



## **TRIAL DEFENSE SERVICE**

FORT CARSON FIELD OFFICE  
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### **SEPARATION FOR MISCONDUCT, CHAPTER 14, AR 635-200**

**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**

a. This discharge may be given to a Soldier upon the following:

(1) The Soldier's conduct exhibits a pattern of minor military disciplinary infractions; or

(2) The Soldier's conduct exhibits a pattern of discreditable involvement with civilian authorities or a pattern of conduct prejudicial to good order and discipline (paragraph 14-12b); or

(3) The Soldier commits a single act of "serious misconduct" (paragraph 14-12c) "serious misconduct" is an offense which could be punished by a punitive discharge under the UCMJ.

#### **WHAT MUST THE COMMANDER DO BEFORE THEY CAN INITIATE A CHAPTER 14?**

a. Only for discharge under paragraphs 14-12a and 14-12b, the Soldier must be formally counseled in writing at least once prior to initiation of the chapter action. The counseling must include the fact that separation action may be initiated if the behavior continues, the type of discharge that could result from the possible separation action and the effect of each. The Soldier is given a reasonable time to correct his deficiencies (Para 1-18b, AR 635-200).

b. Again, only for discharge under paragraphs 14-12a and 14-12b, the Soldier must be transferred once with at least two months of 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 member is resisting rehabilitative efforts.

c. Discharge under paragraph 14-12c does not require the above rehabilitation and counseling.

d. The Soldier must be given a proper medical examination and mental status evaluation.

## **PROCEDURE**

The unit commander forwards the chapter packet containing all relevant matters, including any statements from you and documents you submitted, to the Battalion Commander, who makes his recommendation and forwards it to the Brigade Commander who makes the final decision as to whether you should be separated and the type of discharge you should receive. All records of this separation action, including the reason for separation, are confidential by operation of Federal Law. The only thing, which will be known by prospective employers, etc. is the type of discharge which you received (i.e., Honorable, etc.).

## **WHAT ARE YOUR RIGHTS?**

a. You have a right to consult with an attorney within a reasonable time (not less than three duty days) or civilian counsel at your own expenses (your command should make a TDS appointment for you).

b. You have the right to submit statements in your own behalf (these statements may be made by you or by others on your behalf).

c. You have the right to obtain copies of documents which your commander will forward in support of the separation recommendation.

d. You can waive the above rights in writing. Failure to respond (that means not signing the form) within seven duty days from the date you see an attorney means you give up all of your rights; and

e. You have the right to an administrative discharge board if you are considered for discharge with an Under Other Than Honorable Conditions (UOTH) characterization of service or if you have six (6) or more years of service of total active and reserve service on the date of initiation of recommendation for separation.

## **TYPE OF DISCHARGE**

Soldiers separated under this program will generally be given either a general under honorable conditions or an under other than honorable conditions discharge (Para. 3-7, AR 635-200). They may also, but rarely, receive an Honorable 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 Soldier has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should receive an honorable discharge. 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.

b. **GENERAL:** This is a discharge under honorable conditions, Soldier whose record and performance is satisfactory. This is usually given to someone who had non-judicial punishments (Article 15s), but not for serious infractions. When this type of discharge is given, the commander must state the specific basis for it.

c. **UNDER OTHER THAN HONORABLE CONDITIONS:** This is a discharge issue ordinarily for misconduct, fraudulent entry, security reasons, or for the good of the service. This discharge carries considerable stigma and deprives the Soldier of substantially all veteran's benefits accrued during the enlistment period.

### **EFFECT OF DIFFERENT KINDS OF DISCHARGES**

A General discharge and Under Other Than Honorable Conditions discharge, unlike an Honorable discharge, may create problems for the individual in finding a civilian job. A General discharge tells individuals that you had problems while you were in the military. You may discuss the possible effects of a General discharge or Under Other Than Honorable Conditions discharge with your attorney, as well as refer to the handout available at TDS.

### **UPGRADING THE DISCHARGE**

Your discharge will NOT be automatically upgraded after a period of time. There are two possible ways to get the discharge upgraded when you leave the service.

a. Army Discharge Review Board (AR 15-180).

b. Army Board for Correction of Military Records (AR 15-185): Considers applications to upgrade a discharge issued by a General Court-Martial or a discharge based on "error or injustice". Filing must be within 3 years, although a waiver may be made in the interests of justice.

c. You may obtain the necessary information at <http://arba.army.pentagon.mil>.

d. Prior to leaving the Army, you should try to obtain statements from military personnel regarding your good duty performance, initiative, attitude, and other appropriate statements.

e. Use your local VA office to assist in upgrading your discharge. Your local VA office can also inform you of your VA benefits eligibility.

### **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.

### **WAYS TO FIGHT THE DISCHARGE**

a. Statements: You write and submit a statement to the separation authority explaining why you should not be discharged or why you should receive an honorable discharge. You can also include statements from your supervisors and co-workers. You should also carefully read the elimination packet and respond to the negative items in the packet. Finally, keep copies of all of your statements.

b. Personal Appearance: You could request a personal interview with the separation authority. This authority does not have to grant you an interview.

### **ADDITIONAL INFORMATION/ANY QUESTIONS**

If you are notified for separation, you will visit our office for further advice. In the meantime, should you have any questions, please address that with a Trial Defense Attorney or one of the office's Paralegal Specialists.