

§ 865.111

evaluation of the applicant's overall record of service and relevant regulations.

(f) Voting shall be conducted in closed session, a majority of the five members' votes constituting the DRB's decision.

(g) Details of closed session deliberations of a DRB are privileged information and shall not be divulged.

(h) A formal minority opinion may be submitted in instances of disagreement between members of a board. The opinion must cite findings, conclusions and reasons which are the basis for the opinion. The complete case with the majority and minority recommendations will be submitted to the Director, Air Force Personnel Council.

(i) The DRB may request advisory opinions from staff offices of the Air Force. These opinions are advisory in nature and are not binding on the DRB in its decision making process.

§ 865.111 Response to items submitted as issues by the applicant.

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

(b) 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.

(c) This section does not preclude the DRB 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.

(d) An item submitted as an issue by an applicant in accordance with this regulation shall be addressed as a decisional issue under § 865.112 of this subpart in the following circumstances:

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

(2) When the DRB does not provide the applicant with the full change in

discharge requested, and the decision is based in whole or in part on the DRB's disagreement with the merits of an issue submitted by the applicant.

(e) 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 even if that basis is not addressed as an issue by the applicant. No further response is required to other issues submitted by the applicant.

(f) 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 DRB shall address the items submitted by the applicant unless one of the following responses is applicable:

(1) *Duplicate issues.* The DRB 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.

(2) *Citations without principles and facts.* The DRB may state that any issue, which consists of a citation of a previous 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 § 865.106(g)(1) of this part.

(3) *Unclear issues.* The DRB 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 it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under § 865.110(d) of this subpart.

(4) *Nonspecific issues.* The DRB may state that it cannot 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 § 865.110(d), 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 DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally will set forth the nature of the disagreement under the guidance in § 865.112 of this subpart with respect to decisional issues, or it will reject the applicant's position on the basis of § 865.111(f)(1) or § 865.111(f)(2). If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

§ 865.112 Decisional issues.

(a) 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 DRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(b) *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 DRB denies the full change requested.

(c) *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.

(d) *Relationship of an Issue To Propriety or Equity.* (1) If an applicant identifies an issue as pertaining to both propriety and equity, the DRB will consider it under both standards.

(2) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the DRB shall consider the issue solely as a matter of propriety. Except as provided in § 865.112(d)(4), the DRB is not required to consider such an issue under the equity standards.

(3) If the applicant's issue contends that the DRB 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 § 865.112(e) or § 865.112(f).

(4) If the applicant's issue sets forth principles of equity contained in a prior DRB decision, describes the relationship to the applicant's case, and contends that the DRB is required as a matter of law to follow the prior case, the decisional document shall note that the DRB is not bound by its discretionary decisions in prior cases under the standards in § 865.120 of this subpart. 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 § 865.112(h) or § 865.112(i).

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

(e) *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.

(f) *Denial of the full change requested: Issues of propriety.* 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. The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance: