Character of Discharge (COD)

Instructor Lesson Plan

Time Required: 3 Hours

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| Lesson Description | |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. | |
| TMS # | 4179795 |
| Prerequisites | Prior to this lesson, the Veteran Service Representatives (VSRs) should have completed entry level training (Challenge). Trainees should also have knowledge of establishing Veteran status and reviewing military personnel files and service treatment records. Additionally, knowledge and experience using the Veterans Benefits Management System (VBMS) and the Personal Computer Generated Letters (PCGL) system is required. |
| target audience | The target audience for Character of Discharge (COD) is VSR, post-Challenge.  Although this lesson is targeted to teach the VSRs, post-Challenge, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 3.00 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * COD PowerPoint Presentation * COD Trainee Handouts * COD Job Aid |
| Training Area/Tools | The following are required to ensure the trainees are able to meet the lesson objectives:   * Classroom or private area suitable for participatory discussions * Seating, writing materials, and writing surfaces for trainee note taking and participation * Handouts, which include a practical exercise * Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials * Computer with PowerPoint software to present the lesson material   Trainees require access to the following tools:   * VA TMS to complete the assessment * VBA Intranet |

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| Pre-Planning | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session. * Become familiar with the content of the trainee handouts and their association to the Lesson Plan. * Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the trainee handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson. * Ensure that there are copies of all handouts before the training session. * When required, reserve the training room. * Arrange for equipment such as easel charts, an overhead projector, and any other equipment (as needed). * Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson. * This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins. |
| Training Day | * Arrive as early as possible to ensure access to the facility and computers. * Become familiar with the location of restrooms and other facilities that the trainees will require. * Test the computer and projector to ensure they are working properly. * Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly. * Make sure a whiteboard and the associated markers are available. * You will complete a roll call attendance sheet or provide a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers. |

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| Introduction to Character of Discharge (COD) | | | |
| INSTRUCTOR INTRODUCTION | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts | |
| time required | | 10 minutes | |
| Purpose of Lesson  Explain the following: | | This lesson is intended to educate the audience on the procedures for addressing a COD issue. This lesson will contain discussions and exercises that will allow you to gain a better understanding of:   * identifying a COD issue, * advance notice requirements for a COD issue, * evaluating the evidence to make a COD administrative decision, * preparing a COD administrative decision, and * promulgation of a final COD administrative decision | |
| Lesson Objectives  Discuss the following:  Slides 2-3  Handout p. 2 | In order to accomplish the purpose of this lesson, the VSR will be required to accomplish the following lesson objectives.  TheVSRwill be able to:   * Identify which type of discharge and character of service are binding on VA and which require an administrative decision * Understand the advance notice requirements for a COD determination * Recognize when a conditional service period exists and its impact on a claim for VA benefits * Understand how to evaluate evidence for a COD administrative decision * Identify whether insanity is placed at issue * Comprehend preparation of a COD administrative decision * Understand promulgation of a COD administrative decision | | |
| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. | | |
| Motivation | COD administrative decisions affect permanent entitlement to VA benefits. COD administrative decisions are rarely - if ever - overturned. Thus, the person making the COD decision is making a permanent impact on another individual’s life. It is very important all available evidence be obtained and considered with impartial judgement. It is imperative that one disassociate any emotions or feelings when making a final decision. Any reasonable doubt must be resolved in the service member’s favor. Remember, your decision will affect an individual’s ability to obtain help for any condition they may have suffered while serving in the military. Instances that led to a service member’s other than honorable discharge from the military, but do not conform with any of the bars listed in Federal regulations, should be held honorable for VA purposes. | | |
| STAR Error codes | The Systematic Technical Accuracy Review (STAR) Program reviews cases and considers them either “accurate” or “in error” for the purpose of measuring technical accuracy.  Common errors will include whether   * the character of discharge issue was addressed * all necessary development was completed * the final determination listed and discussed pertinent evidence, the basis of the determination was explained, and required signatures acquired * the notification of the determination was correct, sent, and included all necessary information and the appellate rights.   The STAR code errors are as follows:  1, 2, 3, 7, 10, 11. | | |
| References  Slides 4-5  Handout p. 3 | Explain where these references are located in the workplace.  All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).   * [Public Law 95-126](https://www.gpo.gov/fdsys/pkg/STATUTE-91/pdf/STATUTE-91-Pg1106.pdf) * [38 U.S.C. Chapter 17, Section 1710, Eligibility for hospital, nursing home, and domiciliary care](https://www.law.cornell.edu/uscode/text/38/part-II/chapter-17) * [38 U.S.C. 5303(a)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00005303----000-.html), Certain bars to benefits * [38 CFR 3.12, Character of discharge](http://www.ecfr.gov/cgi-bin/text-idx?SID=1e3b7d37f5d486813321c75b1d285ca9&node=se38.1.3_112&rgn=div8) * [38 CFR 3.13(c), Conditional discharge](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=197b972b5ec49a0558f6511c3620c8a5&mc=true&n=pt38.1.3&r=PART&ty=HTML#se38.1.3_113) * [38 CFR 3.102, Reasonable doubt](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=197b972b5ec49a0558f6511c3620c8a5&mc=true&n=pt38.1.3&r=PART&ty=HTML#se38.1.3_1102) * [38 CFR 3.103, Procedural due process and appellate rights](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=197b972b5ec49a0558f6511c3620c8a5&mc=true&n=pt38.1.3&r=PART&ty=HTML#se38.1.3_1103) * [38 CFR 3.360, Service connected health care eligibility of certain persons administratively discharged under other than honorable condition](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=197b972b5ec49a0558f6511c3620c8a5&mc=true&n=pt38.1.3&r=PART&ty=HTML#se38.1.3_1360) * M21-1 Part III, Subpart v, Chapter 1, Section A, General Information on Administrative Decisions * M21-1 Part III, Subpart v, Chapter 1, Section B, Statutory Bar to Benefits and Character of Discharge (COD) * M21-1 Part III, Subpart v, Chapter 1, Section E, Determinations of Insanity * M21-1 Part III, Subpart v, Chapter 7, Section A, Eligibility for Hospital, Nursing Home, Domiciliary, and Medical Care * M21-1 Part IX, Subpart ii, Chapter 2, Rating for Special Purposes | | |
| Topic 1: Character of Discharge Explained | | | | |
| Introduction | | | | This topic will explain the types of discharges necessary for eligibility to VA benefits. It will also distinguish the types of discharges that require a Character of Discharge (COD) determination. |
| Time Required | | | | 30 minutes |
| OBJECTIVES/ Teaching Points | | | | Topic objectives:   * Identify which type of discharge and character of service are binding on VA and which require an administrative decision   The following topic teaching points support the topic objectives:   * COD requirement for benefit eligibility * When is a COD initiated * When COD is binding on VA * Formal findings required for Other Than Honorable (OTH) discharges * When it is not necessary to make a COD determination * Uncharacterized separations * Action to take for uncharacterized separations * Upgraded discharges |
| COD Requirement for Benefit Eligibility  Slide 6  Handout p. 4 | | | | A Veteran’s COD must be under other than dishonorable conditions to establish eligibility for Department of Veterans Affairs (VA) benefits based on that individual’s military service.  An other than honorable discharge or statutory bar pertaining to a period of service deprives a claimant of all VA benefits for any claim based on that period of service. However,service members who are determined to have been discharged under the regulatory bars described in 38 CFR 3.12(d) may be eligible for health care.  The type of separation and character of service a service member receives is located on his/her DD Form 214, *Certificate of Release or Discharge from Active Duty*.  **Note:** Veterans who have a Bad Conduct Discharge (BCD) are not eligible for health care under Chapter 17 of 38 USC. |
| When is a COD Initiated  *Slide 7*  *Handout p. 4* | | | | A service member’s character of discharge is put at issue when   * a claim for VA benefits is received from a service member or other eligible party * a request for a COD determination has been received from another VA department, a different Federal agency, or a state agency   ***Example:*** The Veterans Health Administration (VHA) submits a VA Form 10-7131, *Exchange of Beneficiary Information and Request for Administrative and Adjudicative Action*, requesting that a character of discharge determination be made to establish if a service member is eligible for VA health care benefits. |

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| When COD is Binding on VA  *Slide 8*  *Handout p. 4* | An individual is entitled to full rights and benefits of programs administered by VA unless there is a bar to benefits under 38 U.S.C. 5303(a). Normally, the military’s characterization of service is binding on VA if the discharge is   * honorable * under honorable conditions (UHC), or * general.   ***Exception*:** For a general COD, the type of separation will need to be considered. The narrative reason for the separation will determine whether the COD is binding on the VA or not. For example, a general discharge with a narrative reason “bad conduct” requires an administrative decision to determine eligibility to VA benefits. |
| Formal Findings Required for OTH Discharges  *Slide 9*  *Handout p. 5* | A formal COD determination is required when the discharge is one of the following   * an undesirable discharge * an OTH discharge, or * a bad conduct discharge (BCD). |
| When it is Not Necessary to Make a COD Determination  Slide 10  Handout p. 5 | It is not necessary to make a COD determination for VA claim purposes   * before the claimant applies to the Veterans Benefits Administration (VBA) and places the matter at issue, or * if there is a separate period of honorable service (conditional period), which qualifies the person for the benefits claimed   ***Exception***: If the individual is subsequently convicted of a “subversive activity” as provided in [38 U.S.C. 6105](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00006105----000-.html) the determination is necessary. |
| Uncharacterized Separations  *Slide 11*  *Handout p. 5* | For cases in which 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 of administrative separation   * entry level separation * void enlistment or induction, and * dropped from the rolls.   ***Note***: Entry level separation can include separation reasons such as:   * failure to meet procurement medical fitness standards * failure to meet retention standards due to a preexisting medical condition * completion of a period of Active Duty for Training (ADT) * hardship discharge, or * dependency discharge.   ***Important***: The service department does not need to provide a characterization of service for the aforementioned three categories of separation. |
| Action to Take for Uncharacterized Separations  *Slide 11*  *Handout p.6* | Use the table below to determine which action to take for the three categories of uncharacterized administrative separations.   |  |  | | --- | --- | | **Type of Separation** | **Action** | | Entry level separation | * Consider uncharacterized separations of this type to be under conditions other than dishonorable. * No administrative decision is required.   ***Reference***: For information on the effect of an entry-level separation based upon fraudulent enlistment on the status as a Veteran, see [VAOPGCPREC 16-99](http://www.va.gov/ogc/docs/1999/prc16-99.doc). | | Void Enlistment or induction | * Review uncharacterized separations of this type based on facts and circumstances of separation, with reference to the provisions of [38 CFR 3.14](http://www.ecfr.gov/cgi-bin/text-idx?SID=a2e4f4d9b06648de90de7379be695705&node=se38.1.3_114&rgn=div8) to determine whether separation was under conditions other than dishonorable. * Prepare an administrative decision. | | Dropped from the rolls | * Review uncharacterized administrative separations of this type based on facts and circumstances of separation to determine whether separation was under conditions other than dishonorable. * Prepare an administrative decision. |   A |
| Upgraded Discharges  *Slide 12*  *Handout p. 6* | A discharge may be upgraded by a discharge review board. Depending on the type of upgrade and the authority under which the discharge was upgraded, the decision may be binding on VA.  For more information on identifying upgraded discharges and how they effect a service member’s entitlement to VA benefits, direct the trainees to [38 CFR 3.12(e-h)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=197b972b5ec49a0558f6511c3620c8a5&mc=true&n=pt38.1.3&r=PART&ty=HTML#se38.1.3_112) and M21-1, Part III, Subpart v, Chapter 1, Section B, 6-7.  \*A Presidential pardon is not considered an upgraded military discharge. Ref: United States Justice Department FAQ’s. <https://www.justice.gov/pardon/frequently-asked-questions> |

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| Topic 2: Development Requirements for COD | |
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| Introduction | This topic will explain the development requirements for COD. It also gives details about conditional periods of service and how to distinguish an honorable period from an other than honorable period. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Understand the advance notice requirements for a pending COD determination * Recognize when a conditional service period exists and its impact on a claim for VA benefits   The following topic teaching points support the topic objectives:   * Was a previous COD decision made * Responsibility for COD development and determinations * Required records for a COD determination * Requirement for advance notice * Conditional discharge * When to develop for a possible conditional discharge * Identifying the need for a conditional discharge COD determination * Determining the dates of service for a conditional discharge |
| Was a Previous COD Decision Made  *Slide 13*  *Handout p. 7* | Before beginning development, make sure to review the file for any previous COD determinations.  If no previous decision has been made, then proceed to develop.  If a previous decision has been made, then   * review to make sure that no clear and unmistakable error was made or that no change(s) in laws or regulations has been made since the decision that would warrant reexamination of the previous decision, * decide if new and relevant evidence has been provided to reopen and reexamine the previous decision, if received on a VA Form 20-0995: Supplemental Claim and, * decide if an additional decision is needed for entitlement to VA health care benefits under Chapter 17, 38 U.S.C. 1710 and 38 CFR 3.360(a) if not a 38 CFR 3.12.   If at least one of the above applies, then undergo any additional development that may be necessary.  If a previous decision has been made and none of the above applies, then proceed to deny the claim in accordance with denying a claim when no new and relevant evidence is provided per M21-1, Part III, Subpart ii, 2. D.1.e, and M21-1 Part I.1.B.1.g. |
| Responsibility for COD Development and Determinations  Slide 14  Handout p. 7-8 | The VSR is responsible for collecting all evidence required to make a COD determination.  This includes, in all cases, records detailing the facts and circumstances surrounding a former service member’s discharge.  The responsibility for making a COD determination rests with the VSR.  Follow the steps in the table below when a COD determination is needed.   |  |  | | --- | --- | | **Step** | **Action** | | 1 | If the discharge at issue is not honorable, UHC, or general; or if there is evidence that the discharge was upgraded, send a request to the service department for all available records, including active duty medical records, personnel records, and records of proceedings pertaining to the discharge. | | 2 | Make a formal determination | | 3 | Prepare the formal determination for the approval of the Veterans Service Center Manager (VSCM) or designee. |   A |
| Required Records for a COD Determination  Slide 15  Handout p. 8 | It is always necessary to obtain and review the facts and circumstances surrounding the service member’s discharge prior to making a formal decision.  Request records relating to the facts and circumstances of discharge using Personnel Information Exchange System (PIES) or Defense Personnel Records Information Retrieval System (DPRIS), as appropriate.  In all cases, full and complete development of information pertaining to the discharge, including but not limited to service treatment records (STRs) and the complete military personnel file, is needed.  ***Note:*** Occasionally the service department will provide only limited records. Make a determination using all the evidence in VA’s possession and resolve any reasonable doubt in favor of the claimant. |
| Requirement for Advance Notice  *Slide 16*  *Handouts p. 9-10* | In any situation that requires a character of discharge determination, including dishonorable discharges   * notify the service member in advance of the need for a determination * provide information concerning the service member’s legal and procedural rights, and * solicit a completed application for benefits (typically a VA EZ Form) covering the disabilities for which a determination is needed, if one has not already been received.   ***Note***: Veterans barred from payment of VA benefits under [38 CFR 3.12(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=200d57890017c0820930c4c6446bd9c4&mc=true&node=se38.1.3_112&rgn=div8) have tentative eligibility to receive VHA health care only for service connected (SC) conditions. In all cases in which VHA has not requested adjudication for specific medical conditions, VBA must request a completed VA Form 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits,* from the claimant. Ref: M21-1 Part **III.v.7.A.4.b.**  ***Explanation***: In many cases the need for a COD determination may be prompted by a claim. However in some situations, such as in VHA referrals for determinations of service connection for treatment purposes, there may not be a claim of record at the time a need for a COD determination is discovered.  ***Exception***: See M21-1 III.v.1.B.1.f. that describes the scenario when a completed application is ***not*** solicited.  The table below   * lists the specific elements the advance notice ***must*** contain, and * provides the purpose and a description of each element.  |  |  | | --- | --- | | **Element** | **Purpose and description** | | Reason for the Decision | Explains the reason why a COD determination is necessary.  ***Note***: Basic eligibility for VA benefits is contingent upon a discharge under conditions other than dishonorable. | | Criteria Used to Make the Decision | * Explains the criteria VA will use to make the decision. * Explains and cites the applicable VA regulations. | | Right of Representation | Informs the claimant of the right to be represented, without charge, by an accredited representative of a recognized Veteran’s service organization.  Explains the following to the claimant:   * he/she may employ an attorney to assist in prosecuting the claim, and * the attorney may appear with the claimant if a personal hearing is requested. | | Review of military records | Explains that VA will review all military records to include STRs, facts and circumstances, and all other available personnel records. | | Claimant’s Right to Submit Evidence | Explains the claimant’s right to submit any evidence, contention, or argument bearing on the issue. | | Claimant’s Right to a Hearing | Explains the claimant’s right to request a personal hearing before a decision is made. | | 60-Day Time Limit | Explains that if the claimant does not reply within 60 days, VA will   * assume he/she * has no additional evidence to submit, and * does not desire additional time for presentation of his/her case, and * make a decision based on the evidence available. | | Effect of the Decision | Fully explains that an unfavorable decision might preclude entitlement to   * the benefit claimed, and * all other gratuitous VA benefits. | | Statement of Policy | Explains that   * the established policy of VA is to assist claimants in developing facts pertinent to a claim, and * VA will make a decision that grants the claimant every benefit that can be supported in law, while protecting the interest of the Federal Government. |   Inform the trainees that a COD advance notice letter can be written using the Veterans Benefits Management System (VBMS) letter “Character of Discharge Letter” or a Personal Computer Generated Letter (PCGL) letter “GP1 Pre: Character of Discharge.” |
| Conditional Discharge  Slide 17  *Handout p. 11* | [38 U.S.C. 101(18)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00000101----000-.html) provides that an individual who enlisted or reenlisted before completion of a period of active service can establish eligibility to VA benefits if he/she satisfactorily completed the period of active service for which he/she was obligated at the time of entry. The satisfactory completion of one contracted period of enlistment while serving on a subsequent contracted period of service under a new enlistment is considered a conditional discharge.  The provisions of [38 U.S.C. 101(18)](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00000101----000-.html) apply even if   * the subsequent discharge was under dishonorable or OTH conditions, or * a statutory bar exists for entitlement to benefits for the later period of service. |
| When to Develop for a Possible Conditional Discharge  Slide 18  Handout p. 11 | A *DD Form 214* may show that an individual served one continuous period of service. However, enlistment contracts generally range from three to six years. Therefore development for a conditional discharge must be undertaken, if   * the service was over three years, especially if the discharge dates do not line up to an exact number of years or months, or * if there is any question about how many periods of service the Veteran enlisted for, or * the *DD Form 214* shows that prior active service exists.   To develop for a possible conditional discharge, request all available STRs and personnel records from all periods of service. |
| Identifying the Need for a Conditional Discharge COD Determination  Slide 19  Handout p. 11 | Once development is complete and evidence is received, use the table below to identify the need for a conditional discharge COD determination.   |  |  | | --- | --- | | **If…** | **Then…** | | Development discloses a prior and separate period of honorable service which would qualify the claimant for the benefit requested | * Adjudicate the claim on that basis, if the claimed conditions fall under the good period of service, or * Complete a COD determination if the claimed conditions fall under the questionable period of service.   ***Note***: If it is unclear which period of service the claimed conditions fall under, complete a COD determination. | | Development does not disclose a prior and separate period of honorable service which would qualify the claimant for the benefit requested | * Proceed with a COD determination * Consider whether the former service member had faithful and meritorious service through the period of active duty for which he/she was obligated at the time of induction or enlistment, and * Discuss the issue of conditional discharge in the decision. |   A |
| Determining the Dates of Service for a Conditional Discharge  *Slide 20*  *Handout p. 12* | When determining the dates of service for a conditional discharge it is necessary to know the length of each enlistment contract the service member signed. Dates of faithful and meritorious service are calculated by   * adding the full length of the first enlistment contract to the service member’s entry into service date, thus calculating the date the individual ***would*** have completed his/her first period of obligation and would have been discharged, then * adding the full length of the next enlistment contract to the date determined above, thus calculating the next date that the individual would have completed his/her period of obligation and would have been discharged, then * continuing to add the full length of each enlistment contract to the date determined above, until no more enlistment contract periods remain.   For examples, please direct the trainees to M21-1 Part III, Subpart v, Chapter 1, B.5.g-h. |
| Topic 3: Making a COD Decision | |
| Introduction | This topic will introduce bars to VA benefits. It also provides information and instructions on how to evaluate and draft a COD administrative decision. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Understand how to evaluate evidence for a COD administrative decision * Identify whether insanity is placed at issue * Comprehend preparation of a COD administrative decision   The following topic teaching points support the topic objectives:   * Statutory bars established by 38 CFR 3.12(c) * Regulatory bars established by 38 CFR 3.12(d) * Additional information on GCM * Additional information on discharge alienage * Additional information on discharge for UA or AWOL * Additional information on discharge for moral turpitude * Additional information on discharge for willful and persistent misconduct * Making a decision * Evaluating the evidence * Health care benefits for COD decisions * Format for administrative decision * Approval of administrative decisions * Effect of insanity on VA benefits * Placing insanity at issue * Developing cases in which insanity is an issue * Rating decision on insanity issue |
| Statutory Bars Established by 38 CFR 3.12(c)  Slide 21  Handout p. 13 | Per [38 CFR 3.12 (c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=514aa275325137ed149956ccc8beb291&node=se38.1.3_112&rgn=div8), benefits are not payable where the former service member was discharged or released under one of the following conditions:   * conscientious objector who refused to perform military duty, wear the uniform, or obey orders * discharged by sentence of a General Court-Martial (GCM) * resignation by an officer for the good of the service * an alien during a period of hostilities * absence without official leave (AWOL) for continuous period of at least 180 days, and * desertion. |

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| Regulatory Bars established by 38 CFR 3.12(d)  Slide 22  Handout p. 13 | Per [38 CFR 3.12 (d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=514aa275325137ed149956ccc8beb291&node=se38.1.3_112&rgn=div8), benefits are not payable where the former service member was discharged or released under one of the following conditions:   * Acceptance of an undesirable discharge to escape trial by GCM * mutiny or spying, * an offense involving moral turpitude, * willful and persistent misconduct, and * sexual acts involving aggressive circumstances   Dishonorable discharges under 38 CFR 3.12(d) only bar VA compensation and pension. The servicemember may still be eligible for health care benefits as long as it is not a bad conduct discharge (BCD).  Remind trainess that a General Court Martial is different than a Special Court Martial. A review of personnel records is needed to determine what type of Court Martial is involved. |
| Additional Information on GCM  Slide 23  *Handout p. 13* | Cases in which the facts indicate the service member was sentenced by a GCM or agreed to accept an undesirable discharge (often seen on the DD Form 214 as OTH), in order to escape trial by GCM, are a bar to benefits.  ***Note:*** The evidence must show that the service member was sentenced by a GCM or accepted the undesirable discharge to escape a GCM, not a summary court-martial or a special court-martial. |
| Additional Information on Discharge Alienage  Slide 24  Handout p. 13 | If there was a discharge during a period of hostilities that was not changed to honorable prior to January 7, 1957, determine if the records show that the Veteran requested the discharge. If the record   * ***shows*** that the Veteran requested the discharge, it is a bar, * does ***not*** show that the Veteran requested the discharge, make a specific request to the service department for this information. |

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| Additional Information on Discharge for UA or AWOL  Slides 25-26  Handout p. 14 | Follow the steps in the table below to determine the action to take if a discharge was issued under OTH conditions, and there was a continuous period of 180 or more days of either an unauthorized absence (UA) or AWOL   |  |  | | --- | --- | | **Step** | **Action** | | 1 | As with all COD determination, send the claimant a due process letter and request all active duty personnel and medical records via PIES or DPRIS, as appropriate. | | 2 | Review the information collected to confirm that it includes the exact dates and nature of the lost time. | | 3 | If the service department confirms a continuous period of 180 or more days of UA or AWOL (exclusive of periods of imprisonment or confinement) which led to the OTH discharge, and the claimant didn’t provide compelling reasons for the absence, then deny benefits. | | 4 | If the claimant provided compelling reasons for the absence but our decision is ultimately unfavorable, make the issue in the formal decision “Statutory Bar Under [38 U.S.C. 5303(a)](http://www.law.cornell.edu/uscode/text/38/5303)” rather than “Character of Discharge,” and use the following as the Conclusion: “The discharge for the period [date] to [date] is a bar to VA benefits under the provisions of 38 CFR 3.12(c)(6) and 38 U.S.C. 5303(a).” |   A |
| Additional Information on Discharge for Moral Turpitude  *Slide 27*  *Handout p. 14* | Cases in which the facts indicate the discharge was for moral turpitude, generally including conviction of a felony, are a regulatory bar to benefits.    Moral turpitude does ***not*** have to be a felony conviction; it can be a single incident, or a series of events.  ***Note***: VBA must apply a liberal standard when determining whether an offense is related to moral turpitude. Claims personnel must consider the context and any mitigating circumstances, including whether a service connected mental or physical condition caused, aggravated, or resulted in the offense. |
| Additional Info on Discharge for Willful and Persistent Misconduct  *Slide 28*  *Handout p. 15* | A discharge, including other OTH conditions, for behavior constituting willful and persistent misconduct is considered to have been issued under dishonorable conditions and is a regulatory bar to benefits.  *Exceptions:*   * A minor offense is not considered willful and persistent misconduct if service was otherwise honest, faithful, and meritorious. * Insanity is a defense to willfulness of misconduct. |

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| Making a Decision  Slide 29-30  Handout p. 15 | A VSR of any salary grade may prepare any administrative decision as part of assigned duties, including a COD administrative decision.  The term “evidence” signifies all of the means by which an alleged matter of fact may be established or disproved. For decision-making purposes in Department of Veterans Affairs (VA), the term generally refers to   * testimony (including statements in support of a claim) * various kinds of documentary proof, and * medical or field examination reports.   Evidence may be   * “positive,” meaning it supports a claimant’s position, or * “negative,” meaning it disproves the claimant’s position.   When there is an approximate balance between positive and negative evidence regarding any issue, the evidence is said to be “in equipoise.” |
| **Evaluating the Evidence**  Slide 31  Handout p. 15 | According to the Federal Circuit Court in [*Maxson v. Gober*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bmm), 230 F.3d 1330 (Fed. Cir. 2000) the ***absence*** of evidence that supports a claimant’s position is considered negative evidence that must be weighed when making a decision.  When deciding an issue, decision-makers must first determine the “weight” of each piece of evidence, based on its probative value.  After collecting all of the available evidence that is relevant to a pending issue,   * Weigh the positive and negative evidence as a whole, and * Determine if the weight of the positive evidence is greater than, less than, or equal to the weight of the negative evidence.  |  |  | | --- | --- | | **If…** | **Then…** | | A majority of the evidence is positive | Decide in the claimant’s favor. | | A majority of the evidence is negative | Decide against the claimant. | | The evidence for and against the claimant’s position is in equipoise | Resolve reasonable doubt in the claimant’s favor. |   A |

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| Health Care Benefits for COD Decisions  Slides 32-33  Handout p. 16-17 | Consider any claim which requires a COD determination as a claim for health care benefits.  *Important*: Individuals who are barred from receiving payment for *SC compensation* because of a discharge under other than honorable conditionscan still receive medical care benefits for a disability incurred or aggravated in the line of duty during active military naval or air service as provided by [38 CFR 3.360](http://www.ecfr.gov/cgi-bin/text-idx?SID=1264aa8161836a86d3513e78f421a208&mc=true&node=se38.1.3_1360&rgn=div8).  Effective October 8, 1977, under Public Law (PL) 95-126, eligibility to health care benefits for any disability incurred or aggravated in the line of duty during active service is extended to any former military personnel with an OTH discharge, regardless of the date of that discharge. Even service members who are determined to have been discharged under the bars described in 38 CFR 3.12(d), are eligible for health care.  Eligibility for health care is *not* extended to persons discharged   * by reason of a bad conduct discharge (BCD), * under one of the statutory bars described in 38 CFR 3.12(c), or * persons subsequently convicted of a “subversive activity” under [38 U.S.C. 6105](http://www.law.cornell.edu/uscode/html/uscode38/usc_sec_38_00006105----000-.html) any time after discharge.   Use the table below to determine which action to take for health care benefits when determining a COD decision.   |  |  | | --- | --- | | If the claimant has an OTH discharge and there is… | Then… | | A determination that the discharge was   * Due to a statutory bar under 38 CFR 3.12(c), or * A BCD | * In conclusion of the administrative decision include the following eligibility statement: “*The individual is not entitled to health care under Chapter 17 of Title 38, U.S.C. for any disabilities incurred in service.”* | | A determination that discharge was due to a condition listed in 38 CFR 3.12(d), but not due to a   * Statutory bar, or * BCD | * In conclusion of the administrative decision include the following eligibility statement: “*The individual is entitled to health care under Chapter 17 of Title 38, U.S.C. for any disabilities incurred in service.”*   *Note:* A rating decision addressing SC for treatment purposes is required after a claim has been received. After the administrative decision, forward to the rating activity for a rating decision on whether the claimed condition is service connected or not. |   *Important:*In all cases in which a regulatory bar to payments under [38 CFR 3.12(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=514aa275325137ed149956ccc8beb291&node=se38.1.3_112&rgn=div8) exists and claimed conditions are available, a rating decision is required addressing service connection under [38 U.S.C. Chapter 17](https://www.law.cornell.edu/uscode/text/38/part-II/chapter-17) for treatment purposes for all conditions claimed on the application. This means that after a COD decision deems the service member’s service honorable for VA purposes or entitles the service member to health care benefits, the claim must be sent to the rating activity for a rating decision of whether the claimed condition is service connected. |
| **Format for Administrative Decision**  Slides 34-35  Handout p. 17 | Every administrative decision must communicate clearly the precise basis for the decision.  The COD template can be located in the M21-1, Part III, Subpart v, Chapter 1, B.1.l. Direct the audience to the COD administrative decision example attached to the handout.  ***Notes:***   * Please inform the trainees that the entire CFR reference does not need to be included in the administrative decision. Only the part of the CFR that applies needs to be included. * In any COD determination, there ***must***be, minimally, a finding that the issue of the Veteran’s sanity is ***not*** involved. * Favorable findings must be included on unfavorable decisions. Note: Most unfavorable COD decisions will not involve any findings favorable to the claimant.   If the Veteran had more than one period of consecutive service, include information covering the periods of satisfactory as well as unsatisfactory service in the determination. |
| Approval of Administrative Decisions  Slide 36  *Handout p. 18* | All administrative decisions must be approved by a Veterans Service Center Manager (VSCM) designee including, but not limited to, a Coach.  Furthermore, VSRs below grade 11 who prepare administrative decisions affecting permanent entitlement to benefits (such as decisions on character of discharge or willful misconduct) must obtain signed concurrence from a VSR grade 11 or higher prior to approval review.  A certified VSR at GS 11 or higher who maintains monthly quality, may be given single signature authority for grants; any denial must be concurred upon by a second equivalently-certified review of at least the same GS level.  For the process for electronically signing an administrative decision in VBMS, see the table in M21-1, Part III, Subpart v, Chapter 1, A.3.e. |
| Effect of Insanity on VA Benefits  *Slide 37*  Handout p. 18 | If a service member was determined to be insane at the time of the commission of the act or acts that would otherwise result in an adverse character of discharge, hold that the service member   * was without fault, and * is not precluded from any VA benefits. |
| Placing Insanity at Issue  *Slide 38*  *Handout p. 18* | Insanity is placed at issue in the following ways:   * by specific allegation by the Veteran or an authorized representative * by the VA employee if the evidence indicates the possibility of insanity, or * if suicidal death occurs in service. |
| Developing Cases in Which Insanity is an Issue  *Slide 39*  *Handout p. 18* | If insanity is at issue, develop the case completely before making a determination.  Obtain the following information when developing:   * all service and post-service treatment records that are in any way relevant, and * complete transcripts of any court martial or board proceedings that may be relevant.   *Note*:  State specifically in a PIES request that the reason for the request is that “*insanity is at issue*.” |

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| Rating Decision on Insanity Issue  *Slide 40*  *Handout p. 19* | After completing development, refer the case to the rating activity to resolve the issue of insanity. Only the Rating VSR (RVSR) is qualified to resolve the issue of insanity.  When a rating decision is received, whether or not insanity is established, a formal decision of character of discharge (COD), line of duty (LOD), or willful misconduct determinations is still required. |

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| Topic 4: Promulgation of COD Decision | |
| Introduction | This topic provides the final steps to finalizing a COD administrative decision which includes approval of the COD decision, updating VA records, and notifying the claimant or entity of the decision. |
| Time Required | 30 minutes |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Comprehend promulgation of a COD administrative decision   The following topic teaching points support the topic objectives:   * Generation of an award after making a decision * Updating the corporate record after making a decision * Procedure for updating BIRLS * Notification of final decision * Notifying VA and non-VA entities of a decision |
| Generation of an Award After Making a Decision  *Slide 41*  *Handouts p. 20-22* | By signing off on an administrative decision regarding the character of a Veteran’s discharge, the signing official implicitly authorizes corresponding updates to the corporate record.  After making a COD decision, a record-purpose award must be generated and authorized.  Walk the audience through the screen shots in the handout.  Under the military eligibility tab, select add.  Under the decision drop down, one of the following three options must be selected:   * Dishonorable for VA purposes – Chapter 17 eligible, * Dishonorable for VA purposes – Chapter 17 ineligible, or * Honorable for VA purposes.   Inform the audience that the administrative decision date is the date the COD decision was approved. Finally, instruct the audience to select Accept.  ***Key:*** For a Dishonorable for VA purposes – Chapter 17 ineligible (DVA) decision, the end product (EP) associated with the administrative decision must be cleared. For a chapter 17 eligible or Honorable for VA purposes decision, the EP associated with the administrative decision must be kept pending until a final decision on service connection is determined. |
| Updating the Corporate Record After Making a Decision  *Slide 42*  *Handout p. 22* | Authorization activity is responsible for updating the corporate record. This is accomplished by making entries in the Beneficiary Identification and Records Locator Subsystem (BIRLS).  Unless current entries are accurate, authorization activity must update the VETERAN IDENTIFICATION DATA tab on the BIRLS VETERAN IDENTIFICATION screen to reflect the Veteran’s   * period(s) of service * type(s) of discharge, and * separation reason(s).   ***Note***: All data entries are made on the VETERAN IDENTIFICATION DATA tab of the BIRLS VETERAN IDENTIFICATION screen. |
| Procedures for Updating BIRLS  *Slide 43*  *Handouts p. 23* | Follow the instructions in the table below when updating BIRLS to reflect the outcome of an administrative decision regarding the character of a Veteran’s discharge. Ref: M21-1 Part M21-1, Part III, Subpart v, Chapter 1, B.1.k.   |  |  | | --- | --- | | **If the administrative decision indicates…** | **Then identify the column containing service data for the period at issue and enter…** | | * the character of the entire period of service at issue bars the Veteran from receiving any benefits per [38 CFR 3.12(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1e3b7d37f5d486813321c75b1d285ca9&node=se38.1.3_112&rgn=div8) | * *12C* in the CHAR SVC (**char**acter of **s**er**v**i**c**e) field, and * *ADM* (**adm**inistrative decision) in the SEP REAS (**sep**aration **reas**on) field. | | the character of the entire period of service at issue bars the Veteran from receiving gratuitous benefits per [38 CFR 3.12(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1e3b7d37f5d486813321c75b1d285ca9&node=se38.1.3_112&rgn=div8) | * *12D* in the CHAR SVC field, and * *ADM* in the SEP REAS field. | | * the entire period of service at issue was *other than dishonorable* for VA purposes | * *HVA* (**h**onorable for **VA** purposes) in the CHAR SVC field, and * *ADM* in the SEP REAS field. | | the Veteran was   * discharged under circumstances involving a bar specified in [38 CFR 3.12(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1e3b7d37f5d486813321c75b1d285ca9&node=se38.1.3_112&rgn=div8), but   eligible for complete separation at an earlier date | * the date the Veteran was eligible for complete separation in the RAD (**r**eleased from **a**ctive **d**uty) field * *HVA* in the CHAR SVC field * the beginning and ending dates of the remainder of the Veteran’s period of service in the EOD (**e**ntry **o**n **d**uty) and RAD fields, respectively, of the ***next*** column of service data * *12C* in the CHAR SVC field of the next column of service data, and   *ADM* in the SEP REAS field of ***both*** columns of service data. | | the Veteran was   * discharged under circumstances involving a bar specified in [38 CFR 3.12(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=1e3b7d37f5d486813321c75b1d285ca9&node=se38.1.3_112&rgn=div8), but * eligible for complete separation at an earlier date | * the date the Veteran was eligible for complete separation in the RAD field * *HVA* in the CHAR SVC field * the beginning and ending dates of the remainder of the Veteran’s period of service in the EOD and RAD fields, respectively, of the ***next*** column of service data * *12D* in the CHAR SVC field of the next column of service data, and * *ADM* in the SEP REAS field of ***both*** columns of service data. |   A |

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| Notification of Final Decision  Slide 43  *Handout p. 24* | After making a final decision and having it approved, promptly provide notice to the claimant as provided in M21-1, Part III, Subpart v, 2.B.1.b.  \**Advise trainees that they can use PCGL “GP2 Post: Character of Discharge” or use RADL but free text will be needed.*  If the decision held is “honorable for VA purposes” or “Dishonorable for VA purposes – chapter 17 eligible” follow the notification elements indicated above to include   * notifying the claimant of the COD decision, * entitlement to health care is established, and * explanation that, although conditions surrounding his/her discharge generally preclude payment of VA benefits, there may be eligibility to VA medical care for any disabilities incurred or aggravated during active service, and that he or she should apply for VA medical care at the nearest VA medical center   If the decision is unfavorable, also advise the claimant of the   * decision’s effect on his/her entitlement to VA benefits, * entitlement to health care is not established, and * procedure for asking the service department that declared his/her character of discharge to review it.   Direct the audience to the decision notification letter example in the handout. |
| Notifying VA and Non-VA Entities of a Decision  *Slide 44*  *Handout p. 24* | After making a character-of-discharge determination at the request of a VA or non-VA entity,   * notify the entity of the outcome of the determination, and * follow the instructions in M21-1, Part III, Subpart v, 7.A.7.d.   ***Important***: If a VA medical unit made the request, provide the results of the decision expeditiously, as entitlement to medical treatment may be at issue. |

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| Practical Exercise | |
| Time Required | 20 minutes |
| EXERCISE | Please complete the practical exercise either individually or in a group and be ready to discuss your answers.  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |

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| Lesson Review, Assessment, and Wrap-up | |
| Introduction  Discuss the following: | The Character of Discharge lesson is complete. Review each lesson objective and ask the trainees for any questions or comments.  **Reminder:** Reiterate to the trainees the following major changes to COD decisions:   * **Solicit a completed application for benefits (typically a VA EZ Form) covering the disabilities for which a determination is needed, if one has not already been received.** * **Reasonable doubt rule now applies to COD decisions** * **A Rating Decision addressing SC for treatment purposes is required after a claim has been received.**   Also, inform the trainees that the Flow Chart and Quick Reference Guide at the end of the handout can be helpful when processing COD Determinations. |
| Time Required | 30 minutes |
| Lesson Objectives | You have completed the Character of Discharge lesson.  The trainee should be able to:   * Identify which type of discharge and character of service are binding on VA and which require an administrative decision * Understand the advance notice requirements for a pending COD determination * Recognize when a conditional service period exists and its impact on a claim for VA benefits * Understand how to evaluate evidence for a COD administrative decision * Identify whether insanity is placed at issue * Comprehend preparation of a COD administrative decision * Understand promulgation of a COD administrative decision |
| Assessment | Remind the trainees to complete the on-line assessment in TMS to receive credit for completion of the course.  The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson. |