

**\*IF YOU HAVE SPECIAL VICTIM COUNSEL OR HAVE FILED AN UNRESTRICTED REPORT OF SEXUAL ASSAULT WITHIN THE LAST 24 MONTHS; PLEASE NOTIFY A TDS PARALEGAL\***



**U.S. ARMY TRIAL DEFENSE SERVICE  
FORT HUACHUCA FIELD OFFICE  
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).

If separated, you could receive one of three types of discharges (depending on your type of chapter): Honorable, General (Under Honorable Conditions) also called a General discharge, or a discharge Under Other Than Honorable Conditions, also called an "OTH." An Honorable discharge is the best discharge you can receive from the service. A General discharge is the second best discharge that the Army gives, but it is also "good paper". An 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. Generally, an OTH discharge is only possible under chapters 14 and 15 and before you can be given an OTH, you have the right to have your case heard by an administrative separation board.

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 occurred 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. The biggest problem with a General discharge is that it is the second best type of discharge and not the best. As such, a future employer may inquire as to why you got the second best, instead of the best. Because it is under honorable conditions and is still considered good paper, however, most employers probably will not press the issue.

The Separation Authority (your Battalion or Brigade Commander, or the Commanding General, depending on your type of chapter) decides whether or not you should be separated and, if so, what type of discharge you should get. There are three ways you can have input into those decisions:

a) If you have less than six years of active and reserve military service, and you are not being considered for an OTH discharge, the only way you can fight this action (or at least 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 that you work for or work with. They should talk about your duty performance, potential, and retainability, 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 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 (Board). This Board would normally consist 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. 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 would 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 could request that a minority member be part of your Board. You could make a statement to the Board, or chose 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 you option is best for you. You can always obtain copies of all documents that will be forwarded to the Separation Authority.

If you are 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 General Discharge (Under Honorable Conditions) once out of the service you may petition the Army Discharge Review Board and the Army Board for Corrections of Military Records to upgrade your discharge. An upgrade is neither guaranteed nor automatic. A memorandum on the procedures to try to upgrade your discharge is attached.

If you wish, you may now see an attorney who will answer questions that you may have about your rights. The attorney will also thoroughly review your discharge packet to ensure the Commander has satisfied all of the regulatory obligations. You and the Attorney will then fill out a form indicating what options you wish to exercise in this matter. Good Luck!!!

## **ADMINISTRATIVE EFFECTS AND ADMINISTRATIVE SEPARATION ISSUES**

**Shipment of household goods** – JFTR, U5317, U5370; A soldier without dependents, separated incident to administrative discharge with an under other than honorable conditions discharge, is not authorized shipment of household goods at government expense. A soldier with dependents, separated 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 non-temporary storage.

**Transportation of Family Members** – JFTR, U5240, U5370; transportation of dependents is authorized back to the home of record or some destination closer if cheaper for the government.

**Dependents Eligibility to Remain in Quarters** – AR 210-50, Section IV; if the soldier is incarcerated or separated from the service the dependents must vacate government quarters immediately. However, most housing directors allow dependents to remain 30 days in order to get their affairs in order.

## Receipt of Discharge Certificate

1. Chapters – receive discharge certificate upon clearing.
2. RE Codes
  - a. RE-1 – eligible to re-enlist
  - b. RE-3 – requires a waiver to re-enlist
  - c. RE-4 – ineligible to re-enlist

### **What About All the Leave Days I Have Been Saving – 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. Soldiers separated with an under other than honorable conditions discharge are not paid for accrued leave, nor is the accrued leave credited to any outstanding debts owed to the government.

## **APPLYING FOR AN UPGRADE OF YOUR DISCHARGE/DISMISSAL**

This fact sheet contains detailed answers to common questions concerning applying to have a discharge upgraded. Discharges are not automatically upgraded after six months. A request for discharge upgrade must be submitted.

**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. However, the application must include supporting documentation such as a certified copy of marriage license, death certificate, or power of attorney as appropriate.

**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)  
Military Personnel Records  
9700 Page Boulevard  
St. Louis, MO 63132-1547

**How do I apply?** After you have all your documents ready, submit an original, completed and signed Application for Review of Discharge or Dismissal (DD Form 293). Blank forms and instructions are available on the ADRB web site: <http://arba.army.pentagon.mil/adrb.htm>. Application forms can also be obtained by sending a request to:

Army Review Boards Agency (ARBA)  
ATTN: Client Information and Quality Assurance  
Arlington, VA 22202-4508  
Phone number: (703) 607-1600

**How long do I have to apply?** Requests for review to the ADRB must be made within 15 years of discharge/dismissal. However, if it has been more than 15 years since the date of your discharge/dismissal, you may apply to the Army Board for Correction of Military Records (ABCMR) using DD Form 149 (Application for Correction of Military Records). 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 and the burden of proof rests with the applicant.

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

b. 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 scores, 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.

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

b. Traveling Panel Hearing - a review involving an appearance before the ADRB at the regional location you request by you and/or your counsel or representative. The Board will travel to one of the regional locations when there are a sufficient number of cases to warrant the expense of travel. Normally, the Board will not appear at a regional location more than once a year. You must pay your own and your counsel's travel expenses.

c. 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, however, 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. 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 "Reason 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 requests, along with supporting documentation should be sent to:

Commander, PERSCOM  
ATTN: TAPC-EPR-P  
Alexandria, VA 22331

**Can I apply to the ADRB for a discharge I received at court-martial?** The ADRB can hear any discharge except a Bad Conduct Discharge (BCD) or a Dishonorable Discharge (DD) issued by a general court-martial. BCDs given as a result of a special court-martial may be upgraded only on the basis of clemency.

**If my discharge is upgraded, will I receive my Montgomery GI Bill or get the money I paid into it back?** 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?** You should receive a letter from the Board within one month that acknowledges receipt of your application. In this letter the Board may also request additional information, so read it carefully. You should then have a decision within the following timelines.

- a. Personal appearance (Arlington, VA) - within two to three months
- b. Personal appearance (regional location) - within twelve months
- c. Records reviews - within 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 reconsideration include, but are not limited to, representation by a counsel or 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.

**Sources of Information:**

AR 15-180                      DoD Directive 1332.28                      10 United States Code §1553

For further information contact the Fort Hood Trial Defense Service at (254) 287-4360.

**\*General Eligibility. The eligibility of benefits set forth are not the sole determining factors, but only list the various types of discharge. The states also provide various benefits that will be influenced by the type of discharge, but information on state benefits should be obtained from state agencies.**

**FOOTNOTES:**

“1” The veteran must have served “honestly and faithfully” for 20 years or been disabled and excludes convicted felons, deserters, mutineers, or habitual drunkards unless rehabilitated or soldier may become ineligible if that person following discharge is convicted of a felony, or is not free from drugs, alcohol, or psychiatric problems.

“2” Only if an immediate relative is buried in the cemetery.

“3” Only if no confinement is involved, or confinement is involved, parole or release is from a US military confinement facility or a confinement facility located outside the US.

“4” This discharge category includes the discharge of an officer under honorable conditions but under circumstances involving serious misconduct. See **AR 600-8-24**.

“5” An officer who resigns for the good of the service (usually to avoid court-martial charges) will be ineligible for benefits administered by the department of Veterans Affairs (DVA). 38 USC 3103.

“6” Including Commissioned and Warrant Officers who have been convicted and sentenced to dismissal as a result of General Court-Martial, see **AR 600-8-24, Chapter 5**.

“7” Additional references include Once a Veteran; Rights, Benefits and Obligations, DA Pam 360-526; and Federal benefits for Veterans and Dependents, (VA Fact sheet 1S-1).

“8” To be determined by the Secretary of the Army on a case-by-case basis.

“9” Only if the Bad Conduct Discharge was a result of conviction by General Court-Martial.

“10” Benefits from the Department of Veterans Affairs are not payable to (1) a person discharged as a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority, (2) by reason of a sentence of a General Court-Martial, (3) resignation by an officer for the good of the service, (4) as a deserter, and (5) as an alien during period of hostilities. 38 USC 3103. A discharge (1) by acceptance of an other than honorable discharge to avoid court-martial (2) for mutiny or spying, (3) for a felony offense involving moral turpitude, (4) for willful and persistent misconduct, or (for homosexual acts, involving aggravating circumstances or other factors will be considered to have been issued under dishonorable conditions and thereby bar veterans benefits. 38 CFR 3.12. A discharge under dishonorable conditions

from one period of service does not bar payment if there is another period of eligible service on which the claim may be predicated (Administrator's Decision, Veterans Admin. No. 655, 20 June 1945).

**VA Benefits Handbook – <http://www.va.gov/pubaff/fedben/00fedben.pdf>**

**“11”** Any person guilty of mutiny, spying or desertion, or who because of conscientious objections, refuses to perform service in the Armed Forces or refuses to wear the uniform shall forfeit all rights to National Service Life Insurance and Servicemember's Group Life Insurance. 38 USC 711, 773.

**“12”** Applies to Post-1957 service only. Post-1957 service qualifies for Social Security benefits regardless of type of discharge. Pre-1957 service under conditions other than dishonorable qualifies a service member for a military wage credit for Social Security purposes.

**“13”** Disabled and Vietnam-era veterans only. Post-Vietnam-era veterans are those who first entered on active duty as or first became members of the Armed Forces after May 7, 1975. To be eligible, they must have served for a period of more than 180 days active duty and have other than honorable discharge. The 180 day service requirement does not apply to (1) veterans separated from active duty because of a service connected disability, or (2) reserve and guard members who served on active duty (under 10 USC 672a, d, or g. 673, or 673b) during a period of war (such as the Persian Gulf War) or in a military operation for which a campaign or expeditionary medal is authorized.

**“14”** Transitional benefits and services are available only to soldiers separated involuntarily, under other than adverse conditions.