

Pentagon Reverses Policy on Publishing Decisions Regarding Bad Paper Discharges

The Pentagon will again make public the decisions of the boards responsible for reviewing the dismissals of military personnel seeking to upgrade their discharges or correct their military records. Last April, the Defense Department began removing the decisions of the services' Discharge Review Boards and Boards for Correction of Military Records from a public website, a direct violation of a federal regulation that required it to make them available for public inspection and copying. It also stopped posting any new decisions by the boards. This prompted the National Veterans Legal Services Program, or NVLSP, to file a lawsuit and injunction 2 JAN in the U. S. District Court for the Eastern District of Virginia to force the department to comply with the law and post the results.

Last week, according to NVLSP, the Pentagon agreed to republish thousands of past decisions to its reading room and post new decisions within 60 days of adjudication. "[We are] delighted that the Pentagon responded swiftly to remedy its unlawful practice and promptly publish all past board decisions because access to these decisions is vital in helping veterans obtain the benefits they are rightfully due," NVLSP Executive Director Bart Stichman said. The background on decisions is considered vital for veterans and their attorneys to craft cases disputing a less-than honorable discharge or clearing up an incomplete or incorrect military record, Stichman explained. "The failure to make the board decisions public is not simply a bureaucratic matter," he said. "The boards are unlawfully withholding valuable information that NVLSP and others can use to help bring life-changing benefits to veterans and their families."

Kristofer Goldsmith, an Iraq War veteran diagnosed with post-traumatic stress disorder who successfully appealed his general discharge and now serves associate director for policy and government affairs for Vietnam Veterans of America, said open access is needed to file a successful appeal. "This is supposed to help these lawyers — most of whom do these cases pro-bono and aren't very familiar with the process — better serve their clients," Goldsmith said. According to the Boards of Review reading room, the Department of Defense removed the content "to conduct a quality assurance review," adding that it planned to update the webpage "when we have a better estimate of when the decisional documents will again be available." The website recommended that anyone wishing to review specific decisional documents could request them from the military departments. But the

specificity requirement made it nearly impossible for service members wanting to review similar cases to theirs to receive them.

Now, according to court documents, the timeline for the documents to again be visible is clear: at least 90 percent of the pre-April 2019 Air Force, Navy and Coast Guard decisions will be reposted on the website by 31 JAN, as will all Army decisions from 2009 to April 2019. By 14 FEB the remaining Air Force, Navy and Coast Guard decisions will be reposted, and by 28 FEB, all Army decisions prior to 2009 will be reposted. And by 31 MAR, the services, including the Coast Guard, will repost all decisions through Dec. 31, 2019. NVLSP worked with pro bono attorneys from Hunton Andrews Kurth, LLC, to resolve the issue.

The removal of the documents from public view raised alarms with Senate Democrats, who wrote the secretaries of the Army and Department of Homeland Security and acting secretaries of the Air Force and Navy Tuesday demanding an explanation for the Pentagon's decision to break the law. "As you know, veterans' access to crucial and sometimes life-saving veterans' benefits often depend on the nature of their discharge. Every day that a board decision is delayed is a day that a veteran may be without access to benefits they have earned," wrote Sens. Tammy Baldwin (D-WI), Jon Tester (D-MT), Richard Blumenthal (D-CT), Dick Durbin (D-IL), Kamala Harris (D-CA), Sherrod Brown (D-OH), Debbie Stabenow (D-MI), Bob Casey (D-PA), Gary Peters (D-MI), Kirsten Gillibrand (D-NY), and Tim Kaine (DVA).

The senators also asked the secretaries to provide data on whether the boards are rendering their decisions in the time frame established by the regulations – within 10 months of receive for at least 90 percent of the cases and within 18 months for all. "Currently, it appears the boards are not in full compliance with those standards," they wrote.