.nlgmltf.org (check under discharges and "getting out.") The success of discharge requests improves if you become familiar with the regulations and have assistance from a civilian counselor or attorney. (For more information, see chapters 15 and 18 which relate to discharge.)

Women Veterans

As women make up a bigger part of the VA's patient populations, they will find that VA medical centers, particularly in the VA's biggest "referral" centers in large cities, can now expertly meet their health care needs, including for gender-specific care. Congress continues to play an active role in crafting a bigger role for the VA in women's health care and in benefits delivery.

Each VA medical center and each VA Regional Office has a women's coordinator assigned to it. There is also a Director of the Center of Women Veterans, who reports to the Secretary of Veterans Affairs and a Women Veterans Health Program within the Veterans Health Administration. These management activities were added to better ensure that women's needs are adequately addressed.

Health Care for Women Veterans

Chapter 9 of this book is devoted to medical benefits delivery and any specific information about eligibility, copayments, and services is addressed there. In sum, however, women veterans are eligible for the same types of care and services as men in addition to most of their gender-specific health care needs. All veterans are required to apply for care with a 10-10EZ form available at your local VA medical center, through the VA's health care information line, (877) 222-8387, and online at www.1010ez.med.va.gov/. Gender-specific health care needs may be met differently from other health care needs (see below for the section on fee-basis care).

Gender-Specific Health Care

More than a decade ago, Congress authorized gender-specific health care services for women, and has since also approved military sexual trauma counseling and treatment in addition to maternity and some infertility care.

Gender-Specific Services

Offered by or Through the VA

Breast exams
Mammographies
Hormone replacement therapy
Pap smears and treatment for abnormal Pap smears
Prescriptions for oral or implantable contraceptives
Diaphragms
Sterilization, in some cases
Cervical cancer vaccine (ages 18-26)
Menopause
Osteoporosis
Some types of infertility care (excluding in-vitro fertilization)

Abortions and abortion counseling are expressly excluded from VA's benefits package.

To the extent possible, the VA provides these services at its facilities, but if it does not have them available it will pay non-VA providers to offer them to enrolled and eligible VA patients. One important service always provided by contract—maternity care—is addressed below. For more information about eligibility for the fee-basis care see Chapter 9 and the fee-basis care section below. To find out about where to receive VA care in your community, see www.va.gov and click "find a facility." You can also call (800) 827-1000.

Fifty VA medical centers now have women's health centers which offer care devoted to women's needs, often in settings that are a bit more private than primary care clinics. Other medical centers have primary care teams that are devoted to women, but others randomly assign women veterans to physicians as they would men. Every VA medical center has a women veterans' program manager and every community-based outpatient clinic has a women's liaison. These individuals often have collateral duties, so if you don't reach them at first, keep trying. They offer an important link to

your services. Call your local VA medical center and ask for the women veterans' program manager.

If your requests for medically necessary care are not handled appropriately, you should first try the facility's patient advocate. The Board of Veterans' Appeals handles any denial of claims for VA medical care. Again, finding legal assistance or help from a veterans service organization may be useful in seeking your earned benefits.

Fee-Basis Care

The VA's fee-basis health care program offers services through outside providers, to be used when the veteran lives too far from a VA facility that offers medically necessary care, or when the VA is unable to furnish the type of care or services required. Eligibility for fee-based care is generally limited to those who live too far from available services, those obtaining service-connected care and care in medical emergencies. If you have questions about your eligibility, contact the health benefits call center at (877) 222-VETS from 8 a.m. to 8 p.m. Eastern Time or the fee-basis care office at your local VA medical center.

VA Form 10-7078 authorizes payment for use of non-VA facilities. In addition to by use of the numbers above, it can be found online at www.va.gov/vaforms/medical/pdf/vha-10-7078-fill.pdf. Authorization for invoices allows you to obtain outpatient medical services from the licensed physician of your choice for the approved conditions and services listed on the form. Be aware that there are limits placed on the number of visits and the length of treatment. Except in emergencies, the VA will authorize payments only prior to treatment.

Maternity Care

As younger veterans of Iraq and Afghanistan return, Congress and the VA must also reconsider VA's policy on maternity care. Women veterans in their childbearing years with choices in health care coverage may not choose a provider that does not provide obstetrical care (the VA generally pays for such care from affiliated medical schools or local community providers) and does not pay for newborn care beyond the first two weeks. If a mom is considered "high-risk," this limitation on newborn care results in VA women veterans program managers scrambling to seek different funding options, such as Medicaid, for coverage of the infant who may need more

than two weeks of care if they are born prematurely, are low-birth weight, or have other complications associated with high-risk pregnancies.

Women of Operations Iraqi and Enduring Freedom

Veterans of Iraq and Afghanistan are likely to shape VA services in the years to come.

Ongoing conflicts in Iraq and Afghanistan have exposed more women, previously in jobs behind the frontline, to combat. Although women are still restricted from positions in direct combat, their presence anywhere in theater potentially exposes them to the same risks as men. While the VA restructures its programs that serve special rehabilitative needs to meet the acute needs of younger veterans with new injuries, women must fight to remind its leaders to also keep their needs in mind.

Women in theater are also exposed to virtually all of the same stressors as men. Besides the constant threat of danger, a toll has clearly been taken by tours of indefinite duration, worries about life back home, buddies who are killed or wounded, and exposure to death and maiming. Estimates vary about the rates at which veterans of Iraq are experiencing Post-Traumatic Stress Disorder (PTSD), but they are generally thought to be high (15-20%). Some studies indicate that women and people of color may be more likely to have PTSD after exposure to wartime violence than non-minority men. According to the VA, more than a third of incoming veterans of current operations are demonstrating a need for some type of post-deployment mental health care, including PTSD, substance abuse, depression and anxiety. The VA is bolstering its services for PTSD by adding sites and employees to vet centers, but there may still be problems with access to care. If you are seeking such services, contact your local Vet Center or VA facility.

Differences Between Male and Female Veterans

While some research indicates that racial and gender inequities in health care are improving, there are still studies that show that women and minorities' care is sometimes worse than care for the same conditions in men. This is particularly true for minority women, who are treated far less aggressively then men with similar conditions. The VA has documented more consistent health care delivery for veterans regardless of race or gender than most health care providers offer, but there are still issues to address. For example,

more minorities should be included in clinical trials for new pharmaceutical treatment and therapies. VA providers also demonstrate a preference to treat cardiac diagnoses for Caucasian veterans invasively while using less aggressive, and possibly less effective, techniques for some minority veterans.

African American and Hispanic servicemembers accounts for a higher percentage of women servicemembers than of men servicemembers. Ethnicity and culture affect women's tendencies to develop some conditions and their treatment needs. Being in a minority may also affect the way providers treat women veterans of color—this can be good and bad. Providers need to know if people in a minority are more likely to have certain health risks, but unless there are problems associated with minority status (this is the case in some treatments being studied for Hepatitis C, for example) they also need to offer the same care for the same sorts of conditions. Unfortunately, there is evidence that some providers don't.

If you believe you are not being treated fairly because of being a woman or because of being part of a minority group you should first contact the patient advocate at the facility. If the response is not helpful, the VA's Inspector General also has a hotline to report problems: (800) 488-8244, open Monday-Friday from 8:30 AM to 4:00 PM Eastern Time.

Women as VA Research Participants

The VA recently launched an initiative to include more women in research studies. Because the VA is a major teaching and research site, this initiative targeting women veterans is important. Being involved in clinical trials, for example, means women veterans may be able to get cutting-edge therapy and pharmaceuticals to which they would otherwise lack access. The VA's Office of Research and Development lists studies underway, including those that are seeking women to participate in research. For more information about research trials involving women please see www.va.gov/ord. If you elect to participate, you have the right to be informed about the advantages and risks of participating in the trial in language you understand. If you want to participate, don't be afraid to ask questions and if you don't want to participate, feel free to refuse.

Targeting women, including women of color, will also allow the VA to better identify unique health issues for these groups. For example, there is some thought that minority women may be more prone to PTSD. In the

OIF/OEF population, women veterans are also seeking VA mental health care at greater rates than men. These issues will continue to be studied and women veterans should stay tuned to Veterans for America's Web site for updates.

Mental Health for Women Veterans

The VA has many mental health programs which address issues from serious chronic mental illness and homelessness to substance abuse and readjustment from deployment. Under the recently passed National Defense Authorization for 2008, the VA and the Department of Defense are required to report on the programs available to serve female veterans and service members with mental health care needs, report whether programs are adequate and to develop a policy to address their needs. Veterans for America's Web site will detail further developments.

Women are served by all of the VA's mental health programs. As a smaller population within the largely male patient population, however, women might have specific concerns—particularly if they are seeking care for situations that have involved abusive men.

Many VA counseling services—including substance use disorders treatment and readjustment counseling—involve group meetings. If there are small numbers of women seeking care at a facility or for a specific problem, then you may feel isolated or that the group is not speaking to your concerns—particularly if you have concerns about relationships with men. Some women, however, will enjoy the camaraderie of being placed in groups made up mostly of men so they can share their reactions to common experiences of deployment or service. Women who have readjustment issues from Iraq and Afghanistan might be far more at ease discussing them among the men they served with then among women civilians, for example. A skilled counselor will be able to understand your needs, and if group counseling is right for you, place you in a group that shares your issues. You may also have concerns about using male counselors or seeking treatment in places, like Vet Centers, which are predominantly used by men.

If you don't like the options for treatment in your area, talk to a women veterans program manager or patient advocate at the closest VA medical center. It may be possible for women to use fee-based care in some circumstances.

Counseling and Treatment for Military Sexual Trauma

The VA provides counseling to any veteran who is suffering as a result of a sexual harassment or a personal assault or battery of a sexual nature, which occurred while on active duty or active duty for training. While every medical center is required to provide assessment and referral to military sexual trauma counseling, not every center offers such services. If you need counseling, call your local VA medical center or Vet Center and ask for the military sexual trauma coordinator or the women veterans program manager. Every VA medical center has identified a psychotherapist as its point of contact for military sexual trauma, as well as a women veterans program manager.

Sexual trauma is psychological trauma, which, in the judgment of a mental health professional, resulted from a physical assault of a sexual nature, battery (touching) of a sexual nature or sexual harassment. Sexual harassment is defined as repeated, unwanted advances, requests for sexual favors and other verbal or physical contact of a sexual nature which is threatening in character. Treatment for military sexual trauma is not limited to women veterans and is mandatory, meaning that the VA must provide treatment and counseling to any eligible veteran. Veterans may receive counseling at private outpatient facilities in some circumstances (see section above on fee-based care). You are also eligible for treatment for physical conditions resulting from the sexual trauma at no cost. For example, if your neck was injured during a sexual assault in the military, you can receive treatment for your neck injury. You do not incur inpatient, outpatient, or medication co-payment charges associated with such counseling or treatment, even if you are not service-connected and have income above the means-test threshold.

In almost all cases, mental health professionals accept a veteran's version of traumatic events occurring on active duty. This allows them to provide treatment for any resulting mental or physical conditions free of charge, even if the incident happened long ago. If you believe you are entitled to compensation for these conditions, keep your sexual treatment and counseling files (see below for more on compensation for PTSD and conditions secondary to sexual assault below).

As part of the VA's National Center for PTSD, the VA Palo Alto Health Care System has established a Women's Mental Health Program that includes its Women's Trauma Recovery Program (WTRP)—the first and

only program of its kind in the nation. The WTRP serves women of all eras and has expanded its treatment program to include war-zone related stress, as well as Military Sexual Trauma (MST) related to in-service sexual assault. To request additional information you can go to its Web page at www.womenvetsptsd.va.gov or contact the program coordinator at (650) 493-5000 ext. 27373.

Privacy and Other Access Concerns

Clinics which see predominantly male veterans may not provide adequate privacy accommodations for women veterans. In addition, psychiatric, residential, and homeless programs may also have a problem accommodating women veterans. Often at existing VA mental health facilities women must share wards and bathroom facilities with men, which may create additional anxieties about privacy and safety, particularly if you are already feeling nervous or have been sexually abused. VA must ensure that its mental health programs—particularly those in inpatient settings—are able to accommodate privacy standards. If you are concerned about privacy at your facility in any setting (this may be especially likely if you've experienced sexual assault), ask a patient advocate or a women veterans program manager for assistance in addressing your concerns.

Until the VA is aware of a problem, it will not fix it. Women need to share their concerns with facility administrators and also be part of management advisory councils that are in regular contact with VA officials at the network and facility level. Many of the veterans' service organizations are integrally involved in these processes, so sharing concerns with these groups that tend to have some clout with VA officials is a good way to ensure the VA will take complaints seriously.

The VA must address how to make some of these inpatient and residential services accessible to the mothers of dependent children. Veterans for America (VFA) has found that a third of the women deployed to OIF/OEF are single parents. The VA has provided some grants for homeless programs in the community that pay for the care of veterans with dependents. If a woman needs inpatient or residential services, she will need to have a place to keep her children while she gets care. Some VA facilities may be aware of local community resources that can help, but if you are in this situation you may be on your own. A good place to start may be your local Department of Social Services. To the find the department(s) in your

state, check in the government listings in your yellow pages, under your city, county, or state. You can also search online for "social services."

Disability Compensation

In general, women, even those who served in eras with less exposure to combat, are compensated for service-connected injuries at greater rates then men. This may not be surprising since women, generally, are more likely than men to recognize symptoms that require health care or to seek treatment. The VA offers disability compensation for conditions "incurred or aggravated" by military service. Generally, a vet must prove an association (but not necessarily the cause) between her service and her condition.

If you are chronically ill or injured and believe that military service caused or worsened a medical condition, you should file a claim. VA Form 21-526 is the application for disability compensation. The application and very general information assisting veterans in filing is found on the VA's website: vabenefits.vba.va.gov/vonapp. (Also see Chapter 3, on compensation.)

Women's gender-specific health conditions may also result in different sorts of claims for compensation than your regional office is used to addressing. Breast, ovarian and cervical cancer may be service-connected if incurred during or as a result of military service, for example. Women recently won a significant legislative victory in obtaining special compensation for the removal of breasts. Another special case is seeking compensation for injuries, including PTSD, that are the result of military sexual trauma. This is discussed in detail below.

The VA has assigned women veterans benefits coordinators in its regional offices the task of assisting women in the adjudication of their claims. These should be familiar with some gender-specific issues. Ask your regional office to connect you to the women's coordinator. If you need to find your regional office, call (800) 827-1000. In addition, many veterans' service organizations have free service programs that can assist veterans with filing claims. Congressionally chartered veterans service organizations that often have service representatives experienced in working through the VA claims processes are found at www1.va.gov/vso.

Women eligible for survivor benefits (payments to dependents who have lost family members due to injuries or illnesses incurred during military service) and CHAMPVA (a health insurance program for dependents) can also be assisted by women benefits coordinators.

If your claim is denied, you can appeal it. Again obtaining your benefits can require a lot of persistence. Get the help you need and keep trying.

Proving Service Connection for PTSD Secondary to Personal Assault

The VA allows different standards of proof to link Post-Traumatic Stress Disorder (PTSD) as a condition secondary to military sexual trauma than are generally accepted for purposes of compensation. If you are a victim of military sexual trauma, Veterans for America (VFA) advises you to report it and to seek medical treatment. Treatment and counseling are important to your recovery and may also safeguard your likelihood of receiving compensation. If you decide to seek compensation for conditions related to military sexual trauma, you should submit any medical records associated with sexual trauma counseling or treatment.

Veterans claiming service connection for disability resulting from an in-service personal assault face unique problems documenting their claims. The VA defines personal assault or personal trauma as an event of human design that threatens or inflicts harm. It does not have to be sexual in nature. It defines sexual trauma as a physical assault of a sexual nature or battery of a sexual nature which may result in lingering physical, emotional or psychological symptoms. Veterans can be compensated for conditions, such as PTSD, associated with either form of assault.

Many victims of personal or sexual assault suffer from PTSD, which is a recurrent emotional reaction to a traumatic event, such as a sexual assault. In many cases, victims don't realize they are suffering from the disorder. If you believe you are struggling with PTSD, check out the VA's Web site at www.ncptsd.va.gov/ncmain, which includes information about symptoms and where to get help.

Most often personal assault in the military involves female veterans, but male veterans may also have been victims of personal assault. Because personal trauma or assault is so sensitive, the VA realizes that many incidents go unreported; thus victims may find it more difficult to produce evidence of the incident (or stressor). Even if the veteran's military records

don't document a personal assault, the VA will consider other evidence to establish an in-service incident and it is required to tell you this. Developing alternative sources of evidence can be vital to obtaining compensation.

The VA amended its compensation regulations to add a new section for PTSD claims based on in-service personal assault (CFR 38, Sect. 3.304(f)(3)). The regulation states that the VA will not deny a claim for PTSD based on personal assault without first advising the veteran that evidence other than that found in the military service records can be submitted. The VA must then allow the veteran the opportunity to submit such evidence. The regulation describes some types of sources of evidence, other than medical service records, that can be used to support a PTSD claim based on a personal assault.

Acceptable Sources Of Documentation To Prove PTSD Secondary To Personal Assault

Rape crisis centers
Civilian police reports
Mental health counseling centers
Hospitals
Medical records from civilian physicians
Statements from family members
Statements from roommates
Statements from fellow service members
Personal journals or diaries
Statements from clergy

Behavior changes following the claimed assault can be relevant evidence which is documented by the above sources. Behavior changes that may establish credibility of the stressor include, but are not limited to:

- Request for a transfer to another duty assignment
- Changes in performance and performance evaluations
- Substance abuse such as alcohol or drugs
- Increased use of over-the-counter medications
- Increased or decreased use of prescription medications
- Increased use of leave without an apparent reason

- Visits to a medical or counseling clinic or dispensary without a specific ailment or diagnosis
- Obsessive behavior such as overeating or undereating
- Treatment for physical injuries around the time of the trauma
- Unexplained episodes of depression, panic attacks or anxiety
- Pregnancy tests around the time of the incident
- Tests for HIV or sexually transmitted diseases
- Breakup of a relationship
- Unexplained economic changes
- Unexplained social behavior changes

The VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred. Any evidence that would tend to support that the claimed stressor occurred should be submitted. In addition to advising the claimant about these potential sources of evidence, the VA may actually assist you in obtaining evidence, including statements from witnesses or alleged perpetrators you identify.

In addition, the VA General Counsel held that an individual who suffers from Post-Traumatic Stress Disorder as a result of a sexual assault that occurred during inactive duty for training may be considered service-connected, for purposes of VA benefits.

Veterans must remember that even with credible evidence that the incident occurred, a medical diagnosis of PTSD and a link of the current symptoms to the incident must be submitted. Evidence of the incident (or in-service stressor), the diagnosis of PTSD and the establishment of a link between current symptoms and the in-service stressor is needed for an award of disability compensation. (For more information on filing compensation claims for PTSD see Chapter 3, subchapter 4, part (b).

Conclusion

Women servicemembers and veterans must be ready to fight. Sexism in the military and the VA does still exist. Women must understand that the bureaucracies are not always suited to meet their unique needs. Knowing the appropriate reporting channels, reporting instances of injustice and abuse,

and advocating for change in the systems is the next battle women servicemembers and veterans must wage and win for themselves and future generations of women servicemembers.

Susan Edgerton served as the Democratic Staff Director for the Health Subcommittee on the House Veterans Affairs Committee from March 1997-May 2005. Before holding that position, she worked as a Program Director for Health Policy Analysis and in other positions for Paralyzed Veterans of America beginning in 1990. Edgerton earned a Masters of Science in Public Health from University of North Carolina at Chapel Hill and Bachelors of Arts degree from the University of Virginia. Since leaving Capitol Hill, Edgerton has consulted for some of the major national veterans service organizations, including Disabled American Veterans and Vietnam Veterans of America. She lives in Falls Church, Virginia with her husband, David Walker, a political consultant, and young sons Zachary and Sam Walker.

Kathleen Gilberd is a paralegal military counselor, who assists servicemembers and veterans in voluntary and involuntary discharge cases, discharge upgrades and Board for Correction of Military/Naval Records cases, sexual harassment and racial discrimination complaints, and medical (disability evaluation system) proceedings. Ms. Gilberd is a graduate of the University of California, Berkeley; she first became interested in military law there when soldiers at nearby Fort Ord asked for help with a demonstration against the Vietnam war at their base. This taught her a great deal about servicemembers' rights, and the lack thereof, and led to professional and pro bono work as a military counselor beginning in 1973. Her work has ranged from Navy sailors' protests of dangerous shipboard conditions to participation on the legal team for Col. Margarethe Cammermeyer in a successful lawsuit against the pre-"Don't Ask, Don't Tell" policy, and now to challenges to the Army's and Marine Corps' efforts to discharge combat veterans with PTSD for misconduct or "personality disorder."

For more years than she cares to remember, Ms. Gilberd has served as the chair or co-chair of the National Lawyers Guild's Military Law Task Force, and she contributes regularly to its legal journal, *On Watch*. She has written extensively and, she says, boringly, on military administrative law,

including contributions to the military counseling manual, *Helping Out*, Clark Boardman Callahan's *Sexual Orientation and the Law*, and other legal manuals. She also serves on the advisory committee of the national GI Rights Network.

Patricia Koritta is a disabled Vietnam Era veteran, having served in both the Marine Corps and the Air Force. She hold a B.A. in psychology and an M.S. in gerontology. She has 26 years' experience as a veterans' advocate. She was employed with the National Veterans Legal Services Program in Washington, D.C. She is admitted to practice before the United States Court of Appeals for Veterans Claims. She currently resides in Arkansas with her husband Fred.

Chapter Twenty-Seven Overview of the Uniform Code of Military Justice

By James Klimaski with David Addlestone

Upon joining the military, the servicemember becomes subject to the Uniform Code of Military Justice ("UCMJ" or "the Code"). Congress created the Code shortly after World War II to provide a uniform and fair system of criminal justice for all branches of the armed forces of the United States.

The UCMJ was needed in part because of the outcry of the citizen soldiers who had been subjected to the antiquated Articles of War and to put an end to some services' primitive approach to military justice. (This chapter by no means is intended to present comprehensive coverage of the criminal law practice under the UCMJ; it is intended to alert the servicemember to some of the most commonly faced situations when a basic understanding of the UCMJ would be helpful.) For the first time, all criminal offenses were defined, and the procedural rights of servicemembers guaranteed by law.

The President was given the authority to promulgate rules to implement the Code by developing a Manual for Courts-Martial (MCM). Over the years, both the Code and the Manual have been modified, but the essential

structure has remained the same, except for the expansion of the role and the independence of the military judges and military defense counsel.

The UCMJ has two main parts, a procedural system for carrying out discipline and a series of punitive articles describing the offenses for which a servicemember can be punished. The criminal code covers the same type of criminal offenses found in civilian life: murder, rape, robbery, etc. It also covers offenses unique to the military: insubordination, failure to obey orders, unauthorized absence, desertion, etc.

The UCMJ also provides for appeals from court-martial convictions and for redress of grievances when the servicemember believes he or she has been treated unfairly (See discussion of Article 138, UCMJ, below).

Servicemember Rights

Much of the Constitution's Bill of Rights designed to protect the individual from arbitrary and unfair prosecution has also been codified in the UCMJ. For example, a servicemember must be informed of the charges against him or her, and these charges must relate to a specific article in the UCMJ. The servicemember must be told at the outset that he or she has a right to counsel and a right to remain silent when questioned (Article 31, UCMJ). This provision is broader than the well-known "*Miranda* rights" guaranteed by the Constitution.

Once a servicemember invokes these rights, all questioning must cease immediately. It is important to remember that a right really is a right only if it is exercised. Once the right is voluntarily waived, it is usually lost, and statements made can be used against the servicemember.

These two rights—the right to counsel and the right to remain silent—are probably the two most important legal rights of an accused servicemember. There is rarely any benefit to waiving any one of these rights and a waiver should never be given without the advice of an attorney.

The person questioning the servicemember may claim he or she is his or her friend, but he or she is not. The questioner most often represents the command. He or she is allowed to lie or exaggerate the facts if he or she thinks it necessary to gain information.

The servicemember should always seek legal counsel before making any statement in a criminal investigation. Any statement – even a general denial

– could be used against the accused servicemember. A denial of guilt to an investigator can be prosecuted as a separate charge of making a false official statement.

Members of the military have the right to free legal counsel from a military defense lawyer, who is bound by the attorney-client privilege. A civilian lawyer may also be consulted, but only at the servicemember's expense.

There may also be times when the servicemember has recourse only to a civilian attorney, such as when he or she is notified that he or she is under investigation, but no charges have yet been formally prepared. The services usually will not assign a military defense counsel until charges are " preferred". However, a servicemember does not have to wait until a military lawyer is assigned. The servicemember can on his or her own go to the military defense counsel's office and try to schedule an appointment.

A military installation rarely will have more than two military defense counsel and usually only one. A military defense counsel is generally quite skilled in trial work with a high degree of independence, as he or she reports only to the Trial Defense Service and not the installation commander or the command's staff judge advocate. Like civilian attorneys, some are very good and some are incompetent.

If, however, the accused does not feel comfortable with his or her assigned military counsel, he or she may request another counsel be detailed to the case. The "area defense counsel" may then take over the case. Area defense counsel are more experienced. The accused servicemember can also ask that a specific individual military counsel be appointed to the case. If this counsel is "reasonably available," the military should honor the request. You should investigate to see which counsel has the best reputation.

Remember, a servicemember should not give in to the pressure of a military investigator or the command and make any statement before consulting with counsel.

A servicemember also has the general right against unreasonable searches and seizure, even when living on base in a barracks or living in government housing. A military investigator, military police officer, senior NCO, or commissioned officer cannot simply search a servicemember's personal property without proper authorization. Such authorization must come from a higher authority, usually the base or post commander. He or she is required to review and evaluate the basis for any search request.

If evidence to support a reasonable suspicion ("probable cause") is lacking, the request should be denied. The command may not use a subterfuge such as a health and welfare inspection to negate a servicemember's rights against unreasonable search and seizure.

A servicemember also has a right to a fair trial. This will be discussed further on in this chapter.

Non-Judicial Punishment ("NJP" or an "Article 15")

The UCMJ provides for the imposition of disciplinary measures by a commander that are not considered criminal proceedings. This non-judicial punishment is allowed under Article 15, UCMJ, also referred to as "NJP," for "non-judicial punishment," or "captain's mast." Unlike a court-martial, where a finding of guilty would be a criminal conviction, a guilty finding under Article 15 does not create a criminal record for the servicemember. Some services remove an NJP from a servicemembers' records upon a promotion, a specified period of time with no new offenses, or other events.

Non-judicial punishment is supposed to be limited to minor disciplinary infractions; however, there are instances when a commander resolved serious offenses utilizing NJP. This break is usually reserved for officers or high-ranking enlisted members.

The procedures for imposing NJP are similar for all the services. However, the Army and the Air Force require a standard of proof of "beyond a reasonable doubt" for a finding of guilt, while the Navy and Marines use only a "clear and convincing standard." As a practical matter, most commanders rarely understand the meaning of beyond a reasonable doubt.

Except when "attached to or embarked on" a ship, a servicemember has the right to reject non-judicial punishment and request a trial by court-martial. This affords the servicemember greater rights, but conversely exposes him or her to greater punishment if found guilty and counts as a federal criminal conviction. If the case is referred to a summary court-martial (SCM), where one officer is judge, jury, prosecutor and defense counsel, this proceeding can also be rejected by the servicemember. There is

no right to assigned counsel at a SCM, but civilian counsel can be used at the servicemember's own expense. There is some debate whether a guilty decision by an SCM is a criminal conviction. The conviction is reviewed locally and the only appeal is to the Judge Advocate General under Article 69, UCMJ (discussed in chapter 16, on correcting records).

The first thing for a servicemember to understand about an offer of non-judicial punishment is that accepting it does not imply guilt. The evidence must prove the charge(s). The servicemember has a right to see the evidence before the start of the proceedings.

While a servicemember in an NJP proceeding may not be represented by a military lawyer, the servicemember should be given the opportunity to meet with a military defense lawyer before deciding to accept or reject NJP. The servicemember can also have another servicemember or a civilian lawyer as a representative or spokesperson at NJP.

Except for the Marines, the services are leery of civilian counsel and will attempt to set up barriers to restrict use of a lawyer for defense at an NJP proceeding.

A servicemember may present both evidence concerning the facts of the case and character or other evidence to "mitigate" (reduce) any punishment imposed after a guilty finding. The evidence can be documents or affidavits or live testimony of witnesses. After imposing punishment, the commander may suspend any portion or all of it.

A servicemember has an absolute right to appeal any imposition of NJP to the next higher command without fear that the punishment will be increased. The servicemember should not be intimidated from filing an appeal.

A lawyer from the higher command's staff judge advocate's office normally reviews the appeal. It is then forwarded to the senior commander for decision. This commander may affirm the punishment, reduce it, or set it aside altogether. The lower commander cannot attempt to use the same evidence at another proceeding.

Military appellate courts cannot review the findings imposed through non-judicial punishment. The servicemember can, however, file a petition to the Board for Correction of Military Records (BCMR) of that service for further review. (See Chapter 16, "Correcting Military Records, Related Issues.") Non-judicial punishment is not intended to be a criminal proceeding. However, the Department of Defense has allowed the military

services to report *arrests* so that they are listed with the FBI, even when the matter is eventually resolved by NJP proceedings. It is important for the servicemember to ask the command notify the FBI to remove this information immediately. If you want to remove the information that resulted in only an NJP proceeding, consult a Judge Advocate.

If the command refuses, the FBI can be asked to correct the record under the Federal Privacy Act. Otherwise, this arrest record could affect future employment, travel, and security clearances. The servicemember should contact the local military defense counsel for assistance.

Courts-Martial

Courts-martial are similar in many respects to criminal trials in the civilian community. There are three types of courts-martial: summary courts-martial (discussed above), special courts-martial for lesser offenses similar to a misdemeanor, and general courts-martial for serious offenses similar to a felony. Some civilian courts are more concerned than courts-martial about the nature of offenses brought to their attention than about the type of court-martial, which tried the case. This issue would arise when prior convictions become an issue or perhaps where a prior felony conviction is an element of the civilian crime, such as possession of a firearm.

The principal difference between these two types of court-martial (special and general) is the limit on punishment. A special court-martial can impose a penalty no greater than a bad conduct discharge, plus one year of confinement and full reduction in grade.

A dishonorable discharge or "dismissal"(for an officer) can be given only by a general court-martial. A general court-martial can impose confinement up to life imprisonment and under some circumstances, the death penalty. The maximum sentence for an offense is governed by the Table of Maximum Punishments contained in the Manual for Courts-Martial promulgated by the President of the U. S.

The court-martial process starts when a charge is "preferred" against a person in the military. Anyone in the military can prefer a charge against anyone else in the military if he or she has personal knowledge that an act of misconduct covered by the UCMJ has been committed.

Usually the unit commander prefers charges. As soon as charges are preferred, the accused should be notified and "detailed" (assigned) a military defense counsel. The detailed military counsel is appointed by a trial defense service that is independent of the person preferring the charges.

The accused servicemember may ask for a specific military defense counsel to be appointed to the case. This request should be granted if the military counsel is reasonably available. The servicemember is also allowed to retain a civilian counsel at his or her own expense—but good counsel does not come cheaply. Military defense counsel remains on the case even if the servicemember hires civilian counsel, unless the servicemember wants to dismiss military counsel. This should be done rarely, as military counsel can help civilian counsel. This may reduce the cost of civilian counsel. See the appendix on legal services for suggestions about how to find competent civilian counsel.

The next step in the process is determining which level of court-martial to which to "refer" the case, to reduce the matter for resolution by non-judicial punishment, or to dismiss the matter entirely. See Chapter 18, "Early Discharge or Separation." If the commander having court-martial convening authority decides the offense is serious enough to warrant a court-martial, he or she needs to investigate the matter before taking the next step of referring the case to trial.

No formal investigation need be done to refer a matter to trial by special court-martial. Before a matter can be referred to a general court-martial, however, Article 32 of the UCMJ requires a formal investigation. This is somewhat comparable to a grand jury proceeding without the secrecy, or to a preliminary hearing. It is a very important right.

The prosecutor ("trial counsel") must present evidence sufficient to convince the Article 32 hearing officer that there is probable cause the offense was committed.

The trial counsel should also present any evidence she or he has which favors the accused servicemember. Though the accused is not required to do anything at these Article 32 proceedings, he or she has a right to fully participate, with appointed or retained civilian counsel, during an Article 32 hearing. That is, he or she has the right to cross-examine any witness, the right to challenge any evidence presented by the trial counsel, the right to call witnesses, and the right to present evidence during the hearing.

This evidence is not limited to the charged offense, but can include anything that may convince the convening authority not to refer the matter to trial, or at least not to a general court-martial. The accused may waive the Article 32 investigation, but this is rarely a good tactic, because the hearing is a good opportunity to have government witnesses testify under oath in the early stages of the proceedings—before the government case has been solidly put together.

It is during these early stages of the court-martial proceedings that the servicemember has to worry about the possibility of command influence. The convening authority appoints the Article 32 investigating officer, the jury (known as court-members), as well as making the decision whether or not to proceed to trial.

The convening authority may also try to influence the proceedings through the staff judge advocate (SJA), the unit's legal advisor. While major changes in the court-martial system have greatly lessened improper command influence, it still occurs with more frequency than is admitted by the military services. Command influence is very hard to prove.

Two changes from the original court-martial scheme have reduced the incidents of unlawful command influence: an independent judiciary and a separate trial defense service not under control of the convening authority.

Once charges against a servicemember are referred for trial, the case proceeds similarly to how it would proceed in the civilian world. Both sides exchange evidence, file appropriate pretrial motions, and gather witnesses in preparation for trial. It is the responsibility of the government trial counsel to see that all witnesses for the prosecution and the defense are available for trial. The expenses for bringing the witnesses to the trial, both fact witnesses and expert witnesses, as well as witnesses for the sentencing phase of the trial, are to be borne by the government.

The trial can be either before a military judge alone or with court members—a jury. While the judge is expected to be impartial, judges rarely acquit a defendant. There must be an exceptional reason for an accused, particularly an innocent accused, to waive a jury trial. The panel members are not a jury of peers to the accused. The convening authority selects panel members from recommendations given by subordinate commanders. In theory, these panel members are to have been interviewed or otherwise known to the convening authority before being selected for a court-martial.

In practice, the command's staff judge advocate selects the jury in many commands.

The panel members must be of equal or greater rank than the accused. Normally, they will be officers, though an enlisted servicemember has the right to have at least one-third of the panel members also come from the enlisted ranks. (This option is rarely exercised by low-ranking servicemembers, because the enlisted jurors tend to be senior NCOs.) Panel members are also subject to voir dire, a process whereby the judge and the counsel for both sides can question them to determine if they can be fair and impartial during the trial. It is important that your attorney remind panel members that they must presume the accused is innocent until proven guilty through evidence presented by the government counsel, also known as trial counsel.

At trial, any evidence presented must conform to the Military Rules of Evidence, which are similar to the Federal Rules of Evidence used in federal civilian courts. The military judge must rule on any challenged evidence before it can be admitted and considered by the panel members. If the judge excludes any evidence, the panel may not consider it during deliberations.

The senior ranking panel member always becomes the "president" of the court, a position that is much like a civilian jury foreperson. However, during deliberations all rank must be set aside and every member of the panel given an equal voice. Unlike members of a civilian jury, however, the military court panel needs to have only two-thirds of the members agree for conviction. Anything less is considered an acquittal. There can be no hung jury as in the civilian courts. Thus, jury selection can be a numbers game with the defense aiming to have to convince the fewest numbers of jurors to vote not guilty.

Sentencing Phase of the Trial

This part of the court-martial, assuming a finding of guilt, is as a practical matter the most important; because 90% of all courts-martial end in convictions. This phase is known as "extenuation and mitigation." This is when the convicted servicemember has the opportunity to present his or herself in the best light. Often in exchange for a guilty plea, the convening

authority has agreed in writing (in a "pre-trial agreement") to approve no more than a specified sentence.

The unwritten deal with the prosecutor is that he or she will remain relatively passive during this phase. The jurors, who do the sentencing, do not know the terms of the agreement. The defense's job is to "beat" the deal. This is often possible because the jury will never hear the gory facts of the case or hear from the servicemember's superiors what a "bad guy" he or she is. It is very important to go over your testimony carefully with your attorney if you choose to take the stand in this phase of the trial.

Review and Appeals

All court-martial convictions, whatever the level of punishment, must be reviewed and approved by the convening authority (CA) with advice from the SJA (again, staff judge advocate). The CA has the power to affirm the conviction and sentence, reduce the sentence, or dismiss the findings in all or in part. The CA cannot increase the punishment.

If a servicemember is convicted at a court-martial and receives a sentence that includes a punitive discharge or confinement of one year or more, he or she has an automatic appeal to the service's Court of Criminal Appeals. There is no absolute right to appeal where the sentence does not include a punitive discharge or one or more years' confinement. The other cases can be reviewed by the service's Judge Advocate General for legal sufficiency and appropriateness of sentence if an appeal is filed under Article 69, UCMJ (See Chapter16, on correction of records).

The servicemember may also petition the Judge Advocate General to have the case sent to the Court of Criminal Appeals for further review. These requests are rarely granted.

Military judges staff the Court of Criminal Appeals. They must review even guilty pleas to see whether the plea was "provident." (That is, did the accused say something when entering the guilty plea or at the sentencing stage that indicated he or she believed he or she was not guilty?) This must be done only in cases in which the accused received a punitive discharge or confinement for one year or more. The case is not considered final until the review has occurred. The court also must review the facts to determine that the offense was proven beyond a reasonable doubt and determine whether

the sentence was appropriate. The court may change the sentence but not increase its severity.

Any decision by the Court of Criminal Appeals may be further appealed to the United States Court of Appeal for the Armed Forces, which is made up of civilian judges appointed by the President and confirmed by the Senate. This court does not have to accept the appeal for consideration, with some rare exceptions. From here the servicemember may petition the United States Supreme Court for possible review. Throughout the whole appeals process, the servicemember is provided free military counsel who specializes in appeals. A civilian attorney may be hired at the servicemember's own expense.

While this appellate process is continuing, and even after it is over, the servicemember may petition for clemency. This request can be sent to the CA (convening authority), the Judge Advocate General, and to the service's clemency board. Military defense trial and appellate counsel are required to inform the servicemember of the clemency petition opportunity.

Article 138, UCMJ (Redress of Grievances)

Article 138 of the UCMJ is one of the few provisions of the Code that permit the servicemember to go on the offensive. This provision gives you the right to file a formal complaint against your commanding officer for any grievance you may have, including harassment, violation of your rights, unfair treatment,etc. Normally, before filing the complaint, you should seek to resolve the issue with your commander. If this is not appropriate or not successful, you may file the complaint with the officer exercising general court-martial authority over your commander.

The commander must investigate the complaint and then forward the results to the office of the secretary of your branch of service. The Manual for Courts-Martial provides guidance on filing an article 138 complaint. Be careful to state your allegations clearly and do not speculate on facts not known to you. If possible, seek assistance from an attorney or experienced military counselor before filing a 138 complaint.

Seek Legal Counsel (This is But a Brief Overview).

This chapter has been but a brief overview of the Uniform Code of Military Justice and how it works. A servicemember should seek the advice of military counsel or a civilian attorney knowledgeable in military law as soon as possible after being notified that he or she may be charged with an offense under the UCMJ. Your rights are your rights only if you exercise them. See the appendix for suggestions on how to locate civilian counsel.

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Chapter Twenty-Eight Immigration, Obtaining U.S. Citizenship through Military Service

By Allan Wernick

Introduction

Naturalization is the process in which a permanent resident of the United States (sometimes called a green card holder) becomes a U.S. citizen.

U.S. citizenship provides many benefits. You must be a U.S. citizen to serve as an officer in the armed forces. In the civilian world, U.S. citizenship means you can vote, hold public office, get public assistance not available to permanent residents, and work in jobs usually open only to U.S. citizens, including police officer and fire-fighter. Some private jobs, for instance where a military contract is involved, also require U.S. citizenship.

Getting U.S. citizenship has other advantages. As a U.S. citizen, you can get a U.S. passport, which often makes it easier to travel abroad. Some countries allow U.S. citizens entry without a visa, and if you need help while traveling, as a citizen you can call on U.S. embassy and consulate representatives to help you. Also, a U.S. citizen can live abroad as long as he or she likes without losing citizenship. A permanent resident who spends

too much time abroad can be barred from reentry. Finally, the U.S. government cannot remove (deport) a U.S. citizen based on an act that occurred after naturalization, except acts of expatriation (such as treason) or formally renouncing U.S. citizenship. Commission of certain crimes can result in the removal (deportation) of a permanent resident, but not a U.S. citizen.

U.S. immigration and nationality laws provide special rules for the naturalization of non-citizens who have served in the U.S. military. Usually, simply serving in the armed forces, even in times of war, does not automatically result in U.S. citizenship. The servicemember or veteran must apply. However, current law requires the U.S. Citizenship and Immigration Services (USCIS) to waive filing fees for naturalization applicants applying based on military service.

Under order of President George Bush, any person serving on active duty in the armed forces on or after September 11, 2001 benefits from special "active hostilities" or "wartime" naturalization rules. "Active duty" means serving full-time in any capacity in the United States Military, including training duty, attendance at a military school while in active military service, and service in non-combatant duty. Active duty DOES NOT include service in the standby reserves.

In considering the rules for naturalization, we discuss both the general rules that apply to all applicants and the rules for those in military service. We focus on naturalization of current active-duty servicemembers and recently discharged veterans. Special rules apply also to active-duty veterans of World War I, World War II, the Korean War, the Vietnam War, and the Persian Gulf conflict. These rules are discussed in the Immigration and Nationality Act at Section 329. You can find the Act at the U.S. Citizenship and Immigration Services Web site at www.uscis.gov .

One final note as we end this introduction: Immigration laws can be confusing. If you have any doubts about whether you qualify for naturalization, consult an expert before applying. Sometimes a naturalization applicant, particularly one with a criminal record, can end up getting removed from the United States. You don't want that to happen to you. At the end of this chapter, under "Where to Get Help with Your Naturalization Application," we provide information on where to get help with your application.

Naturalization Requirements

For a permanent resident to become a U.S. citizen, he or she must be naturalized. That is, the person must apply for citizenship and the U.S. Citizenship and Immigration Services must grant that status. The main exception is for certain children who get citizenship automatically through a parent. Below we discuss naturalization requirements with an emphasis on the special rules that apply to active-duty members of the armed forces, veterans, and those who have died during military service. Note that the rules for active-duty members of the armed forces apply to applicants who apply while in the service, or within six months of honorable discharge.

The Age Requirement

To naturalize, most applicants must be at least age 18. Active-duty members of the armed forces during times of active hostilities may naturalize regardless of age. Other individuals not yet 18 sometimes get citizenship through a U.S. citizen parent.

The Continuous Residence Requirement

With exceptions for active-duty members of the U.S. armed forces, to naturalize you must have resided continuously in the United States as a permanent resident. Most applicants must have resided in the United States for five continuous years. Permanent residents who have been married to and living with the same U.S. citizen spouse while a permanent resident qualify after three years of permanent residence.

Continuous Residence Rules During Periods of Active Hostilities

For those serving during a period of active hostilities, the law waives the continuous permanent residence requirement. Thus, non-citizens who are

currently serving honorably are eligible to apply for naturalization without regard to any period of lawful permanent residence. To benefit from this rule you must apply for citizenship while a member of the armed forces, or within six months of separation. Note that if the servicemember is dishonorably discharged before five years of honorable service, he or she may lose his or her citizenship.

Note that here we refer to "non-citizens" applying for citizenship. While the law requires permanent residence for entry into the armed services, should a person in another status, including an undocumented immigrant, serve during periods of hostilities, he or she may naturalize.

Continuous Residence During Peacetime Service

Active-duty servicemembers serving during peacetime may sometimes naturalize under rules different from those that apply to other applicants.

Permanent residents who have served honorably in the armed forces for at least one year who apply within six months of termination of service qualify for naturalization regardless of their time residing or present in the United States. The one year may be a combination of active duty and inactive reserve duty.

Continuous Residence Requirements for Other than Active-Duty Servicemembers

Veterans who do not apply within six months of termination of service must meet the same continuous residence and physical presence requirements as other applicants. However, any time spent in the service, including time spent abroad, counts toward meeting these requirements.

To meet the continuous residence requirement, you must have resided continuously in the United States as a lawful permanent resident for at least five years. If you are the spouse of a U.S. citizen, you can naturalize three years after becoming a permanent resident if you have been married to and living with that U.S. citizen for the entire three years. Continuous residence does not mean that you must have been in the United States without ever leaving during the statutory period. It does mean, however, that during the five (or three) years before naturalizing you did not abandon your

permanent residence, the United States was your principal residence, and you were never out of the country for more than one year at a time, or 365 consecutive days.

If you have been out of the country for more than six months at one time, but less than one year, you must prove that you never intended to abandon your U.S. residence. Proof might include close family, a house or apartment, a job, and bank or utility accounts in the United States. If you are going abroad to work for a U.S. business or research institution, to do religious work, or to work for the U.S. government, you may be absent for more than a year without breaking your continuous residence if you get prior approval from the USCIS. Again, time spent abroad in military service does not affect compliance with the continuous residence requirement.

The Physical Presence Requirement

Except for the rules discussed above for active-duty servicemembers, to qualify for naturalization, you must have been physically present in the United States for half the required five- (or three-) year required period of continuous residence. Applicants may count time spent abroad doing religious work or in military service toward the required days in the United States.

The Good Moral Character Requirement

To naturalize, an applicant must be a person of good moral character. Good moral character does not mean moral excellence. If you have a record of criminal activity; have failed to pay required family support; have had problems with alcohol or drugs; have been involved in illegal gambling, prostitution, or procuring; have failed to pay your taxes; have failed to register with the Selective Service; or have lied to the USCIS to gain immigration benefits, you may fail the good moral character requirement. Parking tickets, disorderly conduct convictions, and many other minor offenses usually will not prevent you from proving that you have good moral character. However, the USCIS may contend that you do not have good moral character if you have repeated convictions for even minor violations.

The question of who has good moral character under U.S. law is not easy to answer. If you have any doubts, particularly regarding a criminal record, you should speak with an immigration law expert before filing your naturalization application. See "Where to Get Help with Your Naturalization Application," near the end of this chapter.

If you are convicted of certain serious crimes called "aggravated felonies," the law may permanently bar you from naturalization. In the bizarre world of immigration law, even some misdemeanors are aggravated felonies. Other crimes may not be a permanent bar to naturalization but are grounds for deportation.

For naturalization law purposes, a finding of guilt after a court-martial is the same as a criminal conviction. Further, some actions, such as trafficking in illicit drugs, may count against an applicant even without a conviction. If you have ever been arrested or charged with a crime, in or out of the service, get the advice of an immigration law expert before applying for citizenship.

Failure to willfully pay child support is a common reason for a finding of a lack of good moral character. Child support refers to financial support that you provide to your children when they are not living with you.

Other common indications of a lack of good moral character include failure to file tax returns when the law requires you to do so, being a habitual drunkard or a user or dealer of drugs, and earning income from illegal gambling, prostitution, or drug dealing.

Some controversy exists around how the USCIS should apply the rules about good moral character to naturalization applicants applying under the special rules for (active-duty) servicemembers. Generally, you must show good moral character for the period of continuous residence required to naturalize. The USCIS view is that to qualify to naturalize under the special rules for servicemembers, you must show at least one year of good moral character. For other applicants, you must have at least five years of good moral character (three years if you are applying under the special rules that relate to the spouse of a U.S. citizen).

Less-than-Honorable Discharge, Desertion, Failure to Appear for Induction, Draft Avoidance Based on Alienage

Persons not honorably discharged may not avail themselves of the special rules that apply to those in active service. Further, citizenship granted

because of service in the U.S. military may be revoked if the person is dishonorably discharged at any point prior to five years of honorable service. However, a dishonorable discharge and the crime of failure to appear for induction do not necessarily indicate a lack of good moral character and do not bar naturalization.

Note that military law describes five types of discharges: honorable discharge, general discharge under honorable conditions, discharge under other than honorable conditions, bad conduct discharge and dishonorable discharge. The USCIS considers an honorable discharge and general discharge under honorable conditions to meet the definition of "honorable discharge."

Desertion is a permanent bar to naturalization. However, if you are the beneficiary of an individual pardon or a group pardon for any crime or offense, including desertion, you may naturalize.

Non-citizens who avoided the draft because they are not citizens are not eligible to apply for naturalization, though many exceptions apply.

The English Language Requirement

With some exceptions, every naturalization applicant must pass an English language speaking, reading, and writing test. If a question arises at the interview that needs to be discussed in detail—for instance, whether you made required child support payments—you have the right to have the discussion in your native language.

You are exempt from the English language requirement if you have been a permanent resident for at least 20 years and you are over 50 years old or if you have been a permanent resident for at least 15 years and you are over 55 years old. If you qualify for this exemption, you must still pass the U.S. history and civics test, but the USCIS will test you in your native language.

If you are incapable of speaking, reading, or writing because of a mental impairment or physical disability, you are exempt from the English language requirement.

The Civic Knowledge Requirement

To naturalize, you must have a basic understanding of U.S. history and government. You must correctly answer several questions from a list of 100 questions provided by the USCIS. If you are over 65 years of age and you have been a permanent resident for at least 20 years, you need answer only six out of ten simple questions from a list of 25.

If you cannot answer questions or learn due to a mental impairment or physical disability, you are exempt from the civic knowledge test. You must apply for that exemption with your initial application. You can get the questions and answers at the USCIS website, www.uscis.gov.

Oath of Allegiance to the United States

To naturalize, you must take an oath of allegiance to the United States. You may have the oath requirement waived based on religious belief.

To become a U.S. citizen, you must express your allegiance to the United States and its form of government. You may omit that part of the oath relating to bearing arms or performing in military service. However, if you are not willing to bear arms, you must be willing to perform some form of military service, or to perform civilian work of national importance. If you meet conscientious objector standards, you can take an abbreviated form of the oath, declaring that you are willing to perform only civilian service. You must, however, be willing to perform some form of government service.

Dual Citizenship

If you become a naturalized U.S. citizen, do you have to give up your citizenship in another country? That depends on the laws of that country. When you become a U.S. citizen, the U.S. government asks that you renounce all other citizenship. Some countries do not recognize this renunciation and will consider you, a naturalized U.S. citizen, to be a citizen of both countries.

If you are worried that you will lose citizenship in another country, check with that country's consulate or embassy before you naturalize. If you are already a U.S. citizen and want to become a citizen of another country, you probably can do so without jeopardizing your U.S. citizenship.

Posthumous Naturalization and Benefits for the Family of Deceased Servicemembers

A non-citizen who served honorably in active-duty service and died as result of injury or disease incurred during that service may be granted posthumous naturalization. The next-of-kin must make the request.

Family members of a deceased servicemember may be eligible for immigration benefits as well. The spouse, parent, or child of a U.S. citizen who served honorably in the armed forces and died because of injury or disease incurred in or aggravated by combat may self-petition for permanent residence (a green card). The relative must file the petition within two years of the U.S. citizen's death. These rules apply regardless of whether the deceased was a U.S. citizen at the time of his or her death or naturalized posthumously.

For a spouse to self-petition under these rules, the spouse may not have legally separated from the deceased U.S. citizen and may not remarry until he or she gets permanent residence.

A child may self petition even if he or she becomes 21 or marries after the citizen's death, and a parent may self-petition regardless of the child's age.

Note also that the spouse of a person who was posthumously naturalized may naturalize without proving any particular period of physical presence or continuous residence in the United States.

Application Procedures

According to the USCIS, "[E]very military installation has a designated point-of-contact to assist with filing the military naturalization packet."

Nevertheless, reports are that this is not always the case. It's great if you can get help from military officials, but you may apply for citizenship without official help. The form and filing instructions are available by calling the USCIS Form Line at: (800) 870-3676 to request the "Military Packet" and obtain a copy of the handbook, *A Guide to Naturalization*. You can also get the form and information at the USCIS Web site, www.uscis.gov.

Besides USCIS form N-400, Application for Naturalization, members of the armed services and veterans must submit USCIS Form N-426, Certificate of Military or Naval Service, and USCIS form G-325B, Biographic Information.

The USCIS charges no fee for an applicant's applying for naturalization based on his or her active-duty military service.

If you are an active-duty member of the military, you may be interviewed for citizenship abroad or in the United States. If you are in the United States for a limited period, the USCIS will expedite the processing of your application.

Where to Get Help with Your Naturalization Application

Navigating the naturalization process can be difficult. While many people apply for U.S. citizenship without legal assistance, it is best if you get help. Start by learning as much about the process as possible. A good place to begin your research is the USCIS Web site, www.uscis.gov. Also, you may want to try the USCIS Military Help Line: (877) CIS-4MIL ([877] 247-4645).

Once you have learned all you can about the process, contact the AILA Military Assistance Program (AILA-MAP). AILA-MAP is a collaborative effort between the American Immigration Lawyers Association (AILA) and the Legal Assistance Offices (LAO) of the United States military Judge Advocates General Corps. The LAO provides free assistance to active duty, reserve component, and retired military personnel. You can get information and submit a request for assistance at www.aila.org/military.

If you want to hire a private lawyer, try contacting a bar association legal referral panel. You can get a list of panels at the American Bar Association (ABA) Web site at www.abanet.org/legalservices/lris/directory/. If you cannot afford a private attorney, try a not-for-profit immigration law center. Most of these

agencies charge a nominal fee. Some provide free services. The U.S. Board of Immigration Appeals (EOIR) has a list of agencies at www.usdoj.gov/eoir/probono/states.htm. You can also find a list of not-for-profit agencies (sometimes called voluntary agencies or VOLAGS) at my Web site, www.allanwernick.com.

Allan Wernick is a professor at Baruch College, City University New York (CUNY), and Chair of CUNY's Citizenship and Immigration Project. His weekly column, "Immigration and Citizenship," is syndicated by King Features Syndicate, and his column "Immigration Law" appears twice weekly in the *New York Daily News*. He is the author of *U.S. Immigration and Citizenship—Your Complete Guide, 4th Edition*. Research assistance was provided by Shoshana Grossman-Crist and Charlotte Page.

APPENDIX

Legal Services and other Forms of Representation for Veterans, Servicemembers, and Their Families. Also, General and Emergency Services

Most veterans claims and appeals at the VA are handled by employees of veterans service organizations, state veterans agencies, or counties. They are called veterans service officers (VSOs) or veterans service representatives. Some are volunteers. Some of VSOs also represent servicemembers before disability separation proceedings, and veterans before Discharge Review Boards and the Boards for Correction of Military Records.

In some cases, servicemembers or retirees may receive legal assistance from members of the Judge Advocate Generals' corps. In some cases, the servicemember, vet or family member may prefer to seek assistance from a civilian attorney experienced in military or veterans law. The first question you are likely to ask is "how can I afford a civilian lawyer?" Fortunately, the answer is not so bleak. There are some lawyers who handle needy cases for free ("*pro bono*"). Also, if a money claim is involved, some will handle the case for a percentage of the recovery (this is a "contingent fee" and comes out of the amount received from the other side) or no fee at all if you lose your case. In some instances, federal law provides for

government counsel to represent the vet. One example is in reemployment rights cases. And in other cases, lawyers may take cases because the law permits the court to award relatively generous attorneys fees paid by the losing party (usually the government) if you win your case. (Do not worry; fees are not levied against the plaintiff—you—if you lose except in rare circumstances). In cases before the U. S. Court of Appeals for Veterans claims, there is an organization of volunteer lawyers which will provide free counsel in most cases.

We have attempted to compile a complete listing of national and state organizations that provide free legal assistance to or referrals for servicemembers, vets or their families. If none are in your immediate area or otherwise are not available to help you, try your local legal aid or legal services program, if one exists. To find most of these offices go to the listing below for the Legal Services Corporation. If that does not list a nearby office, ask your local bar association or look in the yellow pages under "lawyers."

I. National Organizations

GI Rights Network

www.girightshotline.org

The GI Rights Network is a network of more than 20 organizations providing servicemembers, veterans, potential recruits and their families with information about their rights. It offers counseling on discharges, military regulations, discrimination, sexual assault and harassment complaint procedures, filing grievances, political activity and similar issues. Counseling is non-directive—it's designed to empower and support servicemembers in making their own decisions about rights and options when they face problems with the military. The services are confidential and free; Spanish language counselors are available. Sometimes referrals to experienced lawyers in military and veterans law can be provided.
For information on GI Rights and Discharges call:
(877) 447-4487
From Overseas: 202-483-2220

From Germany: 06223-47506
By e-mail: www.girights@girightshotline.org

The Legal Services Corporation (LSC)

3333 K Street NW, 3rd Floor, Washington, DC 20007
Tel: (202) 295-1500
Fax: (202) 337-6797
http://www.lsc.gov/

The federal Legal Services Corporation (LSC) funds a nationwide network of legal aid organizations providing free civil legal services to low-income Americans. LSC-funded programs handle the full range of non-criminal legal matters, including family law, consumer law, housing law and landlord/tenant matters, issues with government benefits, and more. Clients must meet certain eligibility requirements to qualify for assistance. Visit the "Find Legal Assistance" section of LSC's Web site to find a free legal aid organization in your area. Click here for a state-by-state list of free legal assistance Web sites containing valuable information and resources for civil legal issues.

Military Legal Assistance Offices

To find the nearest military legal assistance office, use the legal assistance locater at
http://legalassistance.law.af.mil/content/locator.php.

To find information on legal assistance for individual branches of the military contact the following offices:

Air Force
Air Force Legal Services Agency
150 Chennault Circle
Maxwell Air Force Base,
AL 36112
Phone: (334) 953-4179
http://hqja.jag.af.mil/

Army
U.S. Army Legal Assistance Policy Division, Client Services Branch

1777 North Kent St., Suite 9001
Rosslyn, VA 22209
Phone: (703) 696-1477
www.jagcnet.army.mil/Legal

Coast Guard
Legal and Defense Services
4200 Wilson Blvd., Suite 750
Ballston, VA 22203
Phone: (202) 493-1745
www.uscg.mil/legal/la/

Marine Corps
Commandant of the Marine Corps (JAL)
HQMC
2 Navy Annex
Washington, DC 20380
Phone: (703) 614-1266, (703) 614-3880 or (703) 614-3886
http://sja.hqmc.usmc.mil/

Navy
Legal Assistance Division
1322 Patterson Ave.,
Suite 3000
Washington Navy Yard,
Washington, DC 20374
Phone: (202) 685-4642
www.jag.navy.mil/html/OJAGLegal%20AssistHome.htm

National Association of County Veteran Service Officers, INC.

NACVSO works to promote the rights of veterans and dependents of the United States through a progressive legislative platform. It works collaboratively with the Department of Veterans Affairs as well as with other nationally chartered veterans organizations to ensure that veterans and

their dependents receive the entitlements they deserve for the sacrifices they endured.

To find a local service officer please visit the Web site below.

http://nacvso.org/cvso.asp

National Institute Of Military Justice

4801 Massachusetts Ave. NW, Washington, DC 20016
Tel: (202) 274-4226
Fax: (202) 274-4226
www.nimj.org/home.aspx

National Institute of Military Justice (NIMJ) does not provide legal services or represent individuals. It does, however, comment on regulations and legislation, and regularly appears as an *amicus curiae* (friend of the court) in cases raising important issues of military justice law and policy. NIMJ's staff, officers, directors and advisors are available to the media to explain the operation of the military justice system.

The National Lawyers Guild Military Law Task Force

318 Ortega Street, San Francisco, CA 94122
Tel: (415) 566-3732 or (619) 233-1701
Contact: Teresa Panepinto teresapanepinto@earthlink.net
Tel: (510) 2119-0413
www.nlgmltf.org

The National Lawyers Guild Military Law Task Force assists those working on military law issues as well as military law counselors working directly with GIs. It trains and mentors counselors and beginning military law attorneys in all aspects of military law through training materials and direct communication. It updates changes in military law and policy. The National Lawyers Guild Military Law Task Force work includes challenges to continued deployments and extended tours of duty. They provide assistance with discharges and GI Rights, discharge upgrades, conscientious objector claims, counter recruitment, registration, draft and enlistment counseling, AWOL/UA, "Don't Ask, Don't Tell," veterans' rights, HIV discrimination, courts-martial, Nuremberg defenses, freedom of speech and communication, contract disagreements, and medical issues.

National Organization of Veterans' Advocates

1425 K Street NW, Suite 350, Washington, DC 2005
Tel:(877) 483-8238
Director: Rich Cohen rich@wvajustice.com

National Organization of Veterans' Advocates (NOVA) provides representation to American veterans and their dependents seeking benefits through the federal veterans benefits system.

http://www.vetadvocates.com/home.html

National Veterans Legal Service Program: Lawyers Serving Warriors

PO Box 65762, Washington, DC 20035
http://www.nvlsp.org/

A project of the National Veterans Legal Services Program (NVLSP) providing free legal representation in disability, discharge and veterans benefits cases to servicemembers and veterans who served in Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF).

Lawyers Serving Warriors may be able to assist where the servicemember or veteran has: been referred to the physical disability evaluation system, is inappropriately facing an involuntary administrative separation, received an inappropriate discharge or discharge characterization, filed a claim with the Department of Veterans Affairs

(VA) for disability compensation, or has had a claim under the Traumatic Injury Insurance Under the Servicemembers Group Life Insurance (TSGLI) denied.

To contact Lawyers Serving Warriors e-mail LawyersServing@nvlsp.org or call (202) 265-8305 ext. 152.

Operation Enduring LAMP

Operation Enduring Lamp is a project of the American Bar Associations Standing Committee on Legal Assistance for Military Personnel.

"It is a consortium of state and local bar associations that have made a commitment to recruit volunteer attorneys, and in many cases offer

training and facilities to volunteers, in order to assist military legal assistance providers with civil law matters affecting service members."

http://www.abanet.org/legalservices/helpreservists/

Servicemembers Legal Defense Network

PO Box 65301, Washington, DC 20035
Tel: (202) 328-3244 or (202) 328 FAIR
Fax:(202) 797-1635
http://www.sldn.org/

To schedule a phone consultation call (202) 328-3244, ext. 501 or e-mail legal@sldn.org

"SLDN provides free legal counseling to servicemembers with legal issues stemming, from or related to the "Don't Ask, Don't Tell" policy banning military service by lesbian

gay, and bisexual persons, the regulations governing military service by HIV+ people, and the regulations addressing military service by transgender persons."

Swords to Plowshares

1060 Howard Street, San Francisco, CA 94103
Tel: (415) 252 – 4788
Contact: Shannon Kissinger
www.stp-sf.org

For VA benefits claims and military discharge upgrading, attorneys provide brief advice and representation to qualifying veterans and their family members. Veterans must be residents of San Francisco OR have served on active duty since September 11, 2001 (OIF/OEF). All services are free of charge.

Phone paralegal Vanessa Quiban to learn how we can help. Swords to Plowshares does not provide legal advice via e-mail. OIF/OEF veterans seeking non-legal-related assistance may contact Swords to Plowshares' Iraq Veteran Project at IVPinfo@stp-sf.org or by phone.

United States Court of Appeals for Veterans Claims

625 Indiana Ave NW, Suite 900, Washington, DC 20004
Tel: (202) 501-5970
Fax: (202) 501-5848

"The Court provides veterans an impartial judicial forum for review of administrative decisions by the Board of Veterans' Appeals that are adverse to the veteran-appellant's claim of entitlement to benefits for service-connected disabilities, survivor benefits and other benefits such as education payments and waiver of indebtedness."

http://www.vetapp.uscourts.gov/

To view list of public practitioners see link below:

http://www.vetapp.uscourts.gov/practitioners/

The Veterans Consortium Pro Bono Program

701 Pennsylvania Ave. NW, Suite 131, Washington, DC 20004

Tel: (202) 628-8164 or toll free (888) 838-7727

Fax: (202) 628-8169

http://www.vetsprobono.org/

The Veterans Consortium Pro Bono Program is an ongoing cooperative effort by four national veterans service organizations – The American Legion, the Disabled American Veterans, the National Veterans Legal Services Program and the Paralyzed Veterans of America. The Program provides free attorneys to veterans and their qualifying family members who have an appeal pending at the U.S. Court of Appeals for Veterans Claims The appeals are handled by volunteer attorneys who are recruited and trained by the Program to help appellants free of charge.

A veteran or family member who has filed an appeal with the Court can request assistance from the Program by calling (toll-free) (888) 838-7727 or e-mailing mail@vetsprobono.org .

Veterans Service Organizations chartered by Congress and or the VA

http://www1.va.gov/vso/index.cfm?template=view

II. State and County Advocacy Services, Including Legal Clinics. Also, General and Emergency Services
First things first: Most state veterans agencies do not provide a suicide hotline. Those that do mention one generally refer the veteran to the VA suicide hotline, (800) 273-TALK (273-8255). A veteran thinking about suicide should call that number. You can also find VA suicide-related advice at http://www.mentalhealth.va.gov/. Servicemembers (as well as veterans and the families of both vets and servicemembers) can call Military OneSource at (800) 342-9647 or visit www.militaryonesource.com

The Web site of the National Association of State Directors of Veterans Affairs (NASDVA)offers two statements about suicide:

(1) Suicide Prevention Awareness

Suicide is the 11th most frequent cause of death in the US: someone dies from suicide every 16 minutes. Suicidal ideas and attempts to harm oneself are the result of problems that may seem like they can't be fixed. Together, Vet Centers and VA Medical Centers stand ready to reach out and help veterans at risk for suicide. Seek professional help...Call the toll-free National Suicide Prevention hotline and indicate you are a veteran. You'll be immediately connected to VA suicide prevention and mental health professionals. We can help-- If you feel you are in Crisis--Call the Suicide hotline (1-800-273-TALK), your local VA Medical Center or Vet Center today!

(2) Suicide Prevention Letter from the Under Secretary of Health

Suicide is not the answer

Are you, or someone you love, at risk of suicide? Get help if you notice any of the following:

- Talking about wanting to hurt or kill oneself
- Trying to get pills, guns, or other ways to harm oneself

- Talking or writing about death, dying, or suicide
- Hopelessness
- Rage, uncontrolled anger, seeking revenge
- Acting in a reckless or risky way
- Feeling trapped, like there's no way out
- Saying or feeling there's no reason for living

Before we get to a list of legal and other advocacy services, we want to let you know about four important resources that fit here about as well they would fit anywhere else in the book:

(1) Military OneSource.

For the sake of efficiency, you may want to try (among other services) a Department of Defense 24/7 service called Military OneSource. You can call (800) 342-9647 or visit www.militaryonesource.com . Other hotlines and Web sites may be better in certain areas, but Military OneSource will try to help with almost anything that active-duty servicemembers, National Guard members, reserve troops, and especially their families, need to know, particularly regarding issues for families with servicemembers deployed abroad. (The service is NOT really for veterans, but if a veteran or family member calls regarding a veteran, Military OneSource will try to direct him or her to services that ARE for veterans.)

This service receives 1000 phone calls and its Web site receives 6000 hits PER DAY. Issues on which it provides advice (and sometimes referrals) include medical (including psychological) care for family members (especially those suffering from loneliness or who may otherwise be distressed because their loved one is not at home), crisis intervention (including suicide prevention), problems of caregivers, child care, elder care, marital problems, educational issues, educational loans, personal financial management, legal issues, spouse employment training, career management, tax preparation, and self-help groups

focusing on drug and alcohol abuse, gambling addiction, and eating disorders.

To find out more about Military OneSource, go to the site and also read the USA Today article on the service: To find the article, click here: www.usatoday.com/news/nation/2008-02-24-hotline-help_N.htm

(2) The National Resource Directory, www.nationalresourcedirectory.org. In its own words:

> The National Resource Directory (NRD) is an online tool for wounded, ill and injured Service Members, Veterans, their families, and those who support them. The NRD provides access to more than 11,000 services and resources at the national, state and local levels that support recovery, rehabilitation and community reintegration.

For state and local organizations, go to the NRD home page and look for "State & Local Agencies," then click on the name of your state.

(3) Veterans Service Organizations. There are countless veterans service organizations. Among the most important national veterans service organizations are, in alphabetical order, the American Legion, AMVETS, the Disabled American Veterans, and the Veterans of Foreign Wars. Two of the many others are the Military Order of the Purple Heart and Vietnam Veterans of America. These and other veterans service organizations provide services, discounts, and products. Most important, they provide service representatives ("service reps"), also known as service officers. Service reps can help vets seek VA benefits and in particular can help them file a claim for disability compensation. They also can answer most questions you may have about the VA.

To find a veterans service organization, visit its Web site. Here are the Web sites to help you find a post or chapter of the six veterans organizations mentioned above:

The American Legion: http://www.legion.org/members/locators/posts

AMVETS: http://www.amvets.org/membership/find_your_post.html
Disabled American Veterans: http://dav.org/veterans/ContactUs.aspx
Veterans of Foreign Wars: http://emem.vfw.org/findpost.aspx
Military Order of the Purple
Heart: http://members.purpleheart.org/Supplyroom/Search/Zip.asp
Vietnam Veterans of America: http://www.vva.org/witest/chapters.aspx

You can also look in your phone directory in the white pages under the name of the organization in question or in the yellow pages under headings such a "Veterans & Military Organizations.". Sometimes you can also find them by calling the nearest VA facility (facilities include but are not limited to VA Regional Offices and VA Medical Centers; (VA facilities can be found at www.va.gov) and asking if a service rep for a particular organization works at that VA facility).

(4) Chapter 20, "Advice for Caregivers and Families of Wounded Servicemembers and Veterans." This chapter has much to offer not just to caregivers but to servicemembers, veterans, and family members in search of advice or support. Early in the chapter, see the list of emergency phone numbers for servicemembers. Late in the chapter, see the list of Web sites for organizations.

Each state and most territories have a locally-funded office that represents the interests of local veterans and their families with veterans claims, discharge upgrading and military records correction. The agency is usually called the State Department (or commission, bureau, division, or a similar name) of Veterans Affairs. Some are very large, some are not well funded, and some supervise employees in many, if not all, counties.

In some states, the county veterans service officer (CVSO) is employed by the county or may have close ties to a local post or chapter of a national veterans service organization. (For more on veterans service organizations, see the section directly above.) If no CVSO is listed, try the Web site of the National Association of County Veterans Service Officers at www.nacvso.org.

To find the e-mail address for the state veterans agency in your state, go to the Web site for the National Association of State Directors of Veterans Affairs (NASDVA) at http://www.nasdva.net/. Click on "STATES," then click on the name of your state.

Here are excerpts from the NASDVA site:

> Each year state governments spend more than $3.5 billion to support our nation's veterans and their families. Collectively, we are second only to the federal Department of Veterans Affairs in providing benefits and services to the men and women who defended our nation. Although each state is unique, with its own traditions, programs, and resources, we are united by our common goal to make a difference in the lives of our veterans.
>
> The members of NASDVA bring together the best of all states and territories. We work together to find real solutions to the common problems we face, and the pooling of expertise and knowledge allows our organization to serve as a resource for each state, the Department of Veterans Affairs, and Congress.
>
> . . . NASDVA is an organization consisting of the top veterans affairs official in each state and territory. We provide a medium for the exchange of ideas and information between states so that we can learn from each other and organize responses to issues that face veterans nationwide. We work to secure uniformity, equality, efficiency, and effectiveness in providing services to veterans and their families, especially in regards to claims representation. We are willing partners with the Congress, the federal Department of Veterans Affairs, and the veteran services organizations that advocate for veterans.

In many states, there are locally focused legal resources that may be of assistance, such as bar association projects and law school clinics. Based on a survey conducted for this book, we list those of which we are aware state-by-state.

Arkansas

Fayetteville
University of Arkansas School of Law
Law School Legal Clinic
Waterman Hall, Maple Street, Fayetteville, AR 72701
Tel: (479) 575-3056
Fax: (479) 272-2815
Director: Michael W. Mullane mullane@uark.edu
Represents veterans? NA
Represents servicemembers? Y
Area Served? Y, did not specify
Income requirements? Y, did not specify

California

San Diego
Thomas Jefferson School of Law
Thomas Jefferson Veterans Legal Assistance
2121 San Diego Ave, San Diego, CA 92110
http://www.tjsl.edu/academic_veterans
Contact: Steve Berenson sberenson@tjsl.edu
Tel: (619) 374-6925

Our clinic works only with veterans, who are participants in, or affiliates or alumni of, the Veterans Village of San Diego recovery program. All screening and eligibility determinations are done through VVSD.

Veterans Village of San Diego
4141 Pacific Hwy., San Diego, CA 92110
http://www.vvsd.net/
Tel: (619) 497-0142
Fax: (619) 497-0263

"Veterans Village of San Diego (VVSD), also known as Vietnam Veterans of San Diego, is dedicated to extending assistance to needy and homeless veterans of all wars and eras and their families by providing housing, food, clothing, substance abuse recovery and mental health counseling, job training and job search assistance."

Swords to Plowshares
1060 Howard Street, San Francisco, CA 94103
Tel: (415) 252 – 4788
Contact: Shannon Kissinger
www.stp-sf.org

For VA benefits claims and military discharge upgrading, attorneys provide brief advice and representation to qualifying veterans and their family members. Veterans must be residents of San Francisco OR have served on active duty since September 11, 2001 (OIF/OEF). All services are free of charge.

Phone paralegal Vanessa Quiban to learn how we can help. We do not provide legal advice via e-mail. OIF/OEF veterans seeking non-legal-related assistance may contact Swords to Plowshares' Iraq Veteran Project at IVPinfo@stp-sf.org or by phone.

Delaware

Wilmington
Widener University School of Law
Veterans Law Clinic
Main Office–Widener University School of Law
4601 Concord Pike , P.O. Box 7474, Wilmington, DE 19803-0474
http://law.widener.edu/Academics/ClinicalProgramsandProfessionalTraining/Clinics/VeteransLawClinic.aspx

Chester Branch Office: 1450 Edgmont Ave Room 150, Chester, PA 19103

Harrisburg Branch Office: 3800 Vartan Way, Harrisburg, PA 17106
Contact:
Delaware veterans: Prof. Thomas J. Reed (302) 477-2070
Southeastern Pennsylvania: Susan Saidel, Esq. (610) 874-1352
Central & Western Pennsylvania: Jeremiah Underhill (717) 5641-3900
Director: Prof. Thomas J. Reed tjreed@mail.widener.edu
Represents veterans? Y
Represents servicemembers?Y

Area Served? Delaware and Pennsylvania veterans and dependents receive a preference. New Jersey and Maryland veterans and dependents may be taken on a case-by-case basis

Income requirements? Total monthly family income from all sources must be at 150% of poverty level or less. Income from spouses and companions is included in this figure.

Florida

Miami
University of Miami School of Law
Elder Law Project
1311 Miller Drive, Coral Gables, FL 33146
Contact: Yolanda Veloz
Tel: (305) 284-3951
Fax: (3050 284-6407
Director: Melissa Lader Barnhardt (Adjunct Faculty)
JoNel Newman (Assistant Professor)
Represents veterans? N
Represents servicemembers? N
Area Served? South Florida/ greater Miami
Income requirements? 200% of the poverty level

Illinois

Chicago
John Marshall Law School
Veterans Legal Support Center and Clinic
315 South Plymouth Court, Chicago, IL 60604
http://www.jmls.edu/veterans/index.shtml
Tel: (312) 427-2737 ext. 346
Fax: (312)427-0438
E-mail: VLSC@jmls.edu
Handles VA cases and appeals.
American Bar Association
The ABA Military Pro Bono Project
321 N. Clark St, Chicago, IL 60654
www.militaryprobono.org
Director: Jason Vail vailj@staff.abanet.org

The ABA Military Pro Bono Project is a referral service for active-duty servicemembers. We refer veterans to programs that handle veterans cases.

Represents veterans? Refer to pro bono attorneys

Represents servicemembers? Refer to pro bono attorneys
Area Served? NA
Income requirements? E-6 pay grade or below

Massachusetts

Boston
Boston University Law School, Northeastern Law School, Suffolk Law School, New England School of Law, Boston College Law School, Harvard Law School
http://www.shelterlegalservices.org/
Shelter Legal Services Legal Clinic at Shelter for Homeless Veterans
NESHV 17 Court St, Boston, MA 02108
Shelter Legal Services Legal Clinic at Chelsea Soldier's Home
91 Crest Ave, Chelsea, MA 02150
Contact: Lisa M. LaFera, Esq.
Tel: (617) 305-1699
Fax: (617) 305-6268
Director: Lisa M. LaFera, Esq. lafera@shelterlegalservices.org
Represents veterans? Y
Represents servicemembers? NA
Area Served? In around the Boston area
Income requirements? 125% of Federal poverty guidelines

Michigan

Detroit
University of Detroit Mercy School of Law
Veterans Law Clinic
651 Jefferson Ave, Detroit, MI 48226
Contact: Michelle Van Horn
Tel: (313) 596-0262
Fax: (313) 596-0280
Director: Joon Sung sungjh@udmercy.edu
Peggy Costello
Represents veterans? Y
Represents servicemembers? N
Area Served? N

Income requirements? 200% of federal poverty guidelines

New York

Albany
Albany Law School
Albany Law Clinic & Justice Center
80 New Scotland Ave., Albany, NY 12208
http://www.albanylaw.edu/sub.php?navigation_id=39
Tel: (518) 445-2328

The Albany Law Clinic & Justice Center is willing to represent and/or advise active-duty, low-income servicemembers within the Albany, New York area in the legal areas listed below:

Health law services for clients with cancer or HIV/AIDS
Workers' compensation claims
Securities arbitration
Clients with developmental disabilities
Taxpayer disputes with the IRS
Domestic violence legal assistance
New York
New York City Bar Association
The City Bar Justice Center
42 West 44th St, New York, NY 10036
http://www.nycbar.org/CityBarFund/index.htm
Contact: Sara Chang
Tel: (212) 382-6648
1-877-564-3833
Represents veterans? Y, in access to disability benefits only
Represents servicemembers? N
Area Served? Y, New York City
Income requirements? Y, did not specify

Urban Justice Center
Veterans and Servicemembers Project
123 William St.-16th floor, New York, NY 10038
http://www.urbanjustice.org/ujc/projects/veterans.html

Contact: Rachel Natelson rnatelson@urbanjustice.org
Tel: (646) 602-5620
Fax: (212) 533-4598
Represents veterans? Y
Represents servicemembers? Y
Area Served? N, priority given to NY area clients
Income requirements? N, priority given to low income clients

North Carolina

Durham
North Carolina Central University law School
Veterans Law Clinic
1512S Alston Ave, Durham, NC 27707
Contact: Craig Kabatchnick
Tel: (336) 456-3751 or (919) 530-6005
Represents veterans? Y
Represents servicemembers? Y
Area Served? N
Income requirements? N
Raleigh
Veterans Foundaion Inc.
Veterans Law Project
PO Box 25337, Raleigh, NC 27611
http://www.veteranslawproject.org
Contact: Tara Sue Clark veteransfoundation@gmail.com
Tel: (336) 987-8398 or (919) 828-5058
Fax: (919) 261-6771
Represents veterans? Y
Represents servicemembers? Y
Area Served? N
Income requirements? N

The Veterans Law Project is working to establish pro bono law clinics to assist military families throughout the globe in a variety of legal interests. These include but are not limited to claims, appeals, classes, programs, training and co-ops with veterans service organizations. The Veterans Law

Project pilot project can be found at the North Carolina Central University Law School.

Virginia

Arlington
George Mason University School of Law
Clinic For Legal Assistance to Servicemembers
3301 Washington Blvd, MS 6C5, Arlingotn, VA 22201
Contact: Student Office class@gmu.edu
Tel: (703) 993-8214
Fax: (703) 993-9540
Director: Joseph Zengerle jzengerl@gmu.edu
Represents veterans? N
Represents servicemembers? Y
Area Served? Virginia, Maryland, District of Columbia are preferred
Income requirements? Undue hardship to retain counsel

Vermont

South Royalton
Vermont Law School
South Royalton Legal Clinic
PO Box 117, South Royalton, VT 05068
Contact: Maryann Zavez MZAVEZ@vermontlaw.edu
Tel: (802) 831-1500
Handles VA cases

Washington D.C.

Catholic University Law School
Columbus Community Legal Services
3602 John McCormack Rd., NE, Washington DC, 20064
Contact: Michael McGonnigal mcgonnigal@law.edu
Tel: (202) 319-6788
Fax: (202) 319-6780
Director: Catherine Klain

Represents veterans? Y

Represents servicemembers? N

Area Served? For cases before the U.S. Court of Appeals for Veterans Claims, we accept clients from throughout the United States. For all other matters, we represent only residents of the District of Columbia.

Income requirements? : In general, we represent clients whose income does not exceed 200 percent of the poverty level.

Wisconsin

Madison
University of Wisconsin
Neighborhood Law Project & Family Court Assistance Project
975 Bascom Mall, Madison, WI 53706
Villager Mall, 2300 South Park St. #3, Madison, WI 53713
Neighborhood Law Project: (608) 260-8221
http://law.wisc.edu/fjr/eji/neighborhood/
Family Court Assistance Project: (608) 262-2301
http://law.wisc.edu/fjr/eji/familycourt/
Fax: (608) 265-3732
Represents veterans? Y, but not in disputes with the military
Represents servicemembers? Y, but not in disputes with the military
Area Served? Dane County, Wisconsin
Income requirements? N

***Appendix compiled by Kaya Sanchez-Harvey, research assistant at Veterans For America, assisted by David Addlestone and Craig Kubey.**