



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Assisting Veterans Through Lawyers Serving Warriors®

Rochelle Bobroff,
Director of Lawyers Serving
Warriors®





NVLSP
NATIONAL VETERANS LEGAL SERVICES PROGRAM

Assisting Veterans Through Lawyers Serving Warriors®

Abigail Reynolds,
Staff Attorney





NVLSP: Lawyers Serving Warriors® (LSW)

Lawyers Serving Warriors® is NVLSP's pro bono project that provides **free** legal assistance through a network of volunteer attorneys to veterans on various issues.





NVLSP: Lawyers Serving Warriors® (LSW)

- Veterans apply to LSW for legal assistance. LSW requests veterans' medical records to further evaluate each case.
- LSW staff attorneys review veterans' applications and place meritorious cases with volunteer law firm/corporate counsel attorneys.
- The volunteer attorney serves as lead counsel.
- LSW staff attorneys serve as mentors, helping the volunteer law firm/corporate counsel attorney prepare a successful case.





Lawyers Serving Warriors® (LSW) Case Types

- Discharge Upgrades
- Medical Retirement
- Combat-Related Special Compensation
- Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI)





NVLSP

Discharge Upgrades



Discharge Upgrade Overview

- Applicants to NVLSP's discharge upgrade program have had their military service terminated prematurely by an administrative separation or court-martial
- The basis for their separation was likely some type of misconduct that resulted in a less than fully honorable discharge.
- The veterans often seek an upgrade of their characterization of discharge to have access to housing and healthcare benefits, increase their employment prospects, and generally improve their lives.





What is a Discharge Upgrade?

- Change the characterization of service:
 - For example, change from “Other Than Honorable” to “Honorable”
- Change the narrative reason for separation to something less stigmatizing
 - For example, change from “Misconduct” to “Secretarial Authority”



Statistics

- Between 2011 and 2015, **91,764** service members were separated for misconduct.
 - **62%** (57,141) of those service members had been diagnosed with PTSD, TBI, or some other mental health condition that could be associated with the misconduct.
- Between 2002 and 2013, **103,581** service members received an OTH discharge characterization.

Impacts of Characterization of Service

- A less than fully honorable discharge can:
 - Hurt employment opportunities
 - Damage reputation and self-esteem
 - Prevent a veteran from accessing benefits
- If a correction board issues an Honorable or General discharge, the veteran may get benefits.



Successful Discharge Upgrade

Case Example

- LSW represented a Marine infantryman with two combat deployments to Afghanistan. He experienced daily gunfights and attacks by the enemy as well as the loss of two close friends. He received numerous awards, including a Combat Action Badge.
- Shortly after his first deployment, the veteran began to show extensive signs of Post-Traumatic Stress Disorder (PTSD). He attempted suicide, but received minimal treatment for his mental health condition. He failed to report another Marine's misconduct. He was then separated with an Other than Honorable characterization of discharge.
- Post-discharge, the VA diagnosed him with PTSD, rated at 70% disabling, but he was not entitled to benefits for his PTSD because of his discharge characterization.
- LSW volunteers submitted a brief to the Naval Discharge Review Board (NDRB) advocating that his combat service and post-discharge PTSD diagnosis mitigated the misconduct. The veteran's discharge was upgraded to General (Under Honorable Conditions). The veteran is now entitled to full benefits and services from the VA for his PTSD.



Department of Defense Supplemental Guidance

- The Department of Defense (DoD) has issued supplemental guidance to assist boards in making discharge upgrade decisions.
- The guidance focuses on mental health conditions linked to service and has led to increased rates of discharge upgrades.



Mental Health Conditions & TBI

- The majority of clients Lawyers Serving Warriors® serves have Post-Traumatic Stress Disorder (PTSD), traumatic brain injuries (TBI), or other mental health conditions that are related to military service.
- Pro bono volunteer attorneys use recent Department of Defense guidance to argue that a veteran client's mental health condition(s) **mitigates the misconduct they were unfavorably discharged for.**



Liberal Consideration



- The guidance recognizes that an honorable discharge does not require flawless service.
- The severity of misconduct changes over time.
- Mental health conditions inherently affect behavior and choices.
- Misconduct itself may be evidence of a mental health condition or behavior consistent with sexual assault or harassment.

PTSD Discharge Upgrade Success Story

- LSW sought a discharge upgrade for a 70 year old veteran who served in the Marine Corps in Vietnam and was discharged for misconduct with an Other Than Honorable characterization of service.
- He was subsequently diagnosed with PTSD.
- The Board for Correction of Naval Records held that the PTSD likely existed at the time of his misconduct and upgraded him to an Honorable discharge, making him eligible for VA disability compensation and other VA benefits.



Military Sexual Trauma (MST)

- Correction Boards have also been instructed to liberally consider MST (sexual harassment, sexual assault, rape, etc.) as a mitigating factor.
- The Department of Defense has recognized that even if the experience was not reported, liberal consideration should still be applied.
- Correction Boards do not have to find that MST actually occurred to grant liberal consideration.
- Veteran's testimony alone may establish that the experience occurred.



Military Sexual Trauma Success Story

- An Army Petroleum Supply Specialist was sexually assaulted by his superior and he went absent without leave (AWOL) to escape his assailant. He was discharged in 1982 with an Other than Honorable characterization. Post-discharge, he struggled with alcoholism and homelessness.
- In 2013, he was diagnosed with Military Sexual Trauma (MST)-induced PTSD and began receiving treatment from the VA.
- LSW submitted a brief to the Board for Correction of Military Records (BCMR) highlighting letters from two treating psychiatrists affiliated with the VA who both concluded that the veteran's misconduct in service was due to his MST-induced PTSD. An Army psychologist for the BCMR found a nexus between the veteran's PTSD from MST and his misconduct in going AWOL, and the psychologist vigorously recommended an upgrade.
- He was granted relief and upgraded to a General (Under Honorable Conditions) characterization, making him eligible for VA benefits.

Post-Service Conduct

- The Wilkie Memo (May 2018)
- Covers all applications based on equity, injustice, or clemency
- Review Boards have authority to ensure “fundamental fairness”
- Factors to consider:
 - Post-discharge conduct/good character
 - Youthful indiscretion
 - Relative severity of misconduct



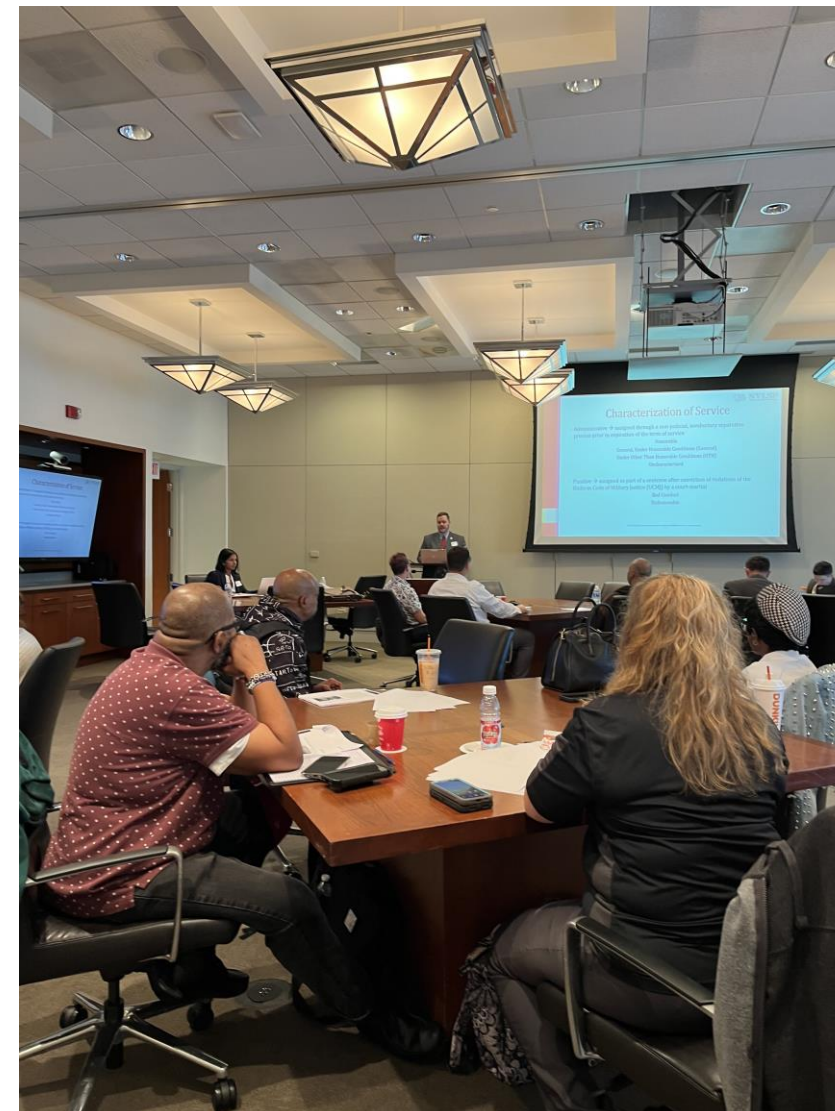
Discharge Upgrade Success Story

- A Marine excelled as a Military Working Dog Handler for over 8 years. In Iraq, he supervised four working dog teams involved in combat operations and explosive searches, clearing approximately 2,500 miles of road of IEDs in and around Baghdad. He felt afraid for his life while deployed and he began experiencing nightmares and other PTSD symptoms. His judgment was impaired, which led him to use marijuana once.
- After a positive urinalysis test, he was administratively separated with an Other Than Honorable discharge characterization.
- Post-discharge, he founded a non-profit organization which rescues dogs from shelters and trains them to be service dogs for veterans who are suffering from mental health conditions.
- He has a PTSD diagnosis and continues to receive treatment.
- LSW filed a detailed brief at the Naval Discharge Review Board, focusing on the veteran's exemplary service, mental health condition, and post-discharge accomplishments. The veteran was granted an upgrade to General. LSW continued to assist with a hearing, and the veteran was later upgraded to fully Honorable.



Don't Ask, Don't Tell

- **1993:** Introduced. Barred openly gay, lesbian, or bisexual persons from military service.
 - **2011:** Officially repealed, allowing LGBTQ service members to openly serve.
 - **2011:** DoD guidance directs the Boards to grant requests to change narrative reasons for separation, characterization of service, and re-entry codes where:
 - (1) Original discharge was based solely on DADT or a similar policy in place prior to DADT
- AND
- (2) No aggravating factors (i.e. misconduct)



Don't Ask, Don't Tell (DADT) Success Story

- LSW assisted an Aircraft Mechanic who served in the Marine Corps. When another Marine threatened to reveal his sexual orientation, making threats of violence and bodily harm, the Marine wrote a letter to his commanding officer disclosing his sexual orientation and requesting a discharge.
- He was discharged based on his disclosure, and his discharge certificate listed “homosexual admission” as the narrative reason for separation.
- Pro bono volunteers wrote a brief to the Board for Correction of Naval Records requesting that the veteran’s narrative reason for separation be changed. The Board agreed and changed the reason for separation to Secretarial Authority.

Personality Disorder Discharge

- A service member who is diagnosed with a “personality disorder” can be administratively separated from the military with a less than fully honorable discharge.
- Reports have found that some service members actually suffering from PTSD, TBI, or some other mental health condition were wrongfully discharged for a personality disorder.



Personality Disorder Success Story

- A Navy Firefighter earned high performance marks, but after seven years of stellar service, he experienced depression and was hospitalized for suicidal gestures.
- Despite his excellent performance grades and lack of any misconduct, he was quickly separated with a “General” discharge characterization and a narrative reason for separation of “Personality Disorder”.
- Post-discharge, he was diagnosed by the VA with bipolar disorder and he was successfully employed as an engineer.
- His initial *pro se* attempts to remove the stigmatizing personality disorder characterization from his discharge certificate were unsuccessful.
- LSW pro bono attorneys submitted a detailed brief to the Board for Correction of Naval Records with evidence of his exemplary performance, subsequent mental health diagnosis of bipolar disorder, and good conduct following discharge. The brief argued it was unjust to continue punishing the veteran when the circumstances that led to his discharge were symptoms of his then-undiagnosed bipolar disorder. In its decision, the Board explicitly stated that the veteran had been “incorrectly diagnosed with a personality disorder.” Based on his lack of misconduct and his performance in service, the Board upgraded his discharge to fully Honorable and changed his narrative reason to “Secretarial Authority”.

Racial Disparities in the Military

- A 2023 report by the Veterans Inclusion Project and Connecticut Veterans Legal Center found that Black servicemembers overall—across all service branches—were approximately 1.5 times as likely as white servicemembers to receive an “Other Than Honorable” rather than an “Honorable” discharge, and approximately twice as likely as white servicemembers to receive a “General” discharge.





NVLSP Success Story

- An Army veteran deployed twice to Iraq, earning a Combat Action Badge and the Navy and Marine Corps Medal (the highest non-combat award for heroism).
- He suffered PTSD from his combat experiences and started drinking to address his symptoms.
- While stationed in Louisiana, the veteran was pulled over by police under suspicion of driving under the influence. He was taken to booking, where he was called racial slurs and degraded by the police officers. He began to have an anxiety attack and was transported to the emergency department by Military Police. He was charged with Driving Under the Influence of alcohol (DUI).
- He was subsequently discharged with an Other Than Honorable characterization.
- Post-discharge, he participated in the VA's PTSD Recovery and Alcohol Dependence Programs. He returned to school and received a degree in computer technology. He became employed as an information technology administrator.
- NVLSP submitted a brief to the Discharge Review Board (DRB) arguing that his PTSD mitigated his misconduct. The Board was persuaded that he used alcohol to self-medicate his PTSD symptoms, mitigating the misconduct. The Board also acknowledged that he experienced racial discrimination during his arrest by police in Louisiana.
- His discharge was upgraded to General (Under Honorable Conditions). He is now eligible for VA disability benefits for his PTSD and other conditions from his service.

Contact Info for Veterans for Free Legal Services

Website:

<https://www.nvlsp.org/what-we-do/lawyers-serving-warriors/>

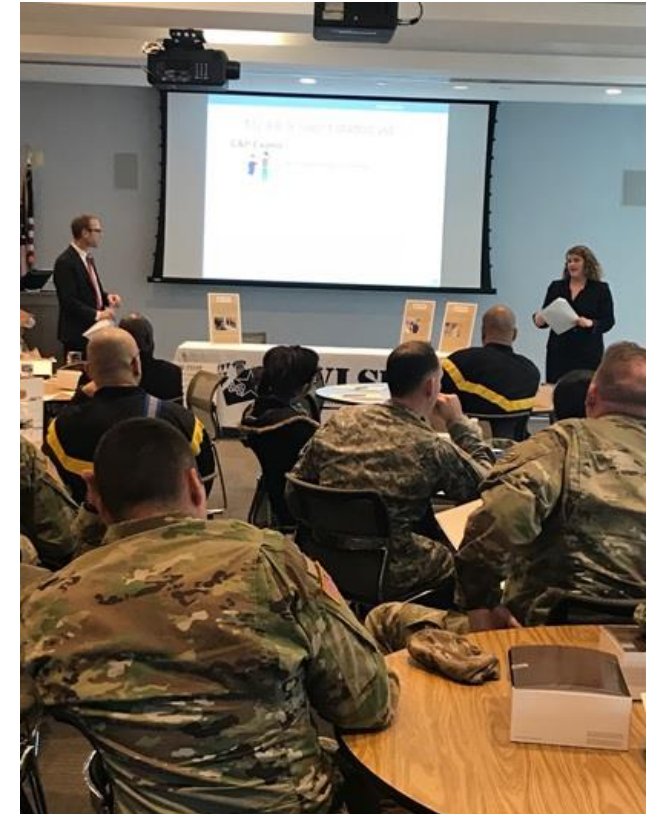
Phone:

202.265.8305, ext. 152

E-mail:

info@nvlsp.org

NVLSP will request that the veterans sign releases so that NVLSP can get their medical and personnel records.





Contact Info for TDVS Service officers

Veterans Service Officers may contact both Rochelle@nvlsp.org and info@nvlsp.org.

Let us know that TDVS holds the POA for the veteran.

NVLSP accredited representatives can access veterans' VA medical records through VBMS for veterans who have a POA with TDVS. This will facilitate a quicker screening process.

- Veterans may weaken their case by applying on their own without a detailed legal brief and exhibits. NVLSP does not require veterans to apply on their own prior to requesting assistance.





Questions?

We look forward to working with you!

