

§ 865.105 Jurisdiction and authority.

The DRB has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the Service, were members of the US Army Aviation components (Aviation Section, Signal Corps; Air Service; Air Corps; or Air Forces) prior to September 17, 1947, or the US Air Force. The DRB does not have jurisdiction and authority concerning personnel of other armed services who at the time of their separation, were assigned to duty with the Army Air Forces or the US Air Force.

(a) The DRB's review is based on the former member's available military records, issues submitted by the former member, or his counsel and on any other evidence that is presented to the DRB. The DRB determines whether the type of discharge or dismissal the former member received is equitable and proper; if not, the DRB instructs the USAF Manpower and Personnel Center (AFMPC) to change the discharge reason or to issue a new character of discharge according to the DRB's findings.

(b) The DRB is not authorized to revoke any discharge, to reinstate any person who has been separated from the military service, or to recall any person to active duty.

(c) The DRB, on its own motion, may review a case that appears likely to result in a decision favorable to the former military member, without the member's knowledge or presence. In this case, if the decision is:

(1) Favorable, the DRB directs AFMPC to notify the former member accordingly at the member's last known address.

(2) Unfavorable, the DRB returns the case to the files without any record of formal action; the DRB then reconsiders the case without prejudice in accordance with normal procedures.

§ 865.106 Application for review.

(a) *General.* Applications shall be submitted to the Air Force DRB on DD Form 293, Application for Review of Discharge or Dismissal from the Armed Forces of the United States (OMB Approval No. 0704-0004) with such other statements, affidavits, or documentation as desired. It is to the applicant's

advantage to submit such documents with the application or within 60 days thereafter in order to permit a thorough screening of the case. The DD Form 293 is available at most DOD installations and regional offices of the Veterans Administration, or by writing to: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

(b) *Timing.* A motion or request for review must be made within 15 years after the date of discharge or dismissal.

(c) *Applicant's responsibilities.* An applicant may request a change in the character of or reason for discharge (or both).

(1) *Character of discharge.* DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Under Other Than Honorable Conditions Discharge to General or Honorable Discharge). Only a person separated on or after 1 October 1982 while in an entry level status may request a change from other than an honorable discharge to Entry Level Separation. A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(2) *Reason for discharge.* DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the DRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the DRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the DRB are consistent with the request for change in discharge set forth in "Board Action Requested" of the DD Form 293. If an ambiguity is created by a difference between an applicant's issue and the requested action, the DRB will respond

to the issue in the context of the action requested in "Board Action Requested." In the case of a Personal Appearance hearing, the DRB will attempt to resolve the ambiguity.

(d) If the member is deceased or mentally incompetent, the spouse, next-of-kin, or legal representative may, as agent for the member, submit the application for the review along with proof of the member's death or mental incompetency.

(e) Applicants forward their requests for review to the USAF Manpower and Personnel Center-mailing address: AFMPC/MPCDOA1, Randolph AFB TX 78150. AFMPC will obtain all available military records of the former members from the National Personnel Records Center.

(f) *Withdrawal of application.* An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review.

(g) *Submission of issues on DD Form 293.* Issues must be provided to the DRB on DD Form 293 before the DRB closes the review process for deliberation and should be submitted in accordance with the guidelines of this subpart for submission of issues.

(1) *Issues must be clear and specific.* An issue must be stated clearly and specifically in order to enable the DRB to understand the nature of the issue and its relationship to the applicant's discharge.

(2) *Separate listing of issues.* Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the DRB.

(3) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the DRB, and its use:

(i) Provides a means for an applicant to set forth clearly and specifically those matters that, in the opinion of the applicant, provide a basis for changing the discharge;

(ii) Assists the DRB in focusing on those matters considered to be important by an applicant;

(iii) Assists the DRB in distinguishing between a matter submitted by an applicant in the expectation that

it will be treated as a decisional issue under §865.112, and those matters submitted simply as background or supporting materials;

(iv) Provides the applicant with greater rights in the event that the applicant later submits a complaint under §865.121 of this subpart concerning the decisional document.

(v) Reduces the potential for disagreement as to the content of an applicant's issue.

(4) *Incorporation by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the DRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the DRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently has failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the DRB, the DRB shall respond to such an issue in accordance with §§865.111 and 865.112 of this subpart.

(5) *Effective date of the new DD Form 293.* With respect to applications received before November 27, 1982, the DRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received on or after November 27, 1982, if the applicant submits an obsolete DD Form 293, the application will be returned with a copy of the revised DD Form 293 for reaccomplishment. The DRB will only respond to the issues submitted on the new form in accordance with 32 CFR part 70, 47 FR 37770, August 26, 1982 and this subpart.

(h) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant is

encouraged, but not required, to identify the issue as applying to the character of or reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the DRB will presume that it applies solely to the character of discharge.

(i) *Relationship of issues to the standards for discharge review.* The DRB reviews discharges on the basis of issues of propriety and equity. The standards used by the DRB are set forth in § 865.120 of this subpart. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based. The applicant is also encouraged, but not required, to identify an issue as pertaining to the propriety or the equity of the discharge. This will assist the DRB in assessing the relationship of the issue to propriety or equity under § 865.112(d) of this subpart.

(j) *Citation of matter from decisions.* The primary function of the DRB 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 DRB'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 apply with respect to applications received on or after November 27, 1982.

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

(2) If an applicant's issue cites a prior decision (of the DRB, 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.

(3) To insure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Correction Board Reading

Room), the applicant must provide the DRB with copies of such decisions or of the relevant portion of treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

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

(k) *Identification by the DRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of all materials and information is made.

(1) *Issues on DD Form 293.* The DRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein) in accordance with this part. With respect to applications submitted before November 27, 1982, the DRB shall consider all issues clearly and specifically stated in accordance with the rules in effect at the time of the submission.

(2) *Amendment of issues.* The DRB 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. This provision does not:

(i) Limit by DRB's authority to question an applicant as to the meaning of such matter;

(ii) Preclude the DRB from developing decisional issues based upon such questions;

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

(iv) Prevent the DRB 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 DRB's understanding of an applicant's presentation. If before closing the hearing for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the FRB 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 DRB from developing its own decisional issues.

(1) *Notification of possible bar to benefits.* Written notification shall be made to each applicant whose record indicates a reason for discharge that bars receipt of benefits under 38 U.S.C. 3103(a). This notification will advise the applicant that separate action by the Board for Correction of Military Records or the Veterans Administration may confer eligibility for VA benefits. Regarding the bar to benefits based upon the 180 days consecutive unauthorized absence, the following applies:

(1) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(2) Such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

§ 865.107 DRB composition and meeting location.

(a) The DRB consists of five members, with the senior line officer acting as the presiding officer. The presiding officer convenes, recesses and adjourns the Board.

(b) In addition to holding hearings in Washington, DC, the DRB, as a convenience to applicants, periodically conducts hearings at selected locations throughout the Continental United States. Reviews are conducted at locations central to those areas with the greatest number of applicants. A continuing review and appraisal is conducted to ensure the selected hearing locations are responsive to a majority of applicants. Administrative details and responsibilities for Regional Boards are outlined in § 865.124.

§ 865.108 Availability of records and documents.

(a) Before applying for discharge review, potential applicants or their designated representatives may, and are encouraged to obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC) 9700 Page Boulevard, St. Louis, Mo 63132; thus avoiding any lengthy delays in the processing of the application (DD Form 293) and the scheduling of reviews.

(1) Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the DRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act or Privacy Act after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and returned to the headquarters of the DRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable.

(2) Applicants and their designated representatives also may examine their military personnel records at the site of their scheduled review before the hearing. The DRB shall notify applicants and their designated representatives of the dates the records are available for examination in their standard scheduling information.

(b) The DRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity. Applications for such information must be made by the applicant to the cognizant authority. The DRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) If the official records relevant to the discharge review are not available at the agency having custody of the