



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

WHAT YOU SHOULD KNOW ABOUT CHAPTER 14, AR 635-200
Separation for Misconduct

1, WHAT IS THE BASIS FOR A CHAPTER 14? Minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, or conviction by civil authorities.

Action will be taken to separate a member when it is clearly established that:

- a. Despite attempts to rehabilitate or develop one as a satisfactory soldier, further efforts are unlikely to succeed, or;
- b. Rehabilitation is impracticable, or member is not amenable to rehabilitation (as indicated by personal history records).

2. WHAT MUST THE COMMAND DO BEFORE THEY CAN LEGALLY INITIATE A CHAPTER 14 FOR MINOR DISCIPLINARY INFRACTIONS OR A PATTERN OF MISCONDUCT? The following must take place, unless waived under special circumstances. These procedures are not required for a Chapter 14 based upon commission of a serious offense or conviction by civil authorities. In these two instances, neither counseling nor rehabilitative transfer are required.

- 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 duty in each unit, between battalion-size or larger units. The separation authority can waive this transfer requirement if further duty by the soldier would cause disciplinary problems, or if the soldier 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 forward the packet recommending approval. The Special Court-Martial Convening Authority can convene a board of officers to hear the case and make recommendations on retention and type of discharge ONLY if an honorable or general under honorable conditions discharge is to be considered. If the soldier is notified of the possibility of a discharge under

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other than honorable conditions, the General Court-Martial Convening Authority must appoint the board of officers to hear the board. If an "other than honorable" discharge is recommended by a board, then the final approval authority has the discretion to suspend the discharge for up to six months to give one the chance to be rehabilitated. AR 635-5 governs accrued leave at the time of discharge. Individuals with an "other than honorable" discharge lose their accrued leave.

4. WHAT ARE YOUR RIGHTS:

- a. You have a right to consult with counsel within a reasonable time (not less than seven 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 documents that your commander will forward in support of the separation recommendation.
- d. If you have six or more years in service, or if you are notified that an "other than honorable" is possible, 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) constitutes a waiver of the above rights.

5. TYPES OF DISCHARGE: Members separated under this program will be given either an honorable, general, or other than honorable discharge (paragraph 3-7, AR 635-200). An other than honorable discharge is normally appropriate for a soldier under this chapter, however, the separation authority may direct a general discharge. When the sole basis for separation is a serious offense which resulted in a conviction by court-martial that did not impose a punitive discharge, the soldier's service may not be characterized under other than honorable conditions unless approved by HQDA. When a soldier has completed entry level status, characterization of service as honorable is NOT authorized unless the soldier's record is otherwise so meritorious that any other type of discharge is inappropriate.

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. 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.

c. 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

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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. 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. 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.

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(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 OR GENERAL DISCHARGE INSTEAD OF AN OTHER THAN HONORABLE 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 a general 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 a general discharge if you are separated from the service. You should keep copies of all such letter you get, because you can use them in an attempt to have your discharge upgraded, if necessary.

If you are seeking a general discharge, the statements should specifically and

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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 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.