DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON, D.C. 20350-1000

SECNAVINST 5420.174D
DEC 2 2 2004

SECNAV INSTRUCTION 5420.174D

From: Secretary of the Navy

Subj: NAVAL DISCHARGE REVIEW BOARD (NDRB) PROCEDURES AND STANDARDS

Ref: (a) Title 10, U.S. Code, Section 1553
(b) DoD Instruction 1332.28 of 4 Apr 2004
(c) SECNAVINST 5420.135D
(d) DoD Directive 1332.14 of 21 Dec 1993
(e) Title 38, U. S. Code, Section 5303(e)(2)
(f) SECNAVINST 5211.5D
(g) SECNAVINST 5720.42F

1. Purpose. To implement within the naval service the updated uniform policies, procedures, and standards, consistent with references (a) and (b), for the review of discharges of former members of the Navy and Marine Corps established by the Secretary of Defense, and to make provision for public inspection, searching and downloading of Naval Discharge Review Board (NDRB) decisional documents through the Department of Defense (DoD) Board's Electronic Reading Room. This instruction is a substantial revision in format and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5420.174C.

3. Background

a. Reference (a) charges the Secretary of the Navy to establish a Board to review the discharge (other than a discharge by sentence of a general court-martial) of any former member of an armed force under the Secretary's jurisdiction. Subject to review by the Secretary, a Board established under the provisions of reference (a) may change a discharge.

b. The NDRB was established in compliance with reference (a).

c. Reference (b) published uniform policies, procedures and standards for the review of discharges within the Armed Forces,

d. The NDRB is a component of the Secretary of the Navy Council of Review Boards, as defined in reference (c).

e. The NDRB's authority to review discharges adjudged by special courts-martial shall not extend to altering the judgment of a court-martial except for purposes of clemency.

4. Responsibilities

a. The NDRB is designated and directed to make final determinations as to whether discharges of former members of the Navy and Marine Corps should be changed and the nature of the change, if warranted.

b. The decisions of the NDRB shall be final, subject to review by the Secretary, as specified in Part IV, Paragraph 409.

c. The President of the Naval Discharge Review Board shall transmit for Secretarial review any case, which the President believes, is of significant interest to the Secretary.

5. Action/Procedures. Organizations of the Department of the Navy and elements of the discharge review system described in this Instruction shall act in accordance with the provisions of this Instruction so as to facilitate proper and effective review of naval discharges. Discharge review procedures are prescribed in Part IV. Discharge review standards are prescribed in Part V and constitute the basic guidelines for determining whether to grant or deny relief in a discharge review. Complaint procedures about decisional documents are prescribed in Part VI.

6. Forms. The DD Form 293, "Application for the Review of Discharge or Dismissal from the Armed Forces of the United States," is available for downloading on the DoD Forms Program website at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*, at most DoD installation and regional offices of the Veterans Administration, or by writing to the Naval Discharge Review Board at 702 Kennon Street, S.E., Room 309 (NDRB), Washington Navy Yard, DC, 20374-5023. The Standard Form

180 (SF180) "Request Pertaining To Military Records" is available at *http://www.nara.gov/regional/mprsf180.html* on the National Archives and Records Administration Web Site.

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(Manpower and Reserve Affairs)

Distribution:
Electronic only, Navy Directive Website http:neds.daps.dla.mil/

TABLE OF CONTENTS

PART I DEFINITIONS	PAGE
101. NAVAL DISCHARGE REVIEW BOARD (NDRB)	I-1
102. NDRB PANEL	I-1
103. PRESIDENT, NDRB	I-1
104. PRESIDING OFFICER, NDRB PANEL	I-1
105. RECORDER, NDRB PANEL	I-1
106. HEARING EXAMINATION	I-1
107. NATIONAL CAPITAL REGION (NCR)	I-1
108. NDRB TRAVELING OR REGIONAL PANEL	I-2
109. RECORD DISCHARGE REVIEW	I-2
110. PERSONAL APPEARANCE HEARING REVIEW	I-2
111. NAVAL SERVICE	I-2
112. DISCHARGE	I-2
113. DISCHARGE REVIEW	I-2
114. ADMINISTRATIVE DISCHARGES	I-2
115. PUNITIVE DISCHARGE	I-4
116. REASON/BASIS FOR ADMINISTRATIVE DISCHARGE	I-4
117. APPLICANT	I-4
118. APPLICATION	I-5
119. COMPLAINANT	I-5
120. COUNSEL/REPRESENTATIVE	I-5

121. DECISIONAL DOCUMENT I-5

PART II AUTHORITY/POLICY FOR DEPARTMENTAL DISCHARGE REVIEW

201. AUTHORITY II-1

202. STATUTORY/DIRECTIVE AUTHORITY II-1

203. BROAD OBJECTIVES OF NAVAL DISCHARGE REVIEW II-2

204. ELIGIBILITY FOR NAVAL DISCHARGE REVIEW II-2

205. JURISDICTIONAL LIMITATIONS AUTHORITY FOR REVIEW OF DISCHARGES II-3

206. JURISDICTIONAL DETERMINATION II-3

207. DISPOSITION OF APPLICATIONS FOR DISCHARGE REVIEW II-4

208. IMPLEMENTATION OF NDRB DECISIONS II-4

209. EVIDENCE SUPPORTING APPLICATION II-4

210. REVIEW ACTION IN INSTANCES OF UNAVAILABLE RECORD II-5

211. REGULARITY OF GOVERNMENT AFFAIRS II-5

212. AVAILABILITY OF RECORDS II-5

213. ATTENDANCE OF WITNESSES II-7

214. APPLICANT'S EXPENSES II-8

215. MILITARY REPRESENTATION II-8

216. FAILURE TO APPEAR AT A HEARING OR RESPOND TO A SCHEDULING NOTICE II-8

217. RECONSIDERATION II-9

218. CONTINUANCE AND POSTPONEMENTS II-10

219. WITHDRAWAL OF APPLICATION II-10

220. REVIEW ON MOTION OF THE NDRB II-10

221. SCHEDULING OF DISCHARGE REVIEWS II-10

222. PERSONAL APPEARANCE DISCHARGE HEARING SITES II-11

223. NDRB SUPPORT AND AUGMENTATION BY REGULAR AND RESERVE ACTIVITIES II-11

PART III RESPONSIBILITIES OF THE NAVAL DISCHARGE REVIEW BOARD III-1

301. MISSION III-1

302. FUNCTIONS III-1

303. OTHER AGENCIES RESPONSIBILITIES IN SUPPORT OF THE NAVAL DISCHARGE REVIEW BOARD III-3

PART IV DISCHARGE REVIEW PROCEDURES IV-1

401. APPLICATION FOR REVIEW IV-1

402. PROCEDURAL RIGHTS OF THE APPLICANT IV-1

403. CONDUCT OF REVIEWS IV-5

404. DECISION PROCESS IV-12

405. APPLICATION OF STANDARDS IV-13

406. RESPONSE TO ITEMS SUBMITTED AS ISSUES BY THE APPLICANT IV-14

407. DECISIONAL ISSUES IV-17

408. RECOMMENDATION OF THE NDRB PRESIDENT IV-24

409. SECRETARIAL REVIEWING AUTHORITY (SRA) IV-25

410. DECISIONAL DOCUMENT IV-28

411. ISSUANCE OF DECISIONS FOLLOWING DISCHARGE REVIEW IV-31

412. RECORD OF NDRB PROCEEDINGS IV-32

413. FINAL DISPOSITION OF THE RECORD OF PROCEEDINGS IV-33

414. AVAILABILITY OF DISCHARGE REVIEW BOARD DOCUMENTS IV-33

415. PRIVACY ACT INFORMATION IV-34

PART V DISCHARGE REVIEW STANDARDS V-1

501. OBJECTIVE OF REVIEW V-1

502. PROPRIETY V-1

503. EQUITY V-2

PART VI COMPLAINTS CONCERNING DECISION DOCUMENTS VI-1

601. GENERAL VI-1

602. JOINT SERVICE REVIEW ACTIVITY (JSRA) VI-1

603. CLASSIFICATION AND CONTROL OF CORRESPONDENCE VI-1

APPENDICES

OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS A-1

SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD B-1

DD FORM 293 (APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES) (with instructions) C-1

SUMMARY OF REVISIONS D-1

PART I

DEFINITIONS

101. Naval Discharge Review Board (NDRB). An administrative board, referred to as the "NDRB," established by the Secretary of the Navy and vested with discretionary authority to review discharges and dismissals under the provisions of reference (a).

102. NDRB Panel. An element of the NDRB, consisting of five members, authorized to review discharges. In plenary review session, an NDRB panel acts with the authority delegated by the Secretary of the Navy to the Naval Discharge Review Board.

103. President, NDRB. A senior officer of the Naval Service designated by the Director, Secretary of the Navy Council of Review Boards, who is responsible for the supervision of the discharge review function within the Naval Service and other duties as assigned.

104. Presiding Officer, NDRB Panel. The senior member of the NDRB Panel shall normally be the Presiding Officer. The Presiding Officer shall convene, recess, and adjourn the NDRB Panel as appropriate.

105. Recorder, NDRB Panel. A panel member responsible for briefing an applicant's case from the documentary and record evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance hearings, and preparing the decisional document subsequent to the hearing.

106. Hearing Examination. The process by which a designated panel member or official of the NDRB prepares a presentation for consideration by the NDRB in accordance with regulations prescribed by the Secretary of the Navy.

107. National Capital Region (NCR). The District of Columbia; Prince Georges 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.

108. DRB Traveling or Regional Panel. A DRB panel that conducts discharge reviews in a location outside the National Capital Regional (NCR). Currently, the NDRB does not travel to any locations outside the NCR to conduct reviews. All reviews are conducted at the Washington Navy Yard, D.C.

109. Record Discharge Review. A formal session of the NDRB convened for reviewing, on the basis of documentary data, an applicant's discharge. The documentary data shall include the application, with all information accompanying the application, available service and medical records, and any other information considered relevant by the NDRB.

110. Personal Appearance Hearing Review. A formal session of the NDRB convened for reviewing an applicant's discharge on the basis of a personal appearance, as well as military records and documentary data provided. The review involves an appearance before the NDRB by the applicant without counsel/representative, or the applicant with the counsel/representative, or on the applicant's behalf by a counsel/representative.

111. Naval Service. The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

112. Discharge. The complete severance of all military status gained by the enlistment or induction concerned, including the assignment of a reason for such discharge and characterization of service per reference (d).

113. Discharge Review. The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of reference (e).

114. Administrative Discharge. A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the Commandant of the Marine Corps, or the Commander, Naval Personnel Command, but

specifically excluding separation by sentence of a court-martial. The type of administrative discharge is a determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations of service for administrative discharges are:

a. Honorable. A separation from the naval service with honor. The issuance of an Honorable Discharge is when the quality of the member's service generally met the standard of acceptable conduct and performance for naval personnel, or is otherwise so meritorious that any other characterization of service would be clearly inappropriate.

b. General (Under Honorable Conditions) also termed "general discharge." A separation from the naval service under honorable conditions. The issuance of a discharge under honorable conditions is when the quality of the member's service has been honest and faithful; however, significant negative aspects of the member's conduct or performance of duty outweighed the positive aspects of the member's service record. In the absence of a specific finding from an administrative board, a characterization of service as General may be awarded based on a review of a member's overall service record.

c. Under Other Than Honorable Conditions (formerly termed "undesirable discharge"). A separation from the naval service under conditions other than honorable. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

d. Entry Level Separation. A separation initiated while a member is in entry level status (i.e., within first 180 days of continuous active duty, computation starts upon enlistment and terminates on the date notification of separation proceedings are initiated) will be described as ELS except when characterization of service as "under other than honorable" is authorized under reasons for separation and are warranted by circumstances of the case; or if "honorable" is clearly warranted by presence of unusual circumstances involving personal conduct and performance,

and is approved by the Secretary of the Navy based on the following reasons: selected changes in service obligation, convenience of the Government, disability, or best interest of the Service.

115. Punitive Discharge. A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

a. Bad Conduct. A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

b. Dishonorable. A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

c. Dismissal. A separation of a commissioned officer, effected by sentence of a general court-martial, or in commutation of such a sentence, or, in time of war, by order of the President, or separation of a warrant officer, W-1, who is dismissed by order of the President in time of war. A complete severance from all military status.

116. Reason/Basis For Administrative Discharge. The terms "reason for discharge" and "basis for discharge" have the same meaning. The first is a Navy term and the second is Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government, Misconduct. Reasons/basis for discharge are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

117. Applicant. A former member of the naval service who has been discharged or dismissed administratively in accordance with the naval directives/regulations or by sentence of a court-martial (other than a general court-martial) whose application is accepted by the NDRB or whose case is heard on the NDRB'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. When the term "applicant" is used in Part II through V, it

includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the NDRB an appropriate power of attorney or other written consent of the applicant.

118. Application. In the context of this instruction, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin, or legal representative. Department of Defense Form 293 ***must*** be used for the application.

119. Complainant. A former member of the Armed Forces (or the former member's counsel) who submits a complaint under Part VI with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under Part VI stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

120. Counsel or Representative. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of 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; or representatives from private organizations or local government agencies.

121. Decisional Document. The written recordation of the applicant's summary of service, the issue or issues presented together with any evidence offered in support of the application, the NDRB's response to the issue or issues, the votes of the member's of the panel, and any recommendations by the President of the NDRB or the Secretarial Reviewing Authority (SRA), as appropriate. The decisional document is promulgated by an "en bloc" letter.

PART II

AUTHORITY/POLICY FOR DEPARTMENTAL DISCHARGE REVIEW

201. Authority

The Naval Discharge Review Board, established pursuant to reference (a), is a component of the Secretary of the Navy Council of Review Boards. By SECNAVINST 5430.7M, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Secretary of the Navy Council of Review Boards. Reference (c) states the organization, mission, duties, and responsibilities of the Secretary of the Navy Council of Review Boards to include the Naval Discharge Review Board.

202. Statutory/Directive Authority

The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, manuals and directives of the Department of the Navy including Marine Corps orders, regulations, etc., and other written public expressions of policy by competent authority:

a. Reference (a) Review of discharge or dismissal, states:

"(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative or an organization recognized by the Administrator of Veterans' Affairs under Chapter 59 of Title 38.11."

b. Reference (b), provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of reference (b) are incorporated in this instruction.

c. Reference (d), prescribes policy, standards, and procedures, which govern the administrative separation of enlisted persons from the Armed Forces.

203. Broad Objectives of Naval Discharge Review

Naval discharge review shall have as its broad objectives:

a. The furtherance of good order and discipline.

b. The correction of injustice or inequity in the discharge issued.

c. The correction of administrative or clerical errors.

204. Eligibility for Naval Discharge Review

Any former member of the Naval Service, eligible for review under reference (a) or surviving spouse, next of kin or legal representative, shall upon submission of an application be afforded a review of the member's discharge from the Naval Service except for the limitations as provided in paragraphs 205 and 206. Discharge review may also be initiated on the motion of the NDRB (See paragraph 220).

205. Jurisdictional Limitations Authority for Review of Discharges

a. The Board does not have the authority to:

(1) review a discharge or dismissal resulting from a general court-martial;

(2) alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency;

(3) revoke any discharge or dismissal;

(4) reinstate a person in the naval service;

(5) recall a former member to active duty;

(6) change a reenlistment code;

(7) make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces;

(8) cancel or void enlistment contracts; or

(9) change the reason for discharge from or to a physical disability.

b. Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years.

206. Jurisdictional Determinations

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in paragraph 205. Decisions shall be made by administrative action without referral to the NDRB. Normally, they shall be made by the Executive Secretary of the NDRB, or they may be referred to the President, NDRB.

207. Disposition of Applications for Discharge Review

One of three dispositions will be made of an application for review of a discharge:

a. The application may be rejected for reason of

(1) absence of jurisdiction;

(2) previous review on the same evidence; or previous reviews (record and a personal appearance hearing review); or

(3) incomplete information on the application.

b. The application may be withdrawn by the applicant; or

c. The application may be accepted and the discharge reviewed by the NDRB, resulting in

(1) change to the discharge, or

(2) no change to the discharge.

208. Implementation of NDRB Decisions

The Commandant of the Marine Corps and the Chief of Naval Operations are responsible for implementing Naval Discharge Review Board decisions within their respective services. The Commandant of the Marine Corps shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The Commander, Naval Personnel Command, acting for the Chief of Naval Operations and Chief of Naval Personnel, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

209. Evidence Supporting Application

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper as issued. When hearings are scheduled, applicants must be prepared to present their case

at the scheduled time. In the absence of any other evidence the discharge review shall be taken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside of what is available in the service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

210. Review Action in Instances of Unavailable Records

In the event that Department of the Navy personnel or health records associated with a requested review of discharge are not located at the custodial activity, the following action shall be taken by the NDRB prior to consideration of the request for discharge review.

a. A certification that the records are unavailable shall be obtained from the custodial activity.

b. The applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this time period, the review may be conducted with information available to the NDRB.

c. The presumption of regularity in the conduct of government affairs may be applicable in instances of unavailable records depending on the circumstances of the case (See paragraph 211).

211. Regularity of Government Affairs

There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

212. Availability of Records

a. Before applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a

General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132. Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the NDRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act (Title 5, USC 552) or Privacy Act (Title 5, USC 552a) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location (such as the National Personnel Records Center, St. Louis, MO, or the Naval Personnel Command, Millington, TN or the Headquarters, U.S. Marine Corps, Quantico, VA) for copying. Upon completion of the copying, the above organization will return the record to the NDRB and the processing of the application shall then be resumed at whatever stage of the discharge review process, if practicable. In view of the lengthy process, applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may also examine their military personnel records at the site of their scheduled personal appearance hearing.

b. The NDRB shall notify applicants of the dates the records are available for examination in their standard scheduling information.

c. The NDRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity. The applicant must make applications for such information to the cognizant authority. The NDRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

d. If the official records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of

not less than 60 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the NDRB.

e. The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on request of an applicant, the NDRB shall provide the applicant and counsel or representative, if any, a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The NDRB shall also notify the applicant or counsel or representative: (a) of the right to examine such documents or to be provided with copies of the documents upon request; (b) of the date by which such requests must be received; and (c) of the opportunity to respond within a reasonable period of time to be set by the NDRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

213. Attendance of Witnesses

Arrangement for attendance of witnesses testifying in behalf of the applicant at discharge review hearings is the

responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

214. Applicant's Expenses

Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the Department of Defense. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

215. Military Representation

Military officers, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before a NDRB Panel, are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by Title 18, United States Code, Section 205.

216. Failure to Appear at a Hearing or Respond to a Scheduling Notice

a. Except as otherwise authorized by the Secretary of the Navy, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) when the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(2) when the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

b. In such cases, the applicant shall be deemed to have waived the right to a hearing, and if the NDRB has not conducted a record review, the NDRB shall complete its review of the discharge. Further request for a hearing

shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

217. Reconsideration

A discharge review shall not be subject to reconsideration except:

a. When the only previous consideration of the case was on the motion of the NDRB;

b. When the original discharge review did not involve a personal hearing and a hearing is now desired, and the provisions of Paragraph 216 do not apply;

c. When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

d. When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

e. When the case was not previously considered under uniform standards published pursuant to Public Law 95-126 and such application is made within 15 years after the date of discharge; or

f. On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

218. Continuance and Postponements

a. The President of the NDRB or presiding officer of the panel concerned may authorize a continuance of a discharge review hearing, provided that such 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 shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

b. Postponements of scheduled reviews normally shall not be 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.

219. Withdrawal of Application

An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

220. Review On Motion Of The NDRB

Reviews of discharges may be initiated by the NDRB on its own motion under the provisions of reference (a).

221. Scheduling Of Discharge Reviews

a. If an applicant requests a personal appearance discharge review, or to be represented in absentia, the NDRB shall provide a hearing in the NCR.

b. The NDRB shall subsequently notify the applicant and representative (if any) in writing of the proposed personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. If the applicant elects, this time limit may be waived and an earlier date set.

c. When an applicant requests a documentary (record) review, the NDRB shall conduct the review as soon as

practicable. Normally, documentary (record) reviews shall be conducted in the order in which they are received.

222. Personal Appearance Discharge Hearing Sites

a. The NDRB shall be permanently located, together with its administrative staff, in the NCR. The NDRB shall routinely conduct personal appearance discharge reviews and documentary (record) reviews at this, its permanent office.

b. As permitted by available resources, NDRB may establish a traveling panel in which the panel is permitted to travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews. The selection of sites and the frequency of visits shall be predicated on the number of requests pending within a region and the availability of resources.

223. NDRB Support and Augmentation by Regular and Reserve Activities

a. When and if the NDRB Panel travels for the purpose of conducting hearings, it shall normally select Navy or Marine Corps installations in the area visited as review sites.

b. The NDRB Traveling Board shall normally consist of members from the NCPB and augmentees from regular and reserve Navy and Marine Corps sources, as required.

c. Navy and Marine Corps activities in the geographical vicinity of selected review sites shall provide administrative support and augmentation to an NDRB Panel during its visit where such assistance can be undertaken without interference with mission accomplishment. The NDRB shall coordinate requests for augmentees and administrative support through the Chief of Naval Operations, the Commandant of the Marine Corps, and the Chief of Naval Reserve, as appropriate.

d. The administrative staff of the NCPB shall undertake all arrangements for NDRB Traveling Panel visits and shall process associated review documents.

PART III

RESPONSIBILITIES OF THE NAVAL DISCHARGE REVIEW BOARD

301. Mission

The Secretary of the Navy Council of Review Boards was established to administer and supervise assigned boards and councils within the Department of the Navy. The Naval Discharge Review Board is a component of the Secretary of the Navy Council of Review Boards.

302. Functions

1. Director, Secretary of the Navy Council of Review Boards

a. Make recommendations to the Secretary of the Navy regarding organization, tasking, and resources of the NDRB and its associated administrative support.

b. Submit recommendations to the Secretary of the Navy regarding policy and procedures for discharge review.

c. Provide administrative and clerical support for NDRB.

d. Inform the Secretary of the Navy of matters of interest to him.

e. Maintain a system of records, including as a minimum:

(1) Records specified for the NDRB as stipulated in the procedures prescribed in Part IV of this instruction.

(2) Records required for the administration of military and civilian personnel.

(3) Files of correspondence received and issued.

f. Establish billet/position assignment criteria for the NDRB.

g. Propose to the Secretary of the Navy, changes to this instruction.

h. Issue requisite precepts and remove or add members to the NDRB from personnel detailed to serve on the Secretary of the Navy Council of Review Boards, or from personnel otherwise made available.

2. President, Naval Discharge Review Board

a. Exercise primary cognizance within the Department of the Navy for matters relating to discharge review.

b. Supervise and direct the activities of the NDRB.

c. Maintain appropriate liaison with discharge review activities in other services (use Army Discharge Review Board as focal point for service coordination).

d. Maintain coordination with the Commandant of the Marine Corps (CMC) and the Commander, Naval Personnel Command (CNPC) in matters associated with discharge review.

e. In conformance with reference (f), protect the privacy of individuals in connection with discharge review.

f. Assure that NDRB functions are administered in accordance with the appropriate Secretary of the Navy instructions dealing with privacy and access to information.

g. Convene the NDRB as authorized by the Secretary of the Navy.

h. If a traveling panel is established, direct the movement of the NDRB Traveling Panel(s) on the basis of regional hearing requests.

i. Monitor the performance of the naval discharge review system. Make recommendations for changes and improvements. Take action to avoid delays in processing of individual discharge review actions.

j. Provide NDRB inputs for the maintenance of the DoD Electronic Reading Room.

303. Other Agencies Responsibilities In Support Of The Naval Discharge Review Board

The Commandant of the Marine Corps (CMC); Commander, Naval Personnel Command (CNPC), Commander, Naval Reserve Force (CNRF); Chief, Bureau of Medicine and Surgery (BUMED); and chiefs of other bureaus and offices of the Department of the Navy shall provide support, as requested, to the Naval discharge review process.

a. Functions of the CMC and Chief of Naval Operations (CNO). In the case of Navy, CNPC, under the CNP, shall discharge responsibilities of the CNO.

(1) Provide and facilitate access by the NDRB to service/health records and other data associated with performance of duty of applicants.

(2) Advise the NDRB of developments in personnel management, which may have a bearing on discharge review judgments.

(3) Implement the discharge review decisions of the NDRB and those of higher authority within respective areas of cognizance.

(4) Include the record of NDRB proceedings as a permanent part of the service record of the applicant in each case.

(5) Where appropriate, recommend cases for the NDRB to review on its own motion.

(6) Provide qualified personnel as NDRB members, recorders and administrative staff.

(7) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(a) the right to a review of his or her discharge under provisions of reference (a), and,

(b) the procedures for applying for such a review.

(8) Provide Navy and Marine Corps units and activities with information on the mission of the Naval Discharge Review Board through entries in appropriate personnel administration directives.

b. Functions of the Chief, Bureau of Medicine and Surgery, Naval Medical Command

(1) Under the CNO, BUMED shall facilitate, as required, access by the NDRB to health records of applicants.

PART IV

DISCHARGE REVIEW PROCEDURES

401. Application for Review. Applications shall be submitted to Naval Discharge Review Board on DD Form 293, "Application for the Review of Discharge or Dismissal from the Armed Forces of the United States," or computer-generated, with such other statements, affidavits, or documentation as desired. The DD Form 293 is available for downloading on the DoD Electronic Reading Room website at http:boards.law.af.mil, at most DoD installations and regional offices of the Veterans Administrative , or by writing to:

Secretary of the Navy Council of Review Boards
Naval Discharge Review Board
720 Kennon Street SE, Room 409
Washington Navy Yard, D.C. 20374-5023

402. Procedural Rights of the Applicant

a. Timing. A motion or request for review must be made within 15 years after the date of discharge or dismissal, if the discharge was other than the result of a general court-martial. The request may include such other statements, affidavits, or documentation, as desired.

b. Applicant's options. An applicant may request a change in the character of or reason for discharge (or both):

(1) Reason for discharge. An applicant may request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the Board shall presume that the request for review does not involve a request for change in the reason for discharge. Under the Board's responsibility to examine the propriety and equity of an applicant's discharge, the NDRB shall change the reason for discharge if such a change is warranted.

(2) Character of discharge. An applicant may request a specific change in character of discharge. A request for review from an applicant who does not have an

Honorable Discharge shall be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another characterization of discharge.

c. Request for consideration of specific issues. An applicant may request the NDRB to consider specific issues, which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both.

d. Use of DD Form 293. DD Form 293 provides the applicant with a standard format for submitting issues to the NDRB, and its use:

(1) Provides a means for the applicant to set forth clearly and specifically those matters that, in the opinion of the applicant, provide a basis for changing the discharge;

(2) Assists the NDRB in focusing on those matters considered to be important by the applicant;

(3) Assists the NDRB in distinguishing between a matter submitted by the applicant in the expectation that it will be treated as a decisional issue under subparagraph g., below, and those matters submitted simply as background or supporting materials;

(4) Provides the applicant with greater rights in the event that the applicant later submits a complaint under Part VI;

(5) Reduces the potential for disagreement as to the content of the applicant's issue.

e. Relationship of issues to the standards for discharge review. The NDRB reviews discharges on the basis of issues of propriety and equity. The standards used by the NDRB are set forth in Part V. The applicant should review those standards before submitting any issue upon which the applicant believes a change in discharge should be based.

(1) Issues concerning the equity of the discharge. An issue of equity is a matter that involves a determination whether a discharge should be changed under the equity standards of paragraph 503, Part V. This includes any issue submitted by the applicant that is addressed to the discretionary authority of the NDRB.

(2) Issues concerning the propriety of a discharge. An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of paragraph 502, Part V. This includes the applicant's issue in which the applicant's position is the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion). Although a numerical reference to the regulation or other sources of law alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the NDRB adequately of the basis for the applicant's position.

(3) The applicant's identification of an issue. The applicant is encouraged, but not required, to identify an issue as pertaining to the propriety or the equity of the discharge. This will assist the NDRB in assessing the relationship of the issue to propriety or equity under Part V, paragraphs 502 and 503.

f. Citation of matter from decisions. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements apply:

(1) The issue must be set forth or expressly incorporated in DD Form 293.

(2) If the applicant's issue cites a prior decision (of the NDRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(3) To ensure timely consideration of principles cited from unpublished opinions, applicant must provide the NDRB with copies of such decisions or of the relevant portion of the treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(4) If the applicant fails to comply with the above requirements, the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

g. Issues on DD Form 293. The NDRB shall consider all items submitted as issues by the applicant on the DD Form 293 or incorporated therein.

(1) Amendment of issues. The applicant, in writing, shall submit any amendment or withdrawal of an issue. The applicant can amend or withdraw any issue before the NDRB closes the review process for deliberation.

(2) Nothing in this provision prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) Additional issues identified during a hearing. The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of the applicant's presentation. If, before closing the case for deliberation, the NDRB believes that the applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that

time. This does not preclude the NDRB from developing its own decisional issues.

403. Conduct of Reviews

a. Composition of Board Members. As designated by the Secretary of the Navy, the NDRB and its panel shall consist of five members. Normally the members shall be career military officers, assigned to the Secretary of the Navy Council of Review Boards. One member of the NDRB shall be designated as the president and may serve as a presiding officer.

(1) Presiding officers of the NDRB shall normally be Navy or Marine Corps officers in the grade of Commander/Lieutenant Colonel or above.

(2) The NDRB membership shall consist of the Presiding Officer and preferably officers in the grades of Lieutenant Commander/Major. The President of NDRB may extend membership to Lieutenant/Captains with fleet/field experience.

(3) Normally, three of the five members of the NDRB panel should belong to the service from which the applicant was discharged whose case is under review.

(4) Any member of a panel of the NDRB, other than the presiding officer, may act as recorder for cases assigned. The recorder may participate as a voting member of the panel.

b. Location. All reviews by the NDRB are conducted in the National Capital Region, Washington Navy Yard, District of Columbia. The Secretary of the Navy may designate other locations, if deemed appropriate.

c. Types of review. An applicant, upon request, is entitled to a records review and a personal appearance hearing. The Board normally requires the applicant to first have a record review prior to a personal appearance hearing. However, should the applicant receive a personal appearance hearing **first**, the applicant is no longer eligible for a record review.

(1) Record review is a review of the application, available service records, and additional documents (if any) submitted by the applicant.

(2) Personal Hearing is a review involving the applicant's appearance before the NDRB, with or without designated counsel/representative.

d. Applicant's expenses. Expenses incurred by the applicant, witnesses, counsel, or representative are the responsibility of the applicant and not the NDRB.

e. Withdrawal of application. The applicant may withdraw the application without prejudice at any time before the scheduled review.

f. Failure to appear at a hearing or respond to a scheduling notice. Further opportunity for a hearing shall not be made available to the applicant who has requested a hearing, when:

(1) The applicant has been sent a scheduling letter containing the time and place of a proposed hearing and fails to make a timely response; or

(2) The applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

g. Waived rights to a hearing. If the applicant fails to respond to a scheduling notice or fails to appear for the scheduled hearing, the applicant shall be deemed to have waived the right to a hearing, and if the applicant has not had a record review, the NDRB shall conduct a record review of the discharge. Further request for a hearing review will not be granted unless the applicant can demonstrate the failure to appear or respond was due to circumstances beyond the applicant's control.

h. Continuance and postponements. The President of the NDRB or the Presiding Officer of the panel concerned may authorize a continuance of a discharge review hearing,

provided that such continuance is of a reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review. Postponements of scheduled reviews normally will not be 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.

i. Reconsideration. A discharge review shall not be subject to reconsideration except:

(1) When the only previous consideration for the case was on the motion of the NDRB;

(2) When the original discharge review did not involve a hearing and a hearing is now desired;

(3) When changes in discharge policy are announced after an earlier review of the applicant's discharge, and the new policy is made expressly retroactive;

(4) When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent substantial enhancement of the rights afforded a respondent in such proceedings; or

(5) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

j. Availability of records and documents

(1) Before applying for discharge review, potential applicants or their designated representative should obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the appropriate address indicated on the form. Once the application for discharge review (DD Form 293) is submitted, the applicant's military records are forward to the NDRB. Once the NDRB receives the records, these records cannot be reproduced by the Board and given to the applicant or their representative. Submission of a request for the applicant's military records, including a request under the Privacy Act reference (f) or Freedom of Information Act, reference (g) or after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to the appropriate location for copying, and copies are returned to the headquarters of the NDRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting the DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may examine their military personnel records at the site of their scheduled review before the hearing. NDRB will notify the applicant of the date the record is available for examination in the scheduling information.

(2) The NDRB is not authorized to provide copies of documents that are under the control of another Government agency, the applicant must make applications for such information to the appropriate authority. NDRB shall advise the applicant of the mailing address of the Government agency to which the request should be submitted.

(3) If the official records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed

for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the NDRB.

(4) The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications, regarding classified material.

(5) In any case heard on request of an applicant, the NDRB shall provide the applicant, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The NDRB shall notify the applicant of:

(a) the right to examine such documents or to be provided with copies of the documents upon request;

(b) the date by which such requests must be received; and

(c) the opportunity to respond within a reasonable period of time (normally 60 days).

(6) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such

summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

(7) Regulations of the Department of the Navy (DoN) may be obtained at many installations under the jurisdiction of the DoN by writing to the following address:

National Technical Information Service
5285 Port Royal Road (Reading Room)
Springfield, VA 22161

k. Executive Management. The administrative affairs of the NDRB shall be managed by the Executive Secretary. This responsibility shall include review of incoming applications, obtaining the required military records and other government documents, as required, scheduling hearings, correspondence, issuing Board decisions, and ensuring regulatory criteria are maintained.

l. Hearings. Hearings (including hearing examinations) that are conducted shall recognize the rights of the individual to privacy. Accordingly, presence at hearings of individuals other than those required shall be limited to persons authorized by the Director, Secretary of the Navy Council of Review Boards, or the President, Naval Discharge Review Board or expressly requested by the applicant, subject to reasonable limitations based upon available space. If, in the opinion of the presiding officer, the presence of other individuals could be prejudicial to the interests of the applicant or the Government, hearings may be held in closed session.

m. Evidence and Testimony

(1) The NDRB may consider any evidence obtained in accordance with this instruction.

(2) Formal rules of evidence shall not be applied in NDRB proceedings. The presiding officer shall rule on matters of procedure and shall ensure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses.

(3) Applicants undergoing hearings shall be permitted to make sworn or unsworn statements, if they so desire, or to introduce witnesses, documents, or other information on their behalf, at no expense to the Department of the Navy.

(4) Applicants may also make oral or written arguments personally or through counsel or representatives.

(5) Applicants and witnesses who present sworn statements may be questioned by the NDRB. All testimony shall be taken under oath or affirmation unless the applicant specifically requests to make an unsworn statement. If an applicant or witness makes an unsworn statement, they may not be questioned by the NDRB unless they agree to answer such questions.

(6) There is a presumption of regularity in the conduct of governmental affairs. This presumption will be applied in any review unless there is substantial credible evidence to rebut the presumption.

(7) Presumption Concerning Court-Martial Specifications

(a) Relevant and material facts stated in a court-martial specification, shall be presumed by the NDRB Panel as established facts. With respect to a discharge or dismissal adjudged by a court-martial tried under the Uniform Code of Military Justice, the action may extend only to changing the discharge or dismissal for purposes of clemency. This policy only applies to cases filed with the discharge review board after 6 December 1983.

(b) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial, shall be considered in accordance with the following:

1. If the applicant/accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the stated facts were true, then the NDRB can presume the truth of such

facts, unless there is substantial credible evidence to rebut this Presumption; or

2. If the discharge in lieu of court-martial only required a valid preferral of charges*, the NDRB may presume the signer either had personal knowledge of, or had investigated the matters set forth, and the charges were true in fact to the best of the signer's knowledge and belief. The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the NDRB. To the extent the discharge proceeding reflects an official determination that the facts stated in the charge sheet are true; that the applicant/accused admitted the facts stated in the charge sheet; or that the applicant/accused admitted guilt of the offense(s), then the presumption is strengthened. In accordance with paragraph 403.1.(6) above, the presumption may be rebutted by "substantial credible evidence."

404. Decision Process

a. The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standards set forth in Part V.

b. The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB panel, as appropriate, and shall maintain an atmosphere of dignity and decorum at all times.

*Charges may be preferred by any person subject to the Uniform Code of Military Justice. The charges must be signed and sworn to before a commissioned officer authorized to administer oaths, and shall state that the signer has personal knowledge of, or has investigated the matters set forth therein; and that the charges are true in fact to the best of the signer's knowledge and belief. 10 U.S.C. 830 (1976) (Art. 30 Uniform Code of Military Justice).

c. Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the Military Department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this Instruction.

d. The NDRB shall identify and address issues after a review of the following: material obtained and presented in accordance with this Instruction, available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

e. If the applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted, provided a record review has not already been done.

405. Application of Standards

a. When the NDRB determines an applicant's discharge was improper (Part V, paragraph 502), the NDRB will determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the Navy and Marine Corps regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable (Part V, paragraph 503), the provisions as to characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

b. When the NDRB determines the applicant's discharge was inequitable (see Part V, paragraph 503), any change

will be based on the evaluation of the applicant's overall record of service and relevant Navy or Marine Corps regulations of which the applicant was a member.

c. Voting shall be conducted in closed session, a majority of the five members' votes constituting the NDRB decision.

d. Details of closed session deliberations of the NDRB are privileged information and shall not be divulged.

e. There is no requirement for a statement of minority views in the event of a split vote. The minority, however, may submit a brief statement of its views.

f. The NDRB may request advisory opinions from appropriate staff officers of the naval service. These opinions are advisory in nature and are not binding on the NDRB in its decision-making process.

g. The preliminary determinations required by reference (e) shall be made upon majority vote of the NDRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in Part V of this instruction.

h. The NDRB shall:

(1) Address items submitted as issues by the applicant under paragraph 406, below;

(2) Address decisional issues under paragraph 407, below; and

(3) Prepare a decisional document in accordance with paragraph 410, below.

406. Response To Items Submitted As Issues By The Applicant

a. General guidance

(1) If an issue submitted by an applicant contains two or more clearly separate issues, the NDRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(2) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(3) Nothing in this paragraph precludes the NDRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

b. Decisional issues. An item submitted as an issue by an applicant in accordance with this Instruction shall be addressed as a decisional issue under paragraph 407, below, in the following circumstances:

(1) When the NDRB decides a change in discharge should be granted, and the NDRB bases its decision in whole or in part on the applicant's issue; or

(2) When the NDRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the NDRB's disagreement on the merits with an issue submitted by the applicant.

c. Response to items not addressed as decisional issues

(1) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(2) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the NDRB shall address the items submitted by the applicant under paragraph 407, below (Decisional Issues) unless one of the following responses is applicable:

(a) Duplicate issues. The NDRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(b) Citations without principles and facts. The NDRB may state that the Applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of subparagraph 402.f., above.

(c) Unclear issues. The NDRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if a reasonable person familiar with the discharge review process cannot understand it after a review of the materials considered.

(d) Nonspecific issues. The NDRB may not be able to respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered, under subparagraph 404.d., above, cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the NDRB disagrees with the applicant as to the relevance of matters set forth in the submission, the NDRB normally will set forth the nature of the disagreement under the guidance in paragraph 407, below, with respect to decisional issues, or it will reject the applicant's position on the basis of subparagraphs 406.c.(2)(a) or 406.c.(2)(b), above. If the applicant's submission is so general that none of those provisions is applicable, then the NDRB may state that it cannot respond because the item is not specific.

407. Decisional Issues

a. General. Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the NDRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(1) Partial change. When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) Relationship of issue to character of or reason for discharge. Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(3) Relationship of an issue to propriety or equity

(a) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB shall consider it under both standards.

(b) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming a change in discharge is required as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in subparagraph 407.a.(3)(d), below, the NDRB is not required to consider such an issue under the equity standards.

(c) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the

applicant's case, the issue shall be considered under the propriety standards and addressed under subparagraph b. or c. below.

(d) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends the NDRB is required as a matter of law to follow the prior case, the decisional document shall note the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards and addressed under subparagraphs e. or f. below.

(e) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

b. Change of discharge: issues of propriety. If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors or expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed.

c. Denial of the full chance requested: issues of propriety

(1) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(2) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(a) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(b) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

1. For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(c) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following

guidance applies in addition to the guidance in subparagraphs c.(2)(a) & (b), above:

1. The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph 402.f., above).

2. The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph 402, f., above) are not relevant to the applicant's case.

3. The NDRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the NDRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

4. The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

5. If the applicant takes the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the NDRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the NDRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue under subparagraphs e. and f., below.

6. When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the NDRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

d. Denial of the full change in discharge requested when propriety is not at issue. If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the propriety of the discharge.

e. Change of discharge: issues of equity. If the NDRB concludes a change in the discharge is warranted under the equity standards in Part V, the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed under the guidance in subparagraph f., below.

f. Denial of the full change in discharge requested: issues of equity

(1) If the NDRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(2) The NDRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(a) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(b) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

1. For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not

find the applicant's testimony to be sufficiently credible to overcome the presumption.

(c) If the NDRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in subparagraphs f.(2)(b)1 and 2, above:

1. The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant, in accordance with paragraph 402.f., above).

2. The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

3. The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation shall address all such specified issues.

4. The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

5. If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it shall presume the validity of the record in the absence of such corrective action. However, the NDRB shall consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it

shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(d) When the NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required, however, to explain why it relied on any such factors, unless the applicant expressly raises the applicability or weight of such a factor as an issue.

(e) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

408. The Recommendation Of The NDRB President

a. General. The president of the NDRB may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary of the Navy. There is no requirement the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in subparagraph b., below.

b. Format for recommendation. If a recommendation is provided, it shall contain the president's views whether there should be a change in the character of or reason for discharge (or both). If the president recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the president's position on decisional issues and issues submitted by the applicant under the following guidance:

(1) Adoption of the NDRB's decisional document. The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this enclosure.

(2) Adoption of the specific statements from the majority. If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) Response to issues not included in matter adopted from the majority. The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(a) The issues on which the president's recommendation is based. The president shall address each such decisional issue.

(b) The president's response to items submitted as issues by the applicant.

(c) Reasons for rejecting the conclusions of the majority with respect to decisional issues, which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Such issues shall be addressed under the principles in paragraph 407, above.

409. Secretarial Reviewing Authority (SRA)

a. Review by the SRA. The Secretarial Reviewing Authority (SRA) is the Secretary of the Navy or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(a) Any specific case in which the SRA has an interest.

(b) Any specific case the president of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the standards set forth in Part V.

b. Processing the decisional document

(1) The decisional document shall be transmitted by the NDRB president under paragraph 407, above.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion without the participation of the applicant or the applicant's counsel:

(a) The applicant shall be provided with a copy of the proposed decisional document, including the NDRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(b) The applicant shall be provided with a reasonable period of time, but not less than 25 calendar days, to submit to the SRA a rebuttal. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB president on decisional issues and other clear and specific issues submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the president's recommendation.

c. Review of the decisional document. If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant, but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the discussion by the

NDRB (or NDRB president) of the issues raised by the majority or the applicant.

d. The Addendum of the SRA. The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) The SRA's decision. The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the NDRB or the NDRB president, the decisional document shall contain a reference to the matter adopted.

(2) Discussion of issues. In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant, and issues raised by the NDRB and the NDRB president in accordance with the following guidance:

(a) Adoption of the NDRB president's recommendation. The addendum may state the SRA has adopted the NDRB president's recommendation.

(b) Adoption of the NDRB's proposed decisional document. The addendum may state the SRA has adopted the proposed decisional document prepared by the NDRB.

(c) Adoption of specific statements from the majority or the NDRB president. If the SRA adopts the views of the NDRB or the NDRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB president, the addendum shall set forth the modification.

(d) Response to issues not included in matter adopted from the NDRB or the NDRB president. The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

1. A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in paragraph 407 above.

2. The SRA's response to items submitted as issues by the applicant.

(3) Response to the rebuttal

(a) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed as outlined in paragraph 407 above, and no further response to the rebuttal is required.

(b) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

1. If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in paragraph 407 above.

2. If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note the fact and cite the specific matter adopted that responds to the issue in rebuttal.

3. If the matter submitted by the applicant does not meet the requirements for rebuttal material in subparagraph b.(2)(b), above, that fact shall be noted.

410. The Decisional Document

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

a. The circumstances and character of the applicant's service as extracted from available service records,

including health records, and information provided by other Government authorities or the applicant, such as, but not limited to:

(1) Information concerning the discharge at issue in the review, including:

(a) Date (YYYYMMDD) of discharge.

(b) Character of discharge.

(c) Reason for discharge.

(d) The specific regulatory authority under which the discharge was issued.

(2) Date (YYYYMMDD) of enlistment.

(3) Period of enlistment.

(4) Age at enlistment.

(5) Length of service.

(6) Periods of unauthorized absence.

(7) Conduct and efficiency ratings (numerical or narrative).

(8) Highest rank achieved.

(9) Awards and decorations.

(10) Educational level.

(11) Aptitude test scores.

(12) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice, Chapter 47 of title 10, United States Code (including nature and date (YYYYMMDD) of offense or punishment).

(13) Convictions by court-martial.

(14) Prior Military Service and type of discharge received.

b. A list of the type of documents submitted by or on behalf of the applicant (including a written brief, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

c. A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

d. A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

e. The NDRB's conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.

(2) The specific changes to be made, if any.

f. A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and any other issues submitted by the applicant. Issues that have been withdrawn or modified with the consent of the applicant need not be listed.

g. The response to the items submitted as issues by the applicant under guidance in paragraph 406, above.

h. A list of decisional issues and a discussion of such issues under the guidance in paragraph 407, above.

i. Minority views, if any, when authorized under rules of the Military Department concerned.

j. The recommendation of the NDRB president when required by paragraph 408, above.

k. The addendum of the SRA when required by paragraph 409, above.

l. Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions thereof that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted, as issues, by the application shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

m. A record of the voting, including:

(1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.

(2) The NDRB member's names (last name, first initial, and middle initial) and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(3) An authentication of the document by an appropriate official.

411. Issuance Of Decisions Following Discharge Review

The applicant shall be provided with a copy of the decisional document and of any further action in review. The applicant shall be notified of the availability of the complaint process under Part VI. Final notification of

decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the Military Service concerned.

a. Notification to the applicant and counsel or representative, if any, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

b. Notification to the Military Service concerned shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

c. Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative, if any, in the same manner as the notification of the review decision.

412. Record Of NDRB Proceedings

a. When the NDRB proceedings have been concluded, a record will be prepared. Records may include written records, electromagnetic records, videotape recordings, or a combination thereof.

b. At a minimum, the record shall include the following:

(1) The application for review;

(2) A record of the testimony in verbatim, summarized, or recorded form at the option of the NDRB concerned;

(3) Documentary evidence or copies thereof, considered by the NDRB other than the military service record;

(4) Briefs and arguments submitted by or on behalf of the applicant;

(5) Advisory opinions considered by the NDRB, if any;

(6) The findings, conclusions, and reasons developed by the NDRB;

(7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;

(8) A copy of the decisional document.

413. Final Disposition Of The Record Of Proceedings

The original record of proceedings and all appendices thereto shall in all cases be incorporated in the Military Service record of the applicant and the military service record shall be returned to the custody of the appropriate records holding facility. If a portion of the original record of the proceedings cannot be stored with the military service record, the military service record shall contain a notation as to the place where the record is stored. Other copies shall be filed and disposed of in accordance with appropriate naval regulations.

414. Availability Of Discharge Review Board Documents

a. A copy of the decisional document prepared in accordance with this Instruction shall be made available promptly for public access after a notice of final decision is sent to the applicant.

b. To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons shall be deleted from documents made available for public access.

(1) Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available to the public.

(2) Each NDRB shall ensure there is a means for relating a decisional document number to the name of the

applicant, to permit retrieval of the applicant's records when processing a complaint under Part VI.

c. Any other privileged, classified, or For Official Use Only (FOUO) material contained in or appended to any documents required by this Instruction may be deleted only if a written statement of the basis for the deletions is provided to the applicant and made available to the public. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

d. NDRB documents will be made available for public inspection and downloading via the DoD Boards' Electronic Reading Room located at http://boards.law.af.mil.

(1) The documents shall be retrievable in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all decisions those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(2) NDRB decisional documents shall include the case number, the date, character of, reason, and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

415. Privacy Act Information

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of reference (f) shall be observed throughout the processing of a request for review of discharge or dismissal.

PART V

DISCHARGE REVIEW STANDARDS

501. Objective Of Review

a. The objective of a discharge review is to examine the propriety and equity of the applicant's discharge. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. In each case, the NDRB or the Secretary of the Navy shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

b. The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions do not bind the NDRB in its review of subsequent cases because no two cases present the same issues of equity.

502. Propriety

a. A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

b. When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another board, agency, or court), the NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

c. The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharges reviewed on or after April 20, 1971: the NDRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court' Order of December 3, 1981, in Wood v. Secretary of Defense to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An other than honorable (formerly undesirable) discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

503. Equity

A discharge shall be deemed to be equitable unless:

a. In the course of a discharge review, it is determined the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

(1) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(2) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

b. At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

c. In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this subparagraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(a) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative);

(b) Awards and decorations;

(c) Letters of commendation or reprimand;

(d) Combat service;

(e) Wounds received in action;

(f) Records of promotions and demotions;

(g) Level of responsibility at which the applicant served;

(h) Other acts of merit that may not have resulted in a formal recognition through an award or commendation;

(i) Length of service during the service period, which is the subject of the discharge review;

(j) Prior military service and type of discharge received or outstanding post-service conduct that may provide a basis for a more thorough understanding of the performance of the applicant during the period of service that is the subject of the discharge review;

(k) Convictions by court-martial;

(l) Records of nonjudicial punishment;

(m) Convictions by civil authorities while a member of the service reflected in the discharge proceedings or otherwise noted in Military Service records;

(n) Records of periods of unauthorized absence;

(o) Records relating to a discharge instead of court-martial.

(2) Capability to serve, as evidenced by factors such as:

(a) Total capabilities. This includes an evaluation of matters, such as age, educational level, and aptitude scores. Consideration may also be given whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(b) Family and Personal Problems. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(c) Arbitrary or capricious action. This includes actions by individuals in authority that constitute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

(d) Discrimination. This includes unauthorized acts as documented by records or other evidence.

PART VI

COMPLAINTS CONCERNING DECISIONAL DOCUMENTS

601. General

a. The procedures in this Part are established for the sole purpose of ensuring decisional documents issued by the NDRBs comply with the decisional document principles of reference (b), and may be modified or supplemented by the DUSD(PI).

b. The following persons may submit complaints:

(1) A former member of the Armed Forces with respect to the decisional document issued in the former member's own case; and

(2) A former member of the Armed Forces who states that correction of a decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

c. The DUSD(PI) is the final authority with respect to action on such correspondence.

602. The Joint Service Review Activity (JSRA)

A three member JSRA consisting of one judge advocate from each Military Department shall advise the DUSD(PI). The operations of the JSRA shall be coordinated by an administrative director, who shall serve as recorder during meetings of the JSRA. The members and the administrative director shall serve at the direction of the DUSD(PI).

603. Review Of Complaints, Classification, And Control Of Correspondence

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically identified violation of reference (b) or any reference thereto. Complaints shall be submitted and reviewed, as outlined in enclosure (5), reference (b).

a. Address of the JSRA. Correspondence with the JSRA concerning decisional documents issued by the NDRBs shall be addressed as follows:

Joint Service Review Activity
OUSD(P&R)PI-LP
The Pentagon
Washington, DC 20301-4000

b. All such correspondence shall be controlled by the administrative director through the use of a docketing procedure.

c. Classification. Correspondence shall be reviewed by the administrative director and categorized either as a complaint or an inquiry in accordance with the following:

(1) Complaints. A compliant is any correspondence in which it is alleged that a decisional document issued by the NDRB or Secretarial Review Authority (SRA) contains a specifically identified violation of the principles of the reference (b).

(2) Inquiries. An inquiry is any correspondence other than a complaint.

APPENDIX A

OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation, which shall continue in effect through out service with the Board.

OATH/AFFIRMATION

I, _____, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

APPENDIX B
SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD

The following are samples of letter format used by the Naval Discharge Review Board:

1. NOTIFICATION OF DECISION TO APPROPRIATE SERVICE HEADQUARTERS (no change warranted) (B-2)

2. NOTIFICATION OF DECISION TO APPROPRIATE SERVICE HEADQUARTERS (WITH ADMINISTRATIVE ERRORS NOTED FOR RECOMMENDED CORRECTIONS (no change warranted) (B-3)

3. NOTFICATION OF DECISION TO APPROPRIATE SERVICE HEADQUARTERS (upgrading the discharge) (B-4)

4. LETTER TO APPLICANT OF BOARD'S DECISION (no change warranted) (B-5)

5. LETTER TO APPLICANT OF BOARD'S DECISION (upgrading discharge) (B-6)

DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE RM 309 (NDRB)
WASHINGTON NAVY YARD DC 20374-5023

Serial No.:
Date:

FOR OFFICIAL USE ONLY

From: Executive Secretary, Naval Discharge Review Board
To: Commandant, United States Marine Corps, Code MMSB 22

Subj: NOTIFICATION OF DECISION IN CERTAIN NAVAL DISCHARGE REVIEW CASES

Encl: (1) Service and/or medical record of each former service member listed below
(2) Original NDRB Decision Document of each former service member listed below

1. Pursuant to Title 10 United States Code, Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharge from the Naval Service of the below listed individuals.

2. It is certified the decision of the Board in each case listed is that no change of the discharge is warranted.

3. It is requested the original NDRB Decisional Document be incorporated in the appropriate service record. Enclosures (1) and (2) refer.

DOCKET NUMBER	NAME/SOCIAL SECURITY NO.	CHARACTER OF DISCHARGE

There are names on this notification

DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE RM 309 (NDRB)
WASHINGTON NAVY YARD DC 20374-5023

Serial No.:
Date:

FOR OFFICIAL USE ONLY

From: Executive Secretary, Naval Discharge Review Board
To: Commandant, United States Marine Corps
Dep Ch of Staff For Manpower and Reserve Affairs
Records Service Section (MMSB 13), Quantico, VA
Via: Records Branch, MMSB 20

Subj: NOTIFICATION OF DECISION IN CERTAIN NAVAL DISCHARGE REVIEW CASES

Encl: (1) Record of discharge review proceeding and service record of personnel listed below

1. Pursuant to Title 10 United States Code, Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharge from the Naval Service of the below listed individuals.

2. ADMINISTRATIVE ERROR(S) WERE NOTED ON DD214 AND NDRB RECOMMENDS APPROPRIATE CORRECTION.

3. The Commandant, United States Marine Corps, is requested to issue revised DD FORM 214 or appropriate corrective action, in accordance with the Board's decision in each case. It is further requested the accompanying copy of the record of discharge review proceedings in each case be incorporated in the appropriate service record. Enclosure (1) refers.

DOCKET NUMBER	NAME/SOCIAL SECURITY NO.	CHARACTER OF DISCHARGE

There are names on this notification

DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE RM 309 (NDRB)
WASHINGTON NAVY YARD DC 20374-5023

Serial No.:
Date:

FOR OFFICIAL USE ONLY

From: Executive Secretary, Naval Discharge Review Board
To: Commandant, United States Marine Corps
Dep Ch of Staff For Manpower and Reserve Affairs
Records Service Section (MMSB 13), Quantico, VA
Via: Records Branch, MMSB 20

Subj: NOTIFICATION OF DECISION IN CERTAIN NAVAL DISCHARGE REVIEW CASES

Encl: (1) Record of discharge review proceeding and service record of personnel listed below

1. Pursuant to Title 10 United States Code, Section 1553, and acting under the authority of the Secretary of the Navy, the Naval Discharge Review Board has reviewed the circumstances associated with the discharge from the Naval Service of the below listed individuals.

2. The decision of the Board in each case is certified to be as it appears opposite the name of the former member.

3. The Commandant, United States Marine Corps, is requested to issue revised DD FORM 214, in accordance with the Board's decision in each case. It is further requested the accompanying copy of the record of discharge review proceedings in each case be incorporated in the appropriate service record. Enclosure (1) refers.

DOCKET NUMBER	NAME/SOCIAL SECURITY NO.	CHARACTER OF DISCHARGE	CHANGE OF TYPE/BASIS

There are names on this notification

DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE RM 309 (NDRB)
WASHINGTON NAVY YARD DC 20374-5023

NOTICE OF DECISION THAT DISCHARGE IS PROPER AS ISSUED

The review authority has carefully examined all available official records in connection with your application for discharge review.

The final decision is the discharge is proper as issued and no change is warranted.

Enclosure (1) is a copy of the Record of Review of Discharge. The original has been made a part of your official service personnel record.

X. XXXXXXXX
Executive Secretary

Encl:
Copy of Review of Discharge for Docket No. XXXX-XXXXX

DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE RM 309 (NDRB)
WASHINGTON NAVY YARD DC 20374-5023

NOTICE OF DECISION THAT DISCHARGE CHANGED

The review authority has given consideration to all relevant issues raised and evidence presented and has carefully examined all available official records in connection with your application for discharge review.

The final decision is the discharge be changed to (honorable, general, etc.).

Enclosure (1) is a copy of the Record of Review of Discharge. This document has been made a part of your official service personnel record.

By copy of this notice and the Record of Review of Discharge, the service personnel manager is requested to issue new discharge documents to reflect the final decision in this case. **Your new separation documents will be sent to you by the Personnel Management Support Branch, Records Correspondence Section (MMSB 13), Quantico, VA 22134-502, (703) 784-3923. please wait at least eight weeks before contacting that office**.

X. XXXXXXX
Executive Secretary

Encl:
Copy of Review of Discharge for Docket No.XXXX-XXXXX

APPENDIX C
DD FORM 293 (APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES) (with instructions)

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

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services and Communications Directorate (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.
PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.
ROUTINE USE(S): None.
DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA *(The person whose discharge is to be reviewed).* **PLEASE PRINT OR TYPE INFORMATION.**

a. BRANCH OF SERVICE *(X one)* ☐ ARMY ☐ MARINE CORPS ☐ NAVY ☐ AIR FORCE ☐ COAST GUARD

b. NAME *(Last, First, Middle Initial)*

c. GRADE/RANK AT DISCHARGE

d. SOCIAL SECURITY NUMBER

2. DATE OF DISCHARGE OR SEPARATION *(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)*

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

4. DISCHARGE CHARACTERIZATION RECEIVED *(X one)*
- ☐ HONORABLE
- ☐ GENERAL/UNDER HONORABLE CONDITIONS
- ☐ UNDER OTHER THAN HONORABLE CONDITIONS
- ☐ BAD CONDUCT *(Special court-martial only)*
- ☐ UNCHARACTERIZED
- ☐ OTHER *(Explain)*

5. BOARD ACTION REQUESTED *(X one)*
- ☐ CHANGE TO HONORABLE
- ☐ CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
- ☐ CHANGE TO UNCHARACTERIZED *(Not applicable for Air Force)*
- ☐ CHANGE NARRATIVE REASON FOR SEPARATION TO:

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST *(Continue in Item 14. See instructions on Page 3.)*

☐ **7.** *(X if applicable)* **AN APPLICATION WAS PREVIOUSLY SUBMITTED ON** *(YYYYMMDD)* _____
AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: *(Continue in Item 14. If military documents or medical records are relevant to your case, please send copies.)*

9. TYPE OF REVIEW REQUESTED *(X one)*
- ☐ 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.
- ☐ I AND/OR *(counsel/representative)* WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.
- ☐ I AND/OR *(counsel/representative)* WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO *(enter city and state)* _____ *(NOTE: The Navy Discharge Review Board does not have a traveling panel.)*

10.a. COUNSEL/REPRESENTATIVE *(If any)* **NAME** *(Last, First, Middle Initial)* **AND ADDRESS** *(See Item 10 of the instructions about counsel/representative.)*

b. TELEPHONE NUMBER *(Include Area Code)*

c. E-MAIL

d. FAX NUMBER *(Include Area Code)*

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* _____ and relationship by marking a box below.

☐ SPOUSE ☐ WIDOW ☐ WIDOWER ☐ NEXT OF KIN ☐ LEGAL REPRESENTATIVE ☐ OTHER *(Specify)*

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE *(Forward notification of any change in address.)*

b. TELEPHONE NUMBER *(Include Area Code)*

c. E-MAIL

d. FAX NUMBER *(Include Area Code)*

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

a. SIGNATURE - REQUIRED *(Applicant or person in Item 11 above)*

b. DATE SIGNED - REQUIRED *(YYYYMMDD)*

CASE NUMBER *(Do not write in this space.)*

14. CONTINUATION OF ITEM 6, ISSUES *(If applicable)*

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS *(If applicable)*

16. REMARKS *(If applicable)*

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY	NAVY AND MARINE CORPS
Army Review Boards Agency Support Division, St. Louis *9700 Page Avenue* St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)	Naval Council of Personnel Boards 720 Kennon Street, S.E. Room 309 (NDRB) Washington Navy Yard, DC 20374-5023
AIR FORCE	**COAST GUARD**
Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	U.S. Coast Guard Commandant (G-WPM) 2100 Second Street, S.W. Room 5500 Washington, DC 20593

INSTRUCTIONS FOR COMPLETION OF DD FORM 293

REQUESTING COPIES OF YOUR OFFICIAL MILITARY PERSONNEL FILE

Information on how to obtain military or health records is available at the National Personnel Records Center website at www.nara.gov/regional/mpr.html or at your local Veterans Administration office.

Applicants are strongly encouraged to submit any request for their military records prior to applying for a discharge review rather than after submitting a DD Form 293 in order to avoid substantial delays in processing of the application and scheduling of review. Applicants and their counsel may also 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.

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 will 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.

DD FORM 293 - PLEASE PRINT OR TYPE INFORMATION. (Items on the form are self-explanatory unless otherwise noted below.)

ITEM 1b. 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 11.

ITEM 2. If you received more than one discharge, the information in this item should refer to the discharge that you want changed. **Discharge Review Boards cannot consider any type of discharge resulting from a sentence given by a general court-martial.**

ITEM 3. If the discharge you want reviewed was issued over 15 years ago, instead of applying on a DD Form 293, you must petition the appropriate Board for Correction of Military Record using DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552.*

ITEM 5. If you request a change of narrative reason for separation, you must list the specific reason for discharge that you believe to be appropriate, otherwise the Board will presume that you do not want a change in reason for discharge. If you do not request a change of discharge characterization in this item, the Board will presume you want to change discharge to Honorable.

If you were separated on or after 1 October 1982 while in an entry level status with an under other than honorable conditions discharge and less than 180 days of active service, you can request a change of discharge characterization to "Uncharacterized" and discharge reason to "Entry Level Separation".

ITEM 6. "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 specific issues in accordance with those instructions and regulations governing the Board. Issues must be stated clearly and specifically. Your issues 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 issues that should be submitted to the Board):

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

Example 2. The discharge is improper because the applicant's pre-service civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings.

In Item 6 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 in Item 14 or on a plain sheet of paper and attach it to this application.

NOTE: If an issue is not listed in Item 6, 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 Discharge Review Board closes the review process for deliberation. Please be sure that your issues are consistent with the Board Action Requested (Item 5). If there is a conflict between what you say in your issues and what you requested in Item 5, the Board will respond to your issue in the context of the action requested in Item 5. For example, if you request a General Discharge in Item 5 but your issue in Item 6 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 mark the box for an Honorable Discharge in Item 5.

Incorporation by Reference. Issues that are listed on a legal brief or other written submissions may be incorporated by reference in Item 6. 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. 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.

INSTRUCTIONS FOR COMPLETION OF DD FORM 293 *(Continued)*

ITEM 8. 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. This also applies to legal briefs or counsel submissions. However, you have the right to submit evidence until the time the Discharge Review Board closes the review process for deliberation. Documents that are of the most benefit are those which substantiate or relate directly to your issues in Item 6. 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 Item 6.

ITEM 9. TYPE OF REVIEW REQUESTED

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

1. *Records Review.* You may have the Board conduct a discharge review based solely on military records and any additional documentation that you provide. This review is conducted without personal appearance by you and/or your counsel appearing.

2. Hearing. You may appear personally (alone or assisted by a representative/counsel) before the Board in the Washington, D.C. Metro Area or before a Traveling Panel of the Board in selected locations throughout the U.S., if appropriate. The Department of Defense is not responsible for, nor will it pay for, any costs incurred by the applicant or representative/counsel for appearance or providing testimony or documentation. 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 by a representative/counsel of your choice.

Applicants participating in a personal appearance or hearing examination may make sworn or unsworn state- ments, introduce witnesses, documents, or other information on their behalf. 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.

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

The military services do not provide counsel representation 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 Legion
2. Disabled American Veterans
3. Veterans of Foreign Wars
4. State or Regional Veterans Offices

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 9. Please note that some of the organizations listed above only represent applicants who appear before the Board in the Washington, D.C. Metro Area. Contact your local veterans affairs office, Veterans Administration Office or veterans service organization for further information.

ITEM 11. 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 12.a. 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 a waiver of your right to a hearing.

ITEM 13.a. and b. A signature and date entered by the applicant or person identified in Item 11 are required.

APPENDIX D

SUMMARY OF REVISION

This revision replaces the outdated SECNAVINST 5420.174C, dated 22 August 1984 and outlines the established uniform procedures and standards for the review of discharges or dismissal under 10 U.S.C. 1533, as promulgated in the DoD Instruction 1322.28, dated April 4, 2004. This instruction deletes obsolete references and eliminates some of the previous redundancy. This instruction also eliminates the requirement that DoD maintain a reading room for public inspection, copying, and distributing of the Naval Discharge Review Board's decisional documents. Additionally, the instruction eliminates the requirement to provide index numbers on all decisional documents, since these documents are now available at the DoD boards' electronic reading room, and can be found using a word search engine instead of index numbers. All other requirements remain in effect concerning the procedural requirements of the Naval Discharge Review Board.