



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

WHAT YOU SHOULD KNOW ABOUT CHAPTER 13, AR 635-200
Separation for Unsatisfactory Performance

1. WHAT IS THE BASIS FOR A CHAPTER 13? Unsatisfactory performance, when it is clearly established that:
- a. The soldier will not develop enough to participate in further training and become a satisfactory soldier; or
 - b. The circumstances are so serious that retention would have an adverse impact on good order and morale.
- AND it is ALSO clearly established that:
- a. The soldier will be a disruptive influence; and
 - b. The circumstances which are the basis of the chapter are likely to continue or recur;
 - c. It is unlikely that the soldier has either the ability to perform effectively in the future, or the potential for advancement or leadership.

2. WHAT MUST THE COMMAND DO BEFORE THEY CAN LEGALLY INITIATE A CHAPTER 13? The following must take place. Only the rehabilitative transfer requirement can be waived under special circumstances.

- a. The soldier must be formally counseled in writing (preferably on DA Form 4856-R) at least once prior to initiation of the chapter action, and this counseling must include:
 - 1) The reason for counseling;
 - 2) The fact that separation action may be initiated if the behavior continues;
 - 3) The type of discharge that could result from the possible separation action and the effect of each type.The soldier should be given a reasonable time to correct the deficiencies. (Para 1-18b, AR 635-200).
- b. The soldier must have been rehabilitatively transferred once, with at least two months of duty in each unit, between battalion-size or large units. The separation authority may waive this transfer requirement if further duty by the soldier would cause disciplinary problems, or if the member is resisting rehabilitative efforts.

3. PROCEDURE. The unit commander forwards the packet to the intermediate commander (usually battalion), who can either disapprove the unit command's discharge request and direct reassignment, or approve discharge if no board is involved. If a board will be convened, the intermediate commander will forward the packet with recommendations to the Brigade Commander, who convenes a board of officers to hear the case. The Brigade Commander reviews the board's findings and recommendations and then makes the final decision as to separation and type of discharge. Both of these convening authorities have the discretion to suspend the discharge for up to six months to give a soldier the

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chance to be rehabilitated. AR 635-5 governs accrued leave at time of discharge.

4. WHAT ARE YOUR RIGHTS?

- a. You have a right to consult with consulting counsel within a reasonable time (not less than 7 duty days), or civilian counsel at your own expense.
- b. You have a right to submit statements on your behalf.
- c. You have a right to obtain copies of the documents which your commander is using to support the separation recommendation.
- d. If you have six or more years in service you have a right to a board or a right to conditionally waive your right to a board.
- e. You have a right to waive the above rights in writing. Failure to respond in seven duty days (that means not signing the form) means you give up all your rights.

5. TYPES OF DISCHARGE: Members separated under this program will be given either an honorable or general discharge (paragraph 3-7, AR 635-200).

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, that is important.

b. 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.

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. 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. UPGRADING THE DISCHARGE: The discharge is NOT automatically upgraded. There are 2 possible ways to get the discharge upgraded when you leave the service:

- a. Apply to the Army Discharge Review Board (AR 15-180).
 - (1) The Army Discharge Review Board (ADRB) should be used to upgrade an administrative (chapter) discharge or a bad conduct discharge issued by a special court-martial.
 - (2) Application to the ADRB should be made within 15 years of discharge. All relevant paperwork should be kept for use in your application.

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Military records may be obtained from National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132, using SF 180, a form available at your VA Regional Office.

(3) The application for review of discharge, DD Form 293, may be obtained from your VA office, and should be mailed to Army Review Boards Agency (ARBA), ATTN: Client Information and Quality Assurance, Arlington, VA 22202-4508. Telephonic assistance is available at (703) 607-1600. Further information may be obtained from their web site: <http://arba.army.pentagon.mil/adrb.htm>.

(4) Assemble as many of the following as possible to include with your request:

Name, grade, organization and assignment at discharge; date and place of discharge; type and nature of discharge; basis of contentions; current address; mitigating factors; military and post-service records – complete; why discharge should be upgraded; proof of education; proof of family responsibility (birth certificates of children and marriage records); proof of good citizenship (no police records); proof of any rehabilitation (for example, drug programs); affidavits by clergy, community leaders, employers, and neighbors attesting to your good standing; any other thing which you can include which might cause the Board to agree with your request.

(5) Hints:

(a) Attempt to get statements from military personnel before you leave the service. This will allow later argument for a better discharge. Such statements are almost impossible to obtain after leaving the service.

(b) Success is enhanced by a personal appearance, which should be requested.

(c) It is advisable to be represented by counsel.

(d) Consult a publication by the Veteran's Education Project, Addlestone, entitled Military Discharge Upgrading, in preparing your application and case.

(6) Other agencies empowered to upgrade a discharge include The Judge Advocate General, the Secretary of the Army and the Army Clemency Board. You may seek an Exemplary Rehabilitation Certificate from the US Department of Labor, Manpower Administration, Washington, D.C. 20210, ATTN: METR, under certain circumstances.

(7) Use your VA office to assist in upgrading your discharge. VA benefits eligibility frequently change. Regardless of discharge type, maintain close contact with your nearest VA office for possible benefits.

b. Apply to the Army Board for the Correction of Military Records (AR 15-185). Applications to upgrade a discharge issued by a general court-martial should be made to the Army Board for the Correction of Military Records (ABCMR). The ABCMR can also consider any application for determining discharge "error or injustice". Filing must be within 3 years, although a waiver may be made, in the interests of justice. Further information is available in AR 15-185.

8. 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.

9. 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 discharge. You should include a positive statement about the Army.

Statements from supervisors and co-workers are also very important, if you are opposing the discharge, statements should address the negative items in your packet, and address the areas covered in paragraph 1, the basis for the action. The statements should specifically and directly comment on whether these factors are true of you. Hopefully, the supervisors will also recommend that you be retained on active duty or that you receive an honorable discharge if you are separated from the service. You should keep copies of all such letters you get, because you can use them in an attempt to have your discharge upgraded later, if necessary.

If you are seeking an honorable discharge, the statements should specifically and directly comment on the factors listed in paragraph 5 regarding "types of discharge." Also include copies of any good certificates, letters or awards. If your discharge is approved and you still wish to stay in the Army, you should write a letter to the Brigade or USAARMC Commander requesting the execution of the discharge be suspended for 6 months so that you can prove yourself.

If you have any questions on these matters, or need any assistance, please consult with a defense attorney.