



TRIAL DEFENSE SERVICE

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

Note: This handout only provides basic information and is not intended to serve as a substitute for personal consultation with an attorney.

BASIS FOR THIS CHAPTER

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.

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 criminal law.

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 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.

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.

TYPE 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.

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.

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.

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.

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.

(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, Adlestone, 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.

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.

HOW TO REQUEST A MORE FAVORABLE CHARACTERIZATION OF DISCHARGE

The main way of requesting a more favorable characterization of discharge is with statements from you and your supervisors since the Chapter 10 request goes up for action in written format. Although you may request a personal interview with the commander who is making the decision, but he/she does not have to grant you one.