From the Armed Forces to Unemployment - The United States' Failure to Ensure that Veterans Have the Care They Need and the Benefits That They've Earned

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I. Introduction

As former President Obama, in honoring Veterans Day, remarked, “honoring those who’ve served is . . . about how we treat our veterans every single day of the year . . . about making sure they have the care they need and the benefits that they’ve earned when they come home . . . about serving [the veterans] as well as [they’ve] served [this country].” In the United States, veterans are looked upon favorably and are shown a level of respect for the sacrifices that service members make to protect our country. Congress recognizes the sacrifices made by veterans and this sentiment is reflected in legislation to promote access to benefits and services for individuals who have served in the armed forces. As will be discussed, a thematic underpinning of these policies is to have veterans return to a productive civilian life, which includes participating in meaningful employment. As part of the efforts to help service members successfully reintegrate into civilian life, various federal agencies offer employment-related services to assist veterans to return to the workforce. Moreover, for veterans returning home with a disability incurred during their service, additional protections and benefits are afforded to them.

Although not a new phenomenon, but one that is more recently recognized, the effects of war and service have led many soldiers to experience symptoms of Post-Traumatic Stress Disorder (“PTSD”) and other mental health conditions. Drug and alcohol use is a major problem plaguing veterans having returned to civilian life, which is exacerbated by the fact that disabilities relating to mental health issues are far less.

1. President Barack Obama, Remarks by the President Honoring Veterans Day Ceremony in Seoul, South Korea, 2 Pub. Papers 1792, 1793 (Nov. 11, 2010).
2. Id.
3. See id. at 1793-94.
4. See infra Section III.B.
5. See infra Section III.B.
6. See infra Section III.B.
7. See infra Section III.B.
8. See infra Section I.B.
apparent than the physical injuries leading to disability.\(^9\) This has created many problems for a growing subset of veterans returning home.\(^10\) Instead of being “honorably discharged with medical conditions,” many service members experiencing symptoms of PTSD are falling through the cracks and are being discharged under the classification of other than honorable due to the manifestation of their mental health condition.\(^11\) Qualification for many of the benefits available to veterans stems from their discharge status. As a result, for most of these individuals receiving an other than honorable discharge, the ramifications of their disability will render them ineligible for veteran benefits, will ostracize them even further, and will give them less of a likelihood to successfully reintegrate into civilian life by becoming gainfully employed.\(^12\)

This paper will argue that current policies of the United States Military, Department of Defense (“DoD”), and Veterans Association (“VA”) which address these “invisible” disabilities and the discharge of soldiers suffering from these disabilities are inadequate, and some even go against the thematic underpinnings of our nation and the legislation enacted to support the civil rights of these individuals. Instead of successfully transitioning to becoming a gainfully employed civilian, many erroneously discharged service members turn to drugs and alcohol, end up homeless or incarcerated, and are pushed further away from their goal of being a productive member of the country they fought so hard to protect.\(^13\) To address this problem, which goes against what this country stands for, this paper will propose a solution for a discharge policy that will ensure that service members returning from war with “invisible” disabilities are given the opportunities and benefits they are entitled to, and therefore the ability to be meaningfully employed and successfully reintegrate into civilian life.

The first part of this note sets forth a general backdrop of the makeup of the military and the history of how PTSD has affected service members. The discharge process, character of service determinations, and the impact that an other than honorable discharge has on the attainment of VA benefits are explained to provide an understanding of why this problem

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9. See infra Sections I.B., II.B.
10. See infra Sections I.B.
11. See infra Sections I.B, II.A, II.B.
12. See infra Sections II.A, II.B.
13. See USC CTR. FOR INNOVATION & RESEARCH ON VETERANS & MILITARY FAMILIES, HELPING VETERANS RETURN TO WORK: BEST PRACTICES FOR BEHAVIORAL HEALTH PRACTITIONERS 1 (2013), http://cir.usc.edu/wp-content/uploads/2013/10/RutgersEAP_FFF.pdf (reporting on a conference held on June 7, 2013 at Rutgers University); see also infra Section II.B.
exists. This background leads into the problem—the effects that PTSD, other than honorable discharges, and the lack of available benefits has on the gainful employment of discharged service members. This note then sets forth the attempts that have been made by the government and agencies to support veterans in their transition to a productive civilian life. However, we will see that these attempts have been unsuccessful thus far. Therefore, the final portion of this note sets forth a proposal to ensure that service members suffering from PTSD are identified, given the benefits that their service affords them, and ultimately allows them to become gainfully employed civilians after separating from the military.

A. Serving in the Military—An Opportunity for Young Americans

Serving as a member of the Armed Forces in the United States, in 2018, is voluntary.14 Although joining the military is a “choice” for many, there are various reasons that a recruit may choose to enter into one of the branches of the military.15 One important reason for enlisting in the military is the opportunities that come along with serving ones country, including the benefits that are afforded to service members when they return to civilian life.16 For many, this means opportunities for education and jobs that may not have been available to them had they not served in the armed forces.17 According to Curtis Gilroy, the Director of Accession Policy for the DoD, “[w]hen the economy slackens and unemployment rises and jobs become more scarce in civilian society, recruiting is less challenging.”18 Joining the military can be an incentive for individuals having difficulty obtaining employment, especially during times of a challenging job market.19 It not only provides the service members with

16. See id. at 2, 5.
18. Id.
19. See id.
a source of income but also comes with benefits and opportunities for training. Therefore, in addition to providing Americans with a “job” while actively serving, it also increases the likelihood that they will become gainfully employed upon returning to civilian life.

Towards the end of the last decade, after the stock market crash of 2008, as unemployment rates increased, recruitment numbers went up. Each branch of the military saw the number of recruits increase from anywhere between six to sixteen percent over recruitment goals. Recruitment rates continue to remain consistent—in 2015 the Navy, Marines, and Air Force all met their recruitment goals; however, the Army lagged slightly behind, reaching ninety percent of their goal.

Following the September 11 attacks, recruitment efforts were aimed at young individuals, many of whom were looking for an opportunity. Many of these young individuals may not have understood the ramifications that their service would have on their lives. Of the active duty military members, almost half, a significantly high number, are twenty-five years old or younger. Many enrollees have others to support—forty-four percent of service members have children and over fifty percent have dependents to care for. According to the DoD, a significant percentage of active duty service members were of young age with minimal education when they enlisted. For eighty-two percent of recruits in 2006, the highest level of education attained was their high school diploma. According to the DoD in 2013, still a majority, 77.8 percent of active duty service members had a high school diploma or GED

20. See id.
21. Id. “Hopefully, when I get out, I’ll have all my fingers and toes and arms, and the economy will have turned around, and I’ll have a little egg to start up my own [business]” was the sentiment expressed by one twenty-two year old who decided to join the Army. Id.
26. Id.
27. See Karin & Onachila, supra note 14, at 158.
28. See id.
29. See Cassidy, supra note 25, at 849.
30. See, id. at 841.
but did not have a Bachelor’s degree. A survey conducted by the Pew Research Center in 2011 indicated that only twenty percent of post-9/11 veterans are “very satisfied with their personal financial situation” and for at least a quarter of veterans, they did not feel that “their military experience has helped them get ahead in life.” In fact, for service members who have had unsuccessful transitions back to civilian life, not only did their experience not help them to get ahead in life, but their experiences set them further back than where they started from.

B. The Negative Effects of PTSD in the Military Dates Back to the Civil War

War is not a new phenomenon in the United States, however, the psychological implications associated with war have not always been as understood as they are today. It was not until 1980 that the Diagnostic & Statistical Manual of Mental Disorders (DSM) recognized PTSD as a mental disorder. Prior to the categorization of PTSD as a diagnosable disorder, the effects that war had on individuals was labeled in various ways including “soldier’s heart” in the Civil War, “shell shock” in World War I, “battle fatigue” in World War II, and “combat stress” in Vietnam. More than 260,000 Vietnam veterans were discharged with “bad papers,” many of whom received the classification as a result of PTSD or “combat stress.” Although we now know that many Vietnam service members suffered from PTSD, because these “conditions” were not recognized as a diagnosable disorder or as a disability, many service members who were exhibiting symptoms of PTSD were “other than honorably discharged” from the military and “were simply cut off from any government help at all, and not even eligible for a civil service job.”

31. Id. at 849.
33. See infra Section II.B.
34. See infra Section I.B.
37. Izzo, supra note 35, at 1589-90, 1594.
38. GERALD NICOSIA, HOME TO WAR: A HISTORY OF THE VIETNAM VETERANS’ MOVEMENT 299, 300 (Kent Carroll & Herman Graf eds. 2004).
Being that the conflicts in Iraq and Afghanistan have lasted longer than almost any conflict in American history, concerns about the resulting psychological effects continue to grow. As PTSD continues to be a growing problem for many of our present day service members, it is imperative that the issue is properly addressed. According to a study by the RAND Corporation’s Center for Military Health Policy Research, early evidence indicates a disproportionately high rate of psychological toll injuries on troops deployed to Afghanistan and Iraq for Operations Enduring Freedom and Iraqi Freedom (“OEF/OIF”) as compared to physical combat-related injuries. It is estimated that up to eighteen percent of veterans returning from Iraq and Afghanistan suffer from PTSD, and research suggests that over two million service members, or approximately twenty percent, of those deployed will develop PTSD. A 2010 VA study reported that approximately 28 percent of “recently-separated veterans were diagnosed by [the] VA or DOD with a mental disorder or psychosocial problem after their separation from the military . . . .” In just four years, the Army has seen a sixty-four percent increase in the number of soldiers forced to leave due to a mental disorder. Mental illness is the cause of one in nine medical discharges, and soldiers discharged for having both a mental and physical disability

40. Id. at 923, 926.
41. See id. at 922, 923.
44. U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-676, VETERANS AFFAIRS: BETTER UNDERSTANDING NEEDED TO ENHANCE SERVICES TO VETERANS READJUSTING TO CIVILIAN LIFE, 12-13 (2014), [hereinafter U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-676] (footnote omitted).
increased 174 percent during the same time period. Notably, these numbers represent those who have been medically discharged, but do not include the service members who were other than honorably discharged. Taking those individuals into account would likely show that this problem is much bigger than we know. In 2009, according to a Pentagon analysis, mental health disorders caused more hospitalizations among U.S. troops than any other medical condition, including battle wounds and "[f]or the first time in history, the number of psychological casualties resulting from combat has far outstripped the number of physical injuries or deaths resulting from battle."49

II. OTHER THAN HONORABLE DISCHARGES FURTHER TRAUMATIZE OUR VETERANS

A. Other than Honorable Discharges Create a Barrier to Benefits for our Veterans

An other than honorable discharge often has a negative impact on soldiers returning from war with PTSD, preventing them from reentering the workforce and returning to civilian life as a productive member of society.50 Benefits and protections available for employees or those seeking employment-related services are not being awarded to our service members discharged with an other than honorable discharge resulting from PTSD.51 In order to appreciate the extent of this problem, it is necessary to understand the qualification process and the difficulties associated with obtaining these benefits.

The role of the VA is primarily to assist veterans after they separate from the armed forces; however, obtaining benefits is a multi-layered process.52 The first step begins with the type of discharge a service member receives from the military or DoD.53 In their determination of a service member’s discharge status, "the military considers the specific facts and circumstances of the individual’s conduct during a particular

46. See id.
47. See id.
48. See id.
50. See infra Section II.B.
51. See infra Section II.B.
52. U.S. GOV'T ACCOUNTABILITY OFF., supra note 44, at 1, 3-4.
period of service.\textsuperscript{54} Regulations vary across the different branches of the government and therefore the DoD grants each branch their own authority to determine a service member's discharge status.\textsuperscript{55} From the start, we see that there is a level of discretion in the process of discharge status determination.\textsuperscript{56} There are generally five discharge statuses that may be given to a service member separating from the military: "(1) honorable, (2) general (under honorable conditions), (3) other than honorable (OTH), (4) bad conduct (adjudicated by a general court-martial or a special court-martial), and (5) dishonorable."\textsuperscript{57}

According to the DoD policy, "[u]nless found fit for duty by the disability evaluation system, a separation for [a mental health disorder] is not authorized if service-related PTSD is also diagnosed."\textsuperscript{58} The policy requires that before a service member is given an other than honorable discharge, they receive a medical evaluation to assess whether the condition could have been a basis for an "administrative separation."\textsuperscript{59} Certain criteria must be met for a service member to be entitled to this medical evaluation, including, a diagnosis of PTSD or allegations by the service member that they are experiencing PTSD as a result of a "contingency operation . . . during the previous 24 months."\textsuperscript{60} However, as this note alleges in further detail, for many service members, at the time of their discharge, to meet this criteria is overly burdensome.\textsuperscript{61}

Once a military discharge status is assigned, in order to obtain VA benefits, an individual must establish "[v]eteran status" with the VA.\textsuperscript{62} There are statutory requirements that must be met for a service member to meet the criteria to achieve "veteran status."\textsuperscript{63} The third statutory requirement, "discharge or separation from the military under conditions other than dishonorable," creates issues for the category of individuals

\begin{itemize}
\item[54.] See id.
\item[55.] 32 C.F.R. § 45 (2012); see also Hetchler & Cook, supra note 53, at 30.
\item[56.] Hetchler & Cook, supra note 53, at 30.
\item[57.] See UMAR MOULTA-ALI & SIDATH VIRANGA PANANGALA, CONG. RESEARCH SERV., R43928, VETERANS' BENEFITS: THE IMPACT OF MILITARY DISCHARGES ON BASIC ELIGIBILITY 5-6 (2015), https://fas.org/sgp/crs/misc/R43928.pdf.
\item[59.] Izzo, supra note 35, at 1590; U.S. DEP'T OF DEF., supra note 58, at 49.
\item[60.] Izzo, supra note 35, at 1590; U.S. DEP'T OF DEF., supra note 58, at 49.
\item[61.] See infra Sections IV.A, IV.B.
\item[62.] See MOULTA-ALI & PANANGALA supra note 57, at 3.
\item[63.] See id. at 3-4; see also 38 U.S.C. § 501(a)(1)-(4) (2012); 38 C.F.R. § 3.12a(a)-(b) (2017). Statutory requirements include "full-time active duty military service . . . ;" "24 months of continuous service, or the full period for which the servicemember was called to duty if activated for less than 24 months . . . ;" and "discharge or separation from the military under conditions other than dishonorable." MOULTA-ALI & PANANGALA supra note 57, at 4.
\end{itemize}
discussed in this note. Service members who receive an “honorable” or “general (under honorable conditions)” discharge by the military will generally be eligible and will be awarded the veteran’s benefits that they are entitled to. However, individuals who receive a “bad conduct discharge” by a general court-martial or a “dishonorable discharge” are legally barred from receiving veterans’ benefits unless, during the course of developing the character of service, the VA determines that they were insane at the time of the offense that led to the discharge or if eligibility for benefits can be established based on a prior period of other than dishonorable service.

If an individual is discharged from their military branch with an other than honorable or bad conduct discharge by a special court-martial, it is up to the VA to make a “character of service” determination regarding their eligibility for benefits. If an individual is labeled as such, the “character of his or her discharge,” as determined by the VA, will be the deciding factor for whether or not an individual receives benefits, but this determination is not so straightforward.

The VA’s “character of service” is not necessarily the same thing as the “[m]ilitary[’s] character of discharge.” The VA reviews these cases only to determine if the individual meets VA criteria for awarding benefits. The characterization of service review will find that the service record is either other than honorable or dishonorable. For the purpose of VA benefits, a finding of an other than honorable record does not preclude an individual from qualifying for VA benefits.

The authority to grant and bar access to a veteran’s benefits/services is given to the VA through the United States Code. The statutes, in practice, contain both mandatory and discretionary criteria; it is the discretionary criteria that bars individuals from eligibility for services.

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64. See infra Section V.B.1.
65. See MOULTA-ALI & PANANGALA supra note 57, at 6.
66. See id.
67. See id. at 6.
68. See id. at 6-7.
69. See id. at 8.
70. See id.
71. See id.
72. See id.
74. See id.
This discretionary element allows the VA "to provide most services only to service members separated ‘under conditions other than dishonorable.’" The statute gives further discretion to the VA by giving them the power to decide if the service member was "separated under ‘dishonorable conditions’" and goes further to give the VA the power to create regulations that include the definition of "dishonorable conditions." As such, the VA has considerable authority to decide whether service members given an other than honorable discharge by their branch of the military are entitled to VA benefits.

B. PTSD and Other than Honorable Discharges are Hindering our Veterans from Finding and Maintaining Jobs

Although "securing gainful employment has been seen as a key goal to a successful transition from military to civilian life," unemployment rates for veterans remain high, especially for those who are wrongfully labeled with a PTSD-related other than honorable discharge. The psychological effects of combat continue to have negative effects on soldiers when they return home to their civilian lives, causing reintegration to be met with difficult transitions.

The culture and structure of the military is not like that of every day civilian life. Therefore, moving from a structured, hierarchical culture where the service member is employed, has a steady paycheck, health care benefits, and other benefits, including housing allowances, back to civilian life can be very difficult. For those individuals suffering from PTSD due to their wartime experiences, it is even more difficult to "learn to become a civilian again," find a job, go back to school, and find a place to live, amongst other responsibilities.

In addition to coping with their symptoms of PTSD, the difficulties that come along with reintegration, and the lack of benefits available to them, have other consequences—soldiers who receive a less than honorable discharge must also deal with the "shame of a bad discharge."

75. Id.
76. See id. at 5-6.
77. See id.
78. See USC CTR. FOR INNOVATION & RESEARCH ON VETERANS & MILITARY FAMILIES, supra note 13, at 1, 4.
79. See id. at 3.
80. See U.S. GOV’T ACCOUNTABILITY OFF., supra note 44, at 6.
81. Id.
82. Id.
83. Izzo, supra note 35, at 1587-88.
It is often not until returning home that a soldier may experience some of the worst symptoms of PTSD because “the body and mind have physically left the chaotic environment of the war zone . . . .”84 As a result of these symptoms and associated shame, instead of returning to work, pursuing education, or addressing their underlying PTSD through the VA and veteran’s health insurance system, many veterans who have been “other than honorably” discharged as a result of PTSD find themselves unemployed and unable to support themselves or their families, and many turn to drugs or end up being arrested.85

Many veterans suffer from drug and/or alcohol abuse problems as a result of their PTSD, and often a veteran’s encounter with the criminal justice system is the first time they will begin to “address remnants of their overseas combat experience.”86 According to a 2007 Department of Justice report, an estimated 5,280 veterans that “separated from the military between 2002 and 2004 . . . were incarcerated in either state or federal” prisons.87 Among veteran populations in state and federal prisons, there are high rates of mental health and/or drug abuse problems.88 In 2006 and 2007, “[thirteen] percent of men and [six] percent of women” utilizing the VA for their medical needs “were diagnosed with a substance use disorder.”89 A 2005 survey also revealed that forty percent of respondents screened positive for risky drinking, twenty-three percent for binge drinking, and twenty-two percent for possible alcohol abuse.90 Besides suffering from the underlying PTSD, the additional struggles of drug abuse, and being wrapped up in the criminal justice system, make it more difficult and less likely that the veteran will be capable of getting or keeping a job, especially without the help of government programs.91 According to VA officials and veterans, PTSD can make it difficult for some veterans to keep a job.92

For many, readjustment from military to civilian life is “daunting.”93 It is already a struggle for veterans to find employment, especially

84. Evan R. Seamone, Dismantling America’s Largest Sleeper Cell: The Imperative to Treat, Rather than Merely Punish, Active Duty Offenders with PTSD Prior to Discharge from the Armed Forces, 37 NOVA L. REV. 479, 482 (2013).
85. See id. at 481-82; Stuart, supra note 49, at 500-01; U.S. GOV’T ACCOUNTABILITY OFF., supra note 44, at 9-10.
86. Seamone, supra note 84, at 482; Stuart, supra note 49, at 490.
88. Stuart, supra note 49, at 500-01.
89. U.S. GOV’T ACCOUNTABILITY OFF., supra note 44, at 10.
90. Id.
91. Id. at 8-9, 13.
92. Id. at 13.
93. Cassidy, supra note 25, at 848.
employment at the military pay rate, so for veterans with an other than
honorable discharge, the task of finding employment is even more
overwhelming.\footnote{Id. at 849.} Just two years ago in 2014, 573,000 veterans, or 5.3
percent, were unemployed.\footnote{Id. at 850.} Of these unemployed veterans, fifty-percent
were age forty-five and over; thirty-seven percent were between ages
twenty-five to forty-four; and four percent were between ages eighteen to
twenty-four.\footnote{Id. at 851–52.} Having a disability, whether it be mental or physical,
intensifies the struggles for veterans to readjust to civilian life.\footnote{Id. at 852.}
Furthermore, for those veterans returning home with PTSD and other
mental health conditions, it is more difficult to secure and retain
employment.\footnote{Jeremiah Stephan, Battling PTSD: Getting Reservists Suffering From PTSD Back to Work
Through Proposed Amendments to USERRA and VA Disability Compensation Benefits, 45 J.
MARSHALL L. REV. 1201, 1202 (2012).} Their symptoms, which may include “insomnia, hyper-
arousal, and avoidance of stimuli,” often make it a struggle for a veteran
to keep their jobs and in some cases may force them to quit.\footnote{Id.; Ken Olsen, Booted After Battle, AMERICAN LEGION (May 18, 2016),
https://www.legion.org/magazine/232778/booted-after-battle.}

Being discharged with an other than honorable status compounds
these struggles even further; the discharge status is a “difficult stigma to
overcome, particularly if it is tied to PTSD” and often times it creates
difficulty obtaining a job when a problematic discharge is on the veteran’s
discharge form.\footnote{Olsen, supra note 100.} Unlike a civilian job, where the consequence of
something like a failed drug test may lead to firing, the consequences of
getting caught in the military is “an other-than-honorable discharge [that]
follows you forever.”\footnote{See Tessa Poppe, What Happens When Veterans Receive Bad Paper
Discharges, TASK & PURPOSE, (Feb. 10, 2015), http://taskandpurpose.com/happens-veterans-receive-bad-paper-

1. From a Veteran’s Perspective

Kristofer Goldsmith’s experiences while suffering from PTSD help
to paint a more realistic picture of the problems associated with military
discharge procedures and the subsequent effects it has on veterans.\footnote{See Tessa Poppe, What Happens When Veterans Receive Bad Paper Discharges, TASK & PURPOSE, (Feb. 10, 2015), http://taskandpurpose.com/happens-veterans-receive-bad-paper-

\footnote{94. Id. at 849.}
\footnote{95. Id. at 850. The prior year, in August of 2013, the U.S. Department of Labor reported that
the jobless rate for post 9/11 veterans was significantly higher at ten percent and almost three
percentage points higher than the national rate. see also USC CTR. FOR INNOVATION & RESEARCH ON
VETERANS & MILITARY FAMILIES, supra note 13, at 1 (showing that the employment rate for post
9/11 veterans in 2013 remained “stubbornly high” at a rate of ten percent).}
\footnote{96. Cassidy, supra note 25, at 850.}
\footnote{97. Id. at 851–52.}
\footnote{98. Id. at 852.}
\footnote{99. Jeremiah Stephan, Battling PTSD: Getting Reservists Suffering From PTSD Back to Work
Through Proposed Amendments to USERRA and VA Disability Compensation Benefits, 45 J.
MARSHALL L. REV. 1201, 1202 (2012).}
\footnote{100. Id.; Ken Olsen, Booted After Battle, AMERICAN LEGION (May 18, 2016),
https://www.legion.org/magazine/232778/booted-after-battle.}
\footnote{101. Olsen, supra note 100.}
\footnote{102. See Tessa Poppe, What Happens When Veterans Receive Bad Paper Discharges, TASK &
PURPOSE, (Feb. 10, 2015), http://taskandpurpose.com/happens-veterans-receive-bad-paper-

After his first tour in Iraq, while living stateside on a Georgia base, Goldsmith learned that he would have to return to Iraq for a second time.\textsuperscript{103} Goldsmith had been “silently suffering since returning home from his first deployment” and the thought of going back to war triggered Goldsmith’s “ongoing and undiagnosed [PTSD]” and pushed him to an attempt to end his life.\textsuperscript{104} When Goldsmith woke up hardly remembering the night before, not only did he find himself handcuffed to a gurney, but he also learned that he was getting kicked out of the military.\textsuperscript{105} Even though Goldsmith had been diagnosed with a less severe diagnosis of depression and adjustment disorder months before, and should have been given a medical discharge for the “unseen wounds he suffered in Iraq,” he was given a general discharge for the “commission of a serious offense” because he missed his plane deploying overseas the morning following his suicide attempt.\textsuperscript{106} This suicide attempt caused him to lose the benefits he would have been entitled to.\textsuperscript{107}

Prior to the onset of his symptoms, Goldsmith had a superb military record, was respected by fellow officers, and attained the rank of sergeant more quickly than many of his peers.\textsuperscript{108} This all changed when Goldsmith returned from Iraq—he began suffering from insomnia which he coped with by heavily drinking.\textsuperscript{109} At the age of twenty-one, after attempting suicide, finding himself back at home living with his parents without any sort of reintegration back into civilian life, instead of pursuing his education or entering the work force to become a productive member of society, Goldsmith continued his heavy drinking, spending his entire savings in an effort to cope with ongoing panic attacks.\textsuperscript{110} Not only did Goldsmith’s condition prevent him from obtaining a job, he was at a

\textsuperscript{103} Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{104} Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{105} Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{106} Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{107} See Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{108} Fields, supra note 102.
\textsuperscript{109} Poppe, supra note 102; Fields, supra note 102.
\textsuperscript{110} Poppe, supra note 102; Fields, supra note 102.
further loss, since he was now ineligible for many of the veteran’s benefits including education opportunities through the G.I. Bill.111 Luckily for Goldsmith, he had the support of his parents who pushed him to get mental health treatment.112 Despite getting himself back on track with the support of his treatment providers and pursuing his education at Columbia University, nine years later at thirty years old, after being rejected twice, Goldsmith continues to appeal his discharge status.113

There are many other wrongfully discharged veterans whose stories are not as “fortunate” as Goldsmith’s.114 Their personal experiences include, among other things, dependence on drugs and alcohol, unemployment, homelessness, incarceration, and psychiatric hospitalizations.115 And for some the sentiments on a “bad conduct discharge[s]” is that “[y]ou might as well have never even enlisted [because a bad conduct discharge is] worse than being a convicted felon.”116

III. HOW IS THE PROBLEM BEING ADDRESSED?

A. Wrongful Discharges are a Known Problem and Receive Considerable Attention

Congress has recognized the importance of PTSD services for veterans for over two decades, but problems still exist today as discussed herein.117 Recognizing that there was a problem within the discharge process for soldiers exhibiting symptoms of PTSD, in 2014, the National Defense Authorization Act (“NDAA”) ordered the Comptroller General of the United States to take a look at the problem of military members being wrongfully discharged and to report on their findings.118 In its September 2014 report, the United States Government Accountability Office (“GAO”) recognized that reintegration for post-9/11 veterans was

111. Poppe, supra note 102; Fields, supra note 102.
112. Fields, supra note 102.
113. Id.
115. Id.
116. Id.
challenging. The GAO spent a great deal of time discussing the prevalence of PTSD and effects PTSD may have on veterans. However, this report did not once address the challenges of service members who were other than honorably discharged due to the manifestation of their mental health condition—the issue the NDAA had set out to address. Although not properly addressed by the federal government, significant attention continued to be given to this issue.

One such example discussing this issue was a July 2014 commentary, published by Jurist, that painted a dismal picture of this issue. The article reported on a study which reported that over 100,000 veterans discharged from the military since 2001 were discharged “with highly prejudicial service characterizations of ‘Under Other Than Honorable Conditions’ (OTH), typically for ‘commission of a serious offense’ or a ‘pattern of misconduct’ while in uniform.” Although the report does not correlate a diagnosis of PTSD to these discharges, it points out that scientific studies “demonstrate a strong correlation between untreated or under treated PTSD and misconduct discharges.” This publication further highlighted the fact that military administrative boards have not recognized the correlation between these types of discharges and the symptoms of PTSD.

Additional attention that focused on petitions of Vietnam veterans for upgraded discharges based on “claims of previously unrecognized Post Traumatic Stress Disorder (PTSD),” prompted then Secretary of Defense, Chuck Hagel, to author a memorandum on September 3, 2014, focusing on “Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder.” The memorandum was directed at the Secretaries of the Military Departments and included supplemental policy guidance for Military Boards for Correction of

120. See id.
121. See id.
123. See Toney, supra note 43.
124. See id.
125. See id.
126. See id.
127. Memorandum from Dep’t of Def’y Chuck Hagel on Supplemental Guidance to Military Bds. for Corr. of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder to the Sec’y of the Military Dep’t (Sept. 3, 2014).
Military/Naval Records (BCM/NR) and details medical considerations, mitigating factors, and procedures for review.\textsuperscript{128}

An early look into the implications of former Secretary of Defense Hagel’s Supplemental Guidance suggested that this policy had not reached veterans and therefore they were not applying for discharge upgrades.\textsuperscript{129} In November 2015, fourteen months after the guidance was released, it was reported that only 201 veterans out of tens of thousands who were eligible applied for a “PTSD-related service upgrade.”\textsuperscript{130} Senator Richard Blumenthal, along with veterans and Yale law students, argued that it is the DoD that is to blame for the low number of upgrade applications due to the lack of publicity given to the policy disseminated to veterans with less than honorable conditions.\textsuperscript{131} Additionally, it was expected that Congress would submit a report to the Senate Armed Services Committee by August 2015 discussing the “efforts to inform veterans about the policy,” but this report never came.\textsuperscript{132} As attention continued to be focused on this issue, the Army announced at the close of 2015 that they would “conduct a ‘thorough, multidisciplinary review’ . . . to investigate reports that the service discharged for misconduct as many as 22,000 soldiers who had been diagnosed with mental health problems.”\textsuperscript{133}

Due to the non-compliance with Hagel’s memorandum, on February 24, 2016, Brad Carson, the Acting Principal Deputy Under the Secretary of Defense for Personnel and Readiness, issued a second Memorandum for the Secretaries of the Military Departments.\textsuperscript{134} This memorandum

\textsuperscript{128} See id. ("This policy guidance . . . is intended to ease the application process for veterans who are seeking redress and assist the Boards in reaching fair and consistent results in these difficult cases . . . . Liberal consideration will be given in petitions for changes in characterization of service to Service treatment record entries which document one or more symptoms . . . of [PTSD] or related conditions. Special consideration will be given to [VA] determinations which document . . . PTSD-related conditions connected to military service. In cases . . . where . . . any document from the period of service substantiate the existence of [symptoms of PTSD] during the time of service, liberal consideration will be given to finding that PTSD existed at the time of service.").

\textsuperscript{129} See Peggy McCarthy, Veterans Are Not Applying For Discharge Status Upgrades, Pentagon Blamed, CONN. HEALTH INVESTIGATION TEAM (Nov. 2, 2015), http://c-hit.org/2015/11/02/veterans-are-not-applying-for-discharge-status-upgrades-pentagon-blamed/.

\textsuperscript{130} See id.

\textsuperscript{131} See id.

\textsuperscript{132} See id.

\textsuperscript{133} See Michelle Tan, Army Launches Review of Soldier Misconduct Discharges, ARMY TIMES (Dec. 3, 2015), https://www.armytimes.com/story/military/pentagon/2015/12/03/army-launches-review-soldier-misconduct-discharges/76731238/; see also infra Section IV.B. (discussing results of the multidisciplinary review).

\textsuperscript{134} Memorandum from Dep’t of Def. Brad Carson on Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval
referred Secretary Hagel’s 2014 Memorandum and stated, “[t]his guidance remains exceptionally important, and we must renew and re-double our efforts to ensure that all Veterans who have sacrificed so much in service to our great Nation receive all of the benefits that the Supplemental Guidance may afford.”135 As unemployment and homelessness, for many veterans, is a result of their “bad paper” discharge, it is also “exceptionally important” to ensure that veterans suffering with PTSD are not being unfairly labeled with an other than honorable discharge.136

B. Widespread Legislation in Support of Successful Reintegration of Veterans into the Workforce

As far back as 1865, the leaders of our country have recognized the need and duty for our country to support its veterans.137 In his second inaugural speech, President Lincoln promised, “to care for him who shall have borne the battle and for his widow and [for] his orphan . . . .”138 More recently, in 2010, President Obama in his weekly address stated, “America will always be there for our veterans, just as they’ve always been there for us. We won’t let them down. We take care of our own.”139 And even more recently in the first weeks of 2018, President Trump declared: “We will not rest until all of America’s great veterans receive the care they have earned through their incredible service and sacrifice to our country.”140 Veterans returning from service have one of the highest unemployment rates in our country and so through legislation and policy making, our leaders have attempted to “take care of [their] own” to support employment efforts of our nation’s veterans.141

Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) to Sec’y of the Military Dep’t (Feb. 24, 2016), http://www.defense.gov/Portals/1/Documents/pubs/Consideration_on_Dischare_Update_Request_s.pdf [hereinafter Carson Memo].

135. _Id._
136. _See_ SIDIBE & UNGER, _supra_ note 122, at 3.
137. _See_ Stephan, _supra_ note 99, at 1201 & n.1; Cassidy, _supra_ note 25 at 838.
1. The Fairness for Veterans Act of 2016

Recognizing the importance of former Secretary of Defense Hagel’s memorandum and discharge upgrade policy, the Fairness for Veterans Act of 2016 was introduced in the House of Representatives in March 2016.142 According to the bill’s sponsor, U.S. Representative Mike Coffman, the Act was developed to address the issue of soldiers being improperly discharged due to minor misconduct and behavioral problems directly linked to combat-related PTSD.143 The National Defense Authorization Act for Fiscal Year 2017 (“NDAA”), signed into law on December 23, 2016, incorporated Coffman’s Act leading to the codification of former Defense Secretary Chuck Hagel’s upgrade policy.144 The statute specifically sets forth that review boards will “review medical evidence . . . that is presented by the former member” and “review the case with liberal consideration to the former member that [PTSD] or [TBI] potentially contributed to the circumstances resulting in the discharge of a lesser characterization.”145

2. The Rehabilitation Act and The Americans with Disabilities Act

On the federal level, the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act of 1973 (“Rehabilitation Act”) provide primary protections to individuals with disabilities from employment discrimination.146 Although, the ADA “prohibits discrimination against people with disabilities in . . . employment [amongst other] services,” the federal government, as an employer, is not subject to the rules of the ADA.147 However, the Rehabilitation Act applies these discrimination

accommodations to the federal government and other federal agencies.\textsuperscript{148} Specifically, the Rehabilitation Act "prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors."\textsuperscript{149} Employment discrimination is a common thread of this statute, which explicitly states that one of the goals of our nation is to "provid[e] individuals with disabilities with the tools necessary to . . . achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals."\textsuperscript{150}

3. The Uniformed Services Employment and Reemployment Act

The Uniformed Services Employment and Reemployment Act ("USERRA") is an employment protection specifically aimed at veterans and provides further protections for those with disabilities.\textsuperscript{151} Under the USERRA, employers cannot "discriminat[e] against employees or applicants on the basis of military status or military obligations"; this rule includes provisions which extend these rights to service members with disabilities that were "incurred or aggraved" over the course of their military service.\textsuperscript{152} Like the Rehabilitation Act, the language of the USERRA portrays underlying policies that support the enhancement of meaningful employment for veterans.\textsuperscript{153} The purpose of the statute, which is not being extended to the class of service members discussed herein, includes "eliminating or minimizing the disadvantages to civilian careers and employment" and "providing for the prompt reemployment of such persons upon their completion of such service . . . ."\textsuperscript{154} This statute further states Congress’ expectation that "the Federal Government should be a model employer in carrying out the provisions of this chapter."\textsuperscript{155}

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\textsuperscript{148} Karin & Onachila, supra note 14, at 174.


\textsuperscript{151} See Michael Waterstone, Returning Veterans and Disability Law, 85 NOTRE DAME L. REV. 1081, 1104 (2010).

\textsuperscript{152} Id.; see also U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., ADA: KNOW YOUR RIGHTS RETURNING SERVICE MEMBERS WITH DISABILITIES 18 (Jan. 2010), https://www.ada.gov/servicemembers_adainfo.pdf.


\textsuperscript{154} Id.

\textsuperscript{155} 38 U.S.C. § 4301(b) (2000).
military, the government is failing to fulfill the duties of this "model employer" by not carrying out the USERRA.156

4. Federal Government Employment Programs for Veterans

The federal government has a plethora of employment-related services available to veterans across departments including, but not limited to, the VA, United States Department of Labor ("DOL"), and the DoD.157 Services/benefits range from traditional vocation rehabilitation services to preferential hiring practices, bypassing competitive hiring procedures, and support for the creation and sustainability of small businesses.158

The VA has a Vocational Rehabilitation and Employment ("VR&E") program, which "helps eligible veterans prepare for, obtain, and maintain suitable employment or achieve independence in daily living." Among the services offered through the VR&E are job training and coaching, education, employment, and independent living services.160

The DOL has a host of programs aimed at assisting veterans in their employment endeavors.161 The Transition Assistance Program ("TAP") was created by the DOL to establish a partnership between the DoD, the VA, the Department of Transportation, and the DOL's Veterans' Employment and Training Service ("VETS") to help meet the needs of separating service members during their transition to civilian life.162 The program gives employment and training information and provides job-search assistance within 180 days of separation.163

In addition to the TAP program, VETS provides funding to the Jobs for Veterans State Grants ("JVSG") Program that aims to help veterans find jobs through employment services at career centers throughout the United States.164 This program provides job support services to veterans

156. See id.
158. Karin & Onachila, supra note 14, at 176-77.
159. See U.S. GOV'T ACCOUNTABILITY OFFICE, supra note 44, at 19.
160. Id.
163. Id.
who are disabled, economically disadvantaged, or who have other barriers to employment.\textsuperscript{165} Across the United States, the percentages of program participants, in program year 2014, who were employed in the first quarter after exiting the program ranged from a low of forty-two percent in the District of Columbia to a high of seventy percent in Ohio.\textsuperscript{166} On average, across the United States, fifty-nine percent of participants were employed in the first quarter after completing the JVSG Program.\textsuperscript{167} Of those who were employed in the first quarter, an average of eighty-two percent retained that employment through the second quarter after the completion of the program.\textsuperscript{168} Nationally, the 2017 funding estimates allocated for this program was $173,287,318.\textsuperscript{169}

The Veteran’s Workforce Investment Program (“VWIP”) is another program offered through VETS that aims to help veterans obtain “meaningful careers, provide them with the employment resources and expertise, protect their employment rights and promote their employment opportunities.”\textsuperscript{170} VWIP is a competitive grant program, managed by the DOL, that awards funds to eligible organizations, which may include states and state agencies, local public agencies, private non-profit organizations, and state and local workforce investment boards.\textsuperscript{171} VWIP’s objective is “to provide resources for the training necessary to prepare eligible veterans for meaningful employment within the labor force and to stimulate the development of effective service delivery strategies that will address the complex problems facing those veterans eligible for VWIP.”\textsuperscript{172}

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\texttt{for \textit{Veterans State Grants Program (JVSG)}, BENEFITS.GOV, https://www.benefits.gov/benefits/benefit-details/5879 (last visited Apr. 30, 2018).}
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\texttt{165. \textit{State Level Employment Outcomes for Veterans and Disabled Veterans}, supra note 164; see also Jobs for Veterans State Grants Program (JVSG), supra note 164.}
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\texttt{166. \textit{See State Level Employment Outcomes for Veterans and Disabled Veterans}, supra note 164.}
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\texttt{167. \textit{See id.}}
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\texttt{168. \textit{Id.}}
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\texttt{172. \textit{Id.}}
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For service members who have been other than honorably discharged, they \textit{may} be eligible for Vocational Rehabilitation or Employment benefits if they possess a VA memorandum or have a disability rating of 20 percent or more. \textit{Id.} On the slight chance that the individuals being
5. President Trump's Recognition of the Problem

Since taking office, President Trump has recognized the struggles of those veterans suffering from mental health conditions during their transition from uniformed service to civilian life.\(^{173}\) As a result, President Trump has made this population a priority.\(^{174}\) The National Defense Authorization Act for Fiscal Year 2018 ("NDAA") includes a provision that requires mental health assessments at the time of separation.\(^{175}\) Although the 2018 NDAA has been signed by President Trump, the signed bill does not include an effective date and regulations regarding the implementation of this bill have not yet been promulgated.\(^{176}\) On January 9, 2018, President Trump also signed an Executive Order entitled "Supporting Our Veterans During Their Transition From Uniformed Service to Civilian Life," which will provide transitioning veterans with access to mental health treatment during the year following discharge.\(^{177}\) Although a significant step in the right direction, an action plan must first be developed before this new policy is implemented.\(^{178}\)

IV. PROMISES TO OUR VETERANS ARE NOT BEING FULFILLED

Through these various programs and policies the government is trying to "do right by its military personnel."\(^{179}\) However, it is apparent from the experiences of a great number of U.S. service members that the promises of our country's leaders including Abraham Lincoln and Barack

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\(^{173}\) Lawrence, supra note 140.

\(^{174}\) Id.


\(^{176}\) See id. Various sections of the 2018 NDAA include effective dates, however, the statutory changes have not yet been implemented, and it is unclear as to when this section will take effect. See id.


\(^{179}\) Karin & Onachila, supra note 14, at 187.
Obama are not being fulfilled. 180 The DoD and the VA are responsible for ensuring that our service members successfully reintegrate into civilian life—the DoD focuses on the transition to civilian life stateside while the VA focuses on overall reintegration from active service to civilian life—however, for those who are being discharged other than honorably, the DoD and the VA are failing to assist them with reintegration. 181

This problem has multiple sources of origin. First, there is the issue of PTSD and the challenges associated with successfully diagnosing an individual prior to discharge. 182 The second issue, which stems from the first, is the challenges veterans face to obtain benefits due to their other than honorable discharge status. 183 Finally, the last issue pertains to the protections and programs that are put in place for not only veterans, but also for civilians with disabilities. 184 For various reasons, these programs are not reaching the population of our other than honorably discharged veterans; therefore, instead of “caring for” our veterans, we are leaving a great number of people behind to suffer in silence. 185 As will be further discussed, the discretion afforded to the VA to determine benefit eligibility, the retroactive nature of discharge upgrades, and the lengthy, often unsuccessful, process in trying to upgrade a discharge classification further exacerbates these issues. 186 Therefore, in order to ensure that we take care of our military personnel, “[o]ur nation’s heroes who honorably served our country should not lose access to the benefits they’ve earned because they are suffering the invisible wounds of war.” 187

A. PTSD is Not Getting Classified as a Medical Disability Prior to Separation

As already established, a significant number of veterans being discharged with an other than honorable classification have underlying PTSD that is not being addressed by the DoD and the VA. 188 One of the challenges in addressing this issue is that symptoms are unique to each

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180. "The efforts of the Department of Defense ("DoD") and the VA have fallen short in recent years of fulfilling Lincoln’s promise." Cassidy, supra note 25, at 838.
181. Id. at 838-39; see also infra Sections IV.A, IV.B, IV.C.
182. See infra Section IV.A.
183. See infra Section IV.B.
184. See infra Section IV.C.
185. See infra Section IV.C.
186. See infra Section IV.B.
187. Press Release, Mike Coffman, supra note 143.
188. See supra Section I.B.
individual and for many they manifest as anti-social like behavioral issues. An important aspect to consider in determining what policy changes are necessary to improve this problem is that the onset of the symptoms is unique for each individual. For some, symptoms occur shortly after a traumatic event occurs, but for others it may take months or years for them to experience any symptoms. Therefore, even when it seems that an individual is in the clear from PTSD and has had a successful transition back into civilian life and the employment sector, this may not be the case. For some, entrenching yourself in work may be another method of ignoring the symptoms of PTSD.

For Chris Miller, a former Marine, he did just this. Ignoring his symptoms of PTSD ultimately caused him to have a psychotic break that almost led to tragedy. Many people like Miller choose to put the needs of their families before their own mental health needs. There are elements inherent in the nature of the military that provide for stabilization for a soldier while they are serving including, “steady pay, ongoing medical benefits, stable housing, and access to legal advice.” However, upon discharge, this level of stabilization quickly diminishes, especially for those with an other than honorable discharge who are ineligible for many of the VA benefits. Based on the negative effects that PTSD has on an individual and the unique-nature of its manifestation, in order to begin to tackle this problem, a better job must be done in terms of detecting and addressing PTSD.

189. See Stephan, supra note 99, at 1208.
190. Id.
191. See id.
192. See id. at 1215 (providing an example of a veteran who, several months after returning home and starting work, suffered a “psychotic break”).
193. See id. at 1214 (stating that many veterans are forced to ignore symptoms of PTSD until they suffer from a “psychotic break” because of the underlying pressure of quickly returning to work in order to provide for his or her family).
194. See id. at 1215.
195. See id. (noting that the “psychotic break” involved disappearing with his infant son for three days).
196. See id. “[T]he structure and lifestyle of the military cultivate a pattern of behavior that may ultimately lead to failure when transitioning back to the civilian world once the appropriate services and support are not readily available.” Cassidy, supra note 25 at 839-40.
197. Cassidy, supra note 25, at 848-49.
198. Id.
199. See Stephan, supra note 99, at 1208.
B. Veterans Cannot Obtain Veteran Benefits with an Other than Honorable Discharge

As discussed, the Rehabilitation Act prohibits federal agencies and employers from discriminating on the basis of disability.\textsuperscript{200} However, the military, as the soldiers' employer, the VA, the federal agency determining a veterans' eligibility for benefits, and the other federal agencies implementing benefits programs, are discriminating against service members by wrongfully discharging those that are exhibiting symptoms of PTSD and preventing them from accessing the benefits associated with being a veteran.\textsuperscript{201} Even after the 2010 NDAA shone a spotlight on this issue, it seemed that not much changed and military branches continued to overlook behavioral health as a factor in any misconduct that led to a service member's other than honorable discharge, and they continued to discriminate against veterans with service-related disabilities.\textsuperscript{202}

The Army began to "reexamine" the cases of some of the soldiers "who it kicked out under [other than honorable] circumstances between 2009 and 2015 because it may have run afoul of [the NDAA that] intended to help ensure troops aren't punished for mental health issues that were actually caused by their military service."\textsuperscript{203} The cases were reexamined because there was no evidence that commanders looked at whether or not PTSD could have been a factor in offenses that resulted in an other than honorable discharge.\textsuperscript{204} It is clear that the policies of the 2010 NDAA did not have enough of an impact on prospectively addressing this problem, which is imperative if any sort of progress is to be made.\textsuperscript{205}

It is made even more clear that the 2010 NDAA did not live up to its expectations, by the fact that the Secretary of Defense on two occasions had to issue Memoranda focusing on this issue in an attempt to strengthen adherence to the Act.\textsuperscript{206} The "record correction boards have failed to function as intended by Congress . . . [and] engaged in a near-categorical refusal to correct the discharge status of veterans suffering from post-

\textsuperscript{200} See supra Section III.B.2.
\textsuperscript{201} See supra Sections II.A, III.B.2, III.B.3, III.B.4.
\textsuperscript{203} Id.
\textsuperscript{204} Id.
\textsuperscript{205} See id.
\textsuperscript{206} See supra Section III.A.
traumatic stress disorder . . .” for many decades.\(^\text{207}\) An order by the Secretary of Defense is not a permanent enough solution. After just two years, the successor to Secretary Hagel had to reissue a Memorandum because the original Memorandum was not being followed.\(^\text{208}\) Even though, as previously discussed, this policy was codified in the NDAA for fiscal year 2017, it is still not enough.\(^\text{209}\) Yet again, in the summer of 2017, Anthony M. Kurta, the acting Under Secretary of Defense for Personnel and Readiness, issued a third memorandum “to resolve lingering questions and potential ambiguities.”\(^\text{210}\) According to the DoD, this guidance “fills in the gaps and resolves any confusion” about the policy for discharge review boards.\(^\text{211}\) Even with a myriad of guidance, a “vast majority” of cases submitted to the Army Review Board Agency that involved PTSD in recent years have been denied.\(^\text{212}\) Even if successful, these discharge upgrades take years and require the work of a lawyer, creating another problem for these veterans.\(^\text{213}\) Since first introduced in 2014, these policies have proven to be ineffective and evidence suggests, even with a presumption in favor of the service member, there is still enough discretion to get it wrong and discharge soldiers who are experiencing service-related PTSD.\(^\text{214}\)

According to Senator Kirsten Gillibrand, the ranking member of the Senate Armed Services Committee Personnel Subcommittee, incorporating Hagel’s policy into law will “ensure that veterans who have PTSD or have experienced Military Sexual Trauma can more easily have their discharges upgraded . . . so that they can get the care they need and the benefits they earned.”\(^\text{215}\) Although a positive step forward, the

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207. SIDIBE & UNGER, supra note 122, at 4.
208. See Carson Memo, supra note 134.
209. See supra Section III.B.1.
211. Press Release, U.S. Dep’t of Def., DoD Releases Clarifying Guidance to Veterans Regarding Discharges and Military Records (Aug. 28, 2017); see also Lisa Ferdinando, DoD Clarifies Liberal Considerations for Veterans’ Discharge Upgrade Requests, U.S. Dep’t of Def. (Aug. 28, 2017), https://www.defense.gov/News/Article/Article/1292904/dod-clarifies-liberal-consideration-for-veterans-discharge-upgrade-requests/ (noting that the guidance released by the Department of Defense was intended to clarify the “liberal consideration policy” that should apply to veterans requesting discharge upgrades due to underlying mental health conditions such as PTSD).
213. See Penaloza, supra note 114.
214. SIDIBE & UNGER, supra note 122, at 10-11 (according to the article, only 73 soldiers, out of 394 identified as having PTSD or TBI, were being reviewed during this time period).
215. Press Release, Peters, Daines, Tillis, & Gillibrand, Fairness for Veterans Provision to be
codification of the policy into law does not ensure that veterans with PTSD who have been other than honorably discharged will receive an upgrade.\textsuperscript{216}

As evidenced by the nature of the Vietnam era claims, the efforts that have been made thus far are more of a retroactive fix that fail to address the heart of the issue.\textsuperscript{217} Evidence supports the contention that review boards have not been uniformly applying the standards since Hagel initially issued the memorandum.\textsuperscript{218} With the 2010 NDAA, the directives issued by the DoD, and the subsequent codification of the their directives in the 2017 NDAA, there has been an attempt to address this issue more efficiently; however, the prior attempts suggest that efforts have not been successfully implemented. Although arguably more powerful now, having the force of law, this policy is still discretionary which may prevent soldiers suffering from PTSD from having their discharge status upgraded.\textsuperscript{219}

Just weeks after Hagel’s policy was codified into law, former Marine Tyson Manker served as an example of the how this discretionary policy is still ineffective.\textsuperscript{220} Manker was given a less-than-honorable discharge as a result of smoking marijuana to “self-medicate” while on leave.\textsuperscript{221} Not only were Manker’s traumatic experiences not taken into account at the time he was discharged,\textsuperscript{222} but in early 2017 a Naval Review Board denied Manker’s appeal of his discharge classification.\textsuperscript{223} According to the Board, they did not question that Manker had PTSD but they determined that there was not enough evidence to support his claim that he smoked marijuana because of his trauma.\textsuperscript{224} In making this determination, the Board referenced a letter that Manker had written to a Major General which stated, that “the mistake [he] made was a bad one,”\textsuperscript{225} that he used “reckless and irresponsible” judgment,\textsuperscript{226} “made a stupid and costly

\textsuperscript{216} See Murakami, \emph{supra} note 144.
\textsuperscript{217} See \emph{supra} text accompanying notes 35-39, 118-23.
\textsuperscript{218} See \emph{supra} text accompanying notes 128-31.
\textsuperscript{219} See Murakami, \emph{supra} note 144.
\textsuperscript{220} See \emph{id}.
\textsuperscript{221} \textit{Id.} at 2.
\textsuperscript{222} \textit{Id.} at 3.
\textsuperscript{223} \textit{Id.} at 4.
\textsuperscript{224} \textit{Id.}
\textsuperscript{225} \textit{Id}.
\textsuperscript{226} \textit{Id}.
decision," and made a "snap decision." The Board found, because Manker did not reference that "he used illegal drugs due to mental health" and did not "ask for help or address any concerns regarding his mental health" during his post-deployment health assessment or separation medical exam, that PTSD was not the cause of the misconduct but instead was correct to classify his conduct as willful. Literature suggests, however, that veterans and service members may use alcohol and/or drugs to self-medicate for mental health conditions and may not realize they are experiencing symptoms of PTSD, or self-medicating to cope with their symptoms, until after they return home. Based on the available research regarding the manifestation of PTSD among service members, the justification from the Naval Review Board to base their decision on the fact that he did not address his mental health issues in his letter is arguably unjust. Manker’s case is first-hand evidence that the existing policy has not been effective and therefore codifying this policy is not the solution to the problem. Newly separated veterans are forced to deal with the same problems that Vietnam veterans dealt with: a lengthy, unproductive process of trying to upgrade their discharge status. Therefore, we need a stronger, more proactive solution to effectively deal with this problem.

C. Protections and Programs are Not Reaching Our Veterans with PTSD

While a service member is serving in the military, the United States (or the federal government) is their employer; therefore, it would naturally follow that the provisions of the Rehabilitation Act must apply to the military, as the service members’ employer. Although “[t]he military has a duty to create the most effective workplace possible in recognition of the sacrifice required of service members and their families," based

227. Id.
228. Id.
229. Id.
230. See id.
231. See id.; U.S. Gov’t Accountability Off., supra note 44, at 10; see also Seamone, supra note 84, at 482.
233. See discussion supra Section III.2.
234. See Karin & Onachila, supra note 14, at 155.
on what has been reviewed thus far, it is evident that many soldiers suffering from PTSD, a disability resulting from military employment, are being discriminated against when they are wrongfully discharged because of their disability. 235 Not only does this go against the sentiments of our leaders and duties of our country to protect our service members, but it also goes against the laws and policies of our country. The Rehabilitation Act and the ADA explicitly prohibit employers from discriminating against employees based on their disabilities and include provisions to ensure that individuals are afforded additional protections so they can enjoy the opportunities that someone without a disability may have. 236 By discharging a service member with a disability with an other than honorable discharge, not only are the DoD and VA punishing a service member for the symptoms related to their disability but they are also not affording them the protections needed to ensure that they have equal opportunities (i.e. protections/benefits afforded to those with an other than dishonorable discharge). Moreover, service members are being further discriminated against when, due to their employer’s discrimination, they are found to be ineligible for additional protections such as USERRA and DOL employment programs. 237 It is evident that many of the DOL-sponsored programs and grants have been successfully implemented in many states; however, this population is at a disadvantage by not being able to participate like their honorably discharged counterparts. 239

V. PROPOSAL

The NDAA was a positive step forward in recognizing that PTSD in the military is a serious problem which is not being properly addressed; however, there is still much to be done to ensure that “we take care of those who have served our nation...” so that they can return home as gainfully employed, productive members of society. 240 As previously set

235. See discussion supra Sections III.A, III.B.

236. See supra Section III.B.2.

237. See discussion supra Section III.B.3, Part IV.

238. See Veterans Workforce Investment Program (VWIP), supra note 171; see also VETERANS’ EMP. & TRAINING SERV., Jobs for Veterans State Grants - JVSG, U.S. DEP’T OF LABOR, https://www.dol.gov/vets/programs/index.htm (last visited Apr. 30, 2018) (explaining one program that provides federal funding to State Workforce Agencies (SWAs) “to hire dedicated staff to provide individualized career and training-related services to veterans and eligible persons with significant barriers to employment and to assist employers fill their workforce needs with job-seeking veterans.”).

239. See discussion supra Section III.B.3.

240. Press Release, Mike Coffman, supra note 143.
forth, the major issues with the current laws and policies are: (1) they are not uniform across all branches of the military; (2) they take a reactive approach; and (3) they are discretionary.241

The current methods of military discharges as well as the determination process for VA benefit eligibility are contrary to the foundation of the Rehabilitation Act. The purpose of section 701 is “to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society . . .”242 However, individuals suffering from combat-related PTSD, other than those honorably discharged, are being stripped of these benefits and have been disempowered from securing employment and becoming “self-sufficient.”243 If supporting and empowering our veterans is to be an underpinning of our nation, an appropriate discharge system, particularly for those veterans with service-related disabilities, must be in line with the provisions of the Rehabilitation Act.

A. Establish a Uniform Discharge System

Although the DoD’s discharge system applies to all branches of the military, each branch has implemented the “uniform” system with their own set of policies and procedures, resulting in wide disparities in the imposition of the discharge system.244 The inconsistent policies allow for a service member from one branch to be given a lower discharge classification than a service member in another branch, despite the fact that the former’s service record may be superior to the latter’s.245 Since the qualification for veterans’ benefits stems from a veteran’s discharge status, this creates a significant problem. Therefore, to effectively address this problem, we must start from the top and make changes on the federal level. Specifically, the federal government and the DoD must expand the Uniform Code of Military Justice, 10 U.S.C., and incorporate the recommendations set forth in this note. The codification of the following proposals and the implementation of the following policies and procedures into the Code of Federal Regulations will provide a strong

241. See supra Parts II.A, IV.
243. See supra text accompanying notes 100-16, 206-20.
245. See U.S. GOV’T ACCOUNTABILITY OFF., FPCD-80-13, supra note 244, at i, 22, 78-80, 84-85.
foundation for the standardization of military discharge proceedings for those service members exhibiting symptoms of PTSD.

1. Require Medical Evaluations with Mental Health Screenings for all Service Members

Although the 2018 NDAA includes a provision that will require "mental health assessments" at the time of discharge, the current DoD policy, which requires a medical evaluation to assess the presence of PTSD before a service member is discharged with an other than honorable discharge status, is ineffective because this medical examination is only mandated if the service member is already diagnosed with PTSD or makes allegations at the time of discharge that they are experiencing symptoms of PTSD as a result of their deployment. Taking the experiences of the soldiers discussed herein, it is evident that many service members do not understand that they are manifesting symptoms of PTSD at the time that they are being punished for their behaviors and being discharged other than honorably. Often times it is not until a soldier returns home that they realize that what they have been experiencing is PTSD. With the coupling of military culture and the stigma placed on mental illness, even more service members may be hesitant in admitting their experiences when facing the possibility of an other than honorable discharge. Because the symptoms of PTSD are not always indicative of the disorder, one cannot assume that individuals who are experiencing PTSD have actually been diagnosed. As a result, the criteria set forth in the DoD policy excludes many service members who should be entitled to a PTSD

246. H.R. Doc. No. 2810, 115th Cong., 1st Sess., at 154 (2017). As discussed above, there has not yet been an effective date set for the implementation of these mental health assessments. See supra text accompanying note 176.
248. See id. at subsec. 1(a)–(c); supra text accompanying notes 59-62. I am hopeful that the addition of a “mental health assessment” at the time of a service members discharge will be an encouraging start, previous failed attempts to assist this population throughout the past eight plus years, leaves me concerned that a “mental health assessment” is not enough. See supra notes 198-203 and accompanying text. Without an effective date, or regulations setting forth how these mental health assessments will be implemented, it is unclear if sufficient procedures will be in place to reach this population in need.
249. See supra text accompanying notes 180-200.
250. See supra text accompanying notes 189-200.
251. See McGrane, supra note 172, at 191.
252. See supra text accompanying notes 103-17 (providing an example of a veteran who, shortly after returning home from Iraq and exhibiting symptoms similar to depression, attempted suicide and was subsequently misdiagnosed with “depression and adjustment disorder”).
assessment before being discharged.

It is therefore the recommendation of this note that all service members receive a medical examination with a mental health screening prior to being discharged from the armed forces. Coming from a culture where PTSD or mental illness is often times thought of as a weakness, the stigma associated with that "weakness" may inhibit service members from seeking help; therefore, requiring medical examinations with mental health screenings for everyone will ensure that those service members in need of help are reached.253 Ideally, a trained mental health professional will conduct this pre-discharge screening to help ensure that the signs or symptoms of PTSD are recognized.254 However, as funding may be a hurdle for mental health professionals to screen every service member, an alternative solution would be for the physician conducting the medical screening to utilize an evidence-based screening instrument to help identify individuals who may be at risk or may be suffering from PTSD.255 Individuals who screen positively at this stage and those individuals who have exhibited signs of PTSD during their tour of duty must be referred for a formal assessment with a mental health professional. With the earlier identification and subsequent treatment of PTSD, the likelihood that our service members successfully transition from military culture to gainful employment will improve.256

2. Establish a Transitional Discharge Status

Although requiring a medical evaluation with a mental health screening at discharge is a good first step, this is not enough to solve the problem. Because symptoms of PTSD manifest uniquely in each individual,257 and often do not arise until months or years later,258 even with a medical evaluation at discharge, suffering service members will likely continue to fall through the cracks.259 Therefore, this note recommends that an additional discharge classification be developed for those individuals who may be exhibiting signs or symptoms of PTSD but

253. See McGrane, supra note 172, at 202-03. Furthermore, requiring mental health screenings for all soldiers will help to reduce the stigma surrounding PTSD in the military. Id. at 202.
254. See id. at 202.
257. Stephan, supra note 99, at 1208.
258. Id.; see McGrane, supra note 172, at 191.
259. See supra text accompanying notes 105-08.
cannot conclusively be diagnosed with the disorder at the time of the medical evaluation. The literature suggests that PTSD often manifests itself through behavioral or antisocial acts, including drug and/or alcohol use/abuse, and it is often not until after a service member returns home that the worst symptoms arise or the service member becomes aware that they are experiencing symptoms of PTSD. This is a problem because other than honorable conditions are often determined before the proper conclusion can be drawn. For the Army,

[one of the most important lessons [the branch has] learned is that many health and disciplinary issues, ranging from post-traumatic stress (PTS) to illicit drug use to suicide, are interrelated. To view soldier misconduct in isolation, for example, fails to capture the real likelihood that the misconduct was related to an untreated physical or behavioral health condition, such as increased aggression associated with PTSD or depression. Therefore, the solution to this problem cannot take a one-size-fits-all approach and must take the unique circumstances of service members into account.

A “transitional discharge status” added to the regulations would create an alternative classification to be used until the DoD/VA can make a correct discharge determination. Therefore, instead of the DoD/VA being so quick to put a negative label on a service member, the transitional discharge status would allow decision makers to properly assess the cause of the service members’ other than honorable actions, make an appropriate discharge determination, and prevent the individuals making sacrifices for this country from being unjustly disqualified for the benefits they so deserve.

The regulations must include relevant criteria to identify the service members that may be suffering from PTSD. To keep this regulation accurate and relevant, the diagnostic criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, currently in its fifth edition (“DSM-5”), must be referenced to help identify those service members

260. See supra text accompanying notes 109-11.
261. See supra text accompanying notes 84-86.
who may be suffering from PTSD. As per the DSM-5, if the following symptoms are exhibited at the time of discharge, a service member shall be placed in this transitional discharge status:

Unwanted upsetting memories; Nightmares; Flashbacks; Emotional distress after exposure to traumatic reminders; Physical reactivity after exposure to traumatic reminders; Trauma-related thoughts or feelings; Trauma-related reminders; Inability to recall key features of the trauma; Overly negative thoughts and assumptions about oneself or the world; Exaggerated blame of self or others for causing the trauma; Negative affect; Decreased interest in activities; Feeling isolated; Difficulty experiencing positive affect; Irritability or aggression; Risky or destructive behavior; Hypervigilance; Heightened startle reaction; Difficulty concentrating; Difficulty sleeping.\(^{264}\)

It is important to note that, based on the fact that symptoms are unique to each individual\(^{265}\) and develop over time,\(^{266}\) this DSM-5 criteria should be used as a guide to recognize symptoms, instead of as a strict means of diagnosing PTSD.\(^{267}\)

In addition to the symptomatic criteria, the regulations must specify the time frame in which an ultimate discharge determination will be made and the follow-up that is required during that period. It is the recommendation of this note that an individual exhibiting symptoms of PTSD may remain in the transitional discharge status for up to two years.\(^{268}\) As symptoms of PTSD can persist for months and years, do not always appear within months, and do not become apparent to many until


\(^{265}\) See Stephan, supra note 99, at 1208.

\(^{266}\) See id.; McGrane, supra note 172, at 191.

\(^{267}\) See supra Section V.A.2.

\(^{268}\) It has already been established that when separating someone who had been deployed in the past twenty-four months, PTSD had to be ruled out. This provides further support for the two-year transitional period set forth in this note. Implementation of the Requirement to Provide a Medical Examination Before Separating Members Diagnosed with Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) and the Capacity of the Department of Defense to Provide Care to PTSD Cases: Hearing Before the Military Pers. Subcomm. of the Comm. on Armed Servs., 111th Cong. 7 (2010) (statement of William J. Carr, Deputy Under Secretary of Defense for Military Personnel Policy, Office of the Under Secretary of Defense for Personnel and Readiness), https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg58290/html/CHRG-111hhrg58290.htm.
they make the transition to civilian life, ample time must be given to accurately assess separated service members.269

This will put the burden on the DoD to keep tabs on those individuals who may carry the “invisible wounds of war,”270 as opposed to burdening the service member who was wrongfully discharged and has to worry about appealing the discharge determination.271 By deferring the classification of an other than honorable discharge until the proper determination can be made, the system will be proactive instead of reactive, and will prevent veterans from being forced to participate in the lengthy discharge upgrade process.272

To qualify for this “transitional status,” service members must meet certain criteria indicating that they may be suffering from PTSD. Therefore, it is also imperative that these service members be eligible for at least some veterans’ benefits during the transitional period. To address any underlying mental health conditions, there is no question that health care benefits are necessary for this subset of individuals.273 Having appropriate health/mental health care is an important step to helping service members with PTSD to successfully transition back to civilian life.274

This note further argues that the various employment benefits/programs should also be made available to the service members who qualify for the transitional discharge status. When an individual chooses to enter the military, it may be said that, in some ways, they sacrifice their own future. They sacrifice starting their career or pursuing education to protect their country and to allow other civilians to pursue these benefits. After making this sacrifice, the transition to civilian life is difficult for many, especially for those individuals suffering from

269. Ranna Parekh, What is Post Traumatic Stress Disorder, AM. PSYCH. ASSOC., https://psychiatry.org/patients-families/ptsd/what-is-ptsd (last updated Jan. 2017); see supra Section II.B.

270. Press Release, Mike Coffman, supra note 143.

271. Press Release, Mike Coffman, supra note 143; see also supra Section IV.B.

272. See supra Section IV.B.

273. PTSD: NATIONAL CENTER FOR PTSD, What Can I Do If I Think I Have PTSD?, U.S. DEP’T OF VETERANS AFFAIRS (Jan. 31, 2017), http://www.ptsd.va.gov/public/treatment/therapy-med/what-if-think-have-ptsd.asp. President Trump’s January 2018 Executive Order may solve this portion of the problem, however, the specifics with regard to the implementation of the one-year mental health care have not yet been developed. See Cronk, supra note 177. Additionally, as this is an Executive Order, this program can be undone at any time. Id. Therefore, it will be necessary for a statute or regulation to be implemented to ensure that veteran’s with a transitional discharge have access to mental health benefits.

274. Id.
PTSD. Many of these veterans returning to civilian life from active duty have an extraordinarily high rate of unemployment, and being unemployed may lead to additional stressors that could negatively impact the former service member’s ability to secure a job. Assisting service members in this transitional category with finding a job may help alleviate these additional stressors and prevent further problems from developing, helping individuals to have a smoother transition back to civilian life. Therefore, an individual who made such sacrifices for this country and completed some of their tour should be entitled to some benefits, especially if the early discharge may be a result of an injury inflicted during their service. By denying a veteran with service-related PTSD VA benefits, we are not “car[ing] for him who . . . ha[s] borne the battle . . . ” Instead, “we’re sending a bad message to a lot of veterans . . . by not giving them the credit they deserve. They’re not receiving benefits they’re rightfully owed.”

B. Changes to VA Policies and Procedures

1. Character of Service Determination

The VA’s benefit determination policies create another barrier to service members “receiving the benefits they’re rightfully owed.” The discretion that is given to the VA, when a veteran is other than honorably discharged from the military, to determine whether or not the veteran will qualify for veterans’ benefits results in the exclusion of most veterans from receiving any benefits. However, as previously discussed, because of this discretion afforded to the VA, an other than honorable

275. See supra Section II.B.

276. See USC CTR. FOR INNOVATION & RESEARCH ON VETERANS & MILITARY FAMILIES, supra note 13 at 1, 3, 9 (explaining that “employment is a necessary component of wellness”); supra Section II.B.

277. See USC CTR. FOR INNOVATION & RESEARCH ON VETERANS & MILITARY FAMILIES, supra note 13, at 4 (explaining that failure to “achieve life goals related to the transition to civilian life,” including maintaining a job, can negatively impact a veteran having a health transition to civilian life).


279. Stephan, supra note 99, at 1201; Cassidy, supra note 25 at 838.

280. Bergman, supra note 278.

281. Id.

282. See supra Section II.A.
discharge status does not immediately bar a veteran from receiving benefits. In actuality, the discretion afforded to the VA in the United States Code allows reviewers to decide that even though a service member received an other than honorable discharge, they are still entitled to some VA benefits. Specifically, the U.S.C. gives the VA the power to not only decide if the service members character of service was "dishonorable" but also to create the definition of "dishonorable conditions." The VA regulations establish that the circumstances warranting a determination of "under dishonorable conditions" currently include, among others,

[w]illful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful, and meritorious.

Based on this regulation, the VA's distinction between "willful and persistent misconduct" and "honest, faithful and meritorious" conduct may be the deciding factor as to whether or not a service member suffering from PTSD who received an other than honorable discharge from their branch will be eligible for any benefits. But "willful and persistent misconduct" sounds a lot like the symptoms many service members with PTSD face.

As far back as 1980, the Comptroller General recognized that many of the service members that receive other than honorable discharges are young, usually less than twenty years old, and are often a result of "transitory behavioral patterns" and "[s]eldom... based on serious criminal wrongdoing." Arguably, it is very likely that this continues to be true today, being that almost half of active duty military members are

283. See supra Section II.A.
284. See supra Section II.A.
285. See supra text accompanying notes 73-77.
287. See id.
288. See Izzo, supra note 35, at 1588, 1594-95, 1597 (providing an example of a veteran who suffered from PTSD and was discharged from service due to misconduct after missing for several days and being charged with dereliction of duty).
289. U.S. GOV'T ACCOUNTABILITY OFF., FPICD-80-13, supra note 244, at iii.
ages twenty-five and younger. Studies suggest that veterans with combat exposure are more at risk for developing PTSD. Veterans who were assigned to ground units of the Army or Marines were 3.7 times more likely to be diagnosed with PTSD than those who served in the Navy or Air Force, and VA records suggest that younger veterans on active duty were at a higher risk of developing PTSD than their counterparts aged forty and older. Moreover, it appears that age plays a factor in the prevalence of binge drinking, with higher rates among the younger populations. Therefore, it logically follows that behaviors associated with PTSD can be interpreted as “willful and persistent misconduct,” creating yet another barrier to accessing veterans’ benefits.

Based on what we now know about PTSD, how it manifests, and the extent that it is impacting today’s service members, these regulations must be changed. Similar to a transitional discharge status, the “character of discharge” regulations should include criteria for individuals who may be suffering from PTSD. These service members should be given more deference when a character of service determination is being made. As with the “Uniform [DoD] Discharge System,” discussed above, the DSM diagnostic criteria for PTSD shall be used as a guide in affording this deference in the “character of discharge” determination. Instead of quickly characterizing such behaviors as “willful and persistent misconduct,” the new policy will raise a red flag during the VA’s “character of service” determination, and instead of cutting off someone exhibiting such behaviors, more deference and opportunity will be given in these cases. Being that the current statute does not bar individuals with an other than honorable military discharge from receiving some benefits, once the VA’s “character of service” criteria are modified, this solution is in line with current statutes.

2. Service Gap Between Discharge and Reintegration

The VA “may be missing opportunities to enhance assistance to veterans by not providing needed services early in the veteran’s

290. See Cassidy, supra note 25, at 849.
291. See U.S. GOV’T ACCOUNTABILITY OFF. GAO-14-676, supra note 44, at 15.
292. Id.
293. Id.
294. See supra notes 281-93 and accompanying text.
295. See supra Section V.A.
296. See supra Section V.A.2.
297. See supra text accompanying notes 74-78.
readjustment process."\(^{298}\) The administration is burdened and, as a result, the benefit determination process is often lengthy and ambiguous.\(^ {299}\) Although, the VA utilizes various avenues to reach out to veterans regarding the services available to them,\(^ {300}\) it is ultimately up to the service members and veterans to register for VA benefits.\(^ {301}\) Once a veteran decides to register for VA benefits, an eligibility review takes on average 1,200 days, or over three years, to complete.\(^ {302}\) During the eligibility process, there are no temporary health care, disability, or other benefits available to the discharged service member.\(^ {303}\) This delay is unacceptable for all veterans being discharged from the military and transitioning back to civilian life. In so many aspects of our society individuals are afforded with various transitional services in a variety of circumstances, whether it be from a hospital to a rehabilitation facility, a jail to community services, or even to assist the elderly in securing Medicare benefits. However, of all these different services available to individuals, there is no one more deserving than a veteran who just finished sacrificing his own freedom and safety for the rest of the country.\(^ {304}\) Therefore, it is this note’s proposal that, upon discharge from the military, there should be no “eligibility period” for such basic benefits.

Instead of the transitioning service member registering with the VA for benefits, this note suggests that it is the obligation of the DoD to transmit discharge information directly to the VA. In turn, the VA will automatically enroll veterans into a “basic benefits package”\(^ {305}\) based on their discharge status. The process will be identical for those veterans who fall into the “transitional discharge category;” except, the “benefits package” may be less inclusive as long as the basic needs discussed above are met.\(^ {306}\) This new system will ensure that no one is left behind, while

\(^{298}\) U.S. GOV’T ACCOUNTABILITY OFF. GAO-14-676, supra note 44.

\(^{299}\) See id. at 8; VETERANS LEGAL CLINIC, LEGAL SERVS. CTR. OF HARVARD LAW SCH., supra note 232, at 10, 29.

\(^{300}\) U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-676, supra note 44 at 18.

\(^{301}\) Id.

\(^{302}\) VETERANS LEGAL CLINIC, LEGAL SERVS. CTR. OF HARVARD LAW SCH., supra note 232, at 10.

\(^{303}\) Id.

\(^{304}\) See Stephan, supra note 99, at 1201 (citing former President Obama discussing that because our veterans are always there for us, we must also be there for our veterans).

\(^{305}\) This note is only focusing on the basic access to benefits. For individuals seeking additional benefits, a separate registration process, like the one that is currently in place today can still be utilized once the basic benefits are afforded.

\(^{306}\) See supra Section V.A.2.

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also reserving the right to separate a service member under other than honorable conditions whose actions were not a result of symptoms of PTSD.

VI. CONCLUSION

For many, entering the military is an opportunity—an opportunity to service their great country, an opportunity to be part of a better cause, an opportunity to gain skills, and an opportunity to return to civilian life as a gainfully employed member of society. The sad reality, however, is that many of these patriotic individuals leave the military with less opportunities due to the impacts of the war, the development of PTSD, and an other than honorable discharge status. Even if it may have been less understood, PTSD relating to war is not a new phenomenon, and has been recognized as far back as the Civil War. Today, PTSD amongst our veterans is well understood, but still so many of our brave men and women are falling through the cracks. As a result of minor misconduct, they are discharged with the stigma of an other than honorable discharge, cannot obtain health benefits to treat their PTSD, and are therefore unable to heal and become a self-sufficient employed member of our country’s workforce. This note demonstrates the importance of employment, as evidenced by the protections and services for veterans to ensure that they can successfully reintegrate into society. However, due to the stigma associated with PTSD and a service member’s inability to treat or even acknowledge their symptoms, these employment protections and services are not reaching this population. Instead, service members with PTSD who were other than honorably discharged continue to struggle with unemployment, substance abuse, and incarceration. As such, this country must take a more centralized, proactive approach to ensure that our military members are taken care of, just as they have taken care of each and every citizen of the United States.

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