

in addition to the guidance in paragraphs above:

(A) 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).

(B) 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.

(C) 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 will address all such specified issues.

(D) 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 agrees with the applicant's position.

(E) 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 will presume the validity of the record in the absence of such corrective action. However, the NDRB will 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.

(iv) When 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 applicability or weight of

such a factor is expressly raised as an issue by the applicant.

(v) 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 that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

#### § 724.807 Record of NDRB proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, audio and/or videotape recordings, or a combination.

(b) At a minimum, the record will include the following:

- (1) The application for review;
- (2) A record of the testimony in either verbatim, summarized, or recorded form at the option of the NDRB;
- (3) Documentary evidence or copies, other than the military service record considered by the NDRB;
- (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.

#### § 724.808 Issuance of decisions following discharge review.

The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the service manager concerned.

(a) Notification to applicants, with copies to counsel or representatives, 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.