

SETTLEMENT AGREEMENT

On April 21, 2010, Plaintiff filed an action, *Shepherd v. McHugh*, No. 3:11CV641 (D. Conn.), against Secretary of Army John McHugh in his official capacity, seeking to challenge a decision by the Army Board for Correction of Military Records (ABCMR or Board) denying Plaintiff's application to upgrade his characterization of service at discharge in light of Plaintiff's recent diagnosis revealing that he suffered from Post-Traumatic Stress Disorder (PTSD) at the time of his discharge. The Court remanded the matter on joint motion of the parties, and after the ABCMR adhered to its prior decision following remand, on October 19, 2012, Plaintiff filed an amended complaint. In that pleading, Plaintiff Shepherd replied his original Administrative Procedure Act challenge to the Army Board's administrative decision, but additionally claimed that the Board's decision was constitutionally flawed, and also added claims against the Army on behalf of a proposed class. Defendant denies Plaintiff's allegations and maintains that all of the actions taken by the Board with respect to Plaintiff comply fully with the Administrative Procedure Act, 5 U.S.C. § 706, and the Fifth Amendment, and all other applicable laws, regulations, and requirements, and further denies that Plaintiff is entitled to any relief. Plaintiff and Defendant ("the Parties") now mutually desire to resolve all of Plaintiff's claims that have been or could have been brought against Defendant in *Shepherd* without the need for further litigation except as expressly provided herein, and without any admission of liability by any party in accordance with the following terms and conditions:

1. Plaintiff, Mr. John W. Shepherd, Jr., enlisted in the United States Army on July 5, 1968. Following training as an Infantryman at Fort Gordon, Georgia, he deployed to Vietnam in January of 1969.
2. Plaintiff was awarded the Bronze Star with a "V" Device for distinguishing himself by heroic service in connection with military operations against an armed enemy. The Bronze Star with a "V" Device is the nation's fourth highest award for valor. His earning of this award reflects a significant degree of valorous service to the United States in armed combat.
3. In Vietnam, Plaintiff was also awarded the Combat Infantryman Badge for satisfactorily performing infantry duties as part of an infantry unit engaged in active ground combat.
4. Plaintiff is also a recipient of the National Defense Service Medal, the Vietnam Service Medal, The Republic of Vietnam Campaign Ribbon, and the Expert Rifle Badge.
5. On August 4, 1969, Plaintiff was separated from the military following his service in Vietnam.
6. Within 3 days of execution of this Settlement Agreement, Plaintiff's counsel will tender to counsel for the United States a signed copy of the attached stipulation of dismissal as to all claims against all parties, with prejudice and without costs, in *Shepherd v. McHugh*, No. 3:11CV641 (D. Conn.). Counsel for the United States will hold in escrow the stipulation of dismissal until Plaintiff's counsel notifies counsel for the United States of receipt of the amended DD Form 214 and redacted copy, described in paragraph 8.
8. At that time, counsel for the United States shall file with the District Court the attached stipulation of dismissal in *Shepherd v. McHugh*.

7. VVA is not a party to this action and nothing set forth herein limits claims which VVA may seek to raise in any future case, other than the claims which Plaintiff Shepherd discharges in this Settlement Agreement, as set forth in paragraphs 10 and 11 below.

8. After executing this Settlement Agreement, Defendant shall take all steps necessary to execute the following actions:

(i) Amend Plaintiff's military records by issuance of a new DD Form 214 and void all prior DD Form 214s and DD Form 215s, so that Plaintiff's records reflect an upgraded discharge status, with a characterization of Under Honorable Conditions (General), effective the date of his separation, August 4, 1969.

(ii) Plaintiff's records may be adjusted in any way necessary to effectuate an upgrade of his discharge to Under Honorable Conditions (General) and to yield a complete military record, but the newly issued DD214 will expressly reflect the following quoted entries:

18 Remarks: "DD Form 214 administratively reissued on [insert date] to change character of service from 'Under Other Than Honorable Conditions' to 'Under Honorable Conditions (General).'" Other language necessary to yield a complete military record may be inserted in this block, but the quoted language must be included.

23 Type of Separation: "Discharge";

24 Characterization of Service: "Under Honorable Conditions (General)";

25: Separation Authority: "AR 635-212";

26: Separation Code: "SPN 386";

29 Dates of time lost during this period: "Days lost under 10 USC 972: 23 days; 21 SEP 68 to 13 OCT 68.";

(iii) While Plaintiff's official records will be adjusted to reflect the amendments noted above, the Defendant will provide Plaintiff one copy of the DD214 with all of the information completed, and one copy with the specific authority and narrative reason for separation, reenlistment eligibility code, and separation program number (SPN) deleted from the form.

9. Defendant shall pay to Plaintiff \$25,000 in attorney fees and costs. Together with the agreement identified in paragraph 8, this payment shall be in full and final settlement and satisfaction of all claims for damages or other monetary relief, equitable and injunctive relief, attorney's fees, expenses, costs, and interest and is the only relief that will be provided to Plaintiff by Defendant under this Settlement Agreement. At Plaintiff's direction, Plaintiff's counsel will provide Defendant's counsel with all information necessary to effectuate any payment to be made under this Agreement.

10. Plaintiff, for himself and his administrators, heirs, representatives, successors, or assigns, and Plaintiff's counsel hereby waive, release, and forever discharge Defendant, the United States Department of Army, and all of their agencies, components, offices, or establishments, and any officers, employees, agents, or successors of any such department, agencies, components, offices, or establishments, either in their official or individual capacities, from any and all claims, demands, and causes of action of every kind, nature, or description, whether known or unknown, which have been or could have been asserted in *Shepherd v. McHugh* or any other administrative or judicial proceeding against Defendant arising out of or in connection with any event occurring prior to the

date of this Settlement Agreement including, without limitation, events relating to Plaintiff's claims in *Shepherd v. McHugh*.

11. In connection with the release, waiver, and relinquishment described in paragraph 10 above, Plaintiff acknowledges that he is aware that he may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which he now knows, with respect to the matters released herein. Nevertheless, it is the intent of Plaintiff, through paragraph 11, and with the advice of counsel, to settle and release all such matters.

12. By entering into this Settlement Agreement, Defendant does not admit to liability. In settling, Plaintiff does not concede that the United States, its attorneys, agents, servants, assigns, or employees are not liable under the claims brought by Plaintiff in this Lawsuit. None of the terms in the Settlement Agreement may be offered or received in evidence or in any way referred to in a civil, criminal, or administrative action or proceeding other than pending or future proceedings (a) that may be necessary to consummate or enforce this Settlement Agreement or (b) related to any application for benefits made by Plaintiff to the Department of Veterans Affairs.

13. Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiff. The Parties agree that nothing in this Settlement Agreement waives or modifies federal, state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Settlement Agreement or the settlement proceeds, and that Plaintiff is executing this Settlement Agreement without reliance on any representation by Defendant as to the application of any such law.

14. This Settlement Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the Parties, nor shall any provision hereof be waived other than by a written waiver, signed by the Parties.

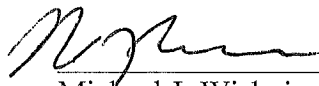
15. This Settlement Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

16. Plaintiff acknowledges that he has discussed this Settlement Agreement with his counsel, who has explained this document to him, and that he understands and fully agrees to all of the terms and conditions of this Settlement Agreement. Plaintiff further acknowledges that he has read this Settlement Agreement, understands the contents thereof, and executes this Settlement Agreement of his own free act and deed. The undersigned represent that they are fully authorized to enter into this Settlement Agreement.

17. The Parties affirm that the only consideration for signing this Settlement Agreement are the representations and promises contained herein and that no other representation, promise, or agreement of any kind has been made to or with the undersigned by any person or entity whatsoever to cause the undersigned to sign this Settlement Agreement. This Settlement Agreement contains the entire agreement between Plaintiff and Defendant with respect to the subject matter and supersedes any prior agreements or understandings between them concerning the subject matter hereof and the terms of this Settlement Agreement are contractual in nature and not mere recitals. It is agreed and understood that this Settlement Agreement shall become effective as of the date upon which it is executed by all the undersigned Parties.

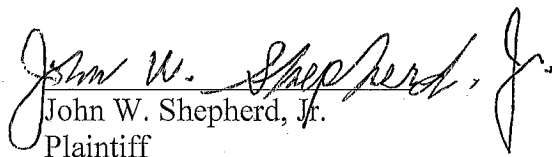
18. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument, and photographic copies of such signed counterparts may be used in lieu of the original.

Dated: October, 3, 2013



Michael J. Wishnie,
Supervising Attorney, ct27221
Fiona Doherty,
Supervising Attorney, ct28623
Abigail Graber, Law Student Intern
Jessica Martinez, Law Student Intern
Jennifer McTiernan, Law Student Intern
Jerome N. Frank Legal Services Organization
Veterans Legal Services Clinic
P.O. Box 209090
New Haven, CT 06520-9090
Telephone: (203) 432-4800
Facsimile: (203) 432-1426
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
Tel: (203) 432-4800
Facsimile: (203) 432-1426
Email: fiona.doherty@yale.edu

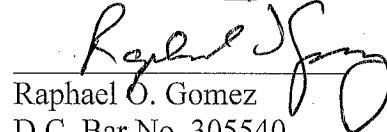
Counsel for Plaintiff



John W. Shepherd, Jr.
Plaintiff

Executed this 3 day of Oct, 2013

Dated: October 4, 2013



Raphael O. Gomez
D.C. Bar No. 305540
Senior Trial Counsel
U.S. Department of Justice
Civil Division/Federal Programs
P.O. Box 883
Washington, D.C. 20044
(202) 514-1318
(202) 616-8460 (Fax)
raphael.gomez@usdoj.gov

Attorney for Defendant,
John McHugh
Secretary of the Army

Of Counsel
MAJ DAVID M. O'DEA
Military Personnel Litigation Branch
United States Army
Litigation Division
9275 Gunston Road, 3rd Floor
Fort Belvoir, VA 22060-5546