

Army Regulation 15–180

**Boards, Commissions, and
Committees**

Army Discharge Review Board

**Headquarters
Department of the Army
Washington, DC
21 July 2021**

UNCLASSIFIED

SUMMARY of CHANGE

AR 15–180

Army Discharge Review Board

This regulation is certified current as of 21 July 2021. Aside from the following administrative changes, no other changes were made to certify currency of this regulation—

- o Updates supplementation information (title page).
- o Updates Secretary of the Army responsibilities (para 1–7).

This major revision dated 25 September 2019—

- o Incorporates new legislation requiring medical professionals serving as members of Discharge Review Boards (para 1–15).
- o Incorporates Section 1177, Title 10, United States Code (paras 1–15*d*, 3–1, 3–2, 3–3, and 3–4).
- o Updates information regarding the Army Discharge Review Board panel and members (chap 2).
- o Incorporates guidance from Army Directive 2014–28, Requests to Upgrade Discharge by Veterans Claiming Post Traumatic Stress Disorder (chap 3).
- o Incorporates guidance from Army Directive 2015–29, Confidential Reviews of Characterization of Terms of Discharge of Members of the Army Who Are Victims of Sexual Offenses (chap 4).
- o Incorporates Army Directive 2015–29 (throughout).

Effective 25 October 2019

Boards, Commissions, and Committees

Army Discharge Review Board

By Order of the Secretary of the Army:

JAMES C. MCCONVILLE
General, United States Army
Chief of Staff

Official:


KATHLEEN S. MILLER
Administrative Assistant
to the Secretary of the Army

History. This regulation is certified current as of 15 July 2021. Aside from the administrative changes listed in the summary of change, no other changes were made to certify currency of this regulation. No content has been changed.

Summary. This regulation governs the actions and composition of the Army Discharge Review Board under Public Law 95–126; 10 USC 1553; DoDD 1332.41, and DoDI 1332.28. It governs applications and Army Discharge Review Board motions for discharge review; public inspection, copying, and distribution of Army Discharge Review

Board documents through the Department of Defense Boards Electronic Reading Room; preparing decisional documents and index entries; and processing complaints regarding them.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve. It also applies to former members of the Army National Guard/Army National Guard of the United States concurrently discharged from the Army National Guard and the U.S. Army Reserve.

Proponent and exception authority. The proponent of this regulation is the Assistant Secretary of the Army (Manpower and Reserve Affairs). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulations. Proponents may delegate this approval authority, in writing, to a division chief in the proponent agency in the grade of colonel or the civilian equivalent.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2

and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Assistant Secretary of the Army (Manpower and Reserve Affairs) Military Review Boards (SAMR–RBB), available at email: usarmy.pentagon.hqda-arba.mbx.i@mail.mil/.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Assistant Secretary of the Army (Manpower and Reserve Affairs) Military Review Boards (SAMR–RBB), 251 18th Street South, Suite 385, Arlington, Virginia 22202–3531, army.arbainquiry@mail.mil.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Chapter 1

Introduction

Section I

Introduction

1–1. Purpose

This regulation prescribes the policies and procedures under which the Army Discharge Review Board (ADRB) is authorized to review the character, reason, and authority of a discharge of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. This regulation implements Section 1553, Title 10, United States Code (10 USC 1553); PL 95–126, Section 1307; DoDI 1332.28; DoDD 1332.41; and Discharge Review Boards (DRBs).

1–2. References and forms

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

Responsibilities are listed in section II.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule-Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1–6. Statutory Authority

10 USC 1553 is the statutory authority of this regulation.

Section II

Responsibilities

1–7. Secretary of the Army

The SECARMY will, in accordance with 10 USC 1553—

- a.* Serve as the designated Department of Defense (DoD) lead and DoD-wide focal point for administrative matters regarding DRBs.
- b.* Comply with all requirements defined in governing DoD policies regarding DRBs.
- c.* As the senior Army official for the ADRB, direct all ADRB operations through the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) and the Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)).

1–8. Assistant Secretary of the Army (Manpower and Reserve Affairs)

The ASA (M&RA) will—

- a.* Serve as the policy proponent for the ADRB.
- b.* Define and implement the DRB procedures and standards within the Department of the Army (DA).
- c.* Determine when it is appropriate for the ADRB to review a discharge or discharges upon its own motion.
- d.* On behalf of the ASA (M&RA), the DASA (RB) will—
 - (1) Serve as the Secretarial Reviewing Authority for any matter reviewed by the ADRB.
 - (2) Appoint the military review boards (MRB) director, who is also the ADRB director/president, on behalf of the ASA (M&RA) and the SECARMY.
 - (3) Appoint, in writing, all members of the board on behalf of the ASA (M&RA) and the SECARMY.

1–9. The Military Review Boards Director/Army Discharge Review Board Director

The MRB Director/ADRB Director will—

- a.* Serve as the President of the ADRB.
- b.* Execute and oversee all ADRB board operations.
- c.* Prescribe operating procedures for the ADRB.
- d.* Designate presiding officers (POs) to oversee each board.
- e.* Monitor statutory and DoD-directed responsibilities of the SECARMY on service discharge review matters to ensure Army compliance.

1–10. Army Discharge Review Board members

The ADRB members will—

- a.* Under oath or affirmation, consider objectively and carefully each case on its individual merits.
- b.* Elicit all facts necessary for a full and fair review.
- c.* Consider all information presented by the applicant; to include available military service and health records, and other records that may be in the files of the Servicemember concerned and that are relevant to the issues before the board.

1–11. Secretary recorder or designated assistant

The secretary recorder or designated assistant will—

- a.* Coordinate and maintain the board calendar, as directed by the ADRB President.
- b.* Schedule board members, as required by policy and/or directed by the ADRB President.
- c.* Provide support to the ADRB panels, addressing issues or conflicts to the ADRB President.

1–12. Presiding officer

The PO will—

- a.* Conduct and oversee discharge review boards, as directed by the ADRB President.
- b.* Convene, recess, and adjourn the board, as appropriate.
- c.* Ensure adherence to board procedures.
- d.* Ensure all cases are properly heard and thoroughly considered.
- e.* Address issues or conflicts with the ADRB President, as applicable.
- f.* Serve as a voting panel member.

1–13. Case review officer

The case review officer will—

- a.* Be responsible for a set number of cases, as designated by the PO for a given board, to review and present to the board.
- b.* Serve as a voting panel member.

1–14. Army Review Boards Agency Legal Advisor

The ARBA Legal Advisor will—

- a.* Provide opinions and guidance on legal matters pertaining to ADRB cases.
- b.* Provide guidance and clarity regarding 5 USC 552, 5 USC 552a, and ADRB decision documents.

1–15. Army Review Boards Agency Medical Advisor

The ARBA Medical Advisor will—

- a.* Provide medical review and advisory opinions on ADRB cases, as requested or prescribed.
- b.* Serve as a medical advisor, and voting member, on all ADRB panels involving medical issues, specifically post-traumatic stress disorder (PTSD), sexual trauma (ST), traumatic brain injury (TBI), and other behavioral health conditions.
- c.* Be either an Army Medical Corps officer or civilian medical provider assigned to ARBA.
- d.* Be a clinical psychologist or psychiatrist, or a physician with special training in mental health issues connected with PTSD or TBI, or mental health disorders other than those connected with PTSD or TBI.

Chapter 2

Army Discharge Review Board

Section I

Application Process

2–1. Who may apply

a. A former Servicemember of the Regular Army, the U.S. Army Reserve, and the Army National Guard previously discharged according to Army regulation or by sentence of a court-martial (other than a general court-martial) whose application is accepted by the board or whose case is heard on the board's own motion.

b. If the former Servicemember is deceased or incompetent, the term applicant includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

c. Former Servicemembers may submit a DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States) to the ADRB or may apply online through the ARBA website at <https://arba.army.pentagon.mil>.

Note. If punitively discharged by a General Court-Martial, a former Servicemember is not eligible to apply to the ADRB. In such cases, a former Servicemember may submit a DD Form 149 (Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552) to the Army Board for Correction of Military Records (ABCMR).

2–2. Time limitation

There is a 15-year statute of limitations when applying for a discharge review by the ADRB. The ADRB is authorized to review the character, reason, and authority of a discharge of any Servicemember or former Servicemember if the motion or request for review is made within 15 years after the date of discharge. If it is more than 15 years since the Servicemember's or former Servicemember's date of discharge, the applicant may apply to the ABCMR for a discharge review.

2–3. Application and evidence

Applicants must submit a DD Form 293 clearly articulating their contention and the basis for the requested change to the characterization of discharge, along with any supporting evidence or materials, especially the separation packet. Evidence is any military record or document, witness statement, personal statement, correspondence, or other materials that support the applicant's contentions of impropriety, inequity, or both as they pertain to the discharge.

Section II

Board Operations

2–4. Board types

a. Record review board is a discharge review conducted in the National Capital Region (NCR) during which the board members review the application, all available evidence and records submitted by the applicant to substantiate an applicant's contention of impropriety, inequity, or both.

b. Personal appearance board is a hearing conducted in the NCR during which the applicant, the applicant's representative, and/or witnesses appear in person to provide information that further supports the applicant's contention.

c. Travel board personal appearance is a hearing conducted outside the NCR, as authorized by the DASA (RB). The applicant, the applicant's representative, and/or witnesses appear in person to provide information that further supports the applicant's contention.

Note. Unless otherwise specified by law or regulation, expenses incurred by an applicant, applicant's representative, or witness(es) will not be paid by the DA or DoD.

2–5. Board

- a.* The ADRB consists of one or more boards.
- b.* When in deliberation, each board consists of five members.
- c.* The senior ranking Servicemember, or as designated by the ADRB President, serves as the PO.
- d.* Any appointed board member administers an oath to applicants and witnesses under UCMJ, Art. 136 (10 USC chapter 47).

e. An applicant is entitled to a records review and a personal appearance board upon request. However, if the applicant elects and receives a personal appearance board first, the applicant is no longer eligible for a records review.

f. An applicant may withdraw an application, without prejudice, at any time before the scheduled record review or personal appearance board.

g. If an applicant fails to appear for the personal appearance at the appointed time and location without prior coordination requesting a continuation, postponement, or withdrawal of the review, the board will conduct a record review, if not previously conducted. If a records review was previously conducted, the case will be closed without board action and no future appeal to the ADRB.

h. Once an applicant exhausts all ADRB board reviews, the applicant may request ABCMR review by submitting a DD Form 149 to the ABCMR. All ADRB decision documents should be included in the application package.

2-6. Board consideration

The ADRB reviews discharges on the basis of issues of propriety and equity.

a. An issue of propriety is a matter that involves a determination of whether an error in discharge occurred with respect to a regulation, statute, constitutional provision, or other source of law (including a matter that requires determining if the action by military authorities was arbitrary and capricious, or an abuse of discretion), and this error prejudices the rights of the applicant. It may also involve a change in policy made expressly retroactive to the type of discharge under consideration that requires a change in the discharge. The application and relevant evidence must set forth the context of the regulatory issue or a description of the procedures allegedly violated to inform the board adequately of the basis for the applicant's position.

b. An issue of equity is a matter involving consideration of whether the policies and procedures under which the applicant was discharged differ in material respects from current Army standards, provided that—

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent relative to the discharge proceedings or other relevant proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge if the current policies and procedures were in effect at the time of the discharge.

2-7. Continuance and postponement

a. A continuance may be authorized by the President, ADRB or PO concerned provided that the continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application will be returned to the applicant with the option to resubmit when the case is fully ready for review.

b. A postponement is normally not permitted other than for demonstrated good and sufficient reason set forth by the applicant, in a timely manner, or for the convenience of the Government.

2-8. Board decisional document

a. Each applicant receives a written notification of the ADRB's decision and the decisional document from the board review. See DoDI 1332.28 for discharge review procedures and requirements pertaining to the decisional document.

b. For those cases requiring corrective action, the ADRB will notify the appropriate office.

c. A copy of the decision, decisional document, and the application will be filed (or incorporated) in the Service-member's Army Military Human Resource Record (AMHRR), as appropriate.

d. A copy of the decisional document, properly redacted for personally identifying information, will be made available for public inspection and downloading via the DoD Boards' Electronic Reading Room at <https://boards.law.af.mil>.

2-9. Appeals options

a. Applicants may appeal a decision from a records review by submitting a new DD Form 293 requesting a personal appearance review.

b. Applicants who received both a records review and personal appearance may apply to the ABCMR for additional review.

Note. Applications to the ABCMR should include copies of ADRB records review and personal appearance decision documents.

2–10. Complaints concerning decisional documents

See DoDI 1332.28 for procedures regarding complaints concerning decisional documents by a military discharge review board.

2–11. Public availability of Army Discharge Review Board statistics

The ARBA will make available to the public, each quarter, on the ARBA website at <https://arba.army.pentagon.mil>, the following:

- a.* The number of motions or requests for review during the previous calendar quarter, including cases in which a mental health condition (to include PTSD) is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or dismissal of the applicant.
- b.* The number of claims submitted during the previous calendar quarter relating to service by an applicant during a war or contingency operation, catalogued by each war or contingency operation.
- c.* The number of discharges or dismissals corrected pursuant to the consideration described above to upgrade the characterization of discharge or dismissal of former members.

Chapter 3

Treatment of Claims Asserting Post Traumatic Stress Disorder or Traumatic Brain Injury in Connection with Combat or Military Sexual Trauma as a Basis for Discharge Review; Other Claims Involving Mental Health Disorders

3–1. Purpose

This section implements requirements of 10 USC 1553, as amended by Section 535 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), regarding treatment by Discharge Review Boards of claims asserting deployment-related PTSD or TBI, or PTSD or TBI related to combat or military sexual assault or sexual harassment, as a basis for review of discharge.

3–2. Prioritization

- a.* ARBA prioritizes the review of all applicants whose request for relief is based, in whole or in part, on matters relating to PTSD, TBI, as supporting rationale or justification for priority consideration. The PTSD or TBI may be diagnosed as being a consequence of deployment in support of a contingency operation or may otherwise be asserted by the applicant if related to combat or sexual assault or sexual harassment.
- b.* When determining the priority of cases, ARBA will carefully weigh the medical and humanitarian circumstances of all cases and only designate higher priority to cases not involving PTSD, TBI, or sexual assault or sexual harassment when the case is considered more compelling.

3–3. Consideration

- a.* In addition to the documentation or evidence as defined in chapter 2 of this regulation, the board will review medical evidence of the Department of Veterans Affairs or a civilian health care provider that is presented by the applicant claiming PTSD or TBI.
- b.* The board will apply liberal consideration when reviewing cases wherein the applicant claims PTSD or TBI potentially contributed to the circumstances resulting in the discharge of a lesser characterization.

3–4. Medical consultation

- a.* In the case of an applicant who was a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post traumatic stress disorder or traumatic brain injury as a consequence of that deployment, 10 USC 1553 requires, as a member of the board, a clinical psychologist or psychiatrist, or a physician with special training in mental health issues connected with PTSD or TBI, as applicable. This board member provides expert guidance on clinical manifestations of PTSD, TBI, and other mental or behavioral health indicators to assist board members in assessing the potentially mitigating effects of PTSD, TBI, and other mental or behavioral health indicators.
- b.* In the case of an applicant who was diagnosed while serving in the armed forces as experiencing a mental health disorder, whether or not deployment-related, a board will include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders. Mental health disorders include conditions such as PTSD, TBI, sexual assault, and sexual harassment. It is ARBA policy that in the case of an applicant who was

diagnosed while serving in the armed forces as experiencing sexual assault and/or sexual harassment, whether or not deployment-related, a board will include a member who is a clinical psychologist or psychiatrist, or a physician with special training in mental health issues connected with sexual assault and/or sexual harassment.

Chapter 4

Confidential Review of Requests to Upgrade Discharge Due to Sexual Trauma

4–1. Purpose

This chapter implements section 547 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291), which provides a confidential review of the characterization of terms of discharge of a former member of the Army who was a victim of a sex-related offense (referred to as sexual assault or sexual harassment in this regulation) during the member’s service in the Army.

4–2. Board consideration

In deciding whether to approve or deny a request to modify the terms or characterization of discharge or separation, the ADRB will—

- a.* Give due consideration to the psychological and physical aspects of the Servicemember’s experience in connection with the sexual assault or sexual harassment, and
- b.* Also determine what bearing such an experience may have had on the circumstances surrounding the Servicemember’s discharge or separation from the Army.

4–3. Board decisions

Documents and decisions concerning requests for review of characterization of discharge or separation by victims of sexual assault or sexual harassment will—

- a.* Not be made public, except with the consent of the individual concerned.
- b.* Not be posted on the Department of Defense Boards’ Electronic Reading Room.
- c.* Not be released in response to a request under the Freedom of Information Act (FOIA), except with the consent of the individual concerned. The nonconsensual release of board decisions in these cases would constitute a clearly unwarranted invasion of personal privacy under FOIA. Furthermore, nonconsensual public release would be inconsistent with congressional intent in PL 113–291 to establish a confidential review process for victims of sexual offenses.
- d.* Be filed in the applicable official military personnel file; the AMHRR.

Appendix A

References

Section I

Required Publications

Unless otherwise indicated, all Army publications are available on the Army Publishing Directorate website at <https://armypubs.army.mil>. DoD publications are available on the ESD website at <https://www.esd.whs.mil>. USCs are available on the USC website at <https://uscode.house.gov>.

DoDD 1332.41

Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs) (Cited on title page.)

DoDI 1332.28

Discharge Review Board (DRB) Procedures and Standards (Cited on title page.)

PL 95–126, Section 1307, Act of 8 October 1977

An Act 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 (Cited in para 1–1.) (Available at <https://www.congress.gov>.)

PL 113–291, Section 547(c)

Preservation of Confidentiality (Cited in para 4–3c.) (Available at <https://www.congress.gov>.)

PL 114–328, Section 535

National Defense Authorization Act for Fiscal year 2017: Treatment by discharge review boards of claims asserting post- traumatic stress disorder or traumatic brain injury in connection with combat or sexual trauma as a basis for review of discharge (Cited in para 3–1.) (Available at <https://www.congress.gov>.)

5 USC 552

Public information; agency rules, opinions, orders, records, and proceedings (also known as the Freedom of Information Act) (Cited in para 1–14b.)

5 USC 552a

Records maintained on individuals (also known as the Privacy Act) (Cited in para 1–14b.)

10 USC, Chapter 47

Uniform Code of Military Justice (Cited in para 2–5d.)

10 USC 1552

Correction of military records: claims incident thereto (Cited in para 2–1c.)

10 USC 1553

Review of discharge or dismissal (Cited in title page.)

38 USC 5303

Certain bars to benefits (Cited in glossary.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read a related publication to understand this publication. Unless otherwise indicated, all Army publications are available on the Army Publishing Directorate website at <https://armypubs.army.mil>. DoD publications are available on the ESD website at <https://www.esd.whs.mil>.

AR 11–2

Managers' Internal Control Program

AR 15–130

Army Clemency and Parole Board

AR 15–185

Army Board for Correction of Military Records

AR 25–22

The Army Privacy Program

AR 25–30

The Army Publishing Program

AR 25–55

The Department of the Army Freedom of Information Act Program

DA Pam 25–40

Army Publishing Program Procedures

DA Pam 25–403

Guide to Recordkeeping in the Army

DoDD 6495.01

Sexual Assault Prevention and Response (SAPR) Program

Secretary of Defense Memorandum, 3 September 2014

Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (Available at <https://www.defense.gov/>.)

Secretary of Defense Memorandum, 25 August 2017

Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment (Available at <https://www.defense.gov/>.)

32 CFR 581.2

Army Discharge Review Board (Available at <https://www.gpo.gov/>.)

10 USC 1177

Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation. (Available at <https://uscode.house.gov/>.)

10 USC 1561

Complaints of sexual harassment: investigation by commanding officers (Available at <https://uscode.house.gov/>.)

Section III**Prescribed Forms**

This section contains no entries.

Section IV**Referenced Forms**

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>); DD forms are available on the ESD website (<https://www.esd.whs.mil/Directives/forms/>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

DD Form 149

Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552

DD Form 293

Application for the Review of Discharge or Dismissal from the Armed Forces of the United States

Appendix B

Board Application of Department of Defense Clarifying Guidance Regarding Liberal Consideration, Mitigating Factors, and Clemency for Request to Modify Military Discharges or Military Records

B-1. Purpose

To define the Army's implementation of DoD guidance regarding liberal consideration, mitigating factors in relation to a military discharge and associated conduct, and clemency when reviewing requests for modification of the characterization of service, narrative reason, separation code and/or authority, or re-enlistment code of a former Servicemember's discharge due to mental health conditions, sexual assault, or sexual harassment. Application of liberal consideration, mitigating factors in relation to the discharge and associated conduct, and clemency are not limited solely to Under Other Than Honorable Condition discharge characterizations. Rather they apply to any request seeking discharge relief involving changes to narrative reason, re-enlistment codes, and upgrades from General to Honorable characterization of service.

B-2. Board member consideration and training

Generally, standards and principles for review will consider the unique nature of each case and offer each Servicemember or veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. The intent of the referenced DoD memoranda are to resolve ambiguities and clarify existing guidance to inform the Boards during their adjudication process. The guidance is not intended to interfere with or impede the Boards' statutory independence. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of the Board. As part of the formal board member training process, all new board members will—

- a.* Be provided and thoroughly review the referenced policies and guidance prior to participating as a voting board member.
- b.* Observe record review and personal appearance boards prior to participating as a voting board member.
- c.* Understand the ADRB is authorized to grant relief based on issues of equity or propriety or clemency to ensure fundamental fairness. However, the ADRB may not exercise clemency for discharges or dismissals issued at a general court-martial.
- d.* Understand that requests for discharge relief typically involve four questions:
 - (1) Did the veteran have a condition(s) or experience(s) that may excuse or mitigate the discharge?
 - (2) Did that condition(s) exist/experience(s) occur during military service?
 - (3) Does that condition(s) or experience(s) actually excuse or mitigate the discharge?
 - (4) Does that condition(s) or experience(s) outweigh the discharge?
- e.* Understand that evidence may come from sources other than a Servicemember's or veteran's service record and may include, but not be limited to, records from the DoD Sexual Assault Prevention and Response Program, law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, physicians, pregnancy tests, tests for sexually transmitted diseases, and statements from family members, friends, roommates, co-workers, fellow Servicemembers, or clergy.
- f.* Understand that liberal consideration does not mandate an upgrade. However, relief may be appropriate for minor misconduct commonly associated with mental health conditions, including PTSD, TBI, or behaviors commonly associated with sexual assault or sexual harassment, and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

B-3. Liberal consideration

Requests for changes in characterization of service will be given to the following:

- a.* Service treatment record entries documenting one or more symptoms that meet the diagnostic criteria of PTSD or PTSD-related conditions, TBI, other mental health conditions, sexual assault, or sexual harassment, especially when connected to military service.
- b.* Department of Veterans Affairs (VA) determinations that document PTSD or PTSD-related conditions, TBI, or other mental health conditions, sexual assault, or sexual harassment connected to military service.
- c.* Cases where Service records or any document from the period of service substantiate the existence of one or more symptoms of what is now recognized as PTSD, a PTSD-related condition, TBI, other mental health condition, sexual assault, or sexual harassment during the time of service.

d. Cases where civilian providers confer diagnoses of PTSD or PTSD-related conditions, when case records contain narratives that support symptomatology at the time of service, or when any other evidence which may reasonably indicate that PTSD or a PTSD-related disorder existed at the time of discharge which may have mitigated the misconduct that caused the other than Honorable characterization of service.

Note. This guidance does not apply to cases involving pre-existing conditions, which are determined not to have been incurred or aggravated while in military service.

B-4. Consideration of mitigating factors

The Boards, while not investigative bodies, will use the referenced DoD memoranda to establish a nexus between the applicant's claim(s) with the misconduct underlying the Servicemember's or veteran's discharge regardless of the characterization of service. The Board will—

a. Consider if the conditions documented in the record (that can reasonably be determined to have existed at the time of discharge) will be considered to have existed at the time of discharge.

b. Consider the following conditions potential mitigating factors in the misconduct that determined the characterization of service: in cases in which PTSD or PTSD-related conditions, TBI, other mental health issues, sexual assault, or sexual harassment may be reasonably determined to have existed at the time of discharge.

c. Exercise caution when weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a characterization of less than Honorable conditions. Potentially mitigating evidence of the existence of undiagnosed combat-related PTSD or PTSD-related conditions as a causative factor in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct.

d. Consider carefully the likely causal relationship of symptoms of PTSD, TBI, sexual assault, or sexual harassment in all cases of misconduct. PTSD is not a likely cause of premeditated misconduct.

B-5. Consideration/determination of clemency

With increasing attention being paid to pardons for criminal convictions and the circumstances under which citizens should be considered for second chances and the restoration of rights forfeited as a result of such convictions, many states have not only developed processes for restoring basic civil rights to felons but established veterans' courts to consider special circumstances associated with military service. Because the authority to change military records or discharges resides with the various military Boards and not the states, the DoD, through the referenced memoranda, provides—

a. Clear standards; to ensure the Boards apply appropriate consideration to every application for relief. While not everyone should be pardoned, forgiven, or upgraded, in some cases, fairness dictates that relief should be granted.

b. Clemency; relief specifically granted from a criminal sentence that is part of the Board's broad authority to ensure fundamental fairness. While Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum, the Discharge Review Boards are limited in their exercise of clemency in that they may not exercise clemency for discharges or dismissals issued at a general court-martial.

c. Guidance to the Boards; applies to more than clemency from sentencing in a court-martial, it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

Appendix C

Internal Control Evaluation

C–1. Function

The functions covered by this evaluation are the administration of the ADRB, to include reviewing, processing, notifying, and reporting requirements.

C–2. Purpose

The purpose of this evaluation is to assist the Director, Military Review Boards, the DASA (RB), the ASA (M&RA), and SECARMY in evaluating the key internal controls outlined in paragraph C–4. It is not intended to cover all controls.

C–3. Instructions

Answers must be based on the actual testing of internal controls (such as document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These key internal controls should be reviewed every 18 months and must be formally evaluated at least once every 5 years. Certification that evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

C–4. Test questions

- a.* Does the ARBA have a current memorandum appointing members to the Military Review Boards and Clemency and Parole Board?
- b.* Are boards scheduled with sufficient regularity to meet the above requirements?
- c.* Are board members appointed by the ASA (M&RA)?
- d.* Do the Military Review Boards have a current list of board members by order of date of rank?
- e.* Are procedures in place to prioritize cases according to the established agency priorities?
- f.* Are procedures in place to obtain the required Army records necessary to resolve an application?
- g.* Are cases reviewed and approved at the appropriate level?
- h.* Are board decisions distributed in a timely fashion?
- i.* Are there procedures in place to ensure board-directed corrections are accomplished in a timely manner?
- j.* Have the Military Review Boards uploaded ADRB board decisions, properly redacted, to the Department of Defense Board of Review Electronic Reading Room?
- k.* Did a medical advisor, as defined in this regulation, review all discharge upgrade requests involving sexual assault, sexual harassment, post traumatic stress disorder, traumatic brain injury, or other behavioral health conditions?

C–5. Supersession

Not applicable.

C–6. Comments

Help to make this a better tool for evaluating internal controls. Submit comments to Assistant Secretary of the Army (Manpower and Reserve Affairs) Military Review Boards (SAMR–RBB), 251 18th Street South, Suite 385, Arlington, Virginia 22202–3531, army.arbainquiry@mail.mil.

Glossary

Section I

Abbreviations

ABCMR

Army Board for Correction of Military Records

ADRB

Army Discharge Review Board

AMHRR

Army Military Human Resource Record

ARBA

Army Review Boards Agency

ARIMS

Army Records Information Management System

ASA (M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

DA

Department of the Army

DASA (RB)

Deputy Assistant Secretary of the Army (Review Boards)

DoD

Department of Defense

DoDD

Department of Defense directive

DoDI

Department of Defense instruction

DRB

Discharge Review Board

FOIA

Freedom of Information Act

MRB

Military Review Board

NCR

National Capital Region

PO

presiding officer

PTSD

post traumatic stress disorder

SECARMY

Secretary of the Army

ST

sexual trauma

TBI

traumatic brain injury

UCMJ

Uniform Code of Military Justice

Section II

Terms

Applicant

A former member of the Armed Forces previously discharged in accordance with military service regulations or by sentence of a court-martial (other than a general court-martial) whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

Arbitrary and capricious action

Includes actions by individuals in authority constituting a clear abuse of such authority and, although not amounting to prejudicial error, may have contributed to the decision to discharge or the characterization of service.

Army Military Human Resource Record

The permanent, historical, and official record of a Soldier's military service. The AMHRR is an umbrella term encompassing human resource records to include, but not limited to, the official military personnel file, finance related documents, medical accession, retention, and/or separation records, and non-service related documents deemed necessary by the Army.

Complainant

A former member of the Armed Forces (or the former Servicemember's counsel) submitting a complaint under DoDI 1332.28, Enclosure 5 with respect to the decisional document issued in the former Servicemember's own case; or a former member of the Armed Forces (or the former Servicemember's counsel) submitting a complaint under enclosure 5 stating that correction of the decisional document will assist the former Servicemember in preparing for an administrative or judicial proceeding in which the former Servicemember's own discharge will be at issue.

Counsel or representative

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the ADRB. It includes, but is not limited to: a lawyer admitted to the bar of a Federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Secretary of Veterans Affairs; a representative from a State agency concerned with veterans affairs; and representatives of a private organization or local government agency.

Department of Defense Boards' Electronic Reading Room

A public website located at <https://boards.law.af.mil>, where potential complainants are able to review prior decisional documents issued by their respective boards and obtain application forms to process a complaint.

Discharge

The complete severance from all military status gained by the enlistment or induction concerned, including the assignment of a reason for such discharge and characterization of service (see DoDD 1332.14).

Discharge review

The evaluation of the reason for separation, the procedures followed in accomplishing separation, and the characterization of service. This includes determinations made under the provisions of 38 USC 5303.

Discharge Review Board

An administrative board constituted by the secretary of the military department concerned and vested with discretionary authority to review discharges under the provisions of 10 USC 1553. The ADRB is authorized to review the character, reason, and authority of a discharge of any Servicemember discharged from active military service within the past 15 years.

Discharge Review Board Panel

A DRB panel, consisting of five members, authorized by the Secretary concerned to review discharges.

Discharge Review Board Traveling or Regional Panel

A DRB panel conducting discharge reviews in a location outside the NCR.

Evidence

For purposes of this regulation, any military record document, witness statement, the applicant's written statement, correspondence, or any other documents supporting the applicant's contention of impropriety, inequity, or both with respect to the discharge.

Hearing

A review involving an appearance before the DRB by the applicant or on the applicant's behalf by a counsel or representative.

Issue

A specific reason why the applicant believes the discharge received may have been improper or inequitable.

Liberal

As authorized by the Secretary of Defense, the military departments have wide latitude and discretion to review and assess cases, pertaining to post traumatic stress disorder and military sexual trauma, independently to correct errors and rectify inequity. While boards cannot predict outcomes, the "liberal" guidance is intended to ease the application process for those individuals who are seeking redress by explaining what supporting evidence would aid their case and assist the boards in reaching fair and consistent results in these cases.

Medical advisor

An officer of the Army Medical Corps or a civilian medical provider assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

National Capital Region

The District of Columbia; Prince George's and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

Post-traumatic stress disorder

An anxiety disorder that can occur after experiencing a traumatic event. The Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association, provides the standard criteria and common language for classification of mental disorders.

President, Discharge Review Board

A person designated by the Secretary concerned and responsible for the supervision of the discharge review function and other duties as assigned.

Records review

A hearing conducted by a panel of senior active duty officers following a thorough review of the applicant's record of service. The applicant does not appear before the panel for this type of hearing but may submit documentary evidence on the applicant's behalf, as it pertains to the applicant's military service and/or post-Service achievements.

Secretarial reviewing authority

Either the Secretary concerned or the official to whom the Secretary's discharge reviewing authority has been delegated.

Sexual assault

As defined in DoDD 6495.01, sexual assault is intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.

Sexual harassment

According to 10 USC 1561, sexual harassment is (1) Conduct that (a) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when—(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; (ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (iii) such conduct has the purpose or effect of un-reasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and (b) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive. (2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the

Department of Defense. (3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the armed forces or civilian employee of the Department of Defense.

Sexual trauma

For purposes of this regulation, the term sexual trauma means rape or sexual assault within the meaning of UCMJ, Art. 120, forcible sodomy under UCMJ, Art. 125 or an attempt to commit either of these categories of offenses when punishable under UCMJ, Art 80.

Traumatic brain injury

Several classifications of brain injury (mild, moderate, severe, or penetrating) that are determined by medical professionals based on the nature of the injury itself. The classifications referenced do not refer to the severity of the symptoms associated with the injury but are based on the nature of the injury itself.

UNCLASSIFIED

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