

VA Regional Office
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 520
September 22, 2010

The Honorable Eric K. Shinseki
Secretary of the Department of VA
Fax (202) 273-4880

Dear Sir:

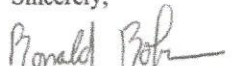
On December 20, 2009, the attached letter was faxed to the Under Secretary For Benefits.

On April 26, 2010, the letter was received in the Columbia VA Regional Office's mailroom and sent through distribution to Local 520.

No response has been received to date. Therefore, Local 520 is sending this letter to you for a response.

We look forward to hearing from you on this matter.

Sincerely,


Ronald Robinson
AFGE Local 520
Acting President
(803) 239-7682
rbnsnrnld@yahoo.com

CF:

President Barak Obama, United States of America Fax (202) 456-2461
Chairman, US House VA Committee Fax: (202) 225-9073
Chairman, Armed Service Committee Fax: (202) 255-3623
US Senator Lindsey D. Graham, Fax: (202) 224-5972
US Senator Jim DeMint, Fax: Fax: 202-228-5143
US Representative Henry E. Brown, Fax: (202) 225-3407
US Representative Joe Wilson, Fax: (202) 225-2455
US Representative J. Gresham Barrett, Fax: 202-225-3216
US Representative Bob Inglis, Fax: (202) 226-1177
US Representative John M. Spratt Jr., Fax, 202 225-0464
US Representative James Clyburn, Fax Fax (202) 225-9253
Under Secretary of Benefits, Fax (202) 275-3591
President, AFGE Fax (202) 639- 6490
President NVAC Fax (540) 224-1931

VA Regional Office
**AMERICAN FEDERATION
OF
GOVERNMENT EMPLOYEES**
LOCAL 520
AFFILIATED WITH THE AFL-CIO
PO BOX 1778
COLUMBIA, SC 29202
December 20, 2009

The Under Secretary for Benefits
810 Vermont Ave NW
WASH DC 20420
Fax (202) 275-3591

RECEIVED MAIL ROOM
COLUMBIA, SC
2010 APR 26 PM 1:12
MAIL ROOM 13

Dear Sir:

We have a local policy recently instituted at the Columbia Regional Office that will only affect veterans in South Carolina if this is not a VBA wide interpretation.

The Regional Office is requiring Character of Discharge determinations for claimants who received General or Under Honorable Conditions (UHC) discharges if a DD Form 214 is available and the reason for discharge has the word "misconduct" in it. This policy is based on a General Counsel opinion that dealt with the issue of a Statutory Bar reason under CFR 3-12c discharge when a General or UHC is involved.

On October 27, 2009, I sent an email to my Coach outlining the reasons I believe this policy needed to be reviewed. (See Encl 1, pgs 3 & 4)

Since I did not get a timely response, I sent a follow-up email on December 8, 2009. I added additional reasons why this policy needs a General Counsel opinion. (See Encl 1, pg 2)

On December 9, 2009, I received a response that Management had posed the question to the VACO Policy Staff.

On December 16, 2009, a response was received from the General Counsel. (See Encl 2)

The local policy also has another problem. It only reviews misconduct reasons. CFR 3.12d does not cover misconduct, but willful and persistent misconduct. Moreover, there are four other reasons - Acceptance of an undesirable discharge to escape trial by general court-martial, Mutiny or spying, an offense involving moral turpitude, homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.

We can eliminate acceptance of an undesirable discharge to escape trial by general court-martial because the claimant would not receive a general or UHC. However, all the other reasons would have to be included.

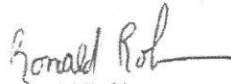
In order for the General Counsel's opinion to be enforced fairly and uniformly and now this local policy, it would require a separation document be obtained and reviewed for each General or UHC discharge. As we stated in our email, a separation document is not required for verification of service. The VBA electronically verify service through the Personnel Information Exchange System (PIES), Veterans Information Solution (VIS), and Beneficiary Identification and Records Locator Subsystem (BIRLS) Veteran Identification Data (VID) screen Veteran Assistance Discharge System (VADS) field. These electronic means do not give the reason for a General or UHC discharge.

Other factors to consider are:

- a. CFR 3-12(e) An honorable discharge or **discharge under honorable conditions** issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Department of Veterans Affairs. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) of this section.
- b. Army Regulation AR 635-200, paragraph 3-6a states, "Both honorable and general discharges entitle a soldier to full Federal rights and benefits provided by law. On the contrary, Army Regulation AR 635-200, paragraph 3-6b states, "Discharge under other than honorable conditions may or may not deprive the soldiers of veterans' benefits administered by the Department of Veterans Affairs; a determination by the agency is required in each case. (See Encl 4)

Please review this matter before deserving veterans are denied benefits because of a misinterpretation of the law and/or a lack of effort of researching this very important issue.

Sincerely,



Ronald Robinson
AFGE Local 520
Vice President
(803) 239-7682
rhnsnrmlid@yahoo.com

Enclosure 1 – Email dated October 27, 2007, December 8 & 9, pgs 1 –4
Enclosure 2 – Email dated December 16, 2009
Enclosure 3 – Q&A Committee – Question and Answer date June 19, 2008
Enclosure 4 – Extract Army Regulation 635-200, dated June 6, 2005