

Chapter 14 Separation for Misconduct

Section I General Provisions

14-1. General

This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14-2. Policy

a. Action will be taken to separate a soldier for misconduct when it is clearly established that—

(1) Despite attempts to rehabilitate or develop him or her as a satisfactory soldier, further effort is unlikely to succeed.

(2) Rehabilitation is impracticable or soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).

(3) The provisions of paragraph 1-35 have been complied with, if applicable.

b. Separation action may be taken when a soldier is not under military control (per chapter 2, section IV).

c. Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties which may be imposed under the UCMJ.

d. Before taking action against a soldier under section III because of minor disciplinary infractions or a pattern of misconduct, commanders will insure that the soldier has received adequate counseling and rehabilitation. See paragraph 1-18.

e. (**Rescinded.**)

f. Misconduct involving fraudulent entry will be considered under chapter 7. Misconduct involving homosexual conduct will be processed under chapter 15.

g. Commanders will consider soldiers meeting the criteria of section III, this chapter, and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the soldier is serving a sentence to confinement at the installation detention facility.

14-3. Characterization of service or description of separation

a. A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record (chap 3, sec III). When the sole basis for separation is a serious offense which resulted in a conviction by court-martial that did not impose a punitive discharge, the soldier's service may not be characterized under other than honorable conditions unless approved by HQDA (TAPC-PDT-SS).

b. When a soldier has completed entry level status, characterization of service as honorable is *not* authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction or higher authority unless authority is delegated per paragraph 1-21 *c*(2). A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is command directed urinalysis results, which cannot be used for characterization of service as specified in chapter 6, AR 600-85, or when an administrative discharge board has recommended separation with an Honorable discharge (see para 2-12 *b*(1)).

c. If characterization of service under other than honorable conditions is *not* warranted for a soldier in entry level status (chap 3, sec III) service will be described as (uncharacterized).

d. An honorable characterization of service is generally required when limited use evidence is initially introduced by the Government. (See para 3-8 *a* and *g.*)

14-4. Authority for discharge or retention

a. The separation authority is authorized to order discharge or direct retention in military service when disposition of a soldier has been made by a domestic court of the United States or its territorial possessions.

b. Upon determination that a soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority. (See AR 600-200, chap 6, sec IV.)

c. The separation authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving soldier a probationary period not to exceed 6 months to demonstrate successful rehabilitation. See paragraph 1-21 for delegation of authority.

Section II Conviction by Civil Court

14-5. Conditions which subject soldier to discharge and reduction in grade

a. A soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudications in juvenile proceedings.

(1) A punitive discharge would be authorized for the same or a closely related offense under the MCM, 1984, as amended; or

(2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Initiation of separation action is *not* mandatory. Although the conditions established in *a*(1) or (2) are present, the immediate commander also must consider whether the specific circumstances of the offense warrant separation. See paragraph 14-7 for guidance on retention.

c. If separation action is initiated by the immediate commander, the case will be processed through the chain of command to the separation authority for appropriate action.

d. A soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction (AR 600-200), as it applies to reductions in grade for misconduct (conviction by civil court).

14-6. Appeals

A soldier will be considered as having been convicted, or adjudged a juvenile offender, even though an appeal is pending or is filed later. A soldier subject to discharge under this regulation will be considered and processed for discharge even though he or she has filed an appeal or has stated his or her intention to do so. However, execution of the approved discharge will be withheld until the soldier has indicated in writing that he or she does not intend to appeal the conviction or adjudication as a juvenile offender, or until the time an appeal may be made has expired, or until the soldier's current term of service, as adjusted (see para 1-23), expires (see limitation of para 14-9) whichever is earlier. If an appeal has been made, discharge will be withheld until final action has been taken or until the soldier's current term of service, as adjusted (para 1-23), expires (see limitation of para 14-9). Upon request of the soldier, or when the commander believes it is appropriate, a soldier may be discharged prior to final action on an appeal. In such cases, the entire file will be forwarded to HQDA (TAPC-PDT-SS),

Alexandria, VA 22331-0479, for final decision. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances and the recommendation.

14-7. Retention action

Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army. However, cases may arise which warrant consideration with a view toward retaining the soldier in the service.

a. In deciding whether retention should be recommended or approved, consider the gravity of the offense, related events, and any matters in extenuation. The military record of the soldier before the offense should be considered, as well as prospects for rehabilitation.

b. If retention is desired and civil custody exists, such as parole or probation, which would interfere with the soldier's military duties, the civil authorities will be requested to relinquish such custody during the soldier's term of military service. If the civil authorities decline to relinquish custody, as a general rule, the soldier will be discharged. The soldier will also be discharged if the conditions for relinquishment of custody will cause an undue burden to the Army.

14-8. Action following disposition by domestic courts

a. When discharge is contemplated. When a soldier is under military control, the unit commander will take action as specified in the Administrative Board Procedure (chap 2, sec III), except that the use of the Notification Procedure (chap 2, sec II) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3-7 *c.* Chapter 2, section IV, prescribes additional actions to be taken when soldier is confined, and the Administrative Board Procedure will be used, except that the use of the Notification Procedure is authorized if characterization of service under other than honorable conditions is not warranted.

b. Board hearing waived or completed. The separation authority may—

(1) Disapprove recommendation for discharge and direct retention.

(2) Approve recommendation for retention.

(3) Approve recommendation for discharge, and approve the type discharge certificate recommended by the board or a more favorable one than that recommended. He or she may not direct a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined per paragraph 14-3.

(4) Approve recommendation for discharge and suspend execution of the discharge.

14-9. Procedure for civil court cases in foreign countries

a. Discharge of soldiers convicted by a foreign tribunal may be approved by major oversea commanders. This authority may be delegated to a general officer with a JA (judge advocate) on his or her staff. Every action taken in such delegation will state the authority. When a soldier is convicted by a foreign tribunal, and the soldier returns to the United States before the initiation or completion of discharge proceedings per this paragraph, discharge proceedings will be initiated or completed per paragraph 14-5. The proceedings will be completed as if the soldier had been convicted by the domestic court of the United States or its territorial possession. (See paras 14-4 and 14-8.) However, the recommendation for discharge will include the items specified in *b*(1) through (4) below. In such cases, the authorities specified in paragraph 1-21 may approve and order discharge under this paragraph if the soldier has been assigned to their command. However, HQDA authorization is required before soldiers who have completed 18 or more years of active Federal service may be discharged. This provision is not intended to relieve oversea commanders of their responsibility to promptly initiate and process civil court cases on soldiers of their command.

b. Commanders will forward the board proceedings, or waiver, through channels to the major overseas commander. Cases will be

processed through the chain of command to the commander in the United States authorized to approve discharge. In both situations, the recommendation regarding discharge will include—

(1) Information concerning the civil record and military service of the soldier.

(2) A statement from the court indicating that the soldier has been initially convicted.

(3) A statement as to the character of discharge desired (include statement as to whether para 2-4 has been complied with).

(4) A report of the trial proceedings submitted by the official US observer, if any, attending the trial or a transcript of the record of trial, if obtainable.

c. Army personnel confined in foreign prisons will not be discharged from military service until the term of imprisonment is completed and they return to the United States. Normally, soldiers disposed of by a foreign tribunal, but not confined, or who are confined but whose release from confinement is imminent will be returned to the United States, or its territorial possessions for discharge. It is general policy that the soldier will be returned to CONUS. Very unusual cases may be forwarded through command channels to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, with supporting reasons as to why a soldier should be authorized discharge in a foreign country. Only most unusual situations will be considered. If discharge in a foreign country is desired, either by the commander or the soldier concerned, this paragraph and chapter 1, section X will be complied with before such requests are submitted to HQDA.

d. If HQDA authorized discharge in a foreign country, the oversea commander accomplishing the discharge will inform the nearest US diplomatic or consular mission of such action.

e. A soldier may not be retained in the service beyond ETS without his or her consent (para 1-29) to complete board action under chapter 2, section III. When the soldier has not requested retention per paragraph 1-29 and it appears that compliance with chapter 2, section III, cannot be accomplished before the soldier's ETS, the case with full details will be submitted through channels to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479. The case will be submitted in time to permit appropriate consideration before the soldier's ETS. There is no authorization to begin last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

14-10. Pay and allowances

See AR 37-104-3.

14-11. Detainers and strength accountabilities

a. Detainers When a detainer is lodged with the civil authorities with a view toward having the soldier returned to military control upon release from confinement, the communication to the civil authorities will clearly show the reason for the detainer. A mere statement that the individual is wanted by the Army can lead to erroneous conclusions. The absence of detailed information may deprive the soldier of parole consideration. Civil authorities may believe that the soldier is wanted for trial when the Army only wants to restore the soldier to duty. When a detainer has been lodged with civil authorities and a decision is later made to accomplish administrative discharge, the civil authorities will be notified, in writing, to remove the detainer and that such detainer be cancelled. Notification will be made when discharge is accomplished. Verbal notification may be made, but must be confirmed in writing at the earliest date.

b. Strength accountability

(1) A soldier sentenced to confinement for 6 months or more in a domestic, civil, or foreign institution will be dropped from military strength when his or her sentence begins (AR 680-1, para 13). However, the soldier's chain of command retains administrative responsibility for processing separation action.

(2) When discharge is approved by separation authority but suspended due to appellate action in paragraph 14-6, the soldier will be administratively reassigned to the nearest Personnel Control Facility

(PCF) per AR 600–62 and AR 630–10. The soldier’s MPRJ and DA Form 201 will be forwarded to the commander of the PCF.

Section III Acts or Patterns of Misconduct

14–12. Conditions which subject soldiers to discharge

Soldiers are subject to separation per this section for the following:

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. If separation of a soldier in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Status Performance and Conduct (chap 11).

b. A pattern of misconduct. A pattern of misconduct consisting of—

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the MCM.

(1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See paragraph 1–45 for civil offenses under investigation by foreign authorities.)

(2) Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

(a) First-time drug offenders. Soldiers in the grade of sergeant and above, and all soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.

(b) Second-time drug offenders. All soldiers must be processed for separation after a second offense.

(c) Medically-diagnosed drug dependent soldiers. All soldiers will be processed for separation upon completion of actions required by AR 600–85.

14–13. Procedures

The administrative board procedures (chap 2, sec III) will be used; however, the use of the notification procedure (chap 2, sec II) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7 *c*.

14–14. Separation authority

Commanders specified in paragraph 1–21 are authorized to convene boards and order separation under this chapter.

14–15. Commanding officer’s report

When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, he or she will report the fact. It will be reported in letter form (fig 2–6) to the separation authority specified in paragraph 1–21 through the intermediate commander.

14–16. Action by intermediate commanders

Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs .

a. Disapprove the recommendation and direct reassignment of the soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer’s report will be sent to the new organization commander for information.

b. Approve the commanding officer’s recommendation and send the report to the separation authority. Recommendation will be made as to characterization of service (see para 2–2 or 2–4).

c. Recommend separation for unsatisfactory performance, if the reason for separation is determined to be a pattern of misconduct

and it is caused by the conditions in paragraph 13–2 *a*, and unsatisfactory performance was stated as a basis for separation in the initial letter of notification. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

14–17. Action by the separation authority

On receiving a recommendation for separation for misconduct, the separation authority may take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization. In case of reassignment, the commanding officer’s report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means. Include the reasons for considering separation for misconduct inappropriate, or in the alternative, take other appropriate action under this regulation.

c. Disapprove the recommendation relating to misconduct and take action himself or herself. The case can be referred to the appropriate separation authority (para 1–21 *c* or *d*) to determine whether the soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2 *a* and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate. Unless unsatisfactory performance was stated as a basis for separation in the initial letter of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

d. Convene a board of officers as prescribed in chapter 2, section III, to determine whether the soldier should be separated for misconduct.

e. When the board hearing has been properly and effectively waived, direct separation of the soldier for misconduct.

f. When the board hearing has been waived approve separation of the soldier for misconduct and suspend execution of the separation (para 1–20).

g. Direct that the case be processed through medical channels, if appropriate when the provisions of paragraph 1–35 have been complied with.

Chapter 15 Discharge for Homosexual Conduct

Section I Policy

15–1. General Policy

AR 600–20 contains general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and commander guidelines for fact-finding inquiries. AR 195–2 provides guidance on criminal investigation of sexual misconduct. AR 380–67 offers guidance on personal security and clearance matters related to homosexual conduct.

15–2. Discharge Policy

a. Homosexual conduct is grounds for separation from the Army under the criteria set forth in paragraph 15–3. This includes pre-service, prior service, or current service homosexual conduct. The term homosexual conduct includes homosexual acts, a statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the soldier’s sexual orientation, but because the statement indicates a likelihood that the soldier engages in or will engage in homosexual acts. A soldier’s sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as described in paragraph 15–3.

b. The foregoing does not preclude—