Questionnaire for a Rough Estimate of a VTC Participant’s Eligibility for VA Benefits

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I. Active Duty

1. Have you ever served on active duty in the following armed forces of the United States?
   For all services that apply, indicate how many times and approximate years.
   a. Army
   b. Navy
   c. Air Force
   d. Marine Corps
   e. Coast Guard
   f. Commissioned Officer of the Public Health Service
   g. Commissioned Officer of the National Oceanic and Atmospheric Administration

   If yes, proceed to question 2. If no, proceed to Part II.

2. When did you enlist?

   If the individual enlisted prior to September 8, 1980 there is no minimum time in service requirement. If the individual enlisted on or after September 8, 1980, the individual must have served 24 continuous months or the full period of enlistment.

3. Did you serve for your full period of enlistment (or contractual period)? Please answer for each armed force and each period of service.

   If no, and the individual enlisted in the military after September 8, 1980, the individual must have served continuously for 24 months or have been separated on the basis of a medical discharge or a hardship discharge to qualify for active duty service.

4. Were you discharged for any reason besides completion of your contractual term?

   Hardship discharge or medical discharge may still permit eligibility.

5. Did you complete more than one period of enlistment (in other words, did you reenlist at any period during your service?).

   A completed prior term of service may independently permit benefits even if another term was not fulfilled.
6. If you were discharged prior to your term of enlistment, how much continuous time (in months) did you spend on active duty prior to your discharge?

**Without a hardship discharge or a medical discharge, the individual should have served at least 24 continuous months.**

7. How many DD-214 forms were you given over your period of enlistment in the military?

**Review all DD-214s for a period of service with an Honorable or General discharge characterization.**

8. Do you still have any of your DD-214s?

**If the individual does not have a DD-214, attempt to verify status and discharge characterization through the Veterans Research Search Services.**

9. Do you have any of your military records?

**For individuals with Less-Than-Honorable discharges, as defined in this document, it will likely be necessary to obtain records, such as court-martial or separation board transcripts, promulgating orders, records of counseling, nonjudicial punishment, or other misconduct to determine the likelihood of a bar to benefits.**

II. **Reserve Duty**

1. Have you ever served in the Reserves for an Armed Force (e.g., Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve)?

**Without a term of mobilized service on active-duty, benefits for reservists are difficult to obtain unless the individual suffered an injury that was in the line of duty during inactive service.**

2. Have you ever served in the National Guard of a State?

**Without a term of mobilized service on active-duty, benefits for members of the National Guard are difficult to obtain unless the individual suffered an injury that was in the line of duty during inactive service.**

3. For all service in the Reserves or National Guard, were you ever mobilized on active duty (e.g., Title 10 Orders)? If so, list all periods of time.

**A mobilization on active duty makes it more likely to obtain benefits.**

4. For all of the times you were mobilized, did you complete the full term of your mobilization?

**A completed tour of active service makes it more likely to obtain benefits.**
5. If any mobilization was cut short, please list the reason?

6. Do you now have an injury that you sustained while on regular non-active status in the Reserves or National Guard?

   For injuries sustained in the line of duty during inactive service, individuals may be able to obtain benefits even if they were never mobilized to conduct active service.

7. Do you know whether a line-of-duty determination was made regarding the injury sustained on non-active status in the Reserves or National Guard?

   The presence of a line-of-duty determination will help to understand the circumstances surrounding the injury.

III. Less-Than Honorable Discharges (Undesirable, Other-Than-Honorable, Bad-Conduct Discharge, Dishonorable Discharge, Dismissal)

1. If you have a Less-Than Honorable Discharge in any of the above categories, do you have a DD-214 for a different period of service with either an Honorable Discharge or a General Under Honorable Conditions Discharge?

   Benefits will still accrue for any completed term of service under honorable terms.

2. If you have more than one DD-214 with one that is Honorable or General, did your injury or the start of your mental health condition happen during the honorable term or the other term?

   Benefits for injuries will extend to the completed periods during which the individual served honorably.

3. For a Bad-Conduct Discharge, what level or court-martial did it come from, General or Special? If you don’t know, do you remember whether there was an Article 32 hearing? Do you remember your sentence?

   Any discharge from a General Court-Martial, regardless of its type, will bar an individual from benefits eligibility. Confinement over one year would indicate a General Court-Martial. An Article 32—preliminary—hearing could suggest the possibility of a General Court-Martial. However, a Convening Authority can refer a case to a Special Court-Martial even if there has been an Article 32 hearing.
4. For a Bad-Conduct Discharge from a Special Court-Martial, what were the charges that you were found guilty of?

Pursuant to VA standards, mentioned below in the endnote, all Bad Conduct-Discharges and Other-Than-Honorable discharges should be reviewed by a VA Regional Office to determine benefit eligibility. However, if an individual was separated for committing theft or fraud, this would almost certainly constitute a crime of moral turpitude barred by regulation. Furthermore, if the discharge related to multiple offenses spread out over time, it is possible that the misconduct could be considered to be willful and persistent misconduct. To make an accurate estimation, it would be necessary to review the actual military records of the individual.

5. Aside from your conviction, did you have any nonjudicial punishment or were you counseled for other violations of the UCMJ or civilian laws?

Even if a discharge at court-martial stemmed from a single event that did not constitute a crime of moral turpitude, in combination with other misconduct reflected in the individual's records, VA adjudicators might still find the service to be characterized by willful and persistent misconduct.

6. For an Other-Than-Honorable or Undesirable discharge, was it based on Absence Without Leave for a continuous period of 180 days or more?

If such misconduct is present, the bar to benefits would likely apply unless there was strong evidence to meet the exception.

IV. Alternatives for Immediate Treatment of Individuals with Pending Character of Service Determinations

1. State Departments of Veterans Affairs

Nearly all states have organizations devoted to veterans’ issues which are separate from the federal VA. In fact, employees and volunteers of these organizations often represent veterans in appeals of unfavorable VA benefits adjudications. While states do vary in the nature and number of services provided to veterans, these organizations exist to assist veterans who are residents of the state. If the VTC does not have an existing relationship with the state department of veterans affairs, it would be advantageous to develop one. Given the large number of veterans of the wars in Iraq and Afghanistan with mental health needs, these local departments may be able to assist a VTC in coordinating for mental health treatment for a VTC participant during the time that the federal VA is evaluating claims and determining benefit eligibility. Moreover, with programs developed for veterans within the
home state of the VTC, such programs may be better suited to identify local resources that can be incorporated into the VTC participant’s treatment plan. For a comprehensive listing of these state departments, visit: http://www.va.gov/statedva.htm.

2. Vet Centers

Vet Centers were established in 1979 to address many issues of Vietnam veterans. Since that time, eligibility has been extended for veterans of more recent campaigns with far fewer administrative hurdles governing eligibility for services. In fact, the major prerequisite for participation in Vet Center services is deployment to a combat zone during a period of enlistment. Discharge characterization is not usually a bar as long as the individual has combat service. Although Vet Center staff members do not prescribe antidepressants or other psychotropic medications, they are usually licensed mental health professionals and provide a range of services, which may include martial and family counseling. VTC treatment teams can explore the possibility of developing alliances with local Vet Centers to incorporate some level of veteran-specific mental health counseling for veterans with combat deployments, especially when other VA programs are not able to offer any type of treatment. For a comprehensive listing of all states’ Vet Centers, visit: http://www.vetcenter.va.gov/.

3. Veterans Service Organizations and County Veterans Service Officers

Veterans Service Organizations (VSOs), such as Iraq and Afghanistan Veterans of America, Swords to Plowshares, the American Legion, AMVETS, Veterans of Foreign Wars, Disabled American Veterans, provide a variety of services to assist veterans. Some are chartered by Congress while others are not. However, many have developed comprehensive programs to connect veterans with resources within the community. As just one example, the VSO Vietnam Veterans Against the War developed a network of mental health providers from around the country to assist veterans with mental health evaluations for the purpose of seeking VA benefits and appealing VA benefits denials. See S Johanna (Hans) Buwalda, Spreading the Wealth: Training Mental Health Providers Nationwide to Work with Veterans, VETERAN (Vietnam Veterans Against the War), Spring 2012, at 8, 8 (describing the efforts of Vietnam Veterans Against the War to “develop[] a network of providers across the country that is willing to provide free, quality mental health services”). Similar to “Give an Hour,” described below, such programs may be wonderful resources for identifying trained and experienced mental health providers who want to assist veterans and who may be able to come to the VTC docket and provide invaluable insights to address participants’ needs beyond the limited manner in which some overwhelmed VA employees are operating. A comprehensive listing of Veterans Service Organizations is available at: http://www.va.gov/vso/. A listing of county veterans service officers is available at: http://nacvso.org/find-a-service-officer/.
4. “Give an Hour”

The “Give an Hour” program was established by mental health providers who were concerned about alleviating the stigma facing many active duty service members who felt intimidated to ask for mental health treatment from the military. The program created a network of licensed mental health professionals from around the country who have volunteered some portion of their time to treat service members for mental health conditions to alleviate some of the stigma. Although “Give an Hour” has no specific connection to justice-involved veterans or VTC programs, it is a valuable resource that may be worth investigating for the purpose of identifying licensed mental health providers who are experienced in treating veterans, who have already volunteered their services to assist. While all members may not desire to provide supplemental treatment services that could fill important gaps at a VTC, some very well may desire to contribute in this way, especially given the more prevalent needs of those veterans presently enmeshed in the criminal justice system. The program has a website with a “Search for Provider” function that can locate volunteer providers based on Zip code and specific areas of practice, such as “Post Traumatic Stress Disorder” (PTSD), “Anxiety Disorders,” “Marriage Counseling,” and “Group Counseling”:

http://www.giveanhour.org/?gclid=COvvqOeKzssCFdcYgQodom4HQw.

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Endnote: Excerpt from VHA HANDBOOK 1601 A.02, at 5-6 (Nov. 5, 2009):

A Veteran who has received a discharge that VA has determined to be disqualifying under application of 38 CFR §3.12 or 38 U.S.C. § 101(2) still retains eligibility for VA health care benefits for service-incurred or service-aggravated disabilities unless he or she is subject to one of the statutory bars to benefits set forth in 38 U.S.C. §5303(a), or when the disabilities in question were incurred during a period of service from which the individual was discharged by reason of a bad conduct discharge (see Public Law (Pub. L.) 95-126, §2 (Oct. 8, 1977).

NOTE: If the DD-214 indicates OTH or BCD as the character of discharge, VHA must submit VA Form 10-7131, Exchange of Beneficiary Information and Request for Adjudicative Action, to the Regional Office (RO) for appropriate action to obtain an adjudicative decision. Eligibility status will be pending verification until a decision is rendered.
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