

Evaluating Misconduct for the Purpose of VA Benefit Eligibility*

Exceptions Allowing Benefit Eligibility	Discharge Type & Circumstances	Disqualification from VA Benefits
INSANITY ¹	Dismissal of an Officer	AUTOMATIC ⁴
INSANITY ¹	BCD or DD from a General Court-Martial	AUTOMATIC ⁵
INSANITY ¹	Any Admin. Discharge in Lieu of General Court-Martial	AUTOMATIC ⁶
INSANITY,¹ COMPELLING CIRCUMSTANCES FOR AWOL ²	RFGOS, Desertion, or OTH for AWOL ≥ 180 Days	AUTOMATIC ^{7, 8, 9}
INSANITY,¹ SERVICE-CONNECTED DISABILITY ³	OTH in Lieu of Special Court-Martial	↓ DISCRETIONARY
INSANITY,¹ SERVICE-CONNECTED DISABILITY ³	Other BCD from Special Court-Martial or OTH	ANY BCD BARS HEALTH CARE BENEFITS ¹⁰ 

Offenses Involving "Moral Turpitude" Under 38 C.F.R. § 3.12(d)(3)

Civilian or military fraud offenses.¹¹

Military offenses, including deceit, larceny, wrongful appropriation, the making of a false statement, making and uttering bad checks, forgery, and maiming.^{12, 13}

Conviction of civilian felony offenses creates a rebuttable presumption of moral turpitude.¹⁴

Conviction of military offenses for which a DD or confinement at hard labor for more than one year is authorized creates a rebuttable presumption of moral turpitude.¹⁵

"Willful and Persistent Misconduct" Under 38 C.F.R. § 3.12(d)(4)

Offenses with specific intent, knowledge, or wanton and reckless disregard elements.¹⁶

Must additionally be "persistent," in that the offense meaningfully interferes with or precludes the ability to perform military duties, such as an AWOL lasting 30 or more days.¹⁷

Except for the persistent offense of AWOL, normally, misconduct must include multiple offenses.¹⁸

The misconduct must amount to more than a minor offense, which includes offenses punishable by less than a DD and less than confinement in excess of a year,¹⁹ if conduct was otherwise honest, faithful, and meritorious.²⁰

- ¹ 38 U.S.C. § 5303(b); 38 C.F.R. § 3.354(a)&(b)
- ² 38 U.S.C. § 5303(a); 38 C.F.R. § 3.12 (c)(6)
(This exception is Inapplicable to Desertion)
- ³ 38 C.F.R. § 3.360(a) (inapplicable to BCD and limited to service-connected health care)
- ⁴ 38 U.S.C. § 101(2); 38 U.S.C. § 5303(a)
- ⁵ 38 U.S.C. § 5303(a); 38 C.F.R. § 3.12 (c)(2)
- ⁶ 38 C.F.R. § 3.12 (d)(1)
- ⁷ 38 U.S.C. § 5303(a); 38 C.F.R. § 3.12(c)(2)
- ⁸ 38 U.S.C. § 5303(a); 38 C.F.R. § 3.12(c)(4)
- ⁹ 38 U.S.C. § 5303(a); 38 C.F.R. § 3.12(c)(6)
- ¹⁰ 38 C.F.R. § 3.360(b)

¹¹ *Jordan v. De George*, 341 U.S. 223, 228 (1951)

¹² MCM ¶ 153b (1969 Rev.)

¹³ MCM ¶ 128b (1951)

¹⁴ Vet. Aff. Op. Gen. Couns. Prec. 6-87, p. 5 (1987)

¹⁵ MCM ¶ 153b (1969 Rev.); *United States v. Moore*, 18 C.M.R. 311, 320 (C.M.A. 1955)

¹⁶ 38 C.F.R. § 3.1(n)

¹⁷ *Cropper v. Brown*, 6 Vet. App. 450, 453 (1994)

¹⁸ 38 C.F.R. § 3.12(d)(4)

¹⁹ *United States v. Moore*, 18 C.M.R. 311, 317 & 319 (C.M.A. 1955) (under *Cropper*, AWOL is not a minor offense)

²⁰ 38 C.F.R. § 3.12 (d)(4)

* This chart only relates to more common discharges resulting from misconduct and is not all-inclusive.