Establishing Veteran Status (MSC)

Trainee Handout

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Objectives

* Given the trainee handout packet and references, identify VA benefits entitlement criteria.
* Given the trainee handout packet and references, distinguish Reservist qualification criteria.
* Given the trainee handout packet and references, distinguish the discharge conditions that entitle an individual to Veterans benefits.
* Given the trainee handout packet and references, identify acceptable evidence for verification of service.

References

* [38 CFR 3.1, Definitions](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_11&rgn=div8)
* [38 CFR 3.4 (b), Disability compensation](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_14&rgn=div8)
* [38 CFR 3.6, Duty periods](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_16&rgn=div8)
* [38 CFR 3.7, Individuals and groups considered to have performed active military, naval, or air service](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_17&rgn=div8)
* [38 CFR 3.12, Character of discharge](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&tpl=/ecfrbrowse/Title38/38cfr3_main_02.tpl)
* [38 CFR 3.13, Discharge to change status](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&tpl=/ecfrbrowse/Title38/38cfr3_main_02.tpl)
* [38 CFR 3.14, Validity of enlistments](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_114&rgn=div8)
* [38 CFR 3.203, Service records as evidence of service and character of discharge](http://www.ecfr.gov/cgi-bin/text-idx?SID=bf6149096232adae2072daaa46938a41&mc=true&node=se38.1.3_1203&rgn=div8)
* M21-1, Part III, Subpart i, Chapter 2, Section D - Overview the Integrated Disability Evaluation System (IDES) and Initial Claims Development
* M21-1, Part III.ii.6.2, Duty Status and Eligibility of Reservists
* M21-1, Part III, ii, 6.3, Duty Status and Eligibility of Personnel in the National Guard Service
* M21-1, Part III.ii.6.4, Minimum Active Duty Service Requirements
* M21-1, Part III.v.1.B, Statutory Bar to Benefits and Character of Discharge (COD)
* [VBA Letter 20-09-14, Digitally Signed Separation Documents and Other Evidence of Service](http://vbaw.vba.va.gov/usb/letters/2009/20-09-14.DOC)

Topic 1: VA Benefits Entitlement Criteria

Definition of a Veteran

A “Veteran” is a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

**Active Duty Qualifications**

Active Duty consists of:

* Full time occupation in the military, naval, or air force.
* Inactive duty for training
  + Any period of *inactive duty for training*, during which a person is disabled or dies from an **injury** incurred or aggravated in the line of duty or any of the following conditions
    - acute myocardial infarction
    - cardiac arrest, or
    - a cerebrovascular accident.
* Active duty for Training
  + any period of *active duty for training* during which a person is disabled or dies from a **disease** or **injury** incurred or aggravated in the line of duty
* Any person who is in active or inactive training that is injured, disabled, or dies from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident while proceeding directly to or returning directly from a period of training.

***Notes***:

According to [VAOPGCPREC8-2001](http://vbaw.vba.va.gov/bl/21/advisory/PRECOP/DADS/01dad/DAD08_01.doc), sexual assault constitutes an injury for the purposes of this block.

**Minimum Active Duty Service Requirements**

In order to fulfill the minimum Active Duty service requirements, an individual must have undergone a full period of Active Duty or 24 continuous months; whichever duration is shorter.

38 CFR 3.12a mandates that the minimum Active Duty service requirement of must be met by all persons, including officers, who:

* Originally enlisted in a regular component of the Armed Forces after September 7, 1980.
* Entered on active duty after October 16, 1981.
* Have neither previously (before October 16, 1981) completed a continuous period of Active Duty of at least 24 months nor been discharged or released from active duty under 10 U.S.C. 1171.

**Exceptions to Minimum Service Requirements**

M21-1MR III.ii.6.4.c and 38 CFR 3.12 a (d) cover the exceptions to the minimum service requirement, however they will not all be covered in this lesson.

The exception most pertinent to this lesson states that the minimum Active Duty requirement does not need to be fulfilled for anyone who is rated with a service-connected disability.

When processing a claim, verifying whether the minimum Active Duty requirement is fulfilled is not necessary when the Veteran is rated with a service-connected disability.

Reservist Qualifications

**Reservist Active Duty**

Activation of a Reservist for full time operational or support purposes is considered Active Duty.

The following types of Reserve programs are considered Active Duty for the purpose of establishing Veteran status if the facts of record establish that the service was full time and for operational or support purposes:

* Active Guard Reserve (AGR)
* Active Duty Support Program (ADS)

**Reserves Programs Not Considered Active Duty**

The following types of Reservist duty are not considered full-time duty:

* Initial Active Duty for Training(IADT) - The standard for Reserve members without prior active service is to undergo a period of Initial Active Duty for Training (IADT) lasting from four to seven months. This training may be taken in a single period or as two separate periods.
* Annual Training(AT) - Annual Training is also sometimes referred to as “summer camp.” AT is an annual two to five weeks activation for training purposes. These are all forms of Active Duty for Training (ADT or ACDUTRA).
* Inactive Duty Training(IDT) - Inactive Duty Training (IDT) is commonly referred to as weekend drills.

The common heuristic for determining Active Duty for Reservists:

* If their activation was for operational or support purpose it would be Active Duty.
* If their activation was for training purposes it would not constitute Active Duty.

**National Guard Service**

The Army National Guard (ARNG) and the Air National Guard (ANG) operate full-time operational and support programs similar to the Ready Reserves. Often, members of the National Guard are the first line of defense for our country.

Service under 10 U.S.C.

A Guard unit or member may be activated under the authority of 10 U.S.C. (Title 10). The members who report qualify as Active Duty service for VA purposes.

Active Duty under 10 U.S.C. is characterized as Federal Active Duty.

Service under 32 U.S.C.

Full-time operational or support National Guard service performed under 32 U.S.C. 316, 502, 503, 504, or 505 is considered ADT for VA purposes and does not meet the definition of Active Duty.

* Presumptive service conditions under [38 U.S.C. 1112](https://www.law.cornell.edu/uscode/text/38/1112) based on service under **32 U.S.C.** may *not* be considered unless the member or former member meets the exception outlined in [38 U.S.C. 101(24)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00000101----000-.html) or [38 U.S.C. 106(b)(3)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00000106----000-.html).

Topic 2: Veteran Status Verification Requirements

Character of Discharge

The character discharge could affect whether or not an individual is entitled to VA benefits.

The following types of discharges are binding for eligibility to VA benefits:

* Honorable discharge
* General discharge
* Certain Uncharacterized discharge
* General Under Honorable Conditions discharge

The following types of discharges require VA development and an administrative decision:

* General Under Conditions Other than Honorable
* Certain Uncharacterized discharge
* Dishonorable discharge
* Bad Conduct discharge

**Uncharacterized Discharges**

According to 38 CFR 3.12 (k), when enlisted personnel are administratively separated from service on the basis of proceedings initiated on or after October 1, 1982, the separation may be classified as one of the following three categories:

* Entry level separation (no decision needed)
* Void enlistment (requires administrative decision)
* Dropped from the rolls (requires administrative decision)

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| **38 CFR 3.12(k)**  **Uncharacterized Separations**  **After October 1, 1982** | |
| Entry level | Considered by VA to be Under Honorable Conditions discharge |
| Void enlistment or induction (May be either UHC or OTH) | VA decides |
| Dropped from rolls  (May be either UHC or OTH) | VA decides |

Verification of Service

The process for establishing Veteran status consists primarily of the following:

* Locate acceptable evidence of service
* Verify active service dates
* Verify character of discharge

The following list shows the acceptable pieces of evidence for verification of service:

* DD Form 214- original, carbon, or VA verified photo copy
* PHS Form 1867
* NOAA Form 56-16
* Report of separation issued prior to the implementation of the DD Form 214
* Continuous active service comments on a DD Form 214 that is acceptable for verifying service
* 3101 response from the service department (PIES S01)
* Digitally signed DD Form 214 that meets certain requirements
* BIRLS VID screen, if it meets the following requirements:
  + Character of service is Honorable (HON) or Under Honorable Conditions (UHC)
  + Branch of service code is not Army National Guard or Air National Guard
  + Separation reason is Satisfactory (SAT)
  + “Y” or “D” in the VADS field
  + “Y” in the VER field

***Note***: Any period of Inactive Duty for Training or Active Duty for Training that has a qualifying illness or injury, that entire period becomes Active Duty for VA purposes, whether it’s 2 days, 2 weeks or 2 years. Participant Profile must be updated. Those periods are listed as Active Duty.

**Incomplete Service Verification**

Verify active service dates and character of discharge by first reviewing the available service department records or other acceptable evidence of service in the claims folder.

If a review of the claims folder indicates that the available evidence is incomplete or information is questionable, request the following:

* Further verification or additional data via Personnel Information Exchange System (PIES), or Defense Personnel Records Information Retrieval System (DPRIS)
* Service data from the appropriate service department (such as the State Adjutant General for National Guardsmen) via PIES as provided in M21-1MR III.iii.2