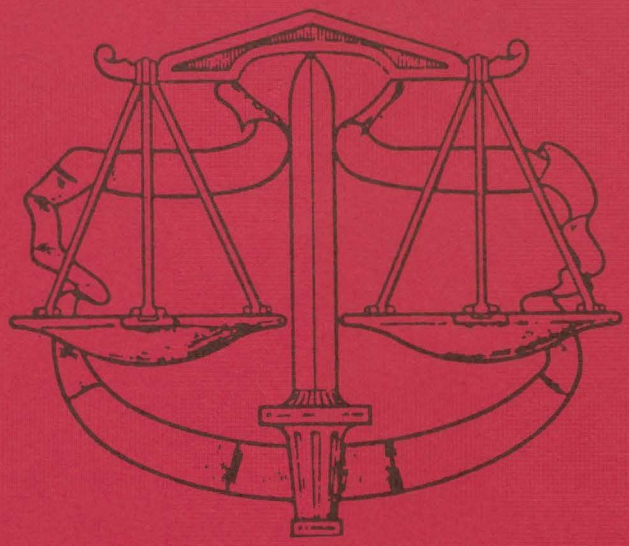
THE ADVOCATE

A Journal For Military Defense Counsel

Volume 15, Number 4 July - August 1983

PROPERTY OF U. S. ARMY
THE JUDGE ADVOCATE GENERAL'S SCHOOL
LIBRARY



Project: The Administrative Consequences of Courts-Martial: Part Two

THE JEPSEN AMENDMENTS

THE ADMINISTRATIVE CONSEQUENCES OF COURT-MARTIAL CONVICTION ON ELIGIBILITY FOR VETERAN'S BENEFITS

UPDATE: THE ADMINISTRATIVE CONSEQUENCES OF COURTS-MARTIAL: PART ONE, VOLUME 14, NUMBER 4

United States Army Defense Appellate Division

Volume 15, Number 4 July-August 1983

CHIEF, DEFENSE APPELLATE DIVISION

COLONEL WILLIAM G. ECKHARDT

EDITORIAL BOARD

Editor-in-Chief:	CPT Richard W. Vitaris
Managing Editor:	CPT Gunther O. Carrle
Articles Editor:	CPT Kenneth G. Gale
Side Bar Editors:	CPT Peter L. Yee
	CPT Frank J. DiGiammarino
Case Notes Editor:	CPT William T. Wilson
Special Projects Editor:	CPT Edmund S. Bloom, Jr.
USATDS Representative:	
Business Editor:	CPT Donna Chapin Maizel

ASSOCIATE EDITORS

CPT Michael D. Graham
CPT Joel R. Maillie
CPT Marcus C. McCarty

ADMINISTRATIVE ASSISTANTS

Ms. Maureen Fountain
Ms. Danita Urquhart
Mrs. Charlene Powers

THE ADVOCATE (USPS 435370) is published by-monthly by the Defense Appellate Division, U.S. Army Legal Services Agency, HQDA (JALS-DA), Nassif Building, Falls Church, Virginia 22041. Second class postage paid at Falls Church, Virginia 22041 and at additional mailing offices.
SUBSCRIPTIONS are available from the Superintendent of Documents, U.S. Government Printing Office, ATTN: Order Editing Section/SSOM, Washington, D.C. 20402. POSTMASTER/PRIVATE SUBSCRIBERS: Send address corrections to Superintendent of Documents, U.S. Government Printing Office, ATTN: Change of Address Unit/SSOM, Washington, D.C. 20402. The yearly subscriptions prices are $15.00 (domestic) and $18.75 (foreign). The single issue prices are $5.00 (domestic) and $6.25 (foreign).

Claims for nonreceipt of Advocate issues should be made as follows: Depository designees: Depository Copies (Receiving) U.S. Gov't Printing Office, Public Documents Warehouse, 5236 Eisenhower Ave., Alexandria, VA 22304; Private subscribers: U.S. Gov't Printing Office, Public Documents Warehouse, ATTN: Subscription Stock, 8610 Cherry Lane, Laurel, MD 20310; All others: THE ADVOCATE, USALSA/DAD, 5611 Columbia Pike, Falls Church, Virginia 22041

The Advocate is published under the provisions of AR 310-1 as an informational media for the defense members of the U.S. Army JAGC and the military legal community. Articles represent the opinions of the authors or the Editorial Board and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army.

Cite as: 15 The Advocate [page] (1983)

JALS-DA 15 September 1983

DISTRIBUTION

1. This special issue of The Advocate is the second part of our "desk book" on the administrative consequences of courts-martial. It includes new chapters on the Jepsen Amendments to the Uniform Code of Military Justice and the impact of courts-martial on veteran's benefits. We have also updated last summer's special issue where there have been changes in the law.

2. There is a natural tendency for defense attorneys to view the work of the military justice system as ending when the trial or appeal is complete. The impact of the court-martial on our soldier clients, however, continues long afterwards. Indeed, the consequences of a court-martial extend years beyond the sentence to confinement. This special issue should make all of us more aware of what happens to our clients "after the dust settles."

3. Misadvice or lack of knowledge concerning the collateral effects of courts-martial do not improvidence pleas. Nevertheless, to provide quality and competent advice to clients it is vital that attorneys understand the consequences of courts-martial and counsel their clients accordingly. Only in this way can we insure that the military accused always enters his pleas knowingly and intelligently.

4. The Jepsen Amendments to the UCMJ permit commanders to involuntarily place an accused on excess leave pending appellate review. This Required Appellate Leave [RAL] often works a personal hardship on our clients. There are steps which can be taken by us to ameliorate these hardships. This special issue of The Advocate teaches us how.

5. The Advocate wishes to thank the Veteran's Administration, the Department of Labor, the Veteran's Law Project, and the Governor's offices of the several states for their information and assistance. We also acknowledge the hard work of Mr. Stephen T. Redmon, a DAD summer intern, who is the principal author of this Project.

WILLIAM G. ECKHARDT
Colonel, JAGC
Chief, Defense Appellate Division

Project: The Administrative Consequences of Courts-Martial--Part Two

This special issue continues the Desk Book on the administrative consequences of courts-martial begun last year in Volume 14, Number 4 of The Advocate. This issue adds new chapters concerning The Jepsen Amendments and Veteran's Benefits. In addition, we have revised and updated last summer's project to reflect recent changes in the law.

Chapter 5 discusses the impact of The Jepsen Amendments on our soldier-clients and discusses ways in which the harsh consequences of the amendments may be ameliorated for some of our clients. The chapter will focus on the application of "Required Appellate Leave" (RAL) which has also been referred to as "mandatory excess leave." It is vital that defense counsel understand the operation of The Jepsen Amendments and advise their clients concerning it. Too often, clients learn of RAL only when they find themselves on the street and unemployed. While there is generally little that can be done to help soldiers on RAL, these clients should be forewarned. In appropriate cases, different action by counsel can preclude RAL or mitigate its harsh effects.

Chapter 6 is a guide to Veterans' Benefits which might be available to our clients after court-martial. Not all benefits are lost automatically. In particular, clients who received only a bad-conduct discharge adjudged by a special court-martial may be eligible for entitlements of which they are unaware.

The revisions to last summer's project make up the balance of this issue. We have reprinted the relevant pages of last summer's issue, Volume 14, Number 4, with the updated material inserted. We suggest that you remove the pages from last summer's issue and replace them with the updated version we have included.

The Advocate believes that this issue, when combined with last summer's project, will be of tremendous assistance to JAGC attorneys worldwide, and to all other attorneys who assist soldiers who have been tried by court-martial.

RICHARD W. VITARIS
Captain, JAGC

CHAPTER 5: THE JEPSEN AMENDMENTS

This chapter discusses the Military Justice Amendments of 1981, commonly referred to as the Jepsen Amendments and focuses on the effect they have had on military members who have been court-martialed.

PART I: THE EFFECT OF THE JEPSEN AMENDMENTS

The Jepsen Amendments[1] to the Uniform Code of Military Justice (UCMJ) were passed to eliminate the disciplinary and morale problems created by an accused who returned to his unit pending completion of appellate review of his court-martial conviction. In most cases, an accused will be released from confinement well before appellate review has concluded. Prior to the Jepsen Amendments, the servicemember would be returned to his unit or, at his option, be placed on voluntary excess leave pending completion of appellate review. The Jepsen Amendments provide the convening authority with the discretion to place the member on Required Appellate Leave [RAL].

Members on RAL receive pay and allowances only for the period for which they have accrued leave. Once the accrued leave has been exhausted, the member is placed on an excess leave status and receives no further pay or allowances. Nor does he accrue additional leave credit for the period of appellate leave. However, the individual continues to be a military member and is eligible for basic benefits, such as hospital care and privileges in military exchanges and commissaries.[2] According to the UCMJ and the Department of Defense Military Pay and Allowances Entitlements Manual (DOD PM)[3] members on RAL are not entitled to basic allowance for subsistence (BAS) or basic allowance for quarters (BAQ).

Despite the salutary purpose of the amendments, the RAL provisions of the Jepsen Amendments have caused numerous unforeseen hardships for affected servicemembers. The individual on RAL is not paid by the Army. However, as the member has not been separated from the service, his ability to secure meaningful employment is severely circumscribed as prospective employers are often unwilling to hire an individual whom they believe can still be called back to duty.

---

1. H. R. Rep. No. 97-306, 97th Cong., 1st Sess. 1 (1981).

2. Id. at 2.

3. Para. 30251c, Department of Defense Military Pay and Allowances Entitlements Manual (C65 2 December 1981).

The members' economic difficulties are heightened by an inability to collect unemployment compensation. As the member has not been separated, he is in essence still employed by the service and will not be issued a Certificate of Release or Discharge from Active Duty [DD Form 214]. Without this form, state unemployment agencies will not process an unemployment claim.[4] The certificate is needed by state officials to calculate the amount of entitlements. The form also contains vital eligibility information (e.g. length of service, pay grade, rank, condition of separation, narrative reason for separation, etc.).

The economic pressure stemming from the difficulty in securing employment or unemployment compensation often forces the servicemember on RAL to misrepresent his status. This adversely effects those ex-servicemembers with honorable discharges who are pursuing civilian employment.

Often, the spouse of the member on RAL is also a servicemember. The active duty spouse has been denied BAQ at the "with dependents rate" leaving the accused without living quarters or the financial means to obtain quarters. While the active duty servicemember would receive BAQ for his family if his spouse were not a servicemember, he is denied BAQ at the with dependents rate because the spouse is on RAL.

An additional problem created by the Jepsen Amendments has been the restriction of servicemembers on RAL from traveling outside the Continental United States (CONUS). Army regulations require that military members obtain permission to take leave outside of CONUS.[5] Servicemembers on RAL have routinely been denied permission. This denial poses a serious hardship for many soldiers on RAL. Many of these individuals have families outside CONUS who are often financially unable to travel to the United States. Denying these members permission to leave CONUS separates the family for extended periods of time.

The servicemember on RAL is thus often placed in an economic and personal straightjacket. The accused realizes that only a discharge will remedy his situation and that vigorous pursuit of his appellate rights

---

4. Chapter IV-3, U.S. Dept. of Labor Employment and Training Administration Handbook No. ETA 384. Unemployment Compensation for Ex-Servicepersons (UCX) (C1, 21 May 1981) [hereinafter DOL Handbook].

5. Army Reg. 630-5 Personnel Absences, Leaves, Passes, Permission Temporary Duty and Public Holidays (C.2 18 March 1977).

will lead to an indefinite period of hardship. Therefore, in many cases the accused will forego the opportunity to appeal his conviction to the Court of Military Appeals in an effort to hasten the appellate process and secure a discharge. The accused will also not lend any support to his automatic appeal to the Army Court of Military Review. Under United States v. Grostefon,[6] an accused can specify errors to be argued in his behalf. Accused members on RAL however, often decide to passively pursue their appeal in order to expedite the appellate process.

PART II: AMELIORATING THE HARSH CONSEQUENCES OF THE JEPSEN AMENDMENTS

Section A: Appeals to the Convening Authority

The Jepsen Amendments provide the convening authority with the discretionary power to place an accused servicemember on RAL pending completion of appellate review of his punitive discharge.

Defense counsel are advised to make timely appeals to convening authorities to prevent certain members from being placed on RAL. The legislative purpose of the RAL provision is to remove unfit members from their commands during appellate review. Current Army Regulations dictate that "[t]he officer exercising general court-martial jurisdiction should decide each situation on a case-by-case basis, taking into consideration, if reasonably available:

> (1) The member's service record;
> (2) The offense(s) of which convicted and sentence adjudged;
> (3) The convening authority's action on the case;
> (4) The recommendation of the staff judge advocate;
> (5) Whether the member has demonstrated that he can be productive or beneficial to the Army by continuing on active duty pending appellate review;
> (6) Any hardship or other adverse consequences which the member may experience if required to take excess leave involuntarily; and
> (7) Any other pertinent information the officer considers appropriate. Unless the officer exercising general court-martial jurisdiction over the member is personally convinced that it is in the best interest

6. 12 M.J. 436 (CMA 1982).

> of the Army and the member for the member to remain on active duty pending appellate review, the member may be directed to take excess leave involuntarily.[7]

It is not likely that members accused of drug offenses, barracks larceny, etc., will be allowed to remain in a duty status. On the other hand, charges such as negligent homicide may not have a sufficient nexus to the maintenance of good order and discipline. Accordingly, defense counsel could make effective appeals to the convening authorities to relax the RAL provision in particular cases.

The essence of an appeal to convening authorities to relax RAL should be similar to a petition for clemency. "A convening authority can consider evidence otherwise inadmissible at trial" to decide whether to place a servicemember on RAL.[8] The emphasis of the appeal should be placed on how the command would benefit from the servicemember not being placed on RAL or that the charges or conviction should not adversely effect the servicemember's ability to continue working in the command. It is highly recommended that defense counsel attempt to secure letters of recommendation from officers and senior noncommissioned officers on behalf of the servicemember. These letters of recommendation should increase the probability of a particular case being considered on an individual basis.

It is vital that defense counsel be aware of the major ramifications of RAL and effectively communicate this information to their clients. The projected length of a member's RAL status is a factor which he should consider before entering pleas. An individual contemplating a guilty plea might choose instead to contest guilt if he understands that a necessary consequence of conviction will be a year or more of unemployment while on RAL.

Section B. Employment

Defense counsel can provide invaluable assistance in the servicemember's effort to secure employment by providing the member as well as prospective employers with timely information on the member's RAL status. Many soldiers are unclear about their RAL status and do not effectively

---

7. Army Reg. 630-5, Leaves, Passes, Permissive Temporary Duty and Public Holidays, para. 5-4b (1-7) (C4 15 March 1982).

8. C. Pardue & E. Walinsky, A Compendium of Post-Trial Considerations for Defense Counsel, 14 The Advocate 160, 163 (1982).

or properly inform employers about the conditions of RAL. A clear and concise explanation of RAL by an applicant to prospective employers can greatly increase an applicant's chance of securing employment. Defense counsel can assist members on RAL by sending explanatory letters to potential employers. While a letter is not a panacea it can greatly improve a member's employment prospects. In an effort to secure employment members on RAL may fear that complete honesty as to their status may jeopardize their chances of obtaining employment. Defense counsel should encourage members to be honest about their military status since misrepresentations are often discovered and may result in dismissal.

Members on RAL are not eligible for Unemployment Compensation for Ex-servicepersons (UCX). State Employment Security Agencies (SESA) require that former members have a DD Form 214 before being considered for UCX. The United States Department of Labor has established guidelines for all SESA's which clearly state that members on RAL are not eligible for UCX.[9] Although the DD Form 214 is a prerequisite for UCX eligibility, all members, regardless of military status, are encouraged to apply for UCX. Retroactive UCX awards may be issued by SESAs when a member becomes eligible for UCX after the date of his initial application. DD Form 215 is used to add or change information on the DD Form 214. Usually it is the new information provided on the DD Form 215 which is used to reconsider applications for UCX. However, members on RAL who do not possess a DD Form 214 should apply for UCX because they may receive a DD Form 214 with more favorable data which has been altered by the appellate process.[10] Members who are initially ineligible for UCX should report regularly to the local SESA office in accordance with their guidelines. Although each state has its own eligibility guidelines, many states require applicants to report regularly despite current ineligiblity in the event that the member subsequently becomes eligible.

Section C: Restriction of Servicemembers on RAL to CONUS

Convening authorities have uniformly denied servicemembers on RAL the requisite permission to take leave outside of CONUS. The apparent reason for this refusal is to prevent recently convicted servicemembers from returning to the area where their crime was committed, resuming contacts with undesirable elements and in essence "picking up" where they left off. Such restrictions are appropriate for the member who has committed a drug related offense or a barracks larceny. However, an

9. DOL Handbook, *supra* note 4, at XIX-3.

10. *Id.*

across the board restriction generally does not serve a valid purpose. The vast majority of servicemembers affected by those restrictions merely want to return to their families. Denial of permission to return separates the member from his family for a prolonged period of time. The decision on whether to restrict a servicemember to CONUS should be made on a case-by-case basis. Blanket restrictions produce unnecessary and protracted personal hardship on the member.

PART III: CONCLUSION

The intent of the Jepsen Amendments was to give the convening authority the discretionary power to place the unrehabilitatable soldier on RAL. The Jepsen Amendments have succeeded in cleansing the commands of these problem soldiers. However, the amendment has been uniformly applied to all servicemembers awaiting completion of appellate review of their punitive discharges. Servicemembers have been placed on RAL even in cases where superior commissioned and noncommissioned officers have urged the convening authority to allow them to return to their units. The convening authority should recognize that the Jepsen Amendments do not mandate that all affected soldiers be placed on RAL. The decision to place a member on RAL or to restrict him or her from traveling outside CONUS should be made on an individual basis taking into consideration the personal circumstances of each case. Defense counsel should become familiar with the ramifications of RAL and, in appropriate cases, assist their clients in petitioning to remain in a duty status or to obtain permission to take RAL outside of CONUS.

CHAPTER SIX: ADMINISTRATIVE CONSEQUENCES OF A COURT-MARTIAL CONVICTION ON ELIGIBILITY FOR VETERANS' BENEFITS

This chapter will outline the guidelines used by the Veterans Administration (VA) to determine the benefit eligibility and entitlement of servicemembers who have been court-martialed.[1] The primary focus of VA eligibility determinations for court-martialed servicemembers is not the court-martial itself. The primary consideration is the type of discharge received by the servicemember. The VA's interpretation of these guidelines with regard to a particular application is final but appeal procedures exist. Relevant statutes and regulations will be examined to provide legal counsel, veterans, servicemembers, and researchers with a reference map to the VA.

This chapter does not reflect the official position of the Veterans Administration or the Department of the Army. This chapter is not intended to be used as cited authority on the interpretation of laws or regulations on veterans' benefits. Rather, it is designed as a desk book for attorneys who advise soldiers who have been court-martialed.

PART I: VETERAN DEFINED

For the purposes of Title 38 of the United States Code, dealing with veterans' benefits, "[t]he term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."[2] Additionally, in order to be eligible for most veterans' benefits the servicemember must satisfy the "minimum period of active duty" requirement.

The "minimum period of active duty" requirement for VA purposes is the shorter of the following periods: (1) twenty-four (24) months of continuous active duty (non-duty periods are not considered as a break in service for continuity purposes but are to be subtracted from the total time served) or (2) the full period of which a person was called or ordered to active duty.[3] Veterans who do not satisfy the "minimum

1. A partial list of veterans' benefits under Title 38 is included at Appendix 6-B

2. 38 U.S.C. § 101(2) (1976).

3. 38 CFR § 3.12a(a)(1) (1982).

period of active duty" are not eligible for VA benefits, unless the termination of the service resulted from an early out or hardship discharge,[4] the member has a service connected disabilities,[5] and or the member falls within certain other exclusions related to service connected disabilities.[6] VA Insurance benefits (under Chapter 19 of Title 38, United States Code) will vest for veterans without their having to meet the "minimum period of active duty" requirement.

A member who has not been discharged or released from the military is not a veteran for purposes of entitlement for most VA benefits. Ordinarily a certificate of Release or Discharge from Active Duty (DD Form 214)[7] is requested by the VA. However, proof of service from the service branch is acceptable. (See also DD Form 215, Correction to DD Form 214, Appendix 6-A). Members on Required Appellate Leave (RAL; or involuntary excess leave) are ineligible for VA benefits, regardless of prior military service, until completion of final appellate review. Members and former members may apply for benefits without a DD Form 214, but the lack of sufficient evidence of release or discharge renders the application incomplete and such evidence should be submitted within one year of the date of application. Provisions regarding benefits for dependants will not be addressed in this chapter. Entitlement of dependants only accrues when eligibility exists based on the veteran's service.

PART II: ELIGIBILITY REQUIREMENTS

A discharge from active duty issued "under conditions other than dishonorable" is a prerequisite to eligibility for VA benefits.[8] Honorable discharges, and general discharges under honorable conditions, entitle claimants to full VA rights and benefits.

Other types of discharges issued "under conditions other than dishonorable" entitle the veteran to benefits unless one of the following bars to benefits applies: (1) a discharge or dismissal by reason of the sentence of a general court-martial; (2) a discharge on the grounds that

4. Id. at § 3.12a(d)(1).

5. Id. at (d)(2)

6. Id. at (d)(3-4).

7. See Appendix 6-A.

8. 38 U.S.C. § 101(2) (1976).

the person was a conscientious objector who refused to perform military duties or refused to wear the uniform or otherwise refused to comply with lawful orders of competent military authorities; (3) desertion; (4) absence without official leave for a continuous period of at least one hundred and eighty (180) days if discharged under other than honorable conditions, unless it is satisfactorily demonstrated that compelling circumstances warranted the prolonged unauthorized absence; and (5) resignation of an officer for the good of the service.[9] A discharge or release from service under any of the above conditions does not bar VA benefits if it is found that the person was insane at the time of committing the offense causing such discharge or release.[10]

Prior to 8 October 1977, an action by the Army Discharge Review Board[11] or the Board for Correction of Military Records (BCMR),[12] which upgraded a discharge to the requisite levels, would set aside any statutory bar to benefits.[13] However, under current VA procedure, an honorable or general discharge issued after 8 October 1977 by a Discharge Review Board will not mandate that the ex-member be entitled to VA benefits.[14] Rather, the Adjudication Division of the VA will determine if the ex-servicemember is eligible for VA benefits. A favorable action by BCMR will, however, automatically overcome any statutory bars to VA benefits.

An other than honorable discharge or a bad-conduct discharge does not automatically deprive a claimant of all VA benefits.[15] A case by case determination must be made to see if the discharge was "under conditions other than dishonorable." The VA Adjudication Division determines the eligibility of claimants with "other than honorable" discharges by making formal findings. This procedure is known as a "character of discharge determination."[16]

---

9. Id. at § 3103(a).

10. Id. at § 3103(b).

11. 10 U.S.C. § 1553 (1976).

12. Id. at § 1552.

13. Id. at § 1553.

14. 38 CFR § 3.12(g) (1982).

15. See Appendix 6-B.

16. 38 CFR § 2.67 (1982).

PART III: CHARACTER OF DISCHARGE DETERMINATIONS

When a member's discharge is not honorable, or under honorable conditions, the VA must make an individualized review to determine ". . . whether an 'other than honorable' discharge was granted under conditions 'other than dishonorable' for purposes of eligibility for all VA benefits."[17] Character of discharge determinations are made for VA claims purposes when ". . . the matter is placed in issue by an application from the veteran or an eligible dependent for benefits for which an 'other than dishonorable' discharge is a prerequisite."[18] A character of discharge determination is not needed if a member had: a separate period of honorable service prior to the period of service at issue and he was eligible for or received an unconditional discharge. However, a character of discharge determination is needed if the later period of service is required for eligibility to the benefits claimed or if only the later period will provide the prerequisite wartime service required for disability or death pension and the discharge from such period was under other than honorable conditions.[19]

All character of discharge determinations are conducted in accordance with the VA due process provisions.[20] The following guidelines are used by the VA: (1) the veteran has thirty (30) days to respond or the VA will assume that the person has no additional information to submit; (2) the veteran must be informed of the right to a hearing; (3) if a hearing is conducted the veteran may present all forms of evidence (i.e. witnesses, documents, personal testimony, etc.); (4) the veteran must be advised of the right to representation; (5) the veteran must be advised of the right to appeal; and (6) the steps in the appeal process are provided[21] (Note: (5) and (6) are post determination considerations).

---

17. Veterans' Administration, VA Benefits Manual No. M21-1, Adjudication Procedures, para. 14.01c (Change 244, Sept. 11, 1979) [hereinafter cited as VA Manual].

18. Id. at para. 14.01c(2).

19. Id. at para. 14.01c(3).

20. Id. at para. 14.02.

21. D. Addlestone, S. Hewman, and F. Gross, The Rights of Veterans (1978).

If the discharge being reviewed resulted from any of the following then a complete summary of the discharge proceedings will be requested from the service department: (1) an offense involving moral turpitude; (2) conviction of a felony; (3) acceptance of an undesirable discharge to escape a general court-martial trial; (4) willful and persistent misconduct; (5) mutiny or spying; or (6) homosexual acts.[22]

At the character of discharge hearing, veterans' chances of prevailing are much better if they ". . . attend, give testimony and/or present other evidence (including some designed to arouse sympathy), and offer arguments - either personally or through a representative - demonstrating that under a strict construction of the regulations, . . ." they qualify for benefits.[23] If the disqualification under consideration has not been clearly identified the veteran (or representative) should request such an identification. It will be easier to refute a specific basis for denying eligibility because the term 'under conditions other than dishonorable' is too vague.[24]

It is recommended that veterans contact one of the VA Regional Offices listed in Appendix 6-C before initiating any hearings with the VA. These offices are vital sources of current VA information.

PART IV: UPGRADED DISCHARGES

Each branch of service has a Discharge Review Board (DRB) with the power to review and change the type and nature of discharges issued to servicemembers. Veterans with discharges which are less than honorable have a right to apply for a discharge upgrade.[25] Prior to 8 October 1977 upgraded discharges from a DRB which changed the character of discharge were binding on the VA.[26] Accordingly, a veteran who became eligible for VA benefits as a result of an upgraded discharge was entitled to receive those benefits. Public Law 95-126 which became effective on 8 October 1977 changed this rule. The purpose of Public Law 95-126 is

---

22. VA Manual at para. 14.01d(1)-(6).

23. See Addlestone at 122.

24. Id. at 122.

25. 10 U.S.C. 1 1553 (1982).

26. VA Manual at para. 14.01g(1).

> To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to person administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.[27]

". . . [T]he VA will not recognize an honorable or general discharge issued on or after the enactment of Public Law 95-126 effective October 8, 1977 by a [Discharge Review Board] as setting aside a [statutory] bar . .. Only favorable action by a [Board for the Correction of Military Records] will overcome this bar. If such an upgraded discharge is recieved, the claim will be examined for the existence of a statutory bar."[28]

PART V: CLEMENCY DISCHARGES

Veterans who were granted clemency discharges pursuant to the President's Proclamation 4313 of 16 September 1974 are not entitled to VA benefits.

> All copies of a DD Form 214 issued to military absentees granted clemency under Presidential Proclamation No. 4313 will show in the remarks section: 'Subject member has agreed to serve _____ months alternate service pursuant to Presidential Proclamation No. 4313.' In addition, the VA copy of the DD Form 214 . . . will give the reason for separation as 'Separation for the good of the service by reason of a willful and persistent unauthorized absence, pursuant to Presidential Proclamation No. 4313.' The service department will also issue a special type of discharge, a Clemency Discharge (DD Form 1953), which will be substituted for the previously awarded undesirable discharge.[29]

---

27. Act of Oct. 8, 1977, Pub. L. No. 95-126, 91 Stat. 1106 (1977).

28. VA Manual at § 14.01g(2).

29. Id. at 14.01(f).

The VA views clemency discharges in the same way they view upgraded discharges. The VA will conduct character of discharge determinations to see if veterans with clemency discharges are eligible for VA benefits. However, a Supreme Court decision, Schick v. Reed,[30] suggests that no government agency can continue to penalize [a veteran] for the pardoned offense if "the pardon was a 'full and complete' one."[31]

PART VI: CONCLUSION

The complexity of VA regulations and procedures indicates that servicemembers and veterans should seek assistance before filing their VA benefit claims if they have questions. This advice is even more important for members that have been court-martialed and have received discharges which might make them ineligible for some VA benefits. All persons concerned with VA benefits for court-martialed members should consult competent authorities (See Appendix 6-C).

30. 419 U.S. 256 (1974).

31. See Addlestone at 125.

APPENDIX 6-A

Certificates of Release or Discharge from Active Duty and Correction Form

(A)	Dept. of Defense Form 214, Copy No. 1	Certificate of Relief or Discharge From Active Duty
(B)	Dept. of Defense Form 214, Copy No. 4	Certificate of Relief or Discharge From Active Duty
(C)	Dept. of Defense Form 215	Correction to DD Form 214, Certificate of Release or Discharge From Active Duty

Facsimile of copy No. 1 of DD Form 214, Armed Forces of the United States Certificate of Release or Discharge From Active Duty

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD SAFEGUARD IT

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

DD FORM 1 JUL 79 214

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME *(Last, first, middle)*

2. DEPARTMENT, COMPONENT AND BRANCH

3. SOCIAL SECURITY NO.

4a. GRADE, RATE OR RANK

4b. PAY GRADE

5. DATE OF BIRTH

6. PLACE OF ENTRY INTO ACTIVE DUTY

7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND

8. STATION WHERE SEPARATED

9. COMMAND TO WHICH TRANSFERRED

10. SGLI COVERAGE AMOUNT $_____,000 ☐ NONE

11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY *(Additional specialty numbers and titles involving periods of one or more years)*

12. RECORD OF SERVICE	YEAR *(s)*	MON *(s)*	DAY *(s)*
a. Date Entered AD This Period			
b. Separation Date This Period			
c. Net Active Service This Period			
d. Total Prior Active Service			
e. Total Prior Inactive Service			
f. Foreign Service			
g. Sea Service			
h. Effective Date of Pay Grade			
i. Reserve Oblig Term Date			

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED *(All periods of service)*

14. MILITARY EDUCATION *(Course Title, number weeks, and month and year completed)*

15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM ☐ YES ☐ NO

16. HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ YES ☐ NO

17. DAYS ACCRUED LEAVE PAID

18. REMARKS

19. MAILING ADDRESS AFTER SEPARATION

20. MEMBER REQUESTS COPY 6 BE SENT TO _____ DIR. OF VET AFFAIRS ☐ YES ☐ NO

21. SIGNATURE OF MEMBER BEING SEPARATED

22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN

S/N 0102-LF-000-2140

MEMBER - 1

Facsimile of Copy No. 4 of DD Form 214, Armed Forces of the United States Certificate of Release or Discharge from Active Duty

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD SAFEGUARD IT

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

DD FORM 1 JUL 79 214 — PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE — **CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY**

1. NAME *(Last, first, middle)*		2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NO
4a. GRADE RATE OR RANK	4b. PAY GRADE	5. DATE OF BIRTH	6. PLACE OF ENTRY INTO ACTIVE DUTY
7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND		8. STATION WHERE SEPARATED	
9. COMMAND TO WHICH TRANSFERRED			10. SGLI COVERAGE AMOUNT $ _____ 000 ☐ NONE

11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY *(Additional specialty numbers and titles involving periods of one or more years)*

12. RECORD OF SERVICE	YEAR(S)	MON(S)	DAY(S)
a. Date Entered AD This Period			
b. Separation Date This Period			
c. Net Active Service This Period			
d. Total Prior Active Service			
e. Total Prior Inactive Service			
f. Foreign Service			
g. Sea Service			
h. Effective Date of Pay Grade			
i. Reserve Oblig Term Date			

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED *(All periods of service)*

14. MILITARY EDUCATION *(Course Title, number weeks, and month and year completed)*

15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS EDUCATIONAL ASSISTANCE PROGRAM ☐ YES ☐ NO	16. HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ YES ☐ NO	17. DAYS ACCRUED LEAVE PAID

18. REMARKS

19. MAILING ADDRESS AFTER SEPARATION	20. MEMBER REQUESTS COPY 6 BE SENT TO _____ DIR OF VET AFFAIRS ☐ YES ☐ NO
21. SIGNATURE OF MEMBER BEING SEPARATED	22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN

SPECIAL ADDITIONAL INFORMATION *(For use by authorized agencies only)*

23. TYPE OF SEPARATION	24. CHARACTER OF SERVICE *(Includes upgrades)*	
25. SEPARATION AUTHORITY	26. SEPARATION CODE	27. REENLISTMENT CODE
28. NARRATIVE REASON FOR SEPARATION		
29. DATES OF TIME LOST DURING THIS PERIOD		30. MEMBER REQUESTS COPY 4 _____ INITIALS

S/N 0102-LF-000-2140

MEMBER - 4

(b)

Facsimile of DD Form 215, Correction to DD Form 214, Certificate of Release or Discharge from Active Duty.

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

1. NAME *(Last, first, middle)*	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NO. *(Also, Service Number if applicable)*
4. MAILING ADDRESS *(Include ZIP Code)*		

5. ORIGINAL DD FORM 214 IS CORRECTED AS INDICATED BELOW

ITEM NO.	CORRECTED TO READ
	SEPARATION DATE ON DD FORM 214 BEING CORRECTED - _____

6. DATE	7. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN

DD FORM 1 JUL 79 **215**

S/N 0102-LF-000-2150

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

CORRECTION TO DD FORM 214, CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

MEMBER - 1

(c)

APPENDIX 6-B

Partial List of Gratuitious VA Benefits under Title 38 of United States Code (§ given for each item listed)

Part 1: General Benefits:

§ 301 - Compensation for Service - Connected Disability or Death.

§ 401 - Dependency and Indemnity Compensation for Service-Connected Deaths.

§ 501 - Pension for Non-Service Connected Disability or Death.

§ 601 - Hospital, Nursing Home, Domiciliary, and Medical Care.

§ 701 - Insurance.

§ 801 - Specially Adapted Housing for Disabled Veterans.

§ 901 - Burial Benefits.

§ 1000 - National Cemetaries and Memorials.

Part 2: Readjustment and Related Benefits:

§ 1501 - Vocational Rehabilitation.

§ 1601 - Post-Vietnam Era Veterans' Educational Assistance.

§ 1650 - Veterans Educational Assistance.

§ 1700 - Survivors' and Dependents' Educational Assistance.

§ 1770 - Administration of Educational Benefits.

§ 1801 - Home, Condominium, and Mobil Home Loans.

§ 1901 - Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces.

§ 2001 - Job Counseling, Training, and Placement Service for Veterans.

APPENDIX 6-C

Selected Veterans Assistance Centers Listed by State

All of the addresses listed below should begin with Veterans Administration and either Regional Office (RO) or United States Veterans Assistance Center (USVAC). All 50 states have toll-free telephone services to VA Regional Offices. Consult your white pages telephone directory under US. Government, Veterans Administration, for the benefits information number in your area. The directory assistance operator can also assist you.

Alabama
474 S. Court Street (RO)
Montgomery 36104

Alaska
235 E. 8th Avenue (RO)
Anchorage 99501

Arizona
3225 N. Central Avenue (RO)
Phoenix 85012

Arkansas
1200 W. 3rd Street (RO)
Little Rock 72201

California
322 West Compton Blvd. (USVAC)
Suite 104
Compton 90220

915 N. Bonnie Beach Pl. (USVAC)
East L.A. Service Center
East Los Angeles 90063

11000 Wilshire Blvd. (RO)
Federal Building
West Los Angeles 90024

211 Main Street (RO)
San Francisco 94105

Colorado
Denver Federal Center (RO)
Building 20
Denver 80225

Connecticut
450 Main Street (RO)
Hartford 06103

Delaware
1601 Kirkwood Hwy. (RO)
Wilmington 19805

District of Columbia
941 N. Capital Street, N.E. (RO)
Washington, D.C. 20421

Florida
144 1st Avenue, S (RO)
St. Petersburg 33731

Georgia
730 Peachtree Street, N.E. (RO)
Atlanta 30365

Guam
Pacific Daily News Bldg.
Room 405
238 O'Hara Street
Agana 96910

Hawaii
300 Ala Moana Blvd. (RO)
PJKK Federal Bldg.
Honolulu 96813

Idaho
550 W. Fort Street (RO)
Federal Bldg. and US Courthouse
Boise 83724

Illinois
536 S. Clark Street (RO)
Chicago 60680

Indiana
575 N. Pennsylvania Street (RO)
Indianapolis 46204

Iowa
210 Walnut Street (RO)
Des Moines 50309

Kansas
901 George Washington Blvd. (RO)
Wichita 67211

Kentucky
600 Federal Place (RO)
Louisville 40202

Louisiana
701 Loyola Avenue (RO)
New Orleans 70113

Maine
Rt. 17 East (RO)
Togus 04330

Maryland
31 Hopkins Plaza (RO)
Federal Building
Baltimore 24201

Massachusetts
John F. Kennedy
Federal Building (RO)
Government Center
Boston 02203

Michigan
477 Michigan Avenue
Patrick V. McNamara
Federal Building
Detroit 48226

Minnesota
St. Paul Federal Bldg. (RO)
St. Paul 55111

Mississippi
100 W. Capital Street (RO)
Jackson 39269

Missouri
1520 Market Street (RO)
Federal Bldg.
St. Louis 63103

Montana
Fort Harrison (RO) 59636

Nebraska
100 Centennial Mall North (RO)
Federal Building
Lincoln 68508

Nevada
245 East Liberty Street (RO)
Reno 89520

New Hampshire
275 Chestnut Street (RO)
Norris Cotton Federal Bldg.
Manchester 03101

New Jersey
20 Washington Place (RO)
Newark 07102

New Mexico
Dennis Chavez Federal Bldg. (RO)
U.S. Courthouse
500 Gold Avenue, S.W.
Albuquerque 87102

New York
111 W. Huron Street (RO)
Federal Building
Buffalo 14202

252 Seventh Aenue,
at 24th Street (RO)
New York City 10001

North Carolina
251 N. Main Street (RO)
Federal Building
Winston-Salem 27102

North Dakota
21st Avenue and Elm Street (RO)
Fargo 58102

Ohio
Anthony J. Celebrezze
Federal Bldg. (RO)
1240 E. 9th Street
Cleveland 44199

Oklahoma
Memorial Station,
Honor Heights Dr. (RO)
Muskogee 74401

Oregon
1220 S.W. 3rd Avenue (RO)
Federal Building
Portland 97204

Pennsylvania
5000 Wissahickon Avenue (RO)
P.O. Box 8079
Philadelphia 19101

1000 Liberty Avenue (RO)
Pittsburgh 15222

Phillippines
1131 Roxas Blvd. (Manila)
APO San Francisco (Air Mail)
Manila 96528

Puerto Rico
Carlos E. Chardon Street (RO)
U.S. Courthouse and Federal Bldg.
San Juan 00918

Rhode Island
321 S. Main Street (RO)
Providence 01903

South Carolina
1801 Assembly Street (RO)
Columbia 29201

South Dakota
300 North Dakota Avenue (RO)
Courthouse Plaza Bldg.
Sioux Falls 57101

Tennessee
110 9th Avenue, S. (RO)
Nashville 37203

Texas
2515 Murworth Drive (RO)
Houston 77054

1400 N. Valley Mills Drive (RO)
Waco 76799

Utah
125 S. State Street (RO)
Federal Bldg.
Salt Lake City 84138

Vermont
White River Junction (RO) 05001

Virginia
941 N. Capital Street, N.E. (RO)
Washington, D.C. 20421

210 Franklin Road, S.W. (RO)
Roanoke 24011

Washington
915 2nd Avenue (RO)
Federal Building
Seattle 98174

West Virginia
200 Veterans Avenue
Beckley 25801

Wisconsin
342 N. Water Street (RO)
Milwaukee 53202

Wyoming
2360 E. Pershing Blvd. (RO)
Cheyenne 82001

(Source: Federal Benefits for Veterans and Dependants, IS-1 Fact Sheet, January 1, 1983 pp 54-64; for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.)

UPDATE TO VOLUME 14, NUMBER 4 -- POST WHERE INDICATED

CHAPTER ONE: DISCHARGE UPGRADING

To upgrade an administrative discharge, or a bad-conduct discharge issued by a special court-martial, application should be made to the Army Discharge Review Board [ADRB]. Application for upgrading any discharge issued by a general court-martial [GCM], including any dismissal, should be made to the Army Board for the Correction of Military Records [ABCMR]. The ADRB and the ABCMR are also empowered to change the reasons for which the discharge was issued, to change the date on which a term of service expired, and to alter various other records. The Judge Advocate General, the Secretary of the Army, and the Army Clemency Board are also empowered to upgrade a discharge. See Chapter 2, infra.

PART I: THE ARMY DISCHARGE REVIEW BOARD.

The ADRB can upgrade an administrative discharge, or a bad-conduct discharge issued by a special court-martial. The Board has no jurisdiction over discharges or dismissals issued by a GCM.

The ADRB cannot revoke a discharge or dismissal, reinstate a person in the Army, or recall a person to active duty.[1] It also may not change reenlistment codes. This can only be done by the U.S. Army Enlistment Eligibility Activity or the ABCMR. The ADRB may not downgrade a discharge, nor change the reason for a discharge to "physical disability."[2]

Section A: When to Apply:

Application to ADRB must be made within fifteen (15) years after the date of discharge. After fifteen (15) years application must be made to ABCMR.

Section B: How to Apply:

First, request that the relevant[3] military records of the former service member be sent to the applicant from the National Personnel Records Center [NPRC]. An applicant will be better able to prepare a strong application if he has the records in his possession prior to filing with the Board. Standard Form [SF] 180 ("Request Pertaining to

1. Army Reg. 15-180, Boards, Commissions and Commitees, The Army Discharge Review Board, para. 3c (3 April 1978) [hereinafter cited as AR 15-180]. The ABCMR has some power in these areas, though it is rarely used.

2. This power is possessed by the ABCMR.

3. To determine what records will be "relevant," see text at notes 16 to 23 infra.

the applicant. A discharge must be equitable, so there is a duty to treat like cases alike. According to the ADRB's Standard Operating Procedures, "The Board must strive for uniformity in its adjudicative deliberations." While circumstances can vary, there are certain parameters which apply to all cases and by which these various cases can be evaluated. Thus, there does exist what might be called a "worldwide standard for the considerations of discharge review appeals."[11]

Section D: Research

The ADRB keeps its decisions on file at the Armed Forces Discharge Review/Correction Board Reading Room, Pentagon Concourse, Washington, D.C. 20310. There have been thousands of ADRB cases over the years. Cases which challenge both administrative and punitive discharges are on file in the reading room. The cases are indexed quarterly according to issue.[12] Research by using the indices can be time consuming. A more efficient alternative is to consult D. Addlestone, et al. Military Discharge Upgrading [hereinafter Addlestone] published by the Veteran's Education Project, on the particular issue for relevant case citations. See note 4 supra. That manual can also provide a useful method of gauging the chances of success with a particular issue or fact pattern. The indices may be similarly utilized. Copies of cases are free at the reading room. If the applicant or his counsel are outside the Washington D.C. area, copies of cases can be ordered by case number. There is a limit of 25 free copies per month per person.

Section E: Hearings

An applicant should request a personal hearing, as the chance for success is much higher with a personal appearance.[13] It is also advisable to have counsel.

There are three types of hearings conducted by the board: 1) by a panel of the ADRB in Washington, D.C.; 2) by a traveling panel; or 3) by

11. 44 Fed. Reg. 25,067, 25,068 (1979).

12. There are copies of the indices in each state. To find the location in a particular state, contact the American Red Cross or other Veteran's service organization.

13. See Addlestone, supra note 4 at § 9.2.7.5.1.

seriousness, and circumstances under which the offenses occurred before concluding that "stacking" exists, and must also determine whether the "stacking" had any effect on the discharge process.[22]

Section G: Aggravating Factors[23]

The applicant should bear in mind that some outside factors will make his case appear worse, and lessen his chances for success. Such factors include the service member's desire to terminate his term of service prematurely, other offenses on his record, the service member's failure to utilize the chain of command to solve his problems, the service member's failure to attempt to rehabilitate himself, and an above average capacity (maturity, higher education level, high aptitude test scores, and demonstrated ability to perform).

Section H: Reconsideration

The Army Discharge Review Board will reconsider a case only if:

(A) the only previous consideration of the case was on the ADRB's motion;

(B) there was no personal hearing initially, and one is now requested (unless this was due to a failure by the applicant to appear);

(C) there have been changes in Army disciplinary policy that have been made expressly retroactive;

(D) the discharge was under policies that are different than those used service-wide if the servicewide policies enhance the rights of the individual;

(E) the applicant now has counsel, but was not represented earlier;

(F) [deleted]; or

(G) substantial, new, and relevant evidence is available which was not previously available to the applicant.

---

22. ADRB Standard Operating Procedures, 44 Fed. Reg. at 25,072.

23. See Addlestone, supra note 4 at § 20.3 for a more detailed examination of mitigating and aggravating factors.

Section D: Research

The Board keeps its decisions on file at the Armed Forces Discharge Review/Correction Board Reading Room, Pentagon Concourse, Washington, D.C. 20310. There have been thousands of ABCMR cases over the years. Most of these are not on point, however, because they involve efforts to challenge administrative rather than punitive discharges. The cases are indexed quarterly according to issue.[37] Research by using the indices can be time consuming. A more efficient alternative is to consult Addlestone, et al. Military Discharge Upgrading [hereinafter Addlestone] published by the Veteran's Education Project, on the particular issue for relevant case citations. See note 4 supra. That manual can also provide a useful method of gauging the chances of success with a particular issue or fact pattern. The indices can also be utilized for the same purposes. Copies of cases are free for applicants and lawyers who are providing free services for applicants. Lawyers that are charging fees to clients will be charged a minimal fee for copies of cases. If the applicant or his counsel are outside the Washington D.C. area, copies of cases can be ordered by case number. Contact the reading room supervisor for fee information.

Section E: Composition of the Board

The Board consists of senior civilian officers or employees of the Department of the Army, as may be appointed by the Secretary of the Army. Approximately 30 eligible individuals are periodically designated to serve as Board members, and from this group, a panel of members are approved by the Secretary for an individual case. Since membership on the board is considered an "extra duty," each panel normally convenes for only one entire day per week. Three members present constitute a quorum of the Board, of whom one is designated as chairman by the Secretary.[38]

Section F: Hearings

Although a hearing is rarely authorized, it should normally be requested since a hearing greatly enhances an applicant's chances for success. When a hearing is authorized, the applicant may appear "before the Board either in person or by counsel of his own selection or in per-

---

37. There are copies of the indicies in each state. To find the location in a particular state, contact the American Red Cross or other Veterans service organization.

38. Army Reg. 15-185, supra n.25 at para. 3.

APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES

Form Approved
OMB NO. 0704-0004

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 10 U.S.C. 1553, Executive Order 9397, 22 Nov 43 (SSN).
PRINCIPAL PURPOSES: To apply for a change in the type of discharge issued.
ROUTINE USES: Placed in applicant's file. Used in applicant's case in determining the relief sought. To compare facts presented with evidence on record.
DISCLOSURE: Voluntary. If information is not furnished, applicant may not secure benefits from the board.

REQUESTING COPIES OF MILITARY RECORDS: Prior to applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a Standard Form (SF) 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132.

SEE INSTRUCTIONS BEFORE COMPLETING THIS FORM

1a. NAME OF APPLICANT TO BE REVIEWED *(Last, First, MI)*

b. SOCIAL SECURITY NO.

c. SERVICE NO. *(If different from 1b)*

2a. ADDRESS FOR ALL FUTURE CORRESPONDENCE *(Street, City, State, ZIP Code)*

b. TELEPHONE NUMBER *(Include area code)*

3. BRANCH OF ARMED SERVICE *(Check one)*
☐ARMY ☐NAVY ☐AIR FORCE ☐MARINE CORPS ☐COAST GUARD

4. DISCHARGE RECEIVED: *(Check one)*
☐HONORABLE ☐GENERAL/UNDER HONORABLE CONDITIONS
☐UNDESIRABLE/UNDER OTHER THAN HONORABLE CONDITIONS ☐BAD CONDUCT *(Special court martial only)* ☐OTHER *(Explain)* _____

5. DATE OF DISCHARGE *(Year, month, day)*

6a. APPEAL FILED IN BEHALF OF INDIVIDUAL TO BE REVIEWED: If the reviewee is deceased or incompetent, then check below the relationship of individual submitting this application. Appropriate evidence must accompany this form.
☐NEXT OF KIN ☐SURVIVING SPOUSE ☐LEGAL REPRESENTATIVE

b. NAME *(Last, First, MI)*

7. BOARD ACTION REQUESTED

a. ☐CHANGE DISCHARGE TO HONORABLE

b. ☐CHANGE DISCHARGE TO GENERAL/UNDER HONORABLE CONDITIONS

c. ☐CHANGE REASON FOR DISCHARGE TO: _____

8. TYPE OF REVIEW REQUESTED: *(Check one)*

a. ☐I and/or *(counsel/representative)* wish to appear at a hearing at no expense to the Government before the Board in the Washington National Capital Region.

b. ☐I and/or *(counsel/representative)* wish to appear at a hearing at no expense to the Government before a Traveling Panel closest to:

_____
(City, State)

c. ☐Conduct a RECORD REVIEW of my discharge based on my military personnel file and any additional documentation submitted by me. I and/or *(counsel/representative)* will not appear before the Board.

9. I HAVE ARRANGED TO BE REPRESENTED BY AND AUTHORIZE THE RELEASE OF RECORDS TO:

a. NAME OF COUNSEL/REPRESENTATIVE *(Last, First, MI)*

b. ORGANIZATION

c. ADDRESS *(Street, City, State, ZIP Code)*

d. TELEPHONE *(Include area code)*

10. ☐I have read Item 10 of the instructions pertaining to the AVAILABILITY of counsel and elect NOT to be represented by counsel/representative *(leave Item 9 blank)*

11. SUPPORTING DOCUMENTS: *(Please print name and social security number on each document.)*

a. ☐ Will not be submitted. Please complete review based on available service records.

b. ☐ Will be submitted within 60 days.

c. ☐ Will be submitted within_____ days.

d. ☐ Are listed below and are attached to this application: *(Continue on a plain sheet of paper if more space is needed.)*

DOCUMENT 1:
DOCUMENT 2:
DOCUMENT 3:

12. ISSUES: The Board will consider any issue submitted by you prior to closing the case for deliberation. The Board also will review the case to determine whether there are any issues which provide a basis for upgrading your discharge. However, the Board is not required to respond in writing to issues of concern to you unless those issues are listed or incorporated by specific reference below. Read the instructions carefully that pertain to block 12 prior to completing this part of the application. If you need more space, submit additional issues on an attachment.

ISSUE 1:

ISSUE 2:

ISSUE 3:

ISSUE 4:

a. ☐ Check this block if you have listed additional issues as an attachment to this application.

b. ☐ I previously submitted an application on_____ and I am completing this form in order to submit additional issues.
(year, month, day)

I make the foregoing statements as part of my application with full knowledge of the penalties involved for willfully making a false statement. *(U.S. Code, Title 18, Section 1001, provides a penalty as follows: A maximum fine of $10,000 or maximum imprisonment of 5 years, or both)*

13. DATE *(year, month, day)*	14. SIGNATURE

UPON COMPLETION, MAIL THIS APPLICATION AS FOLLOWS

ARMY	NAVY & MARINE CORPS	AIR FORCE	COAST GUARD
CO, USARCPAC 9700 Page Blvd St. Louis, MO 63132	NAVAL Discharge Review 801 No. Randolph St. Arlington, VA 22203	AFMPC/MPCDOA1 Randolph AFB, TX 78150	Commandant (G-PE-1) U.S. Coast Guard Headq Washington, DC 20593

(b)2

INSTRUCTIONS

REQUESTING COPIES OF YOUR OFFICIAL MILITARY PERSONNEL FILE: Submission of a request for an applicant's military records (including a request pursuant to the Freedom of Information Act or Privacy Act) after the DD Form 293 has been submitted shall automatically result in the suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the possession of the headquarters of the Discharge Review Board. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are strongly encouraged to submit any request for their military records prior to applying for discharge review rather than after submitting in a DD Form 293 in order to avoid substantial delays in processing of applications and scheduling of reviews. Applicants and their counsel also may examine their military personnel records at the site of their scheduled review prior to the review. The Board shall notify applicants of the date of availability of the records for examination in their standard scheduling information.

ITEM 1a. Use the name which you served under while in the Armed Forces. If your name has since changed, then also include your current name after adding the abbreviation "AKA". If the former member is deceased or incompetent, see Item 6.

ITEM 1b, 1c. Self explanatory.

ITEM 2a. Indicate the address to be used for all future correspondence regarding this application. If you change this address while this application is pending, you must notify the Discharge Review Board immediately. Failure to attend a hearing as a result of an unreported change in address may result in waiver of your right to a hearing.

ITEM 2b, 3. Self explanatory.

ITEM 4. If you received more than one discharge, the information in this item should refer to the discharge that you want changed.

ITEM 5. Self explanatory.

ITEM 6a. If the former member is deceased or incompetent, the application may be submitted by the next of kin, a surviving spouse or a legal representative. Legal proof of death or incompetency and satisfactory evidence of the relationship to the former member must accompany this application.

ITEM 6b. Name of person submitting application on behalf of the former member should be entered.

ITEM 7. Check either Item a or b but not both. If you check Item c you must list the specific reason for discharge that you believe to be appropriate. If you do not check any of these items, the Board will presume you want to change discharge to Honorable. If you do not check Item c the Board will presume that you do not want a change in reason for discharge.

If you were separated on or after 1 Oct 82 while in an entry level status (see DoD Directive 1332.14, Encl 3, Part 1-F) with an under other than honorable conditions discharge and less than 180 days of active service, you can request a change to "Entry Level Separation." To do this, write in block 7 "Change to Entry Level Separation."

ITEM 8. TYPE OF REVIEW REQUESTED:

A. Discharge Review is conducted in two basic ways: (1) Hearing or (2) Records Review.

   1. Hearing. You may appear personally (alone or assisted by a representative/counsel) before the Board in the Washington National Capital Region or before a Traveling Panel in selected locations throughout the U.S. Former members of the Army who do not reside close to the location of a Traveling Panel may be provided the opportunity for presentation by a video-taped hearing which upon completion will be presented to the Board in the Washington National Capital Region. Detailed notification and/or scheduling information for all personal appearances will be provided after the application has been processed. In addition, without appearing yourself, you may have your case presented in the Region or before a Traveling Panel by a representative/counsel of your choice.

   2. Records Review. Without you and/or your counsel appearing, you may have the Board conduct a Review based solely on military records and any additional documentation that you provide.

B. Applicants participating in a personal appearance or hearing examination may make sworn or unsworn statements, introduce witnesses, documents, or other information on their behalf. Department of Defense is not responsible for, nor will it pay for, any costs incurred by the applicant. Applicants may make oral or written arguments personally and/or through representative/counsel. Applicants and witnesses who present sworn or unsworn statements may be questioned by the Board.

C. FAILURE TO APPEAR AT A HEARING OR RESPOND TO A SCHEDULING NOTICE. If you do not appear at a scheduled hearing or respond as required to a scheduling notice, and you did not make a prior, timely request for a continuance, postponement, or withdrawal of the application, you will forfeit the right to a personal appearance and the Board shall complete its review of the discharge based upon the evidence of record.

ITEM 9. Omit if you do not have a representative/counsel. If you later obtain the services of either, inform the Board immediately.

ITEM 10. With regard to reviews involving a representative/counsel, the military services do not provide counsel representation

(b) 3

(Detached from DD Form 293, 1 Nov 82)

or evidence for you, nor do they pay the cost of such representation under any circumstance. The following organizations regularly furnish representation at no charge to you. Representatives may or may not be lawyers.

1. American Red Cross
2. American Legion
3. Disabled American Veterans
4. Jewish War Veterans of the USA
5. Veterans of Foreign Wars

In addition, there are other organizations willing to assist you in completing this application and to provide representation at no cost. It is to your advantage to coordinate with your counsel prior to submitting this application. This will insure that your counsel is able to appear at the location you listed in Item 8. Please note that some of the organizations listed above only represent applicants who appear before the Board in the Washington National Capital Region. Contact your local veterans affairs office, Veterans Administration Office or veterans service organization for further information.

ITEM 11. Evidence not in your official records should be submitted to the Board before the review date. It is to your advantage to submit such documentation with this application or within the following 60 days. This also applies to legal briefs or counsel submissions. However, you have the right to submit evidence until the time the DRB closes the Review Process for deliberation. Documents that are of the most benefit are those which substantiate or relate directly to your Issues (see ITEM 12). Other documents that may be helpful are character references, educational achievements, exemplary post-service conduct and medical reports. You should add your name and social security number to each document submitted. The Board will consider all documents submitted in your behalf, but will respond in writing only to those issues set forth in accordance with the instructions for ITEM 12.

ITEM 12. "Issues" are the reasons why you think your discharge should be changed. You are not required to submit any issues with your application. However, if you want the Board to respond in writing to the issues of concern, you must list your issues in accordance with those instructions and regulations governing the Board.

Issues must be stated clearly and specifically. Your issue should address the reasons why you believe that the discharge received was improper or inequitable. It is important to focus on matters that occurred while you served in the Armed Forces.

The following examples demonstrate one way in which issues may be stated. The example issues do not indicate, in any way, the only type of issue that should be submitted to the Board.

EXAMPLE 1. My Undesirable Discharge was inequitable because it was based on one isolated incident in 28 months of service with no other adverse action.

EXAMPLE 2. The Undesirable Discharge is improper because the applicant's preservice civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings for frequent involvement.

List Issues. In ITEM 12 list each of your issues that you want the Board to address. There is no limit to the number of issues that you may submit. If you need additional space, continue on a plain sheet of paper and attach it to this application. NOTE: If an issue is not listed in ITEM 12, it may result in the Board not addressing the issue even if the issue is discussed in a legal brief or other written submissions or at the hearing. Changes or additions to the list may be made on the DD Form 293 anytime before the DRB closes the Review Process for deliberation. It is recommended that all issues be submitted within 60 days of the application submission.

Please be sure that your issues are consistent with the Board Action Requested (ITEM 7). If there is a conflict between what you say in your issues and what you requested in ITEM 7, the Board will respond to your issue in the context of the action requested in ITEM 7. For example, if you request a General Discharge in ITEM 7 but your issue in ITEM 12 indicated you want an Honorable Discharge, the Board will respond to the issue in terms of your request for a General Discharge. Therefore, if you are submitting issues for the purpose of obtaining an Honorable Discharge, be sure to check the box for an Honorable Discharge in ITEM 7.

Incorporation by Reference. Issues that are listed on a legal brief or other written submissions may be incorporated by reference in ITEM 12. The reference must be specific enough for the Board to clearly identify the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated.

EXAMPLE: ISSUE 1. Use brief, page 2, paragraph 1, sentences one and two.

Applicants should be as specific as possible with all references so the Board can clearly distinguish the scope of the issue. Because it is to your benefit to bring such issues to the Board's attention as early as possible in the review, if you submit a brief, you are strongly urged to set forth all such issues as a separate item at the beginning of the brief.

ITEMS 13, 14. Self explanatory.

Form Approved
OMB No. 76-R0138

REQUEST FOR AND CONSENT TO RELEASE OF INFORMATION FROM CLAIMANT'S RECORDS

NOTE: The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38, United States Code, and will authorize release of the information you specify. The information may also be disclosed outside the VA as permitted by law or as stated in the "Notices of Systems of VA Records" published in the Federal Register in accordance with the Privacy Act of 1974. Disclosure is voluntary. However, if the information is not furnished, we may not be able to comply with your request.

TO	Veterans Administration	NAME OF VETERAN *(Type or print)*	
		VA FILE NO. *(Include prefix)*	SOCIAL SECURITY NO.

NAME AND ADDRESS OF ORGANIZATION, AGENCY, OR INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

VETERAN'S REQUEST

I hereby request and authorize the Veterans Administration to release the following information, from the records identified above to the organization, agency, or individual named hereon:

INFORMATION REQUESTED *(Number each item requested and give the dates or approximate dates—period from and to—covered by each.)*

PURPOSES FOR WHICH THE INFORMATION IS TO BE USED

App. 1-A(d)

NOTE: Additional items of information desired may be listed on the reverse hereof.

DATE	SIGNATURE AND ADDRESS OF CLAIMANT, OR FIDUCIARY, IF CLAIMANT IS INCOMPETENT

230

Appendix 1-C

Legal Assistance Sources

Legal assistance for veterans seeking to upgrade their discharge or some other form of clemency is provided by many sources, including legal aid societies, law school clinics, and veterans service organizations. Many of these sources will provide legal services free of charge. Some individual attorneys in private practice also work in this area.

An applicant can contact a local bar association, a lawyer referral service, or a local Veterans Administration office for referral to service organizations which may represent clients in clemency or discharge upgrade cases. The Veteran's Affairs Department of the applicant's state or a local branch of the American Civil Liberties Union also may be able to refer the applicant to local sources of legal aid. He could also contact the service officer of a local Veterans Organization for referral to sources of aid.

The directory of legal assistance sources for veterans is currently on sale. Copies may be obtained from the Veterans Education Project by writing:

Veterans Education Project
Dept. A, Box 42130
Washington, D.C. 20015
(202) 363-2440

The veteran should explain his problem, state the relief sought, and give his address. The Veterans Education Project will send him the names of sources of legal assistance applicant's area. The directory of legal assistance sources for veterans is currently on sale. Copies may be obtained from the Veterans Education Project (see address and phone number above).

Several large veterans organizations provide non-legal assistance to veterans seeking to upgrade their discharge. These organizations, however, do not provide assistance for applicants seeking other forms of clemency. The organizations will assist in the preparation of documents and will appear with the applicant before the Boards. There is no charge for these services. Applicants should direct their inquiries to the veterans service officer at the organization.

Remit/suspend dismissal[4]	Army Clemency Board	Automatic review prior to end of confinement/ parole
	Secretary of the Army	No time limit
Restore entitlements	TJAG	Prior to completion of appellate review
	Secretary of the Army	No time limit
	Army Clemency Board	Automatic review prior to completion of sentence
	Presidential Pardon	Five years after completion of sentence (confinement plus parole)[5]
Restore civil rights	Presidential Pardon	Five years after completion of sentence (confinement plus parole)[6]

Part 1: THE JUDGE ADVOCATE GENERAL AND THE SECRETARY OF THE ARMY.

This part discusses the clemency powers exercised by TJAG and the Secretary of the Army, pursuant to Article 74, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 874. TJAG also has power, pursuant to Article 69, UCMJ, to review the record of a court-martial not awarding a punitive discharge and not sentencing the accused to confinement over one year. This section does not discuss this latter power.

4. See note 3, supra.

5. The waiting period is longer for more serious offenses. See part III infra, page 2-17.

6. See note 5, supra.

tinuous application without new evidence or arguments is unlikely to be successful, unless a change in the government policy with regard to particular clemency issues is made.

Clemency - If TJAG denied the application the applicant can apply to the Secretary. Because both applications are handled by Criminal Law, OTJAG, however, this may be unsuccessful. If he is in confinement or on parole, the Army Clemency Board will automatically review his case annually. The applicant can also seek a Presidential pardon.

Discharge Upgrade - If TJAG denies the application, requests can be made through the Secretary. The Army Clemency Board will automatically review the case of a prisoner at the U.S. Disciplinary Barracks (USDB), or Installation Detention Facility (IDF), a civilian prison or on parole annually. Once the discharge is given, application can be made to ADRB or ABCMR.[14]

Part II: ARMY CLEMENCY BOARD

Section A: General Considerations

Subsection 1: Clemency Eligibility

If the servicemember is serving a sentence at the USDB, at an IDF, or at a federal prison or is on parole from them, he is automatically considered for clemency by the Army Clemency Board at least once a year.[15]

Schedule of Considerations for Clemency[16]

Sentence	Amount of time after Date of Adjudged Sentence[17]
Eight months or less	As soon as practical - usually four months

14. See Chapter 1, supra.

15. Army Reg. 15-130, Boards, Commissions, and Commitees, The Army Clemency Board, para. 5 (15 May 1979).

16. Army Reg. 190-47, Military Police, US Army Correctional System, para. 6-14(f) (11 November 1980).

17. If some of the sentence is not served, the date of consideration is postponed by the length of time not served.

The Army Clemency Board will consider an application for parole annually for each petitioner.

The Army Clemency Board will waive the time limits for eligibility in "exceptional circumstances."[20] There are no set guidelines as to what constitutes "exceptional circumstances." It is in the discretion of the Commandant, USDB or Commander, IDF, to grant a special request and send it to the Army Clemency Board with his recommendation. If the request is turned down, application can be made directly to the Board. The Board, however, will usually follow the Commandant's judgment. Both the Board and Commandant or Commander have a great deal of discretion. Special consideration by the Board is rare. Pregnancy while in prison, for example, has not been considered sufficient cause for parole.

Section B: Powers and Authority of the Board

The Army Clemency Board does not have the power to impose clemency action itself. Rather, it makes recommendations to the Deputy Assistant Secretary of the Army (Review Boards and Personnel Security) [DASA (RB& PS)], who has been delegated power to grant clemency by the Secretary of the Army. The Deputy Assistant Secretary has discretion whether to follow the recommendations of the Board, and places no more value on the recommendations of the Board than he does on those of the Commandant, USDB, or the Commander of the IDF.

Section C: How to Apply

Subsection 1: Clemency

There is no need to apply for automatic annual review. Special consideration can be requested either through the Commandant, USDB, or Commander, IDF, who will make a recommendation for or against clemency and forward the application to the Board. An applicant may apply directly to the Board at:

Army Clemency Board
Washington, D.C. 20310

However, if appeal is made directly to the Board, it will normally refer the matter back to the Commandant, USDB, or Commander, IDF, for his recommendation. With a request for special consideration, evidence should be submitted to support arguments in accord with the Board's standards. See Section H, infra.

20. Id. at para. 12-5(3)C.

Subsection 2: Restoration to Duty[22]

The Board has the option of sending an applicant who is to be restored to duty to the US Army Correctional Activity (USACA) at the lowest enlisted rank, with restoration to rank previously obtained upon completion of the term with USARB, or to restore the applicant to his previous rank immediately without sending him to USARB. An applicant should request the latter treatment from the Board. Evidence of rehabilitation would aid in the applicant's chances.

Section F: Standards

Subsection 1: General Considerations

The official standards and operating procedures of the Army Clemency Board are in the process of being prepared and should be published by early 1983 in the Federal Register. Some guidelines exist in the areas of parole[23] and reconsideration.[24]

The Board will consider several factors, the most important of which is the offense for which the serviceman was sentenced. The nature of the crime and the amount of time served are examined as the Board determines whether enough punishment has been served. The Board subscribes to a theory of punishment involving rehabilitation (whether the applicant has improved his character and lessened the likelihood of committing another crime) and to some degree, retribution (the theory that one who commits a crime should be punished regardless of other considerations). As such, clemency is less likely the more serious the offense, the less the time served, the less severe the punishment, or in the absence of mitigating factors.

The Board will consider mitigating factors. Whether a weapon was used in the offense, the extent of injury of the victim, and whether the applicant was a mere accomplice rather than a significant actor in the offense can all be important in a decision to grant clemency. The age of the applicant at the time of the offense for which he was confined is also a factor.

---

22. See Section C, supra.

23. Army Reg. 190-47, para. 12-2 supra. See page 2-13, infra, for discussion of standards.

24. Id. at para. 6-15 see text at pages 2-14 infra, for discussion of standards.

A pardon does not change the nature of a military discharge. This can only be done by the ADRB, the ABCMR, the Secretary of the Army, the Army Clemency Board or TJAG (See Chapter I and Chapter II, Parts 1 and 2).

Section B: How to Apply

Application forms can be obtained from:

Pardon Attorney
U.S. Department of Justice
Washington, D.C. 20530

The forms should be filed with:

Commander
U.S. Army Reserve Components Personnel and Administrative Center (USARCPAC)
9700 Page Boulevard
St. Louis, MO 63132

The petition should include the name of the petitioner, his current age, the court and location at which he was convicted, the crime for which he was convicted, the date of sentence, the sentence imposed, the date the sentence commenced, and the place of confinement.

Also included should be the age of the petitioner when he committed the offense, the date of release from confinement, his marital status, prior and subsequent criminal records, (if any), and letters of recommendation.[28] All applications must be accompanied by at least three character affidavits from persons not related to the petitioner. These are important since the Federal Bureau of Investigation will begin its investigation by interviewing the authors of the affidavits. Any other evidence, in line with the standards in Section E, infra, should be submitted.

Section C: Decision Process

USARCPAC will forward the application to the Secretary of the Army, through the Criminal Law Division, OTJAG, who will review the application, and the petitioner's military records, and make a recommendation for or

28. 28 CFR 1.2 (1982)

against clemency. The application is then forwarded to the Department of Justice, Office of the Pardon Attorney, which makes its own determination based on the application and the results of an investigation by the FBI. The FBI will interview the petitioner, his character references, neighbors, employers, etc.

While the Pardon Attorney gives consideration to the Secretary of the Army's recommendation, it is not dispositive as the Secretary does not have access to the FBI report on the petitioner's post-service activities. The Secretary bases his decision on the petitioner's military service, while clemency is based on rehabilitation since the end of the sentence. The President has complete discretion whether to follow the recommendations of the pardon attorney.

Section D: Eligibility

Application can be made five years after the date of release from confinement. If the petitioner was not confined, application can be made at the expiration of a period of at least five years subsequent to the date of conviction.

A longer waiting period of seven years is required for any offense in which a gun was used or for a narcotics offense. There is no distinction in the length of the waiting period for narcotic crimes of possession versus crimes of sale, though in the actual consideration for clemency simple possession is less severe than possession with intent to sell, or actual sale. The waiting period is designed to provide a reasonable time to determine the ability of the petitioner to live in the community free of arrests and conviction. Offenses committed subsequent to the offense in question thus affect eligibility by extending the waiting period three additional years (seven for more serious offenses) after the latest offense.

No petition can be submitted by someone on probation or parole.

If the petitioner is unsure of his eligibility, he should submit the application. The Officer of the Pardon Attorney will determine if the petitioner is eligible.

Section E: Standards

A decision to recommend to the President that a pardon be given is based on the petitioner's overall behavior and character, especially

29. 28 CFR 1.3 (1983).

after conviction of the offense for which he is seeking a pardon. There is no difference between the standards for civilian petitioners and petitioners formerly in the military. Factors considered include the petitioner's prior and subsequent arrest record, his overall reputation in the community, any mitigating factors in the commission of the crime (lack of maturity, age, or capacity, etc.) and the petitioner's life in general after the confinement or discharge/dismissal. Evidence of rehabilitation from narcotics, alcohol, or behavioral problems will be viewed favorably. Steady employment, and a responsible employment position will help. Evidence of family responsibility, including birth and marriage certificates, as well as any evidence or statements from references that the petitioner takes good care of his family, should be submitted. Financial responsibility, as indicated by a good credit rating, prompt payment of rent, and similar factors will also help the petitioner's chances.

The nature and seriousness of the offense and the nature and length of punishment are also factors. An applicant with a more serious crime, or less severe adjudged punishment, is less likely to receive clemency than lesser crimes or harsher punishments. A crime of violence, or any offense in which a gun was used, is considered serious. Narcotics cases vary, simple possession for personal use being less serious than possession with intent to sell or actual sale.

One factor that will serve as a plus in the petitioner's application will be if he has been allowed to reenlist in the military. That the military would take the petitioner back indicates rehabilitation and forgiveness, and makes a pardon more likely.

Section F: Success Rates

Chances for receiving clemency are fair. Cases are not always decided in the same year in which the application was made. The following chart indicates success rates.[30]

Fiscal Year	Received	Granted		Denied	Pending
		Pardons	Commutations		
1976 . . .	604	78	11	244	658
1977 . . .	722	129	8	300	863
1978 . . .	641	162	3	836	508
1979 . . .	710	143	10	448	617
1980 . . .	523	155	11	500	474
1981 . . .	548	76	7	260	679
1982 . . .	462	83	3	381	508

30. Source: Department of Justice Annual Report (1982).

If a new trial or rehearing is ordered and if a new sentence includes forfeitures, the member is credited with any amount forfeited under the first sentence. If forfeitures under the old sentence are set aside, the member is entitled to full pay and allowances for the period from the convening authority's action on the original sentence until the convening authority's action on the second sentence. If a previously approved DD or BCD is not imposed by a new trial, the pay and allowances that would have been paid had the BCD or DD not been imposed will be paid. If a previously adjudged dismissal is not imposed, an administrative discharge is substituted. If the member is reappointed by the President, the time between dismissal and the reappointment is considered time of actual service, and pay and allowances are paid for that time.[7]

(B) Basic pay will not be paid to a service member under a sentence including total forfeiture of pay and allowances. Pay will be paid from the time of conviction until the time sentence is approved by the convening authority. Only unforfeited pay for periods after that date will be paid.[8] See Section C: Forfeitures, supra p. 3-9.

(C) If the service member is being held in confinement by civilian authorities as a witness in a civilian court, or due to an absence excused as unavoidable, he will be paid. If the service member is being held for a foreign civil offense and is under controls of U.S. authority, he will be paid regardless of whether the absence is avoidable. If he is under control of civil authorities, foreign or domestic, he will only receive pay if the absence is unavoidable.[9]

Whether an absence is unavoidable is determined by several factors. If the service member is being held by civilian authorities, or by military authorities for civil authorities, the absence is deemed unavoidable in the following situations:

7. Id. at para. 70509 (5)(1).

8. Id. at para. 70501 (D-F) (C72 March 1983).

9. Table 1-3-2, Rules 4-8 (C65 2 December 1981).

If an enlisted member is on excess leave or in an unauthorized absence status he is not entitled to BAS.[17]

Subsection 2: Basic Allowance for Quarters (BAQ)

2.a: Members without Dependents

If a service member is in confinement pursuant to a sentence of a court-martial, BAQ will accrue and be paid if the member is acquitted, the charges are withdrawn, or the sentence is set aside or disapproved and the member is otherwise entitled to BAQ.[18] If the member is not receiving BAQ on the date before confinement commences, or assignment to government quarters was not terminated before or during the period of confinement, then no BAQ will accrue.[19] A service member restrained in a status of arrest,[20] or in retraining or rehabilitation is otherwise entitled to partial BAQ.[21]

A member without dependents is not entitled to BAQ while on excess leave.

2.b: Members with Dependents

2.b.i: In general

A member with dependents is entitled to BAQ when

(A) adequate quarters are not furnished for the member and his dependents without payment, or for the dependents alone[22] or (B) the

17. Id. at Table 3-1-6, Rules 3.4 (C68 3 May 1982).

18. Id. at Table 3-2-3, Rule 27(B) and at para. 30214(b)(12) (C71 20 December 1982).

19. Id. at Table 3-2-3, Rule 27(C).

20. Id. at para. 30214(b)(9).

21. Id. at (b)(12).

22. Id. at para. 30221(a)(1), (2) (C69 18 August 1982).

dependents are not en route or do not accompany the member to his Permanent Duty Station, or the vicinity thereof, so as to preclude assignment of government quarters.[23]

Government quarters at Fort Leavenworth, Kansas, are not provided to the dependents of a prisoner at USDB, so the dependents are entitled to BAQ. If allowances were not forfeited, they will be paid to the member. If allowances were forfeited, BAQ can be paid to the dependents (see below).

2.b.ii: Payments to Dependents

In certain situations where the servicemember is not entitled to pay, his dependents may receive BAQ.

(A) Unauthorized Absences in the Hands of Civil Authorities

BAQ will be paid to the dependents for up to two months from the first day of the absence unless the member is assigned government quarters. The member must be absent for more than 29 consecutive days. Application must be made within three months after the absence commenced, although this requirement may be waived if the dependents did not receive timely notice of their right to apply for BAQ from the Army. Application must then be made within two months of notice. Payment is made to the dependent.[24]

(B) Pre-trial Confinement in a Foreign Country

(1) For enlisted members in grade E-1 to E-4 (4 years of service or less) BAQ will be paid to the dependents for up to two months from the first day of confinement, unless the member is assigned government quarters. The confinement must be for more than 29 consecutive days. Application must be made within three months after confinement commenced, although this may be waived if the dependents did not receive timely notice of their right to apply for BAQ from the Army. Payment for subsequent months may be given on a showing of hardship on the dependents. Applications are decided on a case-by-case basis.[25]

---

23. Id. at (a)(3).

24. Id. at 30251(a) (C72 4 March 1983).

25. Id. at (b)(1).

(2) Enlisted members in grades E-4 (over 4 years service) and above, cases are decided on a case-by-case basis for any length of time.[26]

(C) How to Apply

Write to: Commander
U.S. Army Finance and Accounting Center [USAFAC]
ATTN: FINCY-A
Indianapolis, IN 46249[27]

With the letter, the dependents should submit evidence of financial difficulty, such as copies of bills, promissory notes, or other indicators of indebtedness, as well as stating in the letter the number of dependents seeking aid, and the total income of the dependents' household.

2.b.iii: Excess leave

BAQ will be paid to the member for two months, unless it is anticipated that the member will not return to duty, such as a member on excess leave pending appellate review of a court-martial.[28]

Subsection 3: Family Separation Allowance (FSA)

FSA is paid when a servicemember must maintain two homes, one for himself, one for his dependents, when transportation of dependents to the PDS or a place near that station is not authorized, the dependents do not live near the PDS,[29] and adequate housing is not available to the member, and inadequate housing is not assigned him and his dependents.[30]

---

26. Id. at (b)(2).

27. Id.

28. Id. at para. 30251(c).

29. Id. at para. 30313. "Near" the PDS is within 50 miles or one and one half hours drive of the PDS one way. Any questionable cases, where the dependents lives within 50 miles or one and one-half hours but access is otherwise difficult, are decided by the Commander, USAFAC. (C67 22 March 1982).

30. Id. at para. 30303 (C68 3 May 1982).

When a servicemember is in military confinement, FSA credit continues for up to 60 days.[31] An additional payment of $30 per month is authorized as FSA-R when the dependents do not live near the PDS, and transportation of the dependents is not authorized at government expense.[32] FSA-R credit continues during the period the member is confined up to ETS.[33]

Section C: Forfeitures

In most cases, forfeitures of pay and allowances may be applied at the time the sentence is approved--i.e. the money is withheld from pay and allowances sent to the member pending appellate review and final approval of the sentence.[34] If the sentence is set aside or overturned, the money may be released. If the forfeitures adjudged cannot be applied until the sentence is ordered executed,[35] the money is collected after the sentence is final. The treatment of forfeitures depends on the type of sentence, including length of confinement and type of discharge.

Forfeitures are a loss of entitlement to the pay concerned. They therefore take precedence over all debts, including fines.[36]

Subsection 1: Sentence of Total Forfeitures and Confinement

(A) If the sentence as adjudged is approved by the convening authority, pay and allowances accrue. The forfeited money is withheld from the time the convening authority approves the sentence until the sentence is ordered executed, and then collected.[37]

---

31. Id. at Table 3-3-2 Rule 11.

32. Id. at para. 30304 (C67 22 March 1982).

33. Id. at Table 3-3-3, Rule 3 (C66 9 December 1981).

34. Id. at para. 70501(e) (C72 4 March 1983).

35. Id. at (f).

36. Id. at para. 70507 (C74 30 May 1983). Generally, forfeitures imposed by courts-martial are paid to the Soldiers' and Airmans' Permanent Fund. See para. 70511 (C50 19 December 1977).

37. Id. at para. 70505(b) (C74 30 May 1983) and Table 7-5-2, Rules 1, 4 (C42 19 March 1976) and Table 7-5-3 Rules 1, 4 (C45 2 October 1976).

not paid until the end of appellate review and the execution of the sentence. All amounts accrued in excess of forfeitures are paid to the member at that time. Pay and allowances do not accrue for enlisted members while in confinement under a suspended dishonorable discharge after the date the sentence is affirmed and ordered executed.[43]

(2) Dismissal Suspended/Officers

If a dismissal is suspended and the remainder of the sentence is executed and if the servicemember is an officer, pay and allowances do not end with the execution of the sentence, but accrue until ETS. Pay and allowances are not paid, however, until the end of appellate review and the execution of the sentence. All amounts accrued in excess of forfeitures are paid to the member at that time. After the sentence is executed, pay and allowances are paid to the officer, minus the amount forfeited.[44]

(3) BCD Suspended

If a bad-conduct discharge is suspended and, if the remainder of the sentence is ordered executed, pay and allowances accrue unless the suspension of the BCD is vacated, and the BCD is ordered executed. They are paid to the servicemember, minus the amount forfeited. If the suspension is vacated, once the discharge is executed, no pay and allowances accrue.[45]

Subsection 3: Sentence to Forfeitures and Discharge Only

(A) If the sentence as adjudged is approved by the convening authority, pay and allowances accrue until the sentence is finally approved or affirmed and ordered executed and are paid to the member until that time. The forfeitures are collected after the sentence is executed.[46]

(B) If the sentence includes a DD or BCD that is suspended, pay and allowances accrue until the suspension is vacated and the discharge is ordered executed. Pay and allowances are paid to the servicemember at that time, minus the amount forfeited.[47]

---

43. Id. at para. 70506 (C72 4 March 1983) and Table 7-5-2 Rules 9, 12.

44. Id. at Table 7-5-2, Rules 9, 12.

45. Id. at Table 7-5-3, Rules 9, 12.

46. Id. at Table 7-5-2 Rule 13, Table 7-5-3, Rule 13.

47. Id. at Table 7-5-2 Rule 14, Table 7-5-3, Rule 14.

the convening authority's action on the first sentence and his action on the subsequent sentence.[52]

If a sentence to forfeitures is set aside or disapproved and if a new trial or rehearing is not ordered or a new trial or rehearing is ordered which results in no imposition of a sentence to forfeitures, the servicemember is entitled to the full pay and allowances he would have received had the first sentence not been executed, at the grade and rank he held prior to any reduction due to the first sentence.[53]

Section D: Fines

Fines are a debt to the United States. They may be collected involuntarily from the current pay of enlisted members. They are collected after all other prior debts for the pay period have been collected, unless the prior debts total two-thirds of the member's pay for any month. If so, the fines may not be applied but are deferred until the member has enough pay for the fines to be applied.[54]

Fines can be involuntarily collected from the final pay but not the current pay of officers.[55]

Section E: Detentions of Pay

Detentions of pay can be withheld from the current pay of any member, regardless of rank. They are withheld after all other prior debts are collected, unless the prior debts total two-thirds of the member's pay for any month. If so, the detentions may not be withheld but are deferred until the member has enough pay for the detentions to be applied.[56]

---

52. Id. at para. 70509(b)(1) (C50 19 December 1977).

53. Id. at para. 70509(a) and (b)(2).

54. Id. at para. 70507(b) (C74 30 May 1983).

55: Id.

56. Id. at para. 70507(c).

Section F: Summary of Entitlements of a Servicemember on Excess Leave

[Note: See also the sections on the individual entitlements and forfeitures].

(A)	Basic Pay	not entitled[57]
(B)	Basic Allowance for subsistence (BAS)	not entitled[58]
(C)	Basic Allowance for Quarters (BAQ) (no dependents)	not entitled[59]
(D)	Basic Allowance for Quarters (BAQ) (with dependents)	up to 2 months, but not entitled if on appellate leave[60]
(E)	Family Separation Allowance	not entitled, as member has no permanent station to which he is assigned[61]

PART II: TRAVEL AND TRANSPORTATION

Section A: Personal Transportation

(A) If the servicemember is discharged under less than honorable conditions but is not confined, he is entitled to travel and transportation allowances (including meal tickets) from the place of separation to the place from which he was ordered to active duty or to his home of record (the member's choice), by the least expensive mode of common carrier transportation available or by a payment of cash in an amount equal to the cost of the least expensive means of common-carrier transportation that could have been used.[62]

---

57. Id. at para. 10306.

58. Id. at Table 3-1-1, Rule 3, and Table 3-1-6, Rule 3.

59. Id. at para. 30251(c).

60. Id.

61. See id. at para. 30303 for qualification requirements, see also para. 10306.

62. Members of the Uniformed Services, Joint Travel Regulations, § M5301 (C365 1 July 1983).

(1) the destination is approved by the commanding officer of his duty station (or other competent authority) and

(2) the cost to the government does not exceed the cost to either the home of record or the place ordered to active duty.[67]

Section B: Transportation of Dependents

Subsection 1: Within the United States

Members of the military service who are transferred to a new permanent duty station (PDS) in general are entitled to transportation of dependents from the old duty station to the new permanent station.[68] There is no entitlement for members in grades E-4 (2 years of service or less) or below, so members reduced to an ineligible grade will not be able to receive transportation to the place of confinement for dependents.[69]

As government housing is not provided the dependents of a prisoner in confinement at USDB or a detention facility, there is little reason to transport them to the new duty station (the place of confinement). No transportation is provided the dependents from the old duty station to any other location.

Subsection 2. Outside the United States

Any member without regard to rank or grade whose duty station is overseas, may request transportation of his dependents to CONUS, Alaska, Hawaii, Puerto Rico, or any other territory or possession of the United States if:

(A) the servicemember is discharged outside the US under other than honorable conditions,

(B) the servicemember is returned to the US for discharge under other than honorable conditions,

67. Id. at § M5304.

68. Id. at § 7000 (C365 1 July 1983).

69. Id. at § M7000(1). Members serving outside the United States are entitled to transportation of dependents despite a grade reduction, see id. at §§ M7000(1) and M7107 (C340 1 July 1983) and Subsection 2, infra.

(C) the servicemember is sentenced to confinement in civilian or military facilities overseas,

(D) the servicemember is returned to the US to serve a sentence at confinement in a civil or military confinement facility,

(E) the servicemember is sentenced to confinement in foreign civilian facilities,

(F) the servicemember is dropped, dismissed, sent to prison under a sentence, or transferred as a prisoner to a place of detention, or

(G) the servicemember is transferred to a different station to await trial by court-martial, or is a deserter or a straggler.

Provided that:

(A) his request is supported by a statement of the approving authority that the best interests of the government and of the dependents will be served by the return of the dependents to CONUS or other destination; and

(B) the transportation authorized is not for a distance greater than that from the member's last duty station to the place where he was ordered to active duty or his home of record.[70]

The approving authority determines the designated place to which transportation is authorized, determines whether a reasonable relationship exists between the conditions and circumstances in each case, and determines the destination to which transportation is authorized.[71]

Dependents may also be returned to the United States for reasons of national interest,[72] or if the dependent becomes involved in a situation embarrassing to the US, prejudicial to order, morale, or discipline in the command, or giving rise to such adverse public feeling that the safety of the dependent is in danger.[73]

70. Id. at § M7103(2)(8).

71. Id. at § M7103(1).

72. Id. at § M7106 (C359 1 January 1983).

73. Id. at § M7102 (C 358 1 December 1982).

If the overseas servicemember is reduced to a grade previously ineligible for transportation of dependents (grade E-4 (2 years of service) or below), he is entitled to transportation for his dependents as if he were not reduced.[74]

Section C: Household Goods.

In general, shipment of goods at government expense is only available for members stationed overseas.

Subsection 1. Separation from Service under less than Honorable Conditions or Sentenced to Confinement Within the United States.

If the servicemember is separated from the service under less than honorable conditions or is separated under a punitive discharge or is sentenced to confinement, he is not entitled to shipment of household goods (HHG) (subject to subsections 2 and 3, infra) and not entitled to non-temporary storage of his HHG, if the discharge or court-martial occurs in the United States.[75] The servicemember must arrange to transport his HHG to his destination himself. If not moved, the goods will be removed from government quarters and stored by the government for up to six months. They will then be disposed of. If the servicemember is unable to arrange for shipment himself, he should give a written power of attorney to a friend, next of kin, legal representative, or mover to transport the items. No form is necessary for this, as a signed letter authorizing the designee to move or supervise a move will suffice.

74. Id. at § M7107 (C359 1 January 1983). § M7000 authorizes the return transportation of dependents of overseas servicemembers of all grades. Prior to 17 October 1978, dependent travel was limited to grade E4 with over two years of service, thus the provisions of § M7107 provide an entitlement for those individuals serving overseas as of the date of amendment to § M7000.

75. Id. at § M8261 (C365 1 July 1983).

Subsection 2: Separation Under less than Honorable Conditions, Outside US, Dependents Transported.

[Note: If dependents are not transported from overseas to be the United States, see Subsection 3 below].

If an overseas servicemember is separated from the service under less than honorable conditions or with a punitive discharge, he is entitled to shipment of household goods, but not for a distance greater than that from his last or former PDS to his home of record or to the place at which he was ordered to active duty.[76]

If the servicemember is at grade E-4 (2 years of service or less) or lower (including reduced grade), he can ship at the E-4 (over 2 years of service) weight allowance. The member is not entitled to non-temporary storage of his goods if he is of rank E-4 (2 years of service or less) or below.[77]

Shipment is only authorized for a distance no greater than that from the member's last or former duty station to his home of record or the place of entry on active duty. The dependents, or some other agent of the member, must transport any additional distance at the member's expense.[78]

Subsection 3: Separation Under Less than Honorable Condition Outside U.S. and Dependents Not Transported; or Sentenced to Confinement Oustide of the United States.

If the servicemember's duty station is outside the United States when sentenced or discharged/dismissed and his dependents are not transported at government expense, he is entitled to shipment if one of the following conditions apply:

76. Id. at § M8303 (C365 1 July 1983). The member must be entitled to transport his dependents under § M7103 of the Members of the Uniformed Services, Joint Travel Regulations. See text at note 69, supra.

77. Id.

78. Id.