

UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION V, FORT LEWIS FIELD OFFICE

**WHAT YOU SHOULD KNOW ABOUT
HOW TO UPGRADE YOUR MILITARY
DISCHARGE**

If you received anything but an "Honorable" Discharge, this may affect your VA Benefits. Here's how you can apply for consideration in having your discharge upgraded:

Bottom Line Upfront

1. Obtain a copy of DD Form 293, "Application for the Review of Discharge or Dismissal from the Armed Forces of the United States."
2. Complete personal information in Section 1.
3. If you are making the application on behalf of another individual, complete Section 2.
4. Indicate the action you wish the board to accomplish in Section 3.
5. In section 4, indicate whether you wish to appear before the board in Washington D.C., wait for a traveling board, or have a records only review.
6. If another person is representing you, complete section 5.
7. Complete Section 6 if you elect not to be represented by counsel.
8. List supporting documentation in Section 7.
9. In Section 8, tell the board exactly why they should consider upgrading your discharge.
10. Sign and Date the Form in Section 9.
11. Mail the completed form to the address listed on the reverse side of the DD Form 293.

Tips:

1. Most of these requests are not approved. To maximize your chances, it is a good idea to be represented by an experienced attorney.
2. If the Discharge is over 15 years old, you must apply for a Correction of Military Records.
3. It may take several months for the board to review your application and make a decision.

While anyone can apply to the appropriate Discharge Review Board (DRB) for a discharge upgrade, or a change in the discharge reason, the individual must convince the board that their discharge reason or characterization was "inequitable" or "improper."

"Inequitable" means the reason or characterization of the discharge is not consistent with the policies and traditions of the service.

"Improper" means that the reason or characterization of the discharge is in error (i.e., is false, or violates a regulation or a law).

For example, an "Inequity" would be: "My discharge was inequitable because it was based on one isolated incident in 28 months of service with no other adverse action."

"Improper" would be: "The discharge is improper because the applicant's preservice civilian conviction, properly listed on his enlistment documents, was used in the discharge proceedings."

Your Right to Apply for Correction of Records.

Title 10, United States Code, Section 1553, is the law governing upgrading military discharges. This statute authorizes the Secretary of the service concerned *"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."*



The Boards are not allowed to revoke a discharge, or recall a person to active duty. Bad conduct discharges imposed by Special Court-martials are reviewed only as a matter of clemency.

When to Apply for an Upgrade of your Discharge.

Under the law, you must make your application for discharge upgrade within 15 years of discharge. If your discharge is older than 15 years, you must apply for a change to your military records.

How To Apply.

Application is a simple process. You should use a DD Form 293, *Application for the Review of Discharge or Dismissal from the Armed Forces of the United States*. This form can be downloaded via the Internet by going through www.usapa.army.mil and following the links to DD Forms. In addition to downloading the form, The DD Form 293 is

available at most DoD installations and regional offices of the Veterans Administration, or by writing to:

Army Review Boards Agency (ARBA)
ATTN: Client Information and Quality Assurance
Arlington, VA 22202-4508
Telephonic assistance is available at 1-703-607-1600

You should complete the form very carefully by typing or printing the requested information. Attach copies of statements or records that are relevant to your case. Make sure you sign item 9 of the form. Mail the completed form to the appropriate address on the backside of the form.

How To Support Your Request.

The Board will upgrade your discharge only if you can prove that your discharge is inequitable or improper. You do this by providing evidence, such as signed statements from you and other witnesses or copies of records that support your case. It is not enough to provide the names of witnesses. The Board will not contact your witnesses to obtain statements. You should contact your witnesses to get their signed statements with your request.

Your own statement is important. Put your statement in clear terms in section 8 of the DD Form 293. Make sure you carefully read the instructions on the back of the form concerning issues. Explain what happened and why it is an inequity or improper.

Normally, the best evidence is statements from persons who have direct knowledge or involvement. For example, statements from persons in your rating chain, your supervisor, first sergeant or commander. Or a statement from the chaplain, or anyone else with direct knowledge of your military service. The board is not going to be interested in your behavior or conduct *after* you left the military. Contain your statements to periods which were directly related to your military service. This is only a general rule, however. You must decide what evidence will best support your case. The DRB looks for issues of equity and propriety. The burden of proof is on you to establish the discharge was inequitable or improper.



It may take you some time to gather statements and records to support your request. You may wish to delay submission of your application until information gathering is complete. You might wish to request a copy of your military records from the National Personnel Records Center (NPRC), to include with your application. You should, however, submit your request within the 15-year time limit.

Getting Help.

With few exceptions, the DRB can consider all discharges for upgrade. The Board cannot, however, change the verdict of a General courts-martial.

Most applicants represent themselves. If your request is complex, you may want someone to represent you:

- Many veteran service organizations (VA) have staff members who will represent you in applying to the Board, and assist you in completing the necessary paperwork. You can find the location of your local VA Office in the Government listings in the phone book, or on-line at www.va.com.
- You may also hire a lawyer to represent you at your own expense.
- You should name your representative on DD Form 249, item 6.
- If you name a representative, the Board will normally deal with your representative rather than directly with you.

Advice and guidance are available from many sources. Military Personnel specialists can advise you on personnel issues. Veteran service organizations will advise you even though you decide to represent yourself. You may discuss your case with a Board staff member, or you may write to the Board, and a staff member will respond to your questions. Several attorneys specialize in military discharge review processes.

Where to Send the Form

Mail the completed DD Form 293 to the appropriate address:

ARMY

Army Review Boards Agency
Support Division, St. Louis
ATTN: SFMR-RBR-SL
9700 Page Avenue
St. Louis, MO 63132-5200

Personal Appearances Before the Board.

You may request a personal appearance before the Board by checking the appropriate box on DD Form 293, item 4. If you request a hearing, the Board will notify you as to time, date, and place (usually Washington D.C., although there are times when the Board travels to Regional Areas to conduct hearings). Expenses incurred are completely your responsibility. The Government will not reimburse you for expenses (travel, lodging, counsel, witness fees, etc.) If you, after being notified by letter of the time and place of the hearing, fail 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, you will be deemed to have waived the right to a hearing, and the DRB shall complete its review of the discharge. The Board will not grant another hearing unless the

you can demonstrate that the failure to appear or respond was due to circumstances beyond your control.

Your hearing before the Board is an administrative hearing, not an adversarial proceeding or a trial. The purpose is to determine whether your period of service was properly characterized. Only one of two things can happen: (1) your request can be granted or (2) your discharge can remain the same. It cannot be made worse. There is what is termed the presumption of regularity in government affairs. This means when the government, or in this case the military, takes an action, it is deemed to be a good and proper action. The burden of proof lies with you to convince the members of the Board that your discharge should be something other than what it is, and in doing so, overcome the presumption of regularity.

Before your Board Appearance, you should review the examiner's brief prior to your hearing. This brief is a summary of the available military records in your case. It contains the essential facts in your case and is put into a format that is easily read by the board members.

One Board member is designated as the action officer for your case. The action officer's job is to go through your entire record and compare it to the brief, making sure the brief is absolutely correct. In doing so, this individual becomes very familiar with your case. If any of the Board members have questions concerning the documentation in your record, either during the hearing or afterwards during the board deliberations, these questions will be addressed to the action officer who will get the document in question for the decision of the Board.

The Board is usually composed of five active duty officers and senior enlisted personnel. They will usually be dressed in civilian clothing, which is purely for your benefit; to help put you at ease and to create a more relaxed atmosphere. They each cast one vote and the majority rules.

In regard to testimony, for the purpose of this hearing you have the right to remain silent, give sworn testimony or give unsworn testimony. If you wish to remain silent you don't have to say anything. If you choose to give sworn testimony you'll take an oath and then each Board member will have the opportunity to ask you questions either about your testimony something in the record or essentially anything they feel might give a greater insight into your case. The Board believes that sworn testimony is important because in the absence of being able to ask questions, there is no way the Board members can establish your creditability as a witness, they don't know whether to believe you or not.

The questioning process has a way of drawing out the truth. If you do decide to give sworn testimony and are asked a question you don't wish to answer, you don't have to answer it. The decision as to which form of testimony you give, if any, is entirely yours. The Board will concern itself with two basic issues in determining whether your discharge should be changed. The first issue is that of propriety. This means did the service follow its own rules and regulations in processing your discharge. If the Board

feels there was an impropriety and that the impropriety was so gross that had it not occurred, the outcome would very likely have been different, it can use the issue of impropriety to upgrade your discharge. The second issue is that of equity. Given the same set of circumstances exactly as it was when you were discharged, apply it to today's rules and regulations, would the outcome be the same. If the Board believes it would not then it can use the issue of equity to change your discharge.

The Board is limited to these two issues, propriety and equity as a basis for a change of discharge. They cannot base a change on compassion or because you have changed for the better.

The hearing will be recorded on either a cassette tape or a CD. It provides a record of the proceedings but beyond that, it gives the board a chance to rehear your testimony after you have left the room and sometimes this can be very important. No one has access to the recording except you and the Board members. You can get a copy by simply asking for it; no one else can get a copy without your written permission.

When you go into the hearing room the board member designated as the recorder will start the recording device and the president of the Board will call the Board to order. The action officer will then read into the record that the board is meeting to consider your case, that you're are present and are or are not represented by counsel and will introduce exhibits into evidence, such as your application, your letter of notification of when to appear, orders that appoint the board, officers of the board, your records and the examiner's brief and your issues. The reason is simply to provide a complete hearing record.

You'll then be asked what form of testimony, if any you wish to give. If you indicate sworn testimony you'll be asked to stand, raise your right-hand and take an oath. All this takes about a minute and half and is essentially the only formal part of the hearing. From that point on you may sit down, try and relax and make yourself comfortable.

The hearing normally takes less than an hour but the Board will take whatever time is necessary to hear your case, there is no time limit. If you have counsel your counsel will likely make an opening statement on your behalf then ask you questions, and then in that way draw out your testimony.

If you are giving sworn testimony, the Board members will ask you questions, your counsel will then make a closing statement on your behalf and then you will have a final opportunity to address the Board. After you are excused you may leave immediately. The Board will then deliberate and reach its decision.

It will take about six to eight weeks for you to receive the Board's decision. If your discharge is changed you will receive a new discharge certificate, a new DD form 214, and the decisional document of this Board. If your discharge is not changed you will receive the decisional document of this Board which will include the specific reasons

your discharge was not changed and will also include any further appeal process, which is applicable to you. In either case, plan on waiting six to eight weeks to get the results.

Changing Reenlistment Eligibility (RE) Codes.

The Armed Forces use to categorize individuals for enlistment or reenlistment in the Armed Forces. RE codes in the '1' series indicate a person is eligible for immediate reenlistment or prior service enlistment, provided otherwise eligible. RE codes in the '2', '3' and '4' series restrict the individual from immediate reenlistment or prior service enlistment. You must receive a review and/or waiver of these RE codes before you are eligible to enlist again. You can review these RE codes on-line at http://books.usapa.belvoir.army.mil/cgi-bin/bookmgr/BOOKS/R680_29/1.Section-II.

There are many qualified prior service applicants who possess a '1' series RE code who will not be able to reenter the military due to specific needs of the service. In most cases, a person with a "2" RE code is not allowed to enlist. If you have a RE code in the '3' or '4' series, you should contact a local recruiter for the branch of service you wish to enter. If you meet all other enlistment criteria, the recruiter may submit a waiver request for the RE '3' or '4' series through appropriate recruiting channels.

The services will not directly consider a request to change the RE code in the DRB process. There is one exception: If the DRB upgrades an applicant's discharge, the Board will also consider whether the RE code should be changed. If the applicant is considered a good candidate to return to the military, the RE code will be changed to "3A"--a waiveable code. Any request to directly consider a change to RE code not involving change to the characterization of service and/or narrative reason for separation must be made through the appropriate **Board of Correction for Military Records**.

If you are seeking a waiver or change of the RE code for the purpose of entering another branch of service, you will need to contact the appropriate service recruiter. The prerogative to waive the individual's RE ineligibility based on post service performance and conduct rests with the Secretaries of the Army, Navy and Air Force. Each Secretary may allow an individual to enlist in the service under his/her jurisdiction. The Secretary of one branch of the Armed Forces has no authority to waive reenlistment/enlistment ineligibility for another service. For example, if a former Army member wishes to enlist in the Air Force, he/she must process through Air Force channels for prior service enlistment. If the RE code renders the veteran ineligible, he/she must process any review or change action through Army channels.