

forth in order to inform the NDRB adequately of the basis for the applicant's position.

(iii) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to specify that each issue pertains to the propriety or the equity of the discharge. This will assist the NDRB in assessing the relationship of the issue to propriety or equity.

(4) *Citation of matter from decisions.* The primary function of the NDRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the NDRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements with respect to applications received on or after November 27, 1982 apply:

(i) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(ii) If an applicant's issue cites a prior decision (of the NDRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(iii) To ensure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Corrective Board Reading Room), applicants must provide the NDRB with copies of such decisions or of the relevant portion of the treatise, manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(iv) If the applicant fails to comply with requirements in § 724.802(b)(4), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(c) *Identification by the NDRB of issues submitted by an applicant.* The applicant's issues shall be identified in ac-

cordance with this section after a review of the materials noted under § 924.803, is made.

(1) *Issues on DD Form 293.* The NDRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein).

(2) *Amendment of issues.* The NDRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(i) Limits the NDRB's authority to question an applicant as to the meaning of such matter;

(ii) Precludes the NDRB from developing decisional issues based upon such questions;

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or

(iv) Prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the NDRB believes that an applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the NDRB from developing its own decisional issues.

§ 724.803 The decisional document.

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(a) The circumstances and character of the applicant's service as extracted

from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

- (1) Information concerning the discharge under review, including:
 - (i) Date (YYMMDD) of discharge;
 - (ii) Character of discharge;
 - (iii) Reason for discharge;
 - (iv) The specific regulatory authority under which the discharge was issued;
 - (v) Date (YYMMDD) of enlistment;
 - (vi) Period of enlistment;
 - (vii) Age at enlistment;
 - (viii) Length of service;
 - (ix) Periods of unauthorized absence;
 - (x) Conduct and efficiency ratings (numerical or narrative);
 - (xi) Highest rank achieved;
 - (xii) Awards and decorations;
 - (xiii) Educational level;
 - (xiv) Aptitude test scores;
 - (xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment);
 - (xvi) Convictions by court-martial;
 - (xvii) Prior military service and type of discharge received.
- (2) Any other matters in the applicant's record which pertains to the discharge or the issues, or provide a clearer picture of the overall quality of the applicant's service.
- (b) A list of the type of documents submitted by or on behalf of the applicant (including written briefs, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.
- (c) A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.
- (d) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.
- (e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been with-

drawn or modified with the written consent of the applicant need not be listed.

- (f) The response to the items submitted as issues by the applicant.
- (g) A list of decisional issues and a discussion of such issues.
- (h) NDRB's conclusions on the following:
 - (1) Whether the character of or reason for discharge should be changed.
 - (2) The specific changes to be made, if any.
- (i) A record of the voting, including:
 - (1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.
 - (2) The NDRB members' names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.
- (j) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the applicant shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.
- (k) The recommendation of the NDRB president when required.
 - (1) The addendum of the SRA when required.
 - (m) Index entries for each decisional issue under appropriate categories listed in the index of decisions.
 - (n) An authentication of the document by an appropriate official.

§ 724.804 Decision process.

- (a) The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standard set forth in subpart I.
- (b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB