

United States Senate  
WASHINGTON, DC 20510-4704

COMMITTEES:  
APPROPRIATIONS  
BUDGET  
HEALTH, EDUCATION, LABOR,  
AND PENSIONS  
RULES AND ADMINISTRATION  
VETERANS' AFFAIRS

October 16, 2014

The Honorable Charles T. Hagel  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Secretary Hagel:

I write to express my deep concern regarding the discharge review and boards for correction processes for certain servicemembers who were separated with less-than-honorable discharges. I continue to hear from veterans, constituents, and advocates about the lengthy, burdensome process that rarely results in successful upgrades of those whose case appears to warrant an upgrade. While I recognize petitions are rightly denied in many cases, the Department has struggled over the years with properly diagnosing and treating mental health injuries and traumatic brain injuries (TBI), as well as training commanders on proper procedure for handling troops with these injuries. Given these shortcomings, I believe full consideration must be given in instances where such an injury contributed to or caused the inappropriate behavior for which a servicemember received a less-than-honorable discharge or where medical discharge should have been pursued.

No veteran with a service connected injury should be denied benefits because they happened to serve at a time when the system did not yet fully understand the impact of mental health and TBI on our men and women in uniform. In some cases a less-than-honorable character of discharge for servicemembers who should have been medically processed out of the military has had a long-term impact on these individuals' lives as they struggle physically and financially. These veterans are barred from many services provided to other veterans and their families. These services are in some cases critical to the personal health and financial security of the veteran and their family, including health care and even homeless benefits. The Department must continue to aggressively focus on this population of veterans in order to ensure they, along with their families, are receiving the support and care they need.

To that end, I was greatly encouraged by your recent decision to direct the Army and Air Force Boards for Correction of Military Records and the Board for Correction of Naval Records to reconsider the discharges of servicemembers who may have suffered from an undiagnosed combat related mental health condition. We have come a long way in our understanding of Post-Traumatic Stress Disorder and other mental health needs since the Vietnam era, and it is only right we guarantee veterans of all eras get a fair evaluation, the correct character of discharge, and the benefits they have a legal right to under their correct discharge.

I urge you to do all you can to ensure veterans of all eras are aware of their right to reconsideration and to remain engaged on this issue in order to make sure it is successful. As this effort gets underway, I request a briefing on how you intend to execute your outreach plan to raise awareness among the impacted veterans and their families, as well as stakeholders who work with these individuals. Words and directives will not be enough for these veterans or for me, and I will be closely monitoring the Department's efforts. I also request information on how you intend to address the issue of lost benefits for surviving family members of veterans who were found to have been wrongly discharged.

I also have serious concerns about key procedural aspects of the discharge review and boards for records correction processes. I am particularly troubled by the administrative burden imposed on veterans by requiring them to assemble and produce all relevant evidence and documentation in support of their petitions, even if such records are in the custody of the applicable service or the Department of Veterans Affairs. This burden unreasonably disadvantages veterans who are without the resources of the government. I ask that you take action to shift this administrative burden to the Department and go to greater lengths to assist veterans in obtaining relevant evidence and documentation.

The bureaucratic and legal nature of proceedings before the review boards also seriously disadvantages veterans, many of whom do not have the expertise necessary to effectively advocate for themselves. For example, according to data provided to my office by the Army, veterans who receive assistance in preparing and presenting their petitions are significantly more likely to be successful than those who attempt to navigate the system on their own. This disparity means the discharge review and upgrade process is far from equitable, with veterans who lack access to representation more likely to be turned away on an administrative technicality, even if they have proof their discharge should be upgraded. This lack of equity is especially troubling considering the potential number of cases involving previously undiagnosed service connected mental health and TBI.

It is clear veterans would benefit from increased access to legal assistance, including pro bono assistance, when navigating the discharge review and boards for correction processes. I request that you work with legal service providers, local bar associations, veterans service organizations, and other interested stakeholders to ensure veterans are not unfairly disadvantaged when attempting to navigate the discharge review and upgrade process. The Department must be certain that veterans and separating servicemembers petitioning for an upgrade understand their right to representation and assist them in accessing those resources.

I know we both agree that veterans who were unfairly removed from the military with a less-than-honorable discharge because the Department and commanders did not know how to handle the medical injuries those servicemembers were struggling with must be made whole. I share your focus on needing to find ways to fix the situation and I look forward to working with you to address this issue. In addition, I hope that moving forward clear directives will remain in place in order to ensure our servicemembers with mental health injuries and TBI are treated fairly and when such injuries contributed to or caused inappropriate behavior that you take these struggles into full consideration.

Thank you for your service and all you do for our men and women in uniform. I look forward to working with you to improve this process and ensure that all veterans receive the just consideration they deserve.

Sincerely,

A handwritten signature in blue ink that reads "Patty Murray". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patty Murray  
United States Senator