

of discipline in the military service of which the applicant was a member.

(c) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the NDRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(1) Quality of service, as evidenced by factors such as:

(i) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct and proficiency ratings (numerical and narrative);

(ii) Awards and decorations;

(iii) Letters of commendation or reprimand;

(iv) Combat service;

(v) Wounds received in action;

(vi) Records of promotions and demotions;

(vii) Level of responsibility at which the applicant served;

(viii) Other acts of merit that may not have resulted in formal recognition through an award or commendation;

(ix) Length of service during the service period which is the subject of the discharge review;

(x) Prior military service and type of discharge received or outstanding post service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(xi) Convictions by court-martial;

(xii) Records of nonjudicial punishment;

(xiii) Convictions by civil authorities while a member of the service, reflected in the discharge proceedings or otherwise noted in the service records;

(xiv) Records of periods of unauthorized absence;

(xv) Records relating to a discharge in lieu of court-martial.

(2) Capability to serve, as evidenced by factors such as:

(i) *Total capabilities*. This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given as to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(ii) *Family and personal problems*. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(iii) *Arbitrary or capricious actions*. This includes actions by individuals in authority which constitute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge the individual or unduly influence the characterization of service.

(iv) *Discrimination*. This includes unauthorized acts as documented by records or other evidence.

APPENDIX A TO PART 724—POLICY STATEMENT BY THE SECRETARY OF DEFENSE—ADDRESSING CERTAIN CATEGORIES OF DISCHARGES

Secretary of Defense memorandum of August 13, 1971, to the Secretaries of the Military Departments, The Chairman, Joint Chiefs of Staff; Subject: Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users:

"Consistent with Department of Defense Directive 1300.11, October 23, 1970, and my memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization.

"Accordingly, each Secretary of a Military Department, acting through his/her Discharge Review Board, will consider applications for such review from former service members. Each Secretary is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. Former service members will be notified of the results of the review. The Veterans' Administration will also be notified of the names of former service members whose discharges are recharacterized.

"The statute of limitations for review of discharges within the scope of this policy

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will be in accordance with 10 United States Code 1553.

“This policy shall apply to those service members whose cases are finalized or in process on or before July 7, 1971”.

Secretary of Defense memorandum of April 28, 1972, to Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff; Subject: Review of Punitive Discharges Issued to Drug Users:

“Reference is made to Secretary Packard’s memorandum of July 7, 1971, concerning rehabilitation and treatment of drug users, and my memorandum of August 13, 1971, subject: ‘Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users.’

“My August 13, 1971 memorandum established the current Departmental policy that administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use will be reviewed for recharacterization to under honorable conditions.

“It is my desire that this policy be expanded to include punitive discharges and dismissals resulting from approved sentences of courts-martial issued solely for conviction of personal use of drugs or possession of drugs for the purpose of such use.

“Review and recharacterization are to be effected, upon the application of former service members, utilizing the procedures and authority set forth in Title 10, United States Code, sections 874(b), 1552 and 1553.

“This policy is applicable only to discharges which have been executed on or before July 7, 1971, or issued as a result of a case in process on or before July 7, 1971.

“Former service members requesting a review will be notified of the results of the review. The Veterans’ Administration will also be notified of the names of former service members whose discharges are recharacterized.”

APPENDIX B TO PART 724—OATH OR AFFIRMATION TO BE ADMINISTERED TO DISCHARGE REVIEW BOARD MEMBERS

Prior to undertaking duties as a Board member, each person assigned to such duties in the precept of the Board shall execute the following oath or affirmation which shall continue in effect throughout service with the Board.

Oath/Affirmation

I, _____, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Discharge Review Board; that I will fully and objectively inquire into and examine all cases coming before me; that I

will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience and the law and regulations applicable to review of naval discharges, so help me God.

APPENDIX C TO PART 724—SAMPLES OF FORMATS EMPLOYED BY THE NAVAL DISCHARGE REVIEW BOARD

Attachment	Form	Title
1	Letter	En Block Notification of Decision to Commander, Naval Military Personnel Command (No Change).
2do	En Block Notification of Decision to Commander, Naval Military Personnel Command (Change).
3do	En Block Notification of Decision to Commandant, Marine Corps (No Change).
4do	En Block Notification of Decision to Commandant, Marine Corps (Change).

NOTE: The Forms appearing in appendix C are not carried in the Code of Federal Regulations.

APPENDIX D TO PART 724—VETERANS’ BENEFITS

91 Stat. 1106
 Pub. L. 95-126, Oct. 8, 1977
 95th Congress

An Act

To deny entitlement to veterans’ benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans’ benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of Title 38, United States Code, is amended by—

(1) Inserting “or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence.” after “deserter,” in subsection (a), and by inserting a comma and “notwithstanding any action