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Discharge Upgrades Bring Much-Needed Closure to Nation's Veterans

Proskauer Pro Bono Blog on **November 9, 2022**

When a veteran is discharged from the armed forces, they begin the transition to civilian life. However, the type of discharge received can have far-reaching consequences for veterans as the stigma of an "Other Than Honorable" discharge follows veterans throughout their lives and limits the federal benefits they can receive. Proskauer is actively involved in helping veterans upgrade their discharge status, when they have been unfairly denied benefits due to an improper classification.

Recently, Proskauer succeeded in upgrading the status of a Marine who received a Discharge Under Other Than Honorable Conditions after testing positive for marijuana use in 2010. He had been deployed to Afghanistan and, while in combat, witnessed a close friend killed by an improvised explosive device. The Marine would later be diagnosed with post-traumatic stress disorder. Fearing the social and professional repercussions of seeking professional help for his trauma, he self-medicated his PTSD with marijuana and was involuntarily discharged as a result.

Shortly after the Marine's discharge, however, the Department of Defense issued a pair of memoranda instructing the armed forces to provide more careful consideration to the effects of PTSD in deciding the appropriate discharge status. They were told to consider both the tendency of trauma survivors to self-medicate symptoms and changing societal norms, including changed views regarding the seriousness of marijuana use in light of state legalization.

Proskauer attorneys Colleen Hart and Shawn Ledingham, along with Proskauer's LA office manager Aurel Van Iderstine, applied for a discharge upgrade on behalf of the Marine. After several years of back and forth with the Department of the Navy, the team succeeded in upgrading his discharge status under the new Defense guidelines. This year, the Marine was finally given an Honorable Discharge.

While most discharge upgrades are processed through administrative channels within the military, sometimes court intervention is necessary. Proskauer recently represented another veteran, whose administrative application for a discharge upgrade had previously been denied. She was a Navy Sailor in the 1980s and 1990s until she was raped by a higher-ranking service member in the parking lot of the naval base where she was serving. The culture in the Navy at that time discouraged victims of rape and sexual assault from reporting attacks. So instead of seeking professional help for the resulting mental and physical trauma, the Sailor self-medicated. She failed a drug test and was discharged with an Other Than Honorable designation.

Proskauer attorneys Kyle Casazza, Jennifer Roche, Shawn Ledingham, and Seth Victor brought a lawsuit against the Navy, seeking reconsideration of the Sailor's prior discharge upgrade under the appropriate guidelines applicable to victims of military sexual trauma. Shortly after the complaint was filed in federal court in Los Angeles, the Navy agreed to reconsider its classification of the Sailor's discharge. The Navy then upgraded her discharge status to General Discharge Under Honorable Conditions.

These victories for veterans demonstrate the need for reassessing prior discharge decisions—some made decades ago—as we better understand the trauma of violence and sexual assault. For those injured in the performance of their duties, the impact of those injuries must be considered in characterizing their service.

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- **Shawn S. Ledingham, Jr.**
  Partner