

Military OneSource Webinar — Applying to the Boards for Correction of Naval or Military Records

Video transcript:

Christina Piechoski:

Good afternoon and welcome to today's webinar titled "Applying to the Boards for Correction of Naval or Military Records."

The appearance of hyperlinks does not constitute endorsement by the Department of Defense of this website or the information, products or services contained therein. For other than authorized activities, such as military exchanges and morale, welfare and recreation sites, the Defense Department does not exercise any editorial control over the information you may find at these locations. Such links are provided consistent with the stated purpose of this Defense Department webinar.

We're thrilled to have with us today Elizabeth Hill. Ms. Hill is the executive director, Board for Corrections of Naval Records. Without further delay, I'll turn things over to you.

Elizabeth Hill:

Thank you, Tina. I'm really excited about sharing as much information about the process to apply to the BCNRs and BCMRs. Hopefully this will alleviate any concerns and make your application process easier.

So, what are the boards for correction of military or naval records? The boards for correction of military or naval records are the highest level of administrative review within the military departments. The correction boards are not courts of law. Each military department has its own correction board. The correction boards were established by statute to relieve Congress from consideration of private bills to correct errors or injustices in military records.

The boards are composed of senior civilian employees of the military departments appointed by the respective military secretary. Appointment as a board member indicates a special trust in the judgment and integrity of the member.

The boards review all applications properly before them to determine if the applicants' military personnel records contain a material error or injustice.

What types of records can be corrected?

By law, the correction boards may correct any military record of the military department concerned. However, the correction boards cannot correct the records of other

government agencies or organizations, even if those records relied upon, upon the military service.

Generally, the types of cases before the correction boards include discharge upgrades/corrections to the DD Form 214, removal of disciplinary documentation, changes to performance evaluations, reinstatement to active duty, correction to reserve retirement points, awards and decorations, revising a separation, bonus payments and military whistleblower retaliation.

Who may apply to the BCM/NRs?

Current and former service members, including reserve and National Guard, may apply for a correction of error or injustice in their official military naval records. A service member can file a case while they are still serving.

Other persons with proper interest may request the correction of another person's military records. If the current or former service member is deceased or incompetent, the service member's spouse, widow or widower, next of kin, mother, father, brother, legally designated representative or other specified individual can apply on behalf of the service member.

Former spouses of service members may apply on issues relating to Survivor Benefit Plan benefits. Such applicants must send proof of proper interest with the application when requesting correction of another person's military records.

Exhaustion of Administrative Remedies

Because the correction boards represent the highest level of administrative review within the military departments, applicants must exhaust all other administrative remedies before applying.

"Exhausting all administrative remedies" means the applicant must take advantage of all other administrative processes or policies that would resolve their record correction before they are eligible to apply to the correction boards.

For example, if an applicant is requesting a discharge characterization upgrade, they must apply to the appropriate discharge review board before they can apply to the correction board, unless more than 15 years have passed since the discharge.

Applicants should carefully review their military department regulations and policies applicable to the issue they intend to present to the correction board to ensure that they have pursued all other available administrative options or remedies. Failure to do so will result in a return of the application without action.

Additionally, many National Guard regulations require the members of the National Guard to apply first to their state adjutant general and then to the National Guard Bureau for Correction of Records before applying to the board for correction of records. These applicants should include with their application a copy of any communication they have had with their state adjutant general or the National Guard Bureau concerning the requested correction. Applicants should include a copy of any decisional

documents received as a result of pursuing other administrative remedies with their DD Form 149 application.

How to Apply — Completing the DD Form 149

The first step in applying for a discharge upgrade or correction is to complete the application form. DOD has created a universal application form for applying to the correction boards to streamline the process. It is Department of Defense Form 149, Application for Correction of Military Record.

When applying, applicants should make sure that they are filling out the most current version of the form. It can be downloaded at a website that you will see on your slides at the bottom of the slide. It's important to fill out each applicable section of the form. It takes approximately 45 minutes to fill out this form and most of the information requested in the form should be readily known to the former service member.

Requesting Service Records

By submitting a signed application, the former service member authorizes the BCNRs to review records available through the U.S. government's system of records, which generally includes the official military personnel file, the in-person, in-service medical records and any other records within the Department of Veterans Affairs electronic medical records.

Applicants are not required to include their military personnel service record as part of their application. However, because it is possible that such government records may be incomplete, applicants are encouraged to provide the BCMRs with copies of any relevant military records and medical records in their possession.

If an applicant would like a copy of their official military personnel file to assist with completion of their application, they can request a copy through the National Archives National Personnel Records Center. They can do that both electronically or via mail or fax.

Applicants are strongly encouraged to request copies of their military personnel records well in advance of submitting their application to ensure that there are not processing delays for the BCNR cases.

The DD Form 149 – Section 1, Service Member

Section 1 provides the information necessary to identify the applicant and the appropriate contact information for use by the correction board. This information should largely be readily known to the applicant, but can also be found within their military service records. For block 9, applicants should provide a current mailing address, phone number and email address. If the applicant's contact information changes after submission of the application, the applicant is responsible for updating the BCNRs with any changes.

Section 2, the Separation Information

Section 2 is designed to identify those applicants who are no longer serving and is primarily completed using information from the former service member's DD Form 214. It is very helpful to reference this document when completing this portion of the form. For those former service members separated pursuant to court-martial, the type of court-martial should be listed in this block. For example, summary, special or general court-martial.

Section 3, Block 11, Requests for Reconsideration

This block should be completed when the former service member has already had their case heard by the BCNRs. BCNR's decisions are not normally subject to reconsideration. However, a case will be reconsidered when the request is supported by materials not previously presented to or considered by the board.

Applying for reconsideration is more likely to be successful if the subsequent application is significantly different from the last time applied. For example, submitting additional evidence that wasn't available when the former service member last applied or referencing new rules issued by the DOD regarding the applicable type of discharge.

Notably, DOD rules have changed for discharge relating to sexual orientation in 2011; PTSD, TBI and mental health in 2014; and military sexual harassment and assault in 2017.

Section 3, Block 12, Category

Because the correction boards have broad authority over all military records, Block 12 is used to help the boards better understand what type of record correction the applicant has requested.

Applicants should check all boxes that apply.

Applicants can also write in or identify categories beyond those listed.

Block 13, Correction and Relief Requested

Block 13 is used to identify what correction or relief the applicant is requesting.

Applicants should be as specific as possible when describing what and how they want their record corrected because there are a variety of different types of relief available.

The correction boards cannot authorize payment of specific amounts of funds. However, the military department may pay claims for amounts due to an applicant as a result of a correction of a military record. Such issues are generally handled after the final correction board decision is issued through DFAS or similar.

Additionally, applying to a correction board does not stay, suspend or delay any ongoing personnel action. For example, applicants cannot request the correction board stop a mandatory separation action or delay a promotion board. Applicants must inform the correction board if there is a pending personnel action that will be impacted by the requested record correction.

Block 14, Related Issues and Conditions

There have been recent statutory and DOD policy changes that provide for consideration of unique issues in discharge review cases relating to or arising from specified circumstances. Block 14 is designed to help the BCNRs identify those potential cases where these policy considerations apply.

For Block 14, applicants whose discharge upgrade request is related to the list of issues or conditions should check the appropriate box or boxes. Applicants should only check boxes that are definitively related to their case. Policy considerations will only be applied in eligible cases. Random or over-checking of the boxes only adds to the administrative processing.

The acronym PTSD stands for post-traumatic stress disorder. The acronym TBI stands for traumatic brain injury. And the acronym DADT refers to Don't Ask, Don't Tell policy.

Applicants who select one of those boxes in Block 14 should ensure that they explain how the selected condition is related or connected to their requested record correction in Block 15.

Additional information regarding policy changes pertaining to these conditions can be found at the review board agency websites and DOD and Department of Veterans Affairs websites. These web addresses are included on the resource slide found at the end of the webinar.

Block 15, so why should the correction be made?

Block 15 is a critical block of the DD Form 149. In Block 15, the applicant should explain all the reasons why a correction request is necessary to address an error or injustice within their military records. The applicant's explanation of Block 15 should be thorough, detailed and as complete as possible. When completing Block 15, applicants should be aware the correction boards presume regularity in the conduct of governmental affairs, and absent information and evidence to the contrary they will presume the commanders, supervisors and other government officials involved have acted fairly and in good faith. Therefore, where appropriate, the explanation in Block 15 should address this presumption and demonstrate why or how a record correction is necessary.

Applicants are not limited to the space provided in Block 15. If additional space is needed than what is provided, applicants can continue on Block 18 or attach additional separate sheets to the form to fully, but as concisely as possible, explain their case.

What constitutes an error?

An error is a factual or legal error within a military record. A factual error is incorrect information within the military record. An example of a factual error could be the entry of an incorrect home of record or basic entry pay date.

A legal error would be a record entry that was arrived at in violation of law, regulation or policy. An example of a legal error would be the military service discharging a service

member without affording them the right to a separation board guaranteed by regulation.

If a correction board finds an error, it can correct the applicant's military record to remove the error and/or to cure the harm that flowed from the error.

However, to warrant correction, errors normally need to be material, especially legal errors. For example, if an applicant was seeking reinstatement to active duty on the basis that service policy entitled them to a separation board within 30 days but their separation board was heard on day 31, the applicant would need to demonstrate how or why that one-day delay was connected to the decision to separate them. How was the one-day delay material to the big issue of what led to their separation?

What constitutes an injustice?

The term injustice does not have a precise definition in the board context. When the correction boards consider issues of injustice, they are evaluating the fundamental fairness of the situation and whether the military record at issue led to an undeserved outcome.

Courts have explained the term injustice as "treatment by the military authorities that shocks the sense of justice but is not technically illegal." For example, if the service member received a less than stellar performance evaluation that prevented them from being selected for promotion and later learned that their supervisor had been motivated by improper purposes when they gave the low marks, they could apply to the correction boards to seek revision of their performance evaluation and a second opportunity to be considered for promotion.

Issues of injustice can also account for issues of fundamental fairness. While clemency generally refers to a relief specifically granted from a criminal sentence, it has also been expanded upon as part of the broad authority of the BCNRs to recent DOD policy guidance now permits the correction boards to consider granting discharge relief to ensure fundamental fairness and rehabilitation in their decision-making process, even when the discharge was a result of an administrative proceeding rather than a criminal sentence.

However, BCNRs cannot undo the court-martial conviction, rather they can correct a record to reduce, or commute the punishment ordered resulting from a court-martial conviction.

In determining whether to grant relief on the basis of clemency grounds, the BCM/NRs may consider factors such as the severity of the misconduct, the aggravating and mitigating facts related to the record or punishment from which the member wants relief, and applicant's candor and acceptance of responsibility, remorse or atonement for misconduct.

Was the punishment, including any collateral consequences, too harsh? Positive or negative post-conviction conduct including any arrests, being taken into custody by law enforcement, any charges or any conviction since the incident at issue; the length of

time since the misconduct; the character and reputation of the applicant and/or evidence of rehabilitation; victim support or opposition for relief and any reasons provided.

Generally, record corrections made for clemency purposes would not include relief such as reinstatement to active duty, medical retirement or lost service time or opportunities.

Section 3, Blocks 16, Date of Discovery

Pursuant to the statute no correction will be made unless the request is made within three years after the discovery of the error or injustice. Block 16 is used to inform the correction board of when the applicant became aware of the issue within their military record. If the exact date is not known, the applicant should provide as specific of a timeframe as possible: month, year, etc.

However, the statute also permits the correction boards to excuse a failure to file within three years if it is in the interest of justice. Applicants applying more than three years after the date of discovery should provide a good faith argument explanation in Block 18.

Hearing Request

Unlike the discharge review boards, applicants do not have a right to a formal hearing before the correction boards. However, if an applicant does wish to appear in person, they should indicate this by checking the appropriate box in Block 17. The board will make the determination as to whether a formal hearing is necessary for the board to render a fair, just and equitable decision.

Very few personal appearances are granted so applicants should try to fully present their case in writing with the necessary documentary evidence submitted as part of the application.

Additional Remarks

Block 18 can be used by an applicant whenever additional space is needed on the DD Form 149 to fully provide the information or remarks needed for Blocks 13, 15 or 16. If even more additional space is needed, an applicant may attach additional sheets. However, applicants should first confirm whether their correction board has a page limit for supporting documentation.

Evidence and Records

The correction boards are not investigative bodies, and the applicant has the burden of providing sufficient evidence of material error or injustice.

Applicants are encouraged to submit any information or documents that can help explain the claims in their case, especially if such documentation is not likely to be found within their official military record.

In Block 19, applicant should list (give a general description) the evidence that they are attaching to the DD Form 149 for submission.

So what types of information should be submitted?

Applicants should only submit relevant evidence. Relevant evidence is any information that tends to make a fact or consequence more or less probable. Relevant evidence has a direct connection to the issue in the case. It does not help a case to submit documents or evidence that are unrelated to the issues raised. More pages of evidence submitted does not equate to a greater likelihood of success.

Examples of supporting documents include copies of medical records, copies of military or separation packages, reference letters, copies of medical or mental health diagnoses, military orders, transcripts, court records or sworn in statements from witnesses. Applicants are encouraged to focus on submitting documentary evidence. Do not submit original documents. Applicants should retain the original of any important document and submit a legible copy with their DD Form 149.

Do not submit USBs. DOD computer security protocols do not permit boards to access their contents.

Applicants are urged to submit any available evidence at the time as the DD Form 149 application to ensure timely consideration of the case. There is no reason or advantage in delaying to submit available relevant evidence.

Generally applications do not need to submit copies of any applicable laws, regulations or military department policies. However, if there's a particular provision that is important for consideration by the BCM/NRs, it may be helpful to include a copy of such information.

Section 5, the Claimant

Section 5 is used to notify the BCM/NR if someone other than the former service member is applying on their behalf. If the former service member is applying on their own, Section 5 can be left blank.

If the service member is deceased or legally incompetent, their next of kin, surviving spouse or a legal representative can apply on their behalf, but the application will need to include evidence in support of the service member's death or incompetency and relationship of the applicant to the service member.

The individual applying on the former service member's behalf will need to fill out Section 5 and provide the needed documentation. Common supporting documents submitted to establish eligibility to apply on someone's behalf includes death certificates, court incompetency documents, marriage license, birth certificates, court appointments of conservatorship or notarized power of attorney.

Section 6, Representative or Counsel

Section 6 is used to notify the BCM/NR if the applicant has a representative or attorney assisting with their case. Applicants who do not wish to use a lawyer or legal representative for their application may leave Section 6 blank.

Although applicants to the BCM/NRs are entitled to representation by counsel at their election, an applicant does not need to have a representative or attorney to apply to the BCM/NR.

The cost of representation, if any, are paid by the applicants and not subject to reimbursement by the BCM/NRs, even if the application is successful.

Many legal aid and veteran service organizations will assist veterans free of charge with their application and/or legal representation.

Section 7, Signature

In Section 7, the applicant should indicate their preferred method of receiving correspondence from the BCMR. To receive correspondence electronically, check the “Yes” box. This is recommended because it may reduce the overall processing time for a case. To receive correspondence by mail, check the “No” box. Section 7 also contains a certification that by signing and dating the form, the applicant attesting that all information you provided in the DD Form 149 application is true.

How to submit your application?

So all of the websites will give instructions, but for those applying to the Air Force BCMR, the preferred method of submission is electronically through the secure Air Force Review Board’s agency online application portal. The online application portal allows the BCMR intake staff to securely work with a digital application and build a case file more quickly and efficiently than with a hard copy application. However, you may still mail the hard copy application and the addresses are online.

For those who apply to the Army BCMR, the preferred method of submission is electronically through their Army Review Board’s agency, and again, you can see the website on the slide. Alternatively, the Navy BCMR applicants, the preferred method of submission is via email, and we have that email address on the slide. All of the mailing addresses for each of the services can be found at the bottom of Page 3 on the DD form 149.

So, what happens after submission of an application?

Upon receipt, the board member staff will review the application package to ensure the case is eligible for correction board review. Once that initial review is complete, the applicant will receive an acknowledgement letter detailing if their case was accepted, along with a docket number and any other pertinent administrative details. If the case was rejected as ineligible for review, the applicant will receive a letter detailing the reason for the rejection.

Some reasons why a BCMR application might be rejected or returned without action include: If the applicant fails to complete and sign the application, if the applicant has

not exhausted all other administrative remedies, if the correction board does not have jurisdiction to grant the requested relief, in other words, the record in question belongs to another government agency, or there is no new evidence submitted with a request for reconsideration.

Unless a hearing is ordered or additional information is needed from the applicant, record correction cases do not normally involve back and forth communication between the board and the applicant. After receipt of the initial acknowledgement letter confirming receipt, applicants should not expect to hear from the board corrections until a decision is issued in their case.

So how long does it take for a BCMR case to be decided? Each BCMR case is unique and evaluated on its individual merits, which means case processing times vary depending on several factors, including the complexity of the issues raised, the availability of relevant service records, and the need to obtain an advisory opinion or additional information. Generally, BCMR cases are heard in the order in which they are received out of fairness to all.

Due to the number of applicants already on hand, it may be as long as 10 to 18 months from the date the application is received before an applicant receives notification of the final decision. However, the correction boards work diligently to process the cases received and the board's current time to completion averages approximately six to eight months.

So where can you get help with an application?

The Department of Defense does not recommend any advocate or organization to assist with the BCMR application process. However, several veteran-focused organizations may provide free or reduced-cost assistance regarding applications to the BCMRs. The Department of Veterans Affairs website has a search tool for accredited attorneys, claims agents and VSO representatives. And again, you can find their website on the slide deck that you were given.

And finally, there are a number of online correction board-related resources that former service members can access to assist them with the application process. These resources include both DOD websites that focus on a particular issue, such as Don't Ask, Don't Tell, and more general resources like the webpages of each of the military departments, review boards, agencies or counsels. And with that, I guess we'll open it up to any questions.

Christina Piechoski:

Let's get started. I have heard of BCMRs using advisory opinions when considering a case. What is an advisory opinion and are these used in every case? Who prepares the advisory opinion?

Elizabeth Hill:

An advisory opinion is not necessary in every case. We request advisory opinions, as an example, if someone claims some mental health issues occurred during their service, and because of those mental health issues, that is why they were discharged. Well, the board members are not psychiatrists and psychologists. So we reach out to psychiatrists and psychologists by law, and request their review of the application. And they have the expertise to review the mental health issues and provide an advisory opinion to the board on how they view the mental health issues. That's an example.

Christina Piechoski:

As the executive director of the BCMR, what are some of the common mistakes or issues you see with applications to your board?

Elizabeth Hill:

First of all, I don't necessarily see the applications when they come in the door, but my staff, I don't know if it's errors per se, but people are not clear in the application about what they want or what the issue is. That to me is the most important. Make sure, obviously, you fill out everything on the DD form 149. Make sure you sign it. Make sure you put an accurate address, phone number, email, all of that's very important because that's how we communicate. But the bottom line is, be very clear in layman's terms, what is the issue that you have, why is it an injustice, why was it an error, and explain it very clearly. That to me is probably the one thing a lot of people don't do.

Christina Piechoski:

How will I know when my case is completed? Will I get some kind of formal response from the board?

Elizabeth Hill:

Yes, you will. Once we receive — when the boards receive your application, you will be notified that the board received the application. So, if you don't receive notification that your application was even received, you want to follow up on that. That's the first part. Once the final decision is made, you will receive that final decision, and it's going to be sent to the address, phone number, or email that you provided. So yes, you will receive the final decision.

Christina Piechoski:

What is the Review Board Reading Room? What types of cases are posted there?

Elizabeth Hill:

So again, by law, the DOD Reading Room is where after final decisions are made within the respective boards, the information is redacted, so there's no names, no social securities, no PII information at all.

But the information is redacted and those final decisions are posted to the DOD reading room and the purpose of it is for petitioners, applicants, lawyers, whoever, they can go out and look at sample cases. They might find some cases that are similar to what their issue is. They can get a feel for the types of cases that may have been approved or the types of cases that were denied.

I will say the DOD reading room is going to be revamped in the near future and will be much more user-friendly. But that is what the DOD reading room is and where you can find sample cases, real cases that were presented before the board.

Christina Piechoski:

Can an applicant change their name or gender on military records after discharge? What do they have to prove to have that change made?

Elizabeth Hill:

So we don't change it, the records. We change DD Form 214. So if someone's name has changed — for instance, if you just got a divorce, for the most part they're not going to change your name on your DD Form 214. There has to be an injustice, if you will. But for a gender identity, as an example, if they have transitioned and their DD Form 214 has a female name and they now are male, then they can request a change to that to our board, and they need to provide a court order showing that their name had been changed.

We've actually delegated that down to the service level. So I would recommend, you need to go to the service first to the military personnel centers. They have the authority to change it, and then if for some reason they denied it, you would want to apply to the board of corrections.

Christina Piechoski:

If the VA gave me a higher disability rating, does that mean the military services disability rating at separation or retirement is wrong and should be corrected?

Elizabeth Hill:

No, it doesn't actually. There's a lot of confusion between VA disability ratings and whether or not you were fit or unfit in the military service. So many, many thousands of people, hundreds of thousands of people were considered fit for military purposes. They were able to do their job and within the rank, etc. But then separately, the VA looks at your medical records and based on their laws and policies can provide you a disability. But the two are not linked. The military deals with fitness and unfitness, which is a completely separate categorization from the VA.

Christina Piechoski:

What if it has been more than three years since the error or injustice was discovered?

Elizabeth Hill:

If it's been more than three years, explain on your application why are you just now applying. It could be any reason. Just give a hard faith effort, a good faith effort. Maybe when I first saw it, I just now applied for a loan or whatever it is, just make sure it's in good faith. We're pretty flexible about waiving the three-year, but you need to give us a reason that it's been more than three years since you knew it was an issue, why are you just now applying to the board? But give us a reason.

Christina Piechoski:

I need to obtain a discharge upgrade. Do I need to go to the Army's Discharge Review Board or are both the same thing?

Elizabeth Hill:

So each service, the first place you want to start, is if you were in the Army, you would go to the Army Discharge Review Board if you were discharged within the last 15 years. And that applies to the Air Force, the Navy, all of the services. If you were discharged within the last 15 years, you want to start with the Discharge Review Board and you have two opportunities. You have a records review and a personal appearance opportunity there.

If, however, you were discharged more than 15 years ago, you bypass the Discharge Review Board and come directly to the Board of Corrections. If the Discharge Review Board denies your application both times, then we are your last appeal. You can then, at that point, apply to us.

Christina Piechoski:

And kind of a second part to that one, can I also change my RE code?

Elizabeth Hill:

Yes, you can submit to apply not only to an upgrade, but let's say you can request your narrative reason be changed and your RE code changed. So it's more than just upgrading your discharge. You may have an honorable discharge. As a matter of fact, we have a lot of individuals who were discharged under the Don't Ask, Don't Tell policy. They got honorable discharges, but their narrative reason says homosexuality. So you can request, again, the 15-year rule applies for these, but you can request that be changed, removed off of your DD Form 214.

Christina Piechoski:

I heard certain branches would just grant upgrade if they claim they have a mental health condition or experienced MST because of liberal consideration, regardless of the reason for discharge. Is this true?

Elizabeth Hill:

No, that's not true. The boards follow the policies and laws and take everything into consideration. So just because someone claims a mental health condition does not mean that their discharge is going to be upgraded or changed.

Christina Piechoski:

I believe that comes to an end with our questions. Ms. Hill, do you have any closing or final thoughts?

Elizabeth Hill:

I just want to say that all of us want to be as accessible and transparent to you. I would suggest that you go to our website. We've been trying to provide as much information as we can to make the process easier. If it's been a long time since you've applied, I suggest applying again and you have nothing to lose by applying to the board.

Christina Piechoski:

I want to thank Ms. Hill and her team for sharing their invaluable experience and expertise. I would also like to thank our attendees for participating in today's webinar. If you find yourself having any questions after the webinar is over, please email moswebinars@militaryonesource.com, and we'll send them over to the presenter for an answer. This concludes today's webinar on Applying to the boards for correction of military or naval records. Thank you.