

Military OneSource Podcast — Military Review Boards: Records Review for Don't Ask Don't Tell Discharges

Episode transcript

Intro voiceover:

Welcome to the Military OneSource podcast. Military OneSource is an official program of the Defense Department with tools, information and resources to help families navigate all aspects of military life. For more information, visit militaryonesource.mil.

Bruce Moody:

Welcome to the podcast. I'm Bruce Moody. Today we'll be talking about the Defense Department's initiatives to correct the records of former members discharged for their sexual orientation with a less than fully honorable conditions discharge during Don't Ask, Don't Tell. We have two guests today to go over this. They are Air Force Colonel, Amy Brantley. Colonel Brantley is chief of the Air Force's Discharge Review Board. Also joining us today is Christa Specht. Christa is director of the Office of Legal Policy. That's an office within the office of the Undersecretary of Defense for Personnel and Readiness and welcome to the both of you.

Colonel Amy Brantley:

Thank you, Bruce.

Christa Specht:

Thank you. We're happy to be here.

Bruce Moody:

It is good to have the both of you with us. I think that we'll be able to cover a lot of ground with the both of you. Colonel, I want to begin with you to kind of help demystify the review process for those who may seem that it looks overwhelming or intimidating. Can you have a crack at that please?

Colonel Amy Brantley:

Sure. And thanks again, Bruce, for having me on the podcast. A service Discharge Review Board, also known as a DRB, examines an applicant's administrative discharge and can change the characterization of service and or the reason for the discharge based on equity, propriety or clemency. For example, an applicant could request an upgrade of a general discharge to honorable and request to change the narrative from minor misconduct to secretarial authority. The Boards for Correction of Military or Naval Records, or BCMNR, consider applications for correction of records and have broader authority to modify those records to correct an error or an injustice.

Unlike the discharge review boards, they can correct administrative actions, pay allowances, decorations and awards, performance evaluations, in addition to upgrades of military discharge. Additionally, both boards apply a process known as liberal consideration to applications from former service members petitioning for discharge relief when the application is based on matters relating to mental health conditions such as PTSD, traumatic brain injury or an experience like sexual assault.

Bruce Moody:

Thanks, Colonel. So there's a lot of detail in this conversation. I really encourage people to go to the program notes. There are going to be links that really get into even further detail about this. Colonel, what I'd like to ask is for you to get into the process of applying for a discharge review and a record correction.

Colonel Amy Brantley:

Sure. The process is actually relatively simple. If you're thinking about applying to one of these boards, the best place to start is with your services review board website. Websites offer information about each board along with instructions on how to apply and complete the forms. Applying online is the most time-efficient for the applicant and the review boards, but mailed in application is also accepted. For the DRB, complete and submit a DD form 293, and for the Board for Correction of Military or Naval Records, submit a DD form 149. On either form, be clear about the relief or correction that you're requesting. For both boards, completing these forms also means submitting copies of relevant documents such as discharge paperwork, inspector general reports or witness statements.

A key thing to remember are that the boards are non-investigative bodies, so applicants need to prove the existence of an error an injustice or an inequity and explain the specific correction requested. I know this is a lot of information, so keep in mind that the VA website is another place to find detailed information and instructions and links to the service website.

Bruce Moody:

Got it. Now, under what circumstances would a former member apply to one board or the other?

Colonel Amy Brantley:

Well, if we're talking about discharge upgrade requests, the DRB is very specific about what it can do for you. If a former member was discharged less than 15 years ago and is seeking an upgrade of a discharge characterization or change in an narrative reason for separation, they should apply to the Discharge Review Board. Keep in mind, their discharge cannot be a result of a general court-martial. The applicant has two opportunities to apply, once for records only review, and the second is a personal appearance via video teleconference. If it's been more than 15 years since their discharge or if a different remedy is sought, the applicant should apply to the Board for Correction of Military or Naval Records. This is a higher level of appeal for discharge

upgrades, as well as some of the corrections we talked about earlier. Again, the service websites do a nice job about lining when to apply to the BCMNRs or the DRB, so be sure to check those out.

Bruce Moody: What should applicants provide along with their DD forms?

Colonel Amy Brantley:

In addition to the forms, applicants are encouraged to submit a copy of their discharge or separation package with their application and any other relevant documents. For the Board for Correction of Military or Naval Records. If the case was already considered and denied by a lower-level appeal process, include the denial decisional document with the application. We strongly recommend the applicant submit any relevant documents themselves, because the board may not have access to everything that they have. Documents that tell the story of what happened and where the applicant believes there was an impropriety or an injustice or an error.

Bruce Moody:

Is there a cost to apply?

Colonel Amy Brantley:

No. There's no cost to apply to any military department review board.

Bruce Moody:

Does an applicant need an attorney during the process?

Colonel Amy Brantley:

No. The process does not require an attorney, but applicants may choose to be represented by one at their own expense or by veteran service organizations such as the American Legion, the Disabled American Veterans or the Military Order of the Purple Heart, for example.

Bruce Moody:

Got it. What can an applicant do to facilitate a successful application?

Colonel Amy Brantley:

I encourage applicants to explain why they believe their discharge was improper or inequitable and provide supporting documentation. The boards are not investigative bodies. It's incumbent on the applicant to prove their case, submit copies of discharge paperwork, as well as personnel, medical and legal records or investigative reports. This can be helpful and help tell their story. Additionally, something to remember is that the boards are allowed to consider post-service factors in the recharacterization of the discharge. It's helpful if applicants provide documentation on their time post service, such as letters of recommendation, job history, evidence of rehabilitation and a drug-free lifestyle, evidence of financial stability from banks, credit card companies or other financial institutions and official transcripts from attendance at higher education. Each

application is considered on its own merit so those items alone don't guarantee the upgrade of a discharge, but supporting documents tell the board about your life after serving.

Bruce Moody:

Can you give us a timeline for the entire process? How long, and I know, on average, but how long does it take to get a decision from the boards?

Colonel Amy Brantley:

This can vary, depending on the board. In general terms, though, the timeline is six to 18 months, depending on the complexity of the case and the number of cases being considered by the board. For example, if someone has a mental health condition that may have impacted their discharge, a specialist is required on the board and medical records need to be reviewed. Also, the older the case, the harder the records may be to obtain. So timelines can vary based on individual circumstances.

Bruce Moody:

Colonel, can applicants have a personal appearance and if so, is it intimidating to appear before these boards?

Colonel Amy Brantley:

For the discharge review boards, you're entitled to a personal hearing for the BCMNRs, you may request a personal hearing, but they are not common and it's only granted if the board determines a hearing is necessary to decide the case. Personal appearances are held via video teleconference. As far as being intimidating, I would say, applicants will be most comfortable if they take the time to prepare and think of the personal appearance as an opportunity to explain to the board in their own words why they feel the discharge was inequitable or improper.

Bruce Moody:

What are some common misperceptions about the Discharge Review Board and the Board for Correction of Military Records?

Colonel Amy Brantley:

Occasionally, we receive applications from former service members who think upgrades are automatic after a certain period of time, for example, six months after discharge, and that's a misconception. There's no law regulation that provides for an unfavorable discharge to be upgraded solely on the passage of time or good conduct after leaving military service. Also, the DRB has no authority to upgrade a discharge for the sole purpose of enhancing reenlistment opportunities. An unfavorable reentry code or RE code is in itself not a bar to reenlistment or request where a waiver can be submitted through a recruiter. And lastly, BCMNR advisory opinions obtained from subject matter experts don't constitute the decision of the board. The board will review those along

with the evidence presented and recommend relief when the evidence shows that it's more likely than not that the applicant was the victim of an error or an injustice.

Bruce Moody:

So Colonel, what we're doing today, we're focusing on reviews for discharges dating back to Don't Ask, Don't Tell, but can anyone who feels their military record contains an error or an injustice apply for a review?

Colonel Amy Brantley:

That's correct. While the Discharge Review Board is limited to relief from unfavorable discharges, the BCMNR can also correct other errors or injustices in military records.

Bruce Moody:

Christa, we're going to get to you in just a second here, but Colonel, as I wrap up talking with you, I'll note again that we're putting a bunch of links in the program notes because this is an issue where people are going to really be relying on specific information to guide them. Can you give us a sense of the resources that we're providing to people?

Colonel Amy Brantley:

Yes. We provided the link to the VA.gov website, and that's where I recommend applicants start to read the discharge upgrade instructions. We also have links to where they can request a copy of their military records and a webinar where they can get more detailed instructions on the boards.

Bruce Moody: Well Colonel, I really appreciate this information and pointing out the links that are available to people. Let's turn to Christa. I'm going to reintroduce you because it's been a while. Christa Specht is director of Office of Legal Policy, that's within the office of the Undersecretary of Defense for Personnel and Readiness. So Christa, what I'd like to do just to begin, is to ask you to tell us about the Defense Department's initiative to correct the military records of former service members who were discharged for their sexual orientation during Don't Ask, Don't Tell.

Christa Specht:

Thanks, Bruce. And thank you again for allowing me to talk about this very important topic. So just to give you a bit of background, back in September of 2023, the Deputy Secretary of Defense, Secretary Hicks, announced that the department would be conducting this proactive review of the military records of service members who were separated during Don't Ask, Don't Tell. And the reason was, we had data that showed that individuals who were separated during Don't Ask, Don't Tell. When they'd gone to the review boards, the process that Colonel Brantley just described, they were very successful in receiving some kind of relief. Yet the numbers showed that a very small percentage of those members were actually accessing the review boards in order to receive a correction for their records. So this initiative was born out of the idea that we needed to do a better job of making sure that everybody who was eligible to receive a

correction to their records was taking advantage of it. And specifically, those members who were impacted by the Don't Ask, Don't Tell policy.

Bruce Moody:

So who is included in this review?

Christa Specht:

So included in this review, you have to have three things. First, you have to have been administratively separated during Don't Ask, Don't Tell, and the operative years of Don't Ask, Don't Tell were between 1994 and 2011. Second, you have to have a DD214. That's that certificate of discharge that everybody gets upon separation that reflects that your reason for separation, sometimes called your narrative basis for separation, was your sexual orientation. And then third, that you received a discharge that was less than fully honorable. And for purposes of this review, what we're considering less than fully honorable would be a general under honorable conditions, an under other than honorable conditions, which is sometimes shortened to a UO or an OTH. And then lastly, if our database just didn't have a discharge characterization associated with this former member, then we included them in this proactive review as well.

Bruce Moody:

Does it require an application to start the process?

Christa Specht:

No. That is the benefit of this proactive review. Everything that Colonel Brantley has just described, using the DD forms, getting a copy of your records, providing information that might be relevant, other relevant documents, none of that is necessary. Instead, the Department of Defense is actually taking the information we have about these eligible members, we're pulling those records. Depending on the age of the records, sometimes they'll be with the National Personal Records Center, sometimes they'll be with the military departments. So we're actually pulling all those records. If they're in a paper format, we're scanning them so we can actually digitize them. We're reviewing them to making sure that they're eligible, and then we'll be actually pushing those to the military department secretaries who will do their own eligibility review. And then ultimately, they will go to the Board for Correction and Military Records or Board Correction of Naval Records depending on the service.

Bruce Moody:

So Christa, what I'd like, for people who may not understand this, talk to us about the possible benefits of a discharge upgrade.

Christa Specht:

So mainly, for this category of individuals, if they are changed, for example, from an other than honorable conditions discharge to say, for example, a general under honorable conditions discharge that may make them eligible for different VA benefits.

So there's certain VA programs like a VA home loan or VA life insurance or burial benefits that they suddenly become eligible for as a result of this change to their discharge characterization. Additionally, even if a service member or former service member doesn't get an upgrade in their discharge characterization, it's highly likely that the Boards for Correction of Military Records or Boards for Correction of Naval Records will change that narrative basis for separation. So instead of reading sexual orientation, which is obviously, a fairly private and confidential matter on their DD214, it'll say something to the effect of secretarial authority, keeping that more private information private.

Bruce Moody:

You've just outlined a few things here, but how would it benefit a former service member to have their record corrected? Is this something that would have an effect in their day-to-day life, for example?

Christa Specht:

Well, primarily in the ways that I've just outlined, the additional VA benefits and the ability to keep the information that relates to the rationale behind their separation private.

Bruce Moody:

What about those former service members who haven't requested a review? Do you have any thoughts on what might be holding them back?

Christa Specht:

Well, similar to what Colonel Brantley was speaking about, our concern has always been that the application process is viewed as intimidating or complicated or that a potential applicant believes that they need an attorney in order to request a records correction. Again, as Colonel Brantley just described, it's really a matter of completing a DD Form and gathering the information necessary and then submitting it. So we're hopeful that by doing this proactive review, we'll be helping that category of individuals who are separated under Don't Ask, Don't Tell, and we're also hopeful, things like this podcast and some of the other products that we are in the process of creating, will be helpful in demystifying the review board process and just facilitating the application slightly easier.

Bruce Moody:

Christa, one more question. For those who applied five or 10 years ago and not successful, would you recommend that they apply again?

Christa Specht:

Yes, with a little caveat there. If the member has new evidence that wasn't available at the time of their original application, or perhaps they had now learned about a mental condition or experience with sexual assault that wasn't previously considered, we

definitely encourage those individuals to reapply to the appropriate review board and provide that new evidence or explain how the prior board didn't consider those aspects of their service. The department has issued new guidance to the review board to asks them to take into consideration certain aspects of a member service that wasn't necessarily considered in the past. Also, it's important to remember that there are two separate review boards that can correct records. So if a member didn't receive the requested records change at a Discharge Review Board, they're likely eligible for a review by the Military Department's Board for Correction of Military or Naval Records.

Bruce Moody:

Well, I appreciate the both of you being with me today. Air Force Colonel Amy Brantley, Chief of the Air Force's Discharge Review Board, and Christa Specht is Director of the Office of Legal Policy, which is part of the Office of the Undersecretary of Defense for Personnel and Readiness. We really appreciate it. Thank you so much and you're welcome back to the podcast anytime.

Christa Specht:

Thank you.

Colonel Amy Brantley:

Thanks again, Bruce.

Bruce Moody: And terrific. And we want to remind you that Military OneSource is an official resource of the Defense Department, and we love to hear from you. If you have any questions or comments, you want to reach out to us, there's a link in the podcast notes. You can even give us an idea for our future episode. Be sure to subscribe to this podcast wherever you listen to your podcasts because we cover a wide range of topics to help military families navigate military life. I'm Bruce Moody. Thank you for being with us today. Take care. Bye-Bye.