

§ 724.205

32 CFR Ch. VI (7-1-05 Edition)

§ 724.205 Authority for review of naval discharges; jurisdictional limitations.

(a) The Board shall have no 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.

§ 724.206 Jurisdictional determinations.

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in § 724.205. 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.

§ 724.207 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
- (b) The application may be withdrawn by the applicant; or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.

§ 724.208 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 Military 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.

§ 724.209 Evidence supporting applications.

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, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available 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.

§ 724.210 Review action in instances of unavailable records.

(a) 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.

- (1) A certification that the records are unavailable shall be obtained from the custodial activity.

(2) 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 60 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.

(3) 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 § 724.211)

(b) [Reserved]

[50 FR 10943, Mar. 19, 1985, as amended at 65 FR 62616, Oct. 19, 2000]

§ 724.211 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.

§ 724.212 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 (5 U.S.C. 552) or Privacy Act (5 U.S.C. 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 for copying, are copied, and 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 mili-

tary 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 review before the hearing. The NDRB shall notify applicants of the dates the records are available for examination in their standard scheduling information.

(b) If the NDRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity, applications for such information must be made by the applicant 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.

(c) [Reserved]

(d) 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, 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 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.