

Office of the Secretary of Defense

§ 70.3

- 70.8 Discharge review procedures.
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AUTHORITY: 10 U.S.C. 1553 and 38 U.S.C. 101 and 3103, as amended.

SOURCE: 47 FR 37785, Aug. 26, 1982, unless otherwise noted.

§ 70.1 Reissuance and purpose.

This part is reissued and:

- (a) Establishes uniform policies, procedures, and standards for the review of discharges or dismissals under 10 U.S.C. 1553.
- (b) Provides guidelines for discharge review by application or on motion of a DRB, and the conduct of discharge reviews and standards to be applied in such reviews which are designed to ensure historically consistent uniformity in execution of this function, as required under Pub. L. 95-126.
- (c) Assigns responsibility for administering the program.
- (d) Makes provisions for public inspection, copying, and distribution of DRB documents through the Armed Forces Discharge Review/Correction Board Reading Room.
- (e) Establishes procedures for the preparation of decisional documents and index entries.
- (f) Provides guidance for processing complaints concerning decisional documents and index entries.

§ 70.2 Applicability.

The provisions of this part 70 apply to the Office of the Secretary of Defense (OSD) and the Military Departments. The terms, "Military Services," and "Armed Forces," as used herein, refer to the Army, Navy, Air Force and Marine Corps.

§ 70.3 Definitions.

(a) *Applicant*. A former member of the Armed Forces who has been discharged or dismissed administratively in accordance with Military Department regulations or by sentence of a court-martial (other than a general court-martial) and under statutory regulatory provisions whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is de-

ceased 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 §§ 70.8 through 70.10, 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 DRB an appropriate power of attorney or other written consent of the applicant.

(b) *Complainant*. A former member of the Armed Forces (or the former member's counsel) who submits a complaint under § 70.10 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 § 70.10 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.

(c) *Counsel or Representative*. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. 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 Administrator of Veterans Affairs; a representative from a State agency concerned with veterans affairs; and representatives from private organizations or local government agencies.

(d) *Discharge*. A general term used in this Directive that includes dismissal and separation or release from active or inactive military status, and actions that accomplish a complete severance of all military status. This term also includes the assignment of a reason for such discharge and characterization of service (32 CFR part 41).

(e) *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 38 U.S.C. 3103(e)(2).

(f) *Discharge Review Board (DRB)*. An administrative board constituted by the Secretary of the Military Department concerned and vested with discretionary authority to review discharges and dismissals under the provisions of 10 U.S.C. 1553. It may be configured as one main element or two or more elements as designated by the Secretary concerned.

(g) *DRB Panel*. An element of a DRB, consisting of five members, authorized by the Secretary concerned to review discharges and dismissals.

(h) *DRB Traveling or Regional Panel*. A DRB panel that conducts discharge reviews in a location outside the National Capital Region (NCR).

(i) *Hearing*. A review involving an appearance before the DRB by the applicant or on the applicant's behalf by a counsel or representative.

(j) *Hearing Examination*. The process by which a designated officer of a DRB prepares a presentation for consideration by a DRB in accordance with regulations prescribed by the Secretary concerned.

(k) *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.

(l) *President, DRB*. A person designated by the Secretary concerned and responsible for the supervision of the discharge review function and other duties as assigned.

§ 70.4 Responsibilities.

(a) The *Secretaries of the Military Departments* have the authority for final decision and the responsibility for the operation for their respective discharge review programs under 10 U.S.C. 1553.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD(MRA&L)) shall:

(1) Resolve all issues concerning DRBs that cannot be resolved among the Military Departments.

(2) Ensure uniformity among the Military Departments in the rights afforded applicants in discharge reviews.

(3) Modify or supplement the enclosures to this part.

(4) Maintain the index of decisions and provide for timely modification of index categories to reflect changes in discharge review policies, procedures, and standards issued by the OSD and the Military Departments.

(c) The *Secretary of the Army*, as the designated administrative focal point for DRB matters, shall:

(1) Effect necessary coordination with other governmental agencies regarding continuing applicability of this part and resolve administrative procedures relating thereto.

(2) Review suggested modifications to this part, including implementing documents; monitor the implementing documents of the Military Departments; resolve differences, when practicable; recommend specific changes; provide supporting rationale to the ASD(MRA&L) for decision; and include appropriate documentation through the Office of the ASD(MRA&L) and the OSD Federal Register liaison officer to effect publication in the FEDERAL REGISTER.

(3) Maintain the DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States," and republish as necessary with appropriate coordination of the other Military Departments and the Office of Management and Budget.

(4) Respond to all inquiries from private individuals, organizations, or public officials with regard to DRB matters. When the specific Military Service can be identified, refer such correspondence to the appropriate DRB for response or designate an appropriate activity to perform this task.

(5) Provide overall guidance and supervision to the Armed Forces Discharge Review/Correction Board Reading Room with staff augmentation, as required, by the Departments of the Navy and Air Force.

(6) Ensure that notice of the location, hours of operation, and similar types of information regarding the Reading Room is published in the FEDERAL REGISTER.