



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

APR - 4 2024

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Clarifying Guidance to Boards for Correction of Military/Naval Records
Considering Cases Involving Both Liberal Consideration Discharge Relief Requests
and Fitness Determinations

This memorandum provides clarifying guidance regarding the application of liberal consideration in petitions requesting the correction of a military or naval record to establish eligibility for medical retirement or separation benefits pursuant to 10 U.S.C. § 1552 by the Military Department Boards for Correction of Military/Naval Records (BCM/NRs). This guidance is being promulgated in light of *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023), and is consistent with that decision.

It is DoD policy that the application of liberal consideration does not apply to fitness determinations, an entirely separate Military Department determination regarding whether, prior to “severance from military service,” the Applicant was medically fit for military service (i.e., fitness determination). While the BCM/NRs are expected to apply liberal consideration to discharge relief requests seeking a change to the narrative reason for discharge in accord with *Doyon*, they should not apply liberal consideration to retroactively assess the Applicant’s medical fitness for continued service prior to discharge in order to determine how the narrative reason should be revised.

Consistent with the *Doyon* court’s interpretation of 10 U.S.C. § 1552(h), BCM/NRs will apply liberal consideration to all applications where the Applicant alleges that combat- or military sexual trauma (MST)-related post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) “potentially contributed to the circumstances resulting in [severance from military service].” However, any request for a medical retirement or separation necessarily asserts the existence of an error or injustice in the previous *failure* of the Service to discharge the individual for unfitness, rather than in the circumstances of individual’s actual discharge or dismissal. As such, 10 U.S.C. § 1552(h) cannot be read to require the application of liberal consideration to assess whether a qualifying PTSD or TBI condition potentially contributed to the circumstances resulting in a medical discharge which never occurred.

Accordingly, in the case of an Applicant described in 10 U.S.C. § 1552(h)(1) who seeks a correction to their records to reflect eligibility for a medical retirement or separation, the BCM/NR will bifurcate its review. First, the BCM/NR will apply liberal consideration to the eligible Applicant’s assertion that combat- or MST-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief, such as an upgrade or change to the narrative reason for discharge, is appropriate. After making that determination, the BCM/NR will then separately assess the individual’s claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue,

without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

This guidance is not intended to interfere with or impede the BCM/NRs' statutory independence. Through this guidance, however, there should be greater uniformity among the BCM/NRs, ensuring fundamental fairness to our Service members and veterans.

A handwritten signature in black ink, appearing to read "Ashish S. Vazirani".

Ashish S. Vazirani
Acting