

**Courts-Martial: Model Instruction Regarding Eligibility for Benefits Administered by the
Department of Veterans Affairs**

2-5-22-1A ELIGIBILITY FOR BENEFITS ADMINISTERED BY THE DEPARTMENT OF
VETERANS AFFAIRS (VA)

(FOR GENERAL COURT-MARTIAL): Under federal law and regulations applicable to the Department of Veterans Affairs, also known as “VA,” a punitive discharge from a General Court-Martial, including both a Bad-Conduct Discharge and a Dishonorable Discharge, will result in an automatic bar to eligibility for benefits administered by VA, except for conversion of life insurance coverage. Only retention in the Service will preserve eligibility for VA benefits if the accused is later discharged under honorable conditions.

(FOR CASES NOT INVOLVING A CONVICTION OF ARTICLE 94, 104, or 106): Despite any bars to VA benefits based on the level of this court-martial, a punitive discharge, or the nature of the offense(s), the accused will still retain certain VA benefits if (she) (he) honorably completed a prior term of active duty service. Such benefits are limited to benefits already earned as a result of any honorably completed prior term(s) of active duty service.

(FOR CASES INVOLVING A CONVICTION OF ARTICLE 94, 104, or 106): Because the accused was convicted of violating Article (94) (104) (106), UCMJ, the accused is ineligible for VA benefits related to a prior or current term of service.

(FOR SPECIAL COURT-MARTIAL): While any punitive discharge adjudged by a General Court-Martial will result in an automatic bar to benefits administered by Department of Veterans Affairs, also known as “VA,” this is not true regarding Special Courts-Martial that result in a Bad-Conduct Discharge.

Some automatic bars to benefits include a Bad-Conduct Discharge accompanying a conviction for Article 85, UCMJ, or Article 86, UCMJ (with a continuous period of absence without authority of 180 days or greater). Otherwise, an accused who has been discharged with a Bad-Conduct Discharge at a Special Court-Martial may still be considered by VA for a Character of Service determination if (she) (he) applies. In this process, adjudicators will review the accused’s entire period of service, the individual facts surrounding the accused’s conduct, and the nature of (her) (his) offenses to determine whether the service was other than dishonorable in character. This evaluation relies on VA’s definition of other than dishonorable service, not the military’s definition. A favorable character of service determination will permit a veteran with a Bad-Conduct Discharge to obtain various benefits, such as a disability pension or vocational rehabilitation, but not health care benefits. Under federal law and regulation, the receipt of a Bad-Conduct Discharge will bar a servicemember’s eligibility for VA health care benefits for disabilities not incurred or aggravated during an honorably completed prior term of active duty service, even if (her) (his) injury or medical condition was incurred or aggravated as a result of the servicemember’s performance of military duties.

Provided another bar to benefits does not apply, the imposition of a punitive discharge is the only circumstance in which a service member may be found to have service-connected disabilities but not be eligible for VA health care benefits.

Until a favorable decision is made by either VA or on an appeal of an adverse VA decision, under VA rules, the accused remains ineligible for VA benefits. It is a process that could take months or years to complete before a final decision is rendered. VA uses a number of standards to evaluate one’s character of military service and the panel should not speculate on whether the accused will obtain a favorable or

unfavorable VA determination. However, because certain circumstances will result in a bar to benefits, such as a conviction for desertion at a special court-martial that adjudges a Bad-Conduct Discharge, I am providing you with a chart titled, "Evaluating Misconduct for the Purpose of VA Benefit Eligibility." The chart provides a summary of major guidelines for VA's Character of Service evaluation. Because these determinations are left to the discretion of VA adjudicators, only retention in the Service guarantees continued eligibility for VA benefits if the accused is later discharged under honorable conditions.

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