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(4) Honor Military Schools: Certain Honor Military Schools designated by Department of the Army, Department of the Navy, and Department of the Air Force are invited to recommend three candidates for nomination annually from among their honor graduates. Appointments are filled by selecting the best qualified candidates regardless of the school from which nominated. Application should be made through the school Senior Army Instructor.

(5) Army ROTC: This category is for members of college and high school Army Reserve Officers' Training Corps units. Application should be made through the Professor of Military Science or Senior Army Instructor at the school.

(6) Regular Army: This category is for enlisted members of the active Army. Appointments may be awarded to 85 Regular Army candidates. Application for admission, through command channels to the United States Military Academy Preparatory School (USMAPS) constitutes application for nomination under this category.

(7) Reserve Components: This category is for enlisted members of the Army Reserve and Army National Guard. Application for admission should be made through command channels to USMAPS. Enlisted members who are not on active duty should apply to the Commandant, United States Military Preparatory School, Fort Monmouth, New Jersey 07703.

(c) *Filipino cadets.* The Secretary of the Army may permit each entering class one Filipino, designated by the President of the Republic of the Philippines, to receive instruction at the United States Military Academy.

(d) *Foreign cadets.* The law permits 20 persons at a time from the Latin-American Republics and Canada to receive instruction at the United States Military Academy. A maximum of three persons from any one country may be cadets at the same time. Such persons receive the same pay and allowances (including mileage from their homes in proceeding to the Military Academy for initial admission) as cadets appointed from the United States. However, they are not entitled to appointment in the United States Armed Forces upon graduation. Citizens of

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other foreign countries have been permitted from time to time to attend the Military Academy upon specific authorization of the United States Congress in each case. Applications must be submitted to the United States Government through diplomatic channels by the governments concerned. Requirements for the admission, advancement, and graduation of foreign cadets are similar to those for United States Cadets.

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§ 575.5 Entrance requirements.

This section describes the specific requirements which candidates must fulfill in addition to obtaining an appointment as outlined in § 575.3.

(a) *Age.* On 1 July of the year admitted to the Military Academy a candidate must be at least 17 years of age and must not have passed his/her 22d birthday. The age requirements for all candidates are statutory and cannot be waived.

(b) *Citizenship.* A candidate must be a citizen of the United States, except those appointed specifically as foreign cadets.

(c) *Character.* Every candidate must be of good moral character.

(d) *Marital Status.* A candidate must be unmarried and not be pregnant or have a legal obligation to support a child or children.

§ 575.6 Catalogue, United States Military Academy.

The latest edition of the catalogue, United States Military Academy, contains additional information regarding the Academy and requirements for admission. This publication may be obtained free of charge from the Registrar, United States Military Academy, West Point, NY 10996, or from the United States Army Military Personnel Center, HQDA (DAPC-OPP-PM), 200 Stovall Street, Alexandria, VA 22332.

PART 581—PERSONNEL REVIEW BOARD

Sec.

581.1 Army Disability Review Board.

581.2 Army Discharge Review Board.

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581.3 Army Board for Correction of Military Records.

AUTHORITY: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

§ 581.1 Army Disability Review Board.

(a) *General provisions—(1) Constitution, purpose, and jurisdiction of review board.*

(i) The Army Disability Review Board (called the review board in this section) is an administrative agency created within the Department of the Army under authority of section 302, title I, Act of June 22, 1944 (58 Stat. 284), as amended by section 4, Act of December 28, 1945 (59 Stat. 623), to review, at the request of any officer retired or released from active service, without pay, for physical disability pursuant to the decision of a retiring board or disposition board, the findings and decisions of such board. The review board is charged with the duty, in cases within its jurisdiction, of ascertaining whether an applicant for review who was separated from the service or released to inactive service, without pay, for physical disability, incurred such physical disability in line of duty or as an incident of the service. When the review board determines in an individual case within its jurisdiction that physical disability was so incurred, it is authorized in the manner prescribed by this memorandum, to reverse prior findings in such regard and to make such findings in lieu thereof as are warranted by the evidence or pertinent regulations. Such remedial action is intended primarily to insure that no officer separated from the service or returned to an inactive status without pay, for disability, shall be deprived unjustly of retirement pay benefits, or retired status and retired pay, as the case may be, by reason of erroneous findings.

(ii) The class of officers whose cases are reviewable shall include officers of the Army of the United States, other than officers of the Regular Army, who were discharged or released to inactive service under the conditions prescribed in paragraph (a)(1)(i) of this section; and former officers of the Regular Army who were wholly retired under section 1252, Revised Statutes.

(iii) The review board is authorized, upon timely application therefor, to re-

view the proceedings and findings of boards referred to in paragraph (a)(1)(i) of this section; and to receive additional evidence bearing on the causes and service-connection of disabilities in the cases of officers referred to in paragraph (a)(1)(ii) of this section, whose cases were the subject of findings by a retiring or disposition board, and who were separated from the service or released to inactive service, without pay, by reason of physical disability, whether denial of retirement or retirement pay benefits, as the case may be, was pursuant to the adverse findings of a board, or was pursuant to administrative action in a case where there was favorable action by a board.

(iv) In carrying out its duties under this memorandum such review board shall have the same powers as exercised by, or vested in, the board whose findings and decisions are being reviewed.

(2) *Application for review.* (i) Any officer desiring a review of his case will make a written application therefor on WD AGO Form 0258 (Application for Review of Army Retiring Board Proceedings) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

(ii) No application for review will be granted unless received by the Department of the Army within 15 years after the date on which such officer was separated from the service or released to inactive service, without pay, for physical disability, or within 15 years after June 22, 1944, whichever date is the later.

(iii) The Adjutant General, upon receipt of an application for review, will note thereon the time of receipt thereof and will, in cases where the jurisdiction for review by the review board is established, assemble the originals or certified copies of all available Department of the Army and/or other record pertaining to the health and physical condition of the applicant, including the record of the proceedings and findings of all retiring and disposition boards in question and the records of all administration and/or executive action taken thereon. Such records, together with the application and any

supporting documents submitted therewith, will be transmitted to the president of the review board.

(3) *Changes in procedure of review board.* The review board may initiate recommendation for such changes in procedures as established herein as may be deemed necessary for the proper functioning of the review board. Such changes will be subject to the approval of the Secretary of the Army.

(b) *Proceedings of review board—(1) Convening of review board.* (i) The review board will be convened at the call of its president and will recess or adjourn at his order. In the event of the absence or incapacity of the president, the next senior member will serve as acting president for all purposes.

(ii) Unless otherwise directed by its president, the review board will convene in Washington, DC, at the time and place indicated by him.

(iii) The review board will assemble in open session for the consideration and determination of cases presented to it. After the conclusion of such hearing, the review board will as soon as practicable thereafter convene in closed session for determination.

(2) *Hearings.* (i) An applicant for review, upon request, is entitled by law to appear before the review board in open session either in person or by counsel of his own selection. Witnesses shall be permitted to present testimony either in person or by affidavit. As used in the regulations in this part the term "counsel" shall be construed to include members of the Federal bar, the bar of any state, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the Act of June 29, 1936 (49 Stat. 2031), and such other persons who, in the opinion of the review board, are considered to be competent to present equitably and comprehensively the claim of the applicant for review. In no case will the expenses or compensation of counsel for the applicant be paid by the Government.

(ii) In every case in which a hearing is authorized, the secretary will transmit to the applicant and to designated counsel for the applicant, if any, a written notice by registered mail stating the time and place of hearing. Such

notice shall be mailed at least 30 days in advance of the date on which the case is set for hearing except in cases in which the applicant waives the right of personal appearance and/or representation by counsel. Such notice shall constitute compliance with the requirement of notice to applicant and his counsel. The record shall contain the certificate of the secretary that written notice was given applicant and his counsel, if any, and the time and manner thereof.

(iii) An applicant who requests a hearing and who, after being duly notified of the time and place of hearing, fails to appear at the appointed time, either in person or by counsel, or, in writing, waives his right to appear, thereby waives such right.

(iv) In the conduct of its inquiries, the review board shall not be limited by the restrictions of common law rules of evidence.

(v) In the case wherein it is advisable and practicable, the review board may, at the request of the examiner, or upon its own motion, request The Surgeon General to detail one or more medical officers to make physical examination of the applicant, if available, and report their findings resulting from such examination with respect to the matters at issue, either in person or by affidavit. When testifying in person at a hearing, such medical witnesses will be subject to cross-examination. Similarly the medical members of the board may examine the applicant, if available, and testify as witnesses concerning the results of such examination.

(vi) Expenses incurred by the applicant, his witnesses, or in the procurement of their testimony, whether in person, by affidavit or by deposition will not be paid by the Government.

(3) *Continuances.* The review board may continue a hearing on its own motion. A request for continuance by the examiner or by or on behalf of the applicant may be granted, if in the board's discretion, a continuance appears necessary to insure a full and fair hearing.

(c) *Findings, conclusions, and directions—(1) Findings, conclusions, and directions of review board.* (i) The review board will make written findings in

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closed session in each case. Such findings will include:

(a) Statement of complete findings of the retiring or disposition board and of administrative action subsequent thereto in the proceedings under review;

(b) A finding affirming or reversing the findings of such retiring or disposition board or such administrative action, specifying which of the findings or administrative actions are affirmed and which are reversed.

(ii) In the event the review board reverses any of such original findings or administrative actions, the review board will then make complete findings which shall include the affirmed findings of the original board or of administrative action subsequent thereto. Such complete findings shall include the following:

(a) Whether the applicant was permanently incapacitated for active service at the time of his separation from the service or release to inactive service.

(b) The cause or causes of the incapacity.

(c) The approximate date of origin of each incapacitating defect.

(d) The date officer became incapacitated for active service.

(e) Whether the cause or causes of the incapacity was or was not an incident of service.

(f) Whether the cause or causes of the incapacity had been permanently aggravated by military service.

(g) Whether such incapacity for active service was or was not the result of an incident of service.

(h) Whether the officer's incapacity was or was not incurred in combat with an enemy of the United States or whether it did or did not result from an explosion of an instrumentality of war in line of duty.

(iii) In the event the review board finds the officer permanently incapacitated for active service and that the incapacity was an incident of service, it will make an additional finding specifying the grade in which the officer is entitled to be retired or to be certified for retirement pay benefits.

(iv) The findings, conclusions, and directions of a majority of the review board shall constitute the findings, conclusions, and directions of the re-

view board, and when made, will be signed by each member of the review board who concurs therein, filed, and authenticated by the secretary.

(d) *Disposition of and action upon proceedings*—(1) *Record of proceedings.* (i) When the review board has concluded its proceedings in any case, the secretary will prepare a complete record thereof. Such record shall include the application for review; a transcript of the hearing if any; affidavits, papers and documents considered by the review board; all briefs and written arguments filed in the case; the report of the examiner; the findings, conclusions, and directions of the review board; any minority report prepared by dissenting members of the review board; and all other papers and documents necessary to reflect a true and complete history of the proceedings. The record so prepared will be signed by the president of the review board and authenticated by its secretary as being true and complete. In the event of the absence or incapacity of the secretary, the record may be authenticated by a second participating member of the review board.

(ii) All records of proceedings of the review board shall be confidential, except that upon written request from the applicant, his guardian or legal representative, The Adjutant General will furnish a copy of the proceedings of the review board, less any exhibits which it may be found impracticable to reproduce out which will include:

(a) A copy of the order appointing the board.

(b) The findings of the Army retiring board affirmed.

(c) The findings of the Army retiring board reversed.

(d) The findings of the review board.

(e) The conclusions which were made by the review board.

(f) The directions of the Secretary of the Army.

If it should appear that furnishing such information would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant. The Adjutant General, subject to the foregoing restrictions, will make available

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for inspection, upon request of the applicant, his guardian or legal representative, a record of the proceedings of any case reviewed by the review board, but copies of the proceedings of any case heard prior to January 4, 1946, will not be furnished if such copies are not readily available.

(2) *Final action by review board.* When the review board has completed the proceedings and has arrived at its decision, the proceedings, together with the review board's decision, will be transmitted to The Adjutant General for appropriate Department of the Army action. The Adjutant General, in the name of the President of the United States, will indicate on the record of such proceedings and decision the President's approval or disapproval of the action of the review board, and will perform such administrative acts as may be necessary and thereafter will notify the applicant and/or his counsel of the action taken. Written notice, specifying the action taken and the date thereof, will be transmitted by The Adjutant General to the president of the review board to be filed by the secretary as a part of the records of the board pertaining to each case.

(e) *Rehearings*—(1) *Policy on the granting of rehearings.* After the review board has reviewed a case and its findings and decision have been approved, the case will normally not be reconsidered except on the basis of new, pertinent, and material evidence, which if previously considered could reasonably be expected to have caused findings and a decision other than those rendered as the result of the original review. An application for rehearing must be made within a reasonable time after the discovery of the new evidence, mentioned in this subparagraph, and the request for rehearing must be accompanied by such new evidence and by a showing that the applicant was duly diligent in attempting to secure all available evidence for presentation to the review board when his case was previously reviewed and that the reason for the delay in discovering such new evidence was not due to fault or neglect on the part of the applicant.

(2) *Application for rehearing.* Any officer desiring a rehearing of his case will make a written application therefor on

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WD AGO Form 0413 (Application for Review of Findings of the Army Disability Review Board) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

[13 FR 6805, Nov. 19, 1948, as amended at 19 FR 6706, Oct. 19, 1954]

§581.2 Army Discharge Review Board.

(a) *Purpose.* This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms*—(1) *Legal consultant of the Army Discharge Review Board (ADRB).* An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB.* An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing.* A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportunity to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities*—(1) *Authority.* The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president.* The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members.* The ADRB will have one or more panels. Each panel, when in deliberation, will consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch.* The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) *Secretary Recorder.* The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) *Administrative Specialist.* An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.* (1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in “Giles v. Secretary of the Army” (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work

CATEGORY “G” in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

[50 FR 33035, Aug. 16, 1985]

§ 581.3 Army Board for Correction of Military Records.

(a) *General*—(1) *Purpose.* This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U.S.C Section 1552, Correction of Military Records: Claims Incident Thereto, is the statutory authority for this regulation.

(b) *Responsibilities*—(1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR’s day-to-day operations.

(3) *The chair of an ABCMR panel.* The chair of a given ABCMR panel will preside over the panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard, and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications that are properly before them to determine the existence of error or injustice.

(ii) If persuaded that material error or injustice exists, and that sufficient evidence exists on the record, direct or recommend changes in military records to correct the error or injustice.

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(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications when the alleged error or injustice is not adequately supported by the evidence, and when a hearing is not deemed proper.

(v) Deny applications when the application is not filed within prescribed time limits and when it is not in the interest of justice to excuse the failure to file in a timely manner.

(5) *The director of an Army records holding agency.* The director of an Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and that do not require ABCMR action.

(ii) Furnish all requested Army military records to the ABCMR.

(iii) Request additional information from the applicant, if needed, to assist the ABCMR in conducting a full and fair review of the matter.

(iv) Take corrective action directed by the ABCMR or the Secretary of the Army.

(v) Inform the Defense Finance and Accounting Service (DFAS), when appropriate; the applicant; applicant's counsel, if any; and interested Members of Congress, if any, after a correction is complete.

(vi) Return original records of the soldier or former soldier obtained from the Department of Veterans Affairs (VA).

(6) *The commanders of Army Staff agencies and commands.* The commanders of Army Staff agencies and commands will—

(i) Furnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, in a timely manner.

(ii) Obtain additional information or documentation as needed before providing the opinions to the ABCMR.

(iii) Provide records, investigations, information, and documentation upon request of the ABCMR.

(iv) Provide additional assistance upon request of the ABCMR.

(v) Take corrective action directed by the ABCMR or the Secretary of the Army.

(7) *The Director, Defense Finance and Accounting Service (DFAS).* At the re-

quest of the ABCMR staff, the Director, DFAS, will—

(i) Furnish advisory opinions on matters within the DFAS area of expertise upon request.

(ii) Obtain additional information or documentation as needed before providing the opinions.

(iii) Provide financial records upon request.

(iv) On behalf of the Army, settle claims that are based on ABCMR final actions.

(v) Report quarterly to the ABCMR Director on the monies expended as a result of ABCMR action and the names of the payees.

(c) *ABCMR establishment and functions—(1) ABCMR establishment.* The ABCMR operates pursuant to law (10 U.S.C. 1552) within the Office of the Secretary of the Army. The ABCMR consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. Three members constitute a quorum.

(2) *ABCMR functions.* (i) The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice.

(ii) When an applicant has suffered reprisal under the Military Whistleblower Protection Act 10 U.S.C. 1034 and Department of Defense Directive (DODD) 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(iii) The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing in 10 U.S.C. 1034 and DODD 7050.6) or request additional evidence or opinions.

(d) *Application procedures—(1) Who may apply.* (i) The ABCMR's jurisdiction under 10 U.S.C. 1552 extends to any military record of the DA. It is the nature of the record and the status of the

applicant that define the ABCMR's jurisdiction.

(ii) Usually applicants are soldiers or former soldiers of the Active Army, the U.S. Army Reserve (USAR), and in certain cases, the Army National Guard of the United States (ARNGUS) and other military and civilian individuals affected by an Army military record. Requests are personal to the applicant and relate to military records. Requests are submitted on DD Form 149 (Application for Correction of Military Record under the Provisions of 10 U.S.C. 1552). Soldiers need not submit applications through their chain of command.

(iii) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, missing, or deceased. Depending on the circumstances, a child, spouse, parent or other close relative, heir, or legal representative (such as a guardian or executor) of the soldier or former soldier may be able to demonstrate a proper interest. Applicants must send proof of proper interest with the application when requesting correction of another person's military records.

(2) *Time limits.* Applicants must file an application within 3 years after an alleged error or injustice is discovered or reasonably should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice.

(3) *Administrative remedies.* The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

(4) *Stay of other proceedings.* Applying to the ABCMR does not stay other proceedings.

(5) *Counsel.* (i) Applicants may be represented by counsel, at their own expense.

(ii) See DODD 7050.6 for provisions for counsel in cases processed under 10 U.S.C. 1034.

(e) *Actions by the ABCMR Director and staff—(1) Criteria.* The ABCMR staff will review each application to determine if it meets the criteria for consideration

by the ABCMR. The application may be returned without action if—

(i) The applicant fails to complete and sign the application.

(ii) The applicant has not exhausted all other administrative remedies.

(iii) The ABCMR does not have jurisdiction to grant the requested relief.

(iv) No new evidence was submitted with a request for reconsideration.

(2) *Burden of proof.* The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

(3) *ABCMR consideration.* (i) A panel consisting of at least three ABCMR members will consider each application that is properly brought before it. One panel member will serve as the chair.

(ii) The panel members may consider a case on the merits in executive session or may authorize a hearing.

(iii) Each application will be reviewed to determine—

(A) Whether the preponderance of the evidence shows that an error or injustice exists and—

(1) If so, what relief is appropriate.

(2) If not, deny relief.

(B) Whether to authorize a hearing.

(C) If the application is filed outside the statute of limitations and whether to deny based on untimeliness or to waive the statute in the interest of justice.

(f) *Hearings.* ABCMR hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

(g) *Disposition of applications—(1) ABCMR decisions.* The panel members' majority vote constitutes the action of the ABCMR. The ABCMR's findings, recommendations, and in the case of a denial, the rationale will be in writing.

(2) *ABCMR final action.* (i) Except as otherwise provided, the ABCMR acts for the Secretary of the Army, and an ABCMR decision is final when it—

(A) Denies any application (except for actions based on reprisals investigated under 10 U.S.C. 1034).

(B) Grants any application in whole or in part without a hearing when—

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(1) The relief is as recommended by the proper staff agency in an advisory opinion; and

(2) Is unanimously agreed to by the ABCMR panel; and

(3) Does not involve an appointment or promotion requiring confirmation by the Senate.

(ii) The ABCMR will forward the decisional document to the Secretary of the Army for final decision in any case in which—

(A) A hearing was held.

(B) The facts involve reprisals under the Military Whistleblower Protection Act, confirmed by the DOD Inspector General (DODIG) under 10 U.S.C. 1034 and DODD 7050.6.

(C) The ABCMR recommends relief but is not authorized to act for the Secretary of the Army on the application.

(3) *Decision of the Secretary of the Army.* (i) The Secretary of the Army may direct such action as he or she deems proper on each case. Cases returned to the Board for further consideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the ABCMR's recommendation, adopts a minority position, or fashions an action that he or she deems proper and supported by the record, that decision will be in writing and will include a brief statement of the grounds for denial or revision.

(ii) The Secretary of the Army will issue decisions on cases covered by the Military Whistleblower Protection Act (10 U.S.C. 1034 and DODD 7050.6). In cases where the DODIG concluded that there was reprisal, these decisions will be made within 180 days after receipt of the application and the investigative report by the DODIG, the Department of the Army Inspector General (DAIG), or other Inspector General offices. Unless the full relief requested is granted, these applicants will be informed of their right to request review of the decision by the Secretary of Defense.

(4) *Reconsideration of ABCMR decision.* An applicant may request the ABCMR to reconsider a Board decision under the following circumstances:

(i) If the ABCMR receives the request for reconsideration within 1 year of the ABCMR's original decision and if the

ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

(h) *Claims/Expenses—(1) Authority.* (i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any. The DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an

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applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous provisions*—(1) *Special standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the term “CATEGORY G” in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is

received from the applicant or unless the Board is otherwise authorized by law.

[65 FR 17441, Apr. 3, 2000, as amended at 70 FR 67368, Nov. 7, 2005]

PART 583—FORMER PERSONNEL [RESERVED]

PART 584—FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY

Sec.

- 584.1 General.
- 584.2 Family support and child custody.
- 584.3 Paternity claims.
- 584.4 Adoption proceedings.
- 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.
- 584.6 Procedures governing nonactive duty or discharged personnel.
- 584.7 Basic allowance for quarters.
- 584.8 Garnishment.
- 584.9 Involuntary allotments.

APPENDIX A TO PART 584—REFERENCE

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 50 FR 52447, Dec. 24, 1985, unless otherwise noted.

§ 584.1 General.

(a) *Purpose.* This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

(1) Support and nonsupport of family members.

(2) Child custody.

(3) Paternity claims.

(4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

(i) Nonsupport complaints.

(ii) Child custody complaints.

(iii) Paternity claims.

(iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—