



**TRIAL DEFENSE SERVICE
FORT KNOX FIELD OFFICE
FORT KNOX, KENTUCKY 40121**

**WHAT YOU SHOULD KNOW ABOUT CHAPTER 10, AR 635-200
REQUEST FOR DISCHARGE IN LIEU OF TRIAL BY COURT-MARTIAL**

1. WHAT IS THE BASIS FOR A CHAPTER 10? Court-martial charges have been preferred against you and the charges preferred authorize the imposition of a bad-conduct or dishonorable discharge by a court-martial.

Action will be taken to separate a Soldier when:

a. Charges have either been preferred, or referred, to a court-martial. Preferral occurs when the prosecutor drafts the charges and your commander actually signs and reads you the charges. Referral takes place after preferral. Referral occurs when a commander with authority signs documents authorizing a particular court-martial to hear your case.

b. You, the Soldier, voluntarily submit a request to the General Court-Martial Convening Authority (GCMCA) through your chain of command requesting discharge instead of court-martial, and the GCMCA grants your request.

2. **You should always remember that the purpose of the Chapter 10 is to avoid going to court-martial. A court-martial conviction is a federal conviction and will become part of your civilian record. If you obtain a Chapter 10 discharge you will be out of the Army but you will not have to start civilian life with a federal conviction. Whatever decision you make, you should do so only after consulting a Trial Defense Counsel or an attorney who has experience practicing military criminal law.**

3. PROCEDURE. As stated, charges are preferred or the charges are, after preferral, referred for disposition to a court-martial. You cannot submit a Chapter 10 request unless your case has been preferred with the idea that a BCD Special or General Court-Martial will be convened to hear your case. Likewise, if your case has already been referred, you can only submit the request if your case has been referred to a BCD Special or a General Court-Martial. A lesser court-martial (Special Court-Martial or Summary Court-Martial) does not have the authority to impose a punitive discharge. You then get a copy of the charges and a chance to discuss your options with an attorney. A Trial Defense Counsel or an attorney who is experienced in the practice of military criminal law is most qualified to give you advice regarding whether you should submit the request. If you submit the request, your attorney will forward it to the trial counsel (prosecutor). The request will then be forwarded to each commander in your chain of command, who will make a recommendation on whether the request should be approved and, if approved, what type of discharge should be issued. The GCMCA, normally the Commanding General, will approve or disapprove the request. If approved, the GCMCA will decide what discharge you receive. If disapproved, your case will proceed to court-martial.

4. WHAT ARE YOUR RIGHTS?

a. You have a right to consult with consulting counsel within a reasonable time (not less than 72 hours) to consider the wisdom of submitting the Chapter 10 request. Consulting counsel will advise you of the elements of the offenses, the burden of proof the Government must carry to prove your guilt at a court-martial, the possible defenses to the charges against you, the provisions of Chapter 10, AR 635-200, the requirement that you must **voluntarily** submit the request, the type of discharge that is normally given under Chapter 10, your right to withdraw the request, the possible loss of Veterans Administration benefits, the fact that you will receive a reenlistment code which will bar you from ever reentering any branch of the service (RE-4), and the prejudice that you may experience in civilian life as a result of separation under the provisions of Chapter 10.

b. You have a right to submit statements on your behalf.

c. You have a right to obtain copies of the court-martial packet.

d. You have a right to waive the above rights in writing.

e. **You must be informed that part of the process is signing a request admitting your guilt to all or some of the offenses. You must admit guilt to at least 1 offense that authorizes the imposition of a punitive discharge.** The Chapter 10 cannot be approved without this admission.

Chapter 10

5. **TYPES OF DISCHARGE:** Members separated under this program will **most likely** be given an **OTHER THAN HONORABLE DISCHARGE** (paragraph 10-8, AR 635-200). It is virtually impossible to receive an Honorable Discharge. In rare instances, it **might be** possible to receive a General Discharge under Honorable Conditions or Uncharacterized Discharge.

a. **HONORABLE:** This is a separation with honor. An honorable discharge will be given for proper military behavior and proficient performance of duty. If the member has served faithfully and performed to the best of their ability, and there is no derogatory information in the military record, an honorable discharge should be directed. If there are infractions of discipline, the seriousness and frequency will be evaluated. When there is a doubt, it should be resolved in favor of an honorable discharge. It is the pattern of behavior, not the isolated incident, which is important.

b. **UNCHARACTERIZED:** Entry-level status Soldiers only may receive an uncharacterized discharge. For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

c. **GENERAL:** This is a separation under honorable conditions. A general discharge is given to a Soldier whose record and performance is satisfactory. This is usually given to a Soldier who had frequent nonjudicial punishments but not for serious infractions. When this type of discharge is given, the commander must state the specific basis for it.

d. **OTHER THAN HONORABLE:** **This is the discharge that you will receive, barring an unusual situation with your case.** This separation is under other than honorable conditions. It may be issued for misconduct that includes acts constituting a significant departure from the conduct expected of members of the Army, including: (1) use of force or violence to produce serious bodily harm or death, (2) abuse of trust, (3) disregard for customary superior/subordinate relationships, (4) lengthy AWOL time, and (5) acts that endanger the security of the United States or welfare of other Army members. **A person receiving an other than honorable discharge will automatically be reduced to E1 and may lose the right to have goods shipped home. Additionally, you will also lose the right to cash in your leave days.** Before you leave the TDS office, pick up a Benefits-Discharges Sheet so you understand all the benefits that are in question.

6. **EFFECT OF DIFFERENT KINDS OF DISCHARGES:** There is little difference in eligibility for veteran's benefits and programs between general and honorable discharges. Educational benefits (i.e. Montgomery GI Bill), however, require an honorable discharge in addition to specific time in service requirements. With either discharge, other veteran's benefits depend on the length of service and other factors. **An other than honorable discharge will most definitely have some adverse impact once you become a civilian.** There may be some psychological prejudice in the civilian world against people with general discharges; no definite statement can be made about this factor.

7. **REENTRY CODE (RE):** Soldiers separated under the provisions of Chapter 10, AR 635-200, will receive a RE Code of 4, prohibiting them from reentering the service at a later date.

8. **UPGRADING THE DISCHARGE:** If you receive an other than honorable or general discharge, you are eligible to apply to have your discharge upgraded through the Army Discharge Review Board. The TDS office has information on the process for such an upgrade application.

9. **TIMING OF SEPARATION:** You will be separated as soon as possible. NOTE: Any misconduct committed after the discharge is approved, but before separation, can still be prosecuted.

10. **HOW TO FIGHT BACK IF YOU DIDN'T WANT THE DISCHARGE OR YOU WANT AN HONORABLE INSTEAD OF A GENERAL DISCHARGE.** The main way of opposing the discharge is with statements. You may also request a personal interview with the commander who is making the decision, but he/she does not have to grant you one. You can submit a statement that you write yourself, stating your side of the negative information that your commander has compiled, and respectfully stating why you want to stay in the Army or why you believe you should be given an honorable, uncharacterized or general discharge. You should include a positive statement about the Army.