

United States Senate

WASHINGTON, DC 20510

July 8, 2016

The Honorable Robert A. McDonald
Secretary of Veterans Affairs
810 Vermont Avenue, Northwest
Washington, D.C. 20240

Dear Secretary McDonald,

We write today to express our concern with the Department of Veterans Affairs' (VA) overly broad interpretation and utilization of "willful and persistent misconduct" to bar veterans with other-than-honorable (OTH) discharges from health care and benefits eligibility whose behavior is actually the result of post-traumatic stress, traumatic brain injury, or mental health issues. We urge you to swiftly clarify and update these regulations to ensure veterans have appropriate access to care and that you take into account the conditions veterans face upon returning home. We also ask that you address the current significant delays in making these determinations.

The negative impacts that come from an OTH discharge when used to deny benefits are substantial. In a March 2016 report, Swords to Plowshares and the National Veterans Legal Services Program estimated that over 125,000 post-9/11 veterans have received OTH discharges, many of them due to psychological difficulties. An OTH discharge jeopardizes and delays access to VA medical care, preventing vulnerable veterans with mental health needs from accessing the care they need. As you are aware, former Secretary of Defense Chuck Hagel issued guidance to the military services to ensure consideration of post-traumatic stress disorder in their review of OTH discharge upgrades.

We urge you to take similar steps and other appropriate action to ensure veterans can access the care and services they need, including by clarifying the criteria for "willful and persistent misconduct" in section 3.12 of title 38, Code of Federal Regulations, and updating relevant Department procedures and guidance to employees.

We appreciate the multiple efforts underway to better serve veterans and your attention to this concern.

Sincerely,



RICHARD BLUMENTHAL
United States Senator



JON TESTER
United States Senator

THOM TILLIS
United States Senator

PATTY MURRAY
United States Senator



GARY PETERS
United States Senator

CORY A BOOKER
United States Senator

AL FRANKEN
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MICHAEL F. BENNET
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AMY KLOBUCHAR
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