



DEPARTMENT OF THE ARMY

United States Trial Defense Service
Fort Rucker Field Office
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Fort Rucker, AL 36362



ADMINISTRATION SEPARATION (CHAPTER) INFORMATION

Your commander has recommended that you be administratively separated from the service under the provisions of AR 635-200. This handout will answer some general questions about your administrative separation (also called a “chapter”). This fact sheet is not intended to constitute legal advice and is not a substitute for speaking with a defense attorney. For further information contact the Trial Defense Service at 334-255-3919

Your Rights:

- You have a right to consult with an attorney. You can consult with a Trial Defense Service attorney at no cost to you, or hire civilian counsel at your own expenses
- You have the right to submit statements in your own behalf.
- You have the right to obtain copies of documents which your commander will forward in support of the separation recommendation.
- 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;
- You have the right to an administrative discharge board if you are considered for discharge with an Under Other Than Honorable Conditions (OTH) characterization of service or if you have over 6 years of service in the military. If you are a soldier that has over 6 years in service you are entitled to have an administrative separation board hear your case regardless of the command recommendation as to characterization of service. (For example: the command is recommending an honorable discharge but you want to stay. If you have over 6 years you can request a board to hear your case and argue for retention). An attorney from TDS will be detailed to represent you at a board, you can hire a civilian attorney to represent you, or you can represent yourself.

Types of Discharge/Characterizations of Service:

- An **Honorable Discharge** is the best discharge you can receive from the service. 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
- A **General, Under Honorable Conditions Discharge** (also called a “General Discharge): This type of discharge 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. A general discharge indicates that you had problems while you were in the military and may cause prejudice in civilian life. However, because it is under honorable conditions and is still considered “good paper,” most employers probably will not press the issue.
- An **Under Other Than Honorable Conditions (OTH) Discharge** will deprive you of most of the benefits you would receive with an Honorable discharge and may cause you substantial prejudice in civilian life. Before you can be given an OTH, you have the right to have your case heard by an administrative separation board.

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The benefits available to you under the different types of discharges are listed on the chart attached to this handout. Note that with a General discharge, you keep *most* of the pay entitlements or VA benefits that you might have accrued thus far. For example, you can still cash in your accrued leave. However, you do lose any GI Bill contributions and any civil service retirement credit (that is, credit toward federal civil service retirement for your active duty military time) to which you would otherwise be entitled.

Ways to Fight the Discharge:

The Separation Authority, usually your Battalion or Brigade Commander, or the Commanding General (depending on the type of chapter and the proposed characterization of service) decides whether you should be separated and, if so, what type of discharge you will receive.

There are three ways you can have input into those decisions:

- a) If you have less than six years of total active and reserve military service, and you are not being considered for an OTH discharge, you are not eligible for an Administrative Separation Board, so the only way you can have some input into what sort of discharge you receive is to submit statements in your own behalf. These statements can be yours, or from people with whom or for whom you have worked. They should talk about your duty performance, potential for rehabilitation and retention, as well as any significant past contributions you have made. They can ask that you either be retained in the service or given an Honorable discharge. These statements should be submitted to your Commander, who will forward them to the Separation Authority to aid him in his decision.
- b) If you have six years or more years of active and reserve military service or you are being considered for an OTH discharge, you have the two additional options:

(1) You have the right to have your case heard before an Administrative Separation Board. This Board normally consists of three people; two officers and one senior enlisted soldier. The Board's job is to decide whether you should be separated and if so, with what kind of discharge/characterization of service. The Board then makes a recommendation to the Separation Authority. The Separation Authority makes the final decision, but cannot do anything less favorable to you than the Board recommended. At the Board you have certain rights. You have the right to be represented by a detailed military lawyer or another military lawyer you might request (if that lawyer is reasonably available), both at no cost to you. You could also hire a civilian lawyer, at no cost to the Government. If you are a minority member, you can request that a minority member be part of your Board. You can make a statement to the Board, or choose to remain silent.

(2) You also have the right to submit a Conditional Waiver. A Conditional Waiver is a document you send to the Separation Authority telling him that you will agree to give up your right to a Board hearing if he promises to give you a better type of discharge (usually a General discharge). If the Separation Authority agrees, you get that better type of discharge. If he turns down your proposal, you still have the right to a Board.

In any case, you also have the right to consult with a military lawyer to decide what your option is best for you. You have the right to obtain copies of all documents that will be forwarded to the Separation Authority.

If you are involuntarily discharged, you will not be eligible to reenlist in the United States Army for a period of two years; however, if discharged with an Honorable Discharge, the Separation Authority may direct that you serve the rest of your obligated time in a Reserve status. If discharged with a characterization less favorable than an Honorable, you may apply to the Army Discharge Review Board or the Army Board for Corrections of Military Records to upgrade your discharge. An upgrade is neither guaranteed nor automatic. Information on the procedures to try to upgrade your discharge is attached.

For further information contact the Trial Defense Service at 334-255-3919.

Benefits upon Separation

Often, the first question soldiers pending separation is “What benefits do I get?” This is not an easy issue, and subject to constant change. Benefits accorded administratively discharged soldiers vary based upon (1) the basis for discharge; (2) the character of service; and (3) the length of service. Prerequisites frequently change. Listed below are some benefits soldiers frequently ask us about, and the general rules that apply.

Separation Pay *See 1992 DoD Pay Manual, paragraph 40411-40416*

A soldier separated involuntarily with an honorable discharge, who has a minimum of six years service, may be eligible for full separation pay. Examples include soldiers discharged because of a Reduction in Force or failure to attain retention control points. The formula for computing separation pay is: 10% ((monthly base pay) (years of service) (12)). EX: E4 with 6 years of service = 10 % (1322.40) (6) (12) = \$9,521.28.

Half Separation Pay *See DoD Pay Manual paragraph 40411b*

A soldier separated involuntarily, with an honorable or general discharge, who has a minimum of six years of service, who is not qualified for retention and denied reenlistment may be eligible for half separation pay. Examples include soldiers denied reenlistment for local or DA Bar to reenlistment (i.e. QMP, RCP), separations for the convenience of the government such as personality disorders or parenthood (AR 635-290, Chapter 5), for drug or alcohol rehabilitation failure (Chapter 9), and weight control failure (Chapter 18). The formula for computing half separation pay is that provided for full separation pay, divided by 2. In the example above the E4 would be entitled to \$4,760.64.

Payment for Accrued Leave *See DoD Pay Manual, paragraph 40401*

Payment of up to 60 days accrued leave is authorized for soldiers separated with a fully honorable or general discharge. A soldier separated under other than honorable conditions is not paid for accrued leave, nor is accrued leave credited toward any outstanding debts owed the government.

Montgomery GI Bill Benefits

Generally, eligibility for education benefits requires minimum periods of service (20 months for a 24-month enlistment: 30 for a 36 month enlistment) and an honorable discharge. VA reserves the right to upgrade a discharge, so soldiers with less than fully honorable discharges should be referred to their local VA office.

Household Goods Shipment *See Joint Federal Travel Regulation U5317, U5370, Change 82, 10/1/93*

A member without dependents, separated incident to a court-martial, or administrative discharge under other than honorable conditions, is not authorized shipment of household goods at government expense. A member with dependents, separated incident to court-martial or with an under other than honorable conditions discharge is authorized shipment of household goods to a designated place, but is not authorized non-temporary storage. Separations with an honorable or general discharge are authorized both shipment and up to one year of non-temporary storage.

Benefits for Involuntary Separations

Members separated involuntarily, for other than court-martial or misconduct, or entitled to:

1. Continued DoD medical coverage for up to 120 days;
2. Continued use of Commissary, PX, and MWR privileges for up to 2 years;
3. Apply for extension to remain in government quarters for up to 180 days.

These benefits are not authorized for service members separating voluntarily, unless they receive SSI or SSB, ETS and Chapter 10 AR 635-200 (In Lieu of Court-Martial) are examples of voluntary separations.

Re-Enlistment Codes

On separation, a service member's DD 214 is annotated with a re-enlistment code. RE-1 indicates eligibility to re-enlist. RE-3 requires a waiver for re-enlistment; and RE-4 indicates the member is not eligible to re-enlist. A soldier separated as a result of a court-martial or separated under Chapter 10 receives an RE Code 4. This fact sheet is not intended to constitute legal advice and is not a substitute for speaking with a defense attorney.

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Army Discharge Review Board Information

This fact sheet contains answers to common questions concerning applying to have a discharge upgraded. This fact sheet is not intended as a substitute for speaking with a defense attorney. For further information contact the Fort Campbell Trial Defense Service at 334-255-3919

Who may apply?

Former members of the Regular Army, the Army Reserve, and the Army National Guard may submit an application (DD Form 293) to the Army Discharge Review Board (ADRB). If the former member is deceased or incompetent the surviving spouse, next of kin, or legal representative may apply (application must include supporting documentation, i.e. certified copy of marriage license, death certificate, or powers of attorney).

What do I do first?

If you need any of your personnel records for inclusion in your application, obtain them before you submit your request for review. After your application for discharge review is submitted your records are sent to the ADRB where they cannot be reproduced. To obtain copies of your military personnel records, submit a Standard Form 180 (Request Pertaining to Military Records) to:

National Personnel Records Center (NPRC)
9700 Page Boulevard
St. Louis, MO 62132-5200

How do I apply?

After you have all your documents ready, submit an original completed & signed Application for Review of Discharge or Dismissal (DD Form 293). Blank forms & instructions are available on the Army Review Boards Agency (ARBA) web site. <http://arba.army.pentagon.mil/>. Application forms can also be obtained by sending a request to:

Army Review Boards Agency (AREA)
ATTN: Client Information and Quality
Assurance Arlington, VA 22202-4508

Telephone assistance is available at 1-703-607-1600

How long do I have to apply?

Request for review must be made within 15 years of discharge/dismissal. We suggest that you wait at least a short time (6 months – 2 years) of discharge before applying to the ADRB in order to allow time for you to establish some references in the civilian community where you live.

What characterization of discharge can I request?

You can apply to have your discharge upgraded to honorable the first time you apply; regardless of the characterization of discharge you were awarded. However, we suggest you be realistic in your request. Soldiers discharged under Other Than Honorable conditions after 1 October 1982 while in entry-level status (less than 6 months service) may request upgrade to an uncharacterized discharge. To do this, write in block 3c "Change to Entry Level Separation."

What reasons justify an upgrade of my discharge?

There are two grounds for upgrading a discharge:

Propriety – requesting change in discharge due to an error in the application of a regulation, statute, constitutional provisions or other source of law.

Equity – requesting change in discharge due to (1) the policies and procedures under which you were discharged differing in material respects from those currently applicable on a service-wide basis, (2) the discharge being inconsistent with the standards of discipline in the military service of which you were a member at the time of issuance; (3) your exemplary service record and other evidence presented to the ADRB; or (4) your capability to serve (age, educational level and aptitude score, family and personal problems, capricious actions, or discrimination).

Can I appear personally before the review board?

Yes. There are three types of reviews; the first two involve personal appearance:

Resident Panel Hearing – a review involving an appearance before the ADRB in Arlington, VA. by you and/or representative. You must pay your own and your counsel's travel expenses.

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Traveling Panel Hearing – a review involving an appearance before the ADRB at the regional location you request by you and/or your counselor representative. The traveling panel holds reviews at each regional location approximately 1 time each year. You must pay your own and your counsel’s travel expenses.

Record – a review of the application, available service record, and documents submitted by you or on your behalf. There is no personal appearance by you and/or your counsel or representative.

Can I submit a brief or supporting cases, regulations, previous decisions, etc. with my application?

Yes although when a brief is submitted, we recommend that you list specific issues discussed in the brief separately at the beginning of your brief and that you separately identify each of these issues in the issues block of the DD Form 293. Also, for clarification purposes, we recommend that you cite on the DD Form 293 the page and paragraph of the brief where the issue is raised. Also, to save time in the review process, you should attach copies of cited cases, excerpts from regulations, and copies of previous decisions.

What if I want to apply for a change in my “Reasons for Discharge”?

You must specifically note that as a reason for your application in Block 3c of the application and provide documents to support your issue(s). If you fail to do this, the ADRB will assume you are applying for an upgrade of the characterization of your discharge only.

Can I apply to the ADRB for a change in my RE Code?

NO, RE code change questions should be directed to Commander, PERSCOM, ATTN: TAPC-EPR-P, Alexandria, VA 22331.

Can I apply to the ADRB for a discharge I received at court-martial?

Yes, that ADRB processes all applications for upgrades long as they are filed within 15 years from the date of discharge. Application for upgrade after 15 years from the date of discharge must be submitted to the Army Board for the Correction of Military Records (DD Form 149).

If my discharge is upgraded, will I receive my Montgomery GI Bill or get the money I paid into it back?

No not necessarily. The ADRB does not make decisions on policies and procedures related to the Montgomery GI Bill. Your local Department of Veterans Affairs can assist you with such matters.

How long does it take to process an application?

1. Personal appearance (Arlington, VA) – approximately two to three months
2. Personal appearance (regional location) – approximately twelve months
3. Records reviews – approximately six months

Can I ask for a reconsideration of my application?

Yes, you may apply for reconsideration as often as you wish. However, the primary reason for reconsideration is due to newly discovered evidence. When applying for this reason, you must show new, substantial and relevant evidence that was not available at the time of any previous review. A record of all ADRB reviews and findings are maintained. Therefore, if a comparison shows that the evidence you submit would have had a probable effect, the request for reconsideration should be granted. Other reasons for consideration include, but are not limited to, representation by a counselor representative on your behalf when your previous application did not involve such representation and retroactive changes in discharge policies that are announced after your earlier review. AR 15-180 outlines the complete eligibility criteria for reconsideration of a discharge review.