



# Trial Defense Service

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## **Officer Eliminations: The Legal Process**

### I. References

- a. 10 U.S.C. § 1181
- b. Army Regulation 600-8-24, Chapter 4, Officer Transfers and Discharges
- c. Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers
- c. DA Circular 635-92-1, Separation Pay

### II. Overview

AR 600-8-24 provides substantially uniform elimination procedures for all officers on active duty, except those who are probationary officers not being recommended for an Other Than Honorable discharge. These procedures include show cause notification, referral to a board of inquiry convened by a major commander, review by a board of review at Department of the Army, and final action by the Secretary of the Army.

### III. Reasons for Elimination (AR 600-8-24, para. 4-2)

- a. Substandard performance of duty.
- b. Misconduct, moral or professional dereliction, or in the interest of national security.
- c. Derogatory information contained in the officer's records combined with other known deficiencies.

### IV. Authority to Initiate Elimination Proceedings (AR 600-8-24, para. 4-18)

- a. Commanding General, HRC

Any subordinate commander may recommend to the GOSCA the initiation of elimination proceedings for an officer in his/her command.

- c. The Deputy Chief of Staff for Personnel (DCSPER) when recommendations for elimination are made by HQDA promotions, school or command selection boards.
- d. The Secretary of the Army, the Chief of Staff, and such official in their offices as designated.

### V. Elimination of Probationary Officers

- a. Probationary officers are:

- (1) Regular Army commissioned officers with less than 5 years commissioned service;
- (2) Officers in the USAR who have less than 3 years commissioned service, and;
- (3) Warrant officers who have less than 3 years' service since original appointment in their present component.

- b. Procedures.

- (1) An officer recommended for elimination may:
  - (A) Tender a resignation in lieu of elimination.
  - (B) Request a discharge in lieu of elimination (RA officers only).
  - (C) Apply for retirement if eligible.

(2) A recommendation does not require referral to a Board of Inquiry unless the officer declines to elect one of the options above and an Other Than Honorable discharge is recommended.

(3) If officer declines to elect one of the options and an Honorable or General discharge is recommended, the officer may submitted a statement or rebuttal.

(4) Upon receipt of the statement or rebuttal, the initiating official may close the case or forward the case directly to Commander, PERSCOM, who may also close the case or forward to the Secretary of the Army for a final decision.

## VI. Elimination of Nonprobationary Officers

### a. Procedure

(1) The officer is notified by the initiating official of the recommendation for elimination and reason(s) for the action.

(2) The officer then may:

(A) Tender a resignation in lieu of elimination.

(B) Request a discharge in lieu of elimination (RA officers only).

(C) Apply for retirement if eligible.

(3) If the officer declines to elect the one of the options, he or she may submit a statement or rebuttal to the GOSCA.

(4) Upon receipt of the statement, the GOSCA may close a case that he or she initiated or refer the case to a Board of Inquiry.

### b. Board of Inquiry

(1) The board consist of at least 3 voting members, a recorder, legal advisor and respondent's counsel. All voting members will be RA officers (unless the respondent is a RC officer) and senior in rank to the respondent. When the respondent is a minority, female or special branch, and makes a written request, the board will include a minority, female and officer of the special branch. When substandard performance of duty is alleged, the board will include an officer of the same branch as the respondent.

(2) The provisions of AR 15-6 apply to board proceedings except as modified by AR 600-8-24.

(3) The board must make a separate finding on each factual allegation and reason for involuntary separation. The board may recommend retention (with or without reassignment) or involuntary separation. In the case where misconduct, moral or professional dereliction is alleged, the board will also recommend a characterization of discharge. If an officer is recommended for elimination solely because of substandard performance of duty he or she will receive an Honorable discharge.

c. The Board of Inquiry report and the respondent's rebuttal, if any, will be reviewed by and forwarded with recommendations by the GOSCA, MACOM commander and the CG, PERSCOM. Each may close the case if it was initiated at their level or lower.

### d. Board of Review

(1) If the CG, PERSCOM does not close the case and elimination is recommended, he or she will forward the case to the Board of Review.

(2) The Board of Review has the same composition as the Board of Inquiry.

(3) The board reviews the record of the case only.

(4) The board makes recommendations to the Secretary of the Army who makes a final decision.

(5) The board may make a recommendation of clemency, however only the Secretary of the Army may grant clemency.

## VII. Considerations

a. Recoupment. Officers who participate in certain advanced education programs and fail to complete their educational requirements or military service obligations are subject to the recoupment provisions of AR 37-104-4, chapter 3.

b. Separation Pay. Officers who are eliminated for failure to meet body weight/composition, alcohol or drug rehabilitation failure may be eligible for ½ separation pay. Officers eliminated for other allegations of substandard performance, misconduct, moral or professional dereliction are not eligible for separation pay.