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DEPARTMENT OF THE NAVY

DISCHARGE REVIEW BOARD MANUAL



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TABLE OF ISSUANCES AND REVISIONS/CHANGES

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LIST OF REVISIONS/CHANGES

The following list outlines administrative and other corrections that have been incorporated into this manual.

1. Reordered paragraphs throughout to ensure roles, responsibilities, and jurisdiction are defined in a logical, streamlined, sequential manner.
2. Added language in various paragraphs to capture the additional guidance offered by the more recent references.

FOREWORD

This manual implements policy set forth in SECNAVINST 5420.174E, prescribes standards for the execution of the Naval Discharge Review Board (NDRB), and is applicable to all commands and activities in the Department of the Navy (DON).

Local supplements to amplify this manual may be issued and inserted as new chapters. A local supplement shall not contradict or repeat information contained in this manual.

Forms and Information Management Control:

DD Form 293 (Rev. 12/2019), Application for the Review of Discharge from the Armed Forces of the United States is available electronically on the Department of Defense (DoD) Forms Management Program Website
<https://www.esd.whs.mil/Directives/forms/>

Standard Form-180 (Rev. 11/2015), Request Pertaining to Military Records is available electronically on the General Services Administration Website <https://www.gsa.gov/reference/forms#>

Reports Control Symbol (RCS) Office of Management and Budget (OMB) Number 0704-0004 has been assigned to DD Form 293, Application for the Review of Discharge from the Armed Forces of the United States and the information being collected.

This manual may be accessed through the Department of the Navy Issuances Web site <https://www.secnav.navy.mil/doni/>. Contact information is provided below for assistance or to offer recommended changes:

President, Naval Discharge Review Board
720 Kennon Avenue, SE, Room 309
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29 Sep 20

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REFERENCES

- (a) 10 U.S.C. §1553
- (b) 32 CFR 723
- (c) DoD Instruction 1332.14 of 12 June 2020
- (d) DoD Instruction 1332.28 of 4 April 2004
- (e) DoD Directive 1332.41 of 8 March 2004
- (f) Manual for Court-Martials
- (g) SECNAVINST 1920.6D
- (h) SECNAVINST 5420.193
- (i) NAVPERS 15560D
- (j) MCO 1900.16
- (k) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards of Correction for Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" of 25 July 2018
- (l) USD (P&R) Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" of 25 August 2017
- (m) USD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)" of 24 February 2016
- (n) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014
- (o) USD (P&R) Memo, "Repeal of 'Don't Ask, Don't Tell'" of 20 September 2011
- (p) 18 U.S.C. §205
- (q) 10 U.S.C. §815

CHAPTER 1
PROGRAM OVERVIEW

101. Purpose. This manual implements policy and assigns responsibilities for the administration and operation of the NDRB in accordance with references (a) through (q).

102. Program Objectives. The NDRB will be administered in such a manner as to further enhance good order and discipline, correct injustice and inequity in discharges issued, and correct administrative or clerical errors.

103. Program Policy. The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, manuals and directives of the DON Navy including Marine Corps Orders, regulations, etc., and other written public expressions of policy by competent authority.

104. Authority

a. Reference (a) states, in part:

(1) The Secretary concerned shall, after consulting the Administrator of Veterans Affairs, 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. A motion or request for review must be made within fifteen years after the date of the discharge or dismissal.

(2) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(3) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited

representative or an organization recognized by the Administrator of Veterans Affairs.

b. Reference (b), provides for uniform standards and procedures for review of discharges from the military services of the DoD. The provisions of reference (d) are incorporated in this manual.

105. Other Activities' Responsibilities in Support of the NDRB.

a. The Commandant of the Marine Corps (CMC), Commander, Navy Personnel Command (CNPC), Commander, Naval Reserve Force, Chief, Bureau of Medicine and Surgery (BUMED), and chiefs of other bureaus and offices of the DON shall provide support, as requested, to the Naval discharge review process. The CMC and the Chief of Naval Operations (CNO) are responsible for implementing NDRB decisions within their respective services. The CMC shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The CNPC, acting for the CNO, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

b. Functions of the CMC and CNO. In the case of Navy, CNPC, shall discharge responsibilities of the CNO.

(1) Provide and facilitate access by the NDRB to service/health records and other data associated with the performance of duty of applicants.

(2) Advise the NDRB of developments in personnel management, which may have a bearing on discharge review judgments.

(3) Implement the discharge review decisions of the NDRB and those of higher authority within respective areas of cognizance.

(4) Include the record of NDRB proceedings as a permanent part of the service record of the applicant in each case.

(5) Where appropriate, recommend cases for the NDRB to review on its own motion.

(6) Provide qualified personnel as NDRB members, recorders and administrative staff.

(7) Establish administrative procedures to ensure that if a member is separated from the Navy or the Marine Corps under other than fully honorable conditions, the member is advised of:

(a) The right to a review of his or her discharge under provisions of reference (a).

(b) The procedures for applying for such a review.

(8) Provide Navy and Marine Corps units and activities with information on the mission of the NDRB through entries in appropriate personnel administration directives.

c. The BUMED, Naval Medical Command shall facilitate, as required, access by the NDRB to health records of applicants.

CHAPTER 2
THE NAVAL DISCHARGE REVIEW BOARD SYSTEM

201. NDRB. A component of the Secretary of the Navy Council of Review Boards (SECNAVCORB) designated to review, recommend, and decide propriety, equity, and clemency issues in discharges of service members who have applied for review. A full list of related terms and definitions is provided in Appendix A. The objectives of the NDRB are to:

- a. Further enhance good order and discipline.
- b. Correct injustice and inequity in discharges issued.
- c. Correct administrative or clerical errors if discovered during a discharge review.

202. Mission. SECNAVCORB was established to administer and supervise assigned boards and councils within the DON. The NDRB is a component of the SECNAVCORB authorized to review the character, reason and authority of a discharge for members of the Navy and Marine Corps who have been discharged from active military status in the past 15 years.

203. Director, SECNAVCORB Responsibilities

- a. Exercise primary cognizance over matters relating to the discharge review systems within the DON.
- b. Administer and supervise the activities of the NDRB by monitoring the performance of the discharge review system to ensure compliance with governing directives and to avoid delays in the processing and reviewing of individual cases.
- c. Convene the NDRB, appoint the President (GS-15 or senior military officer in the grade of O-6), and establish membership as prescribed in this manual.
- d. Provide administrative and clerical support for the NDRB.
- e. Inform the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) of matters of interest.

- f. Recommend enhanced discharge review policy and procedures to the ASN (M&RA).
- g. Propose changes to this instruction/manual to ASN (M&RA).
- h. Selectively screen discharge review cases for concurrence with NDRB determinations and forward recommendations for those cases that require final action by the ASN (M&RA) or Secretary of the Navy (SECNAV).
- i. Ensure a complete system of records is maintained.
- j. Protect the privacy of records relating to processing and reviewing discharge review cases in accordance with the references.
- k. Ensure that NDRB functions are administered in accordance with the appropriate directives.
- l. Coordinate with the CMC and CNPC for all matters associated with the discharge review of naval service members.
- m. Take all other actions necessary for the effective and efficient accomplishment of the NDRB mission.

204. NDRB President Responsibilities

- a. Exercise primary cognizance for all matters pertaining to NDRB case management and review.
- b. Maintain liaison with other departmental and service representatives responsible for discharge review matters and serve as the direct representative of the SECNAV at government forums and at relevant civilian state and federal agencies.
- c. Direct the review of all cases within the jurisdiction of the NDRB.
- d. Forward cases of interest to the Secretarial Review Authority (SRA) as appropriate for final decision.
- e. Direct reconsideration of previously adjudicated cases when appropriate.

f. Coordinate board location and time, and case distribution to board members.

g. Issue and distribute promulgating orders on discharge review in a timely manner.

h. Ensure all cases are accurately prepared and include all the necessary documents for the board to review.

i. Perform all other duties as may be assigned by the Director, SECNAVCORB.

j. Ensure all decisional documents are disseminated to the applicants and posted to the electronic reading room in a timely manner.

205. Presiding Officer (PO) Responsibilities. The PO, NDRB, will be a civilian employee in the grade of GS-14/15 or a senior military officer (Navy or Marine) in the grade of O-5/O-6 appointed by the NDRB President or the Director, SECNAVCORB. The PO, as senior member of the hearing, will ensure compliance with all provisions of this manual. Specifically, the PO will:

a. Ensure review hearings are conducted in compliance with corresponding law and directives.

b. Ensure all cases have been thoroughly reviewed by board members prior to convening a review hearing.

c. Review and certify the final tally of votes from a hearing prior to the decisional document being forwarded from the recorder to the President.

206. Composition of the Board. The NDRB will be composed of five members, all of whom are either career civil service, commissioned officers, or senior enlisted personnel selected for their maturity, analytical ability, training and experience. When practicable, the members should be senior to the applicant.

a. Training. All board members will complete the NDRB training program prior to being certified as either a voting member or a recorder/voting member.

b. Oath/Affirmation. Prior to assuming their duties as

members of the NDRB, each individual will execute the oath or affirmation provided in Appendix B, administered by the SECNAVCORB Legal Counsel, which continues in effect throughout their service with the NDRB.

c. Recusal. Members will avoid conflicts of interest by recusing themselves from pending matters in which they were either indirectly or directly involved in a personal or professional capacity. If in doubt as to whether an actual or apparent ethical conflict of interest exists in a specific case, the member may seek an advisory opinion from the SECNAVCORB Legal Counsel.

207. Objective of Review

a. The objective of a discharge review is to examine the propriety and equity of the applicant's discharge. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. In each case, the NDRB or the Secretary of the Navy shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude the NDRB from correcting clerical errors.

b. The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions do not bind the NDRB in its review of subsequent cases because no two cases present the exact same issues of equity.

208. Jurisdiction. The NDRB has jurisdiction over any former service member of the Naval Service eligible for review under reference (a). Submission of an application by an eligible service member (or surviving spouse, next of kin or legal representative) shall be afforded a discharge review except for the limitations as provided in paragraph 209. Discharge review may also be initiated on the motion of the NDRB under paragraph 214.

209. Jurisdictional Limitations Authority for Review of Discharges

a. The Board does not have the authority to:

(1) Review a discharge or dismissal resulting from a general court-martial.

(2) Alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency.

(3) Revoke any discharge or dismissal.

(4) Reinstate a person in the naval service.

(5) Recall a former member to active duty;

(6) Make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces.

(7) Cancel or void enlistment contracts.

b. Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years. Those applications should instead be referred to the Board of Correction for Naval Records.

210. Evaluative Criteria. The applicant's race, color, religion, ethnicity, national origin, sexual orientation, and gender, are not evaluative factors when determining the equity and propriety of a discharge. The following criteria will be considered when determining the appropriateness of an application for discharge review:

a. Propriety. A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the

same if the error had not been made).

(2) A change in policy by the military service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge. Specifically, pursuant to reference (o), and following the repeal of the Don't Ask, Don't Tell policy service members separated under that provision should normally be granted relief "when there were no other aggravating factors in the record, such as misconduct."

(3) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another board, agency, or court), the NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(4) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive duty status in a reserve component and who were discharged or had their discharges reviewed on or after April 20, 1971: the NDRB shall either re-characterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the court's order of December 3, 1981, in Wood v. Secretary of Defense to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(a) An other than honorable discharge for an inactive duty reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties.

(b) A general discharge for an inactive duty reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

b. Equity. A discharge shall be deemed equitable unless:

(1) In the course of a discharge review, it is determined the policies and procedures under which the applicant was

discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

(a) Current policies or procedures represents a substantial enhancement of the rights afforded a respondent in such proceedings.

(b) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the military service of which the applicant was a member.

(3) 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 subparagraph 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:

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

1. Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative).

2. Awards and decorations.

3. Letters of commendation or reprimand.

4. Combat service.

5. Wounds received in action.

6. Records of promotions and demotions.

7. Level of responsibility at which the applicant

served.

8. Other acts of merit that may not have resulted in a formal recognition through an award or commendation.

9. Length of service during the service period, which is the subject of the discharge review.

10. Prior military service and type of discharge received or outstanding post-service conduct that may provide a basis for a more thorough understanding of the performance of the applicant during the period of service that is the subject of the discharge review.

11. Convictions by court(s)-martial.

12. Records of nonjudicial punishment(s).

13. Conviction(s) by civil authorities while a member of the service reflected in the discharge proceedings or otherwise noted in military service records.

14. Records of periods of unauthorized absence.

15. Records relating to a discharge in lieu of court-martial.

16. Recommendations of the military judge and the staff judge advocate or legal officer, comments of officials in the post-trial progress report, comments of the officer exercising general court-martial jurisdiction and, if available, the commanding officer at the time of trial.

17. Any psychiatric/psychological evaluation of the member, including relevant social factors, and, when appropriate, a substance abuse/dependency evaluation or any other specialized treatment need.

18. A comparison of the offense(s) and sentence with the offense(s) and sentences of co-accused and other members with similar convictions and sentences.

19. Clemency previously granted by other authorities.

(b) Factors that potentially mitigate any misconduct such as:

1. Evidence that at the time of misconduct, the service member was affected by post-traumatic stress disorder, military sexual trauma, traumatic brain injury, or mental health issues. Service members able to provide evidence which may reasonably indicate that these conditions existed at the time of discharge which might have mitigated the misconduct shall be granted liberal consideration by the NDRB.

2. The service member's total capability to serve. This includes an evaluation of matters, such as age and maturity, upbringing and educational level, and aptitude scores. Consideration may also be given whether the acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as the ability to adjust to military service.

3. 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.

4. Arbitrary or capricious action. This includes actions by individuals in authority that constitute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

5. Discrimination. This includes unauthorized acts as documented by records or other evidence.

(c) Meritorious post-service. The NDRB is authorized to consider post-service factors in the re-characterization of a discharge. However, there is no law, or regulation, that provides that an unfavorable discharge may be upgraded based solely on the passage of time or good conduct in civilian life subsequent to leaving the service. Normally, to permit relief, a procedural impropriety or inequity must have been found to exist during the period of enlistment in question. Evidence that demonstrates meritorious post-service includes (but is not limited to):

1. Employment.
2. Personal and professional stability.
3. Self-sustainment.
4. Education.
5. Sobriety.
6. Charitable endeavors and/or spiritual endeavors.

(d) Clemency. The NDRB is authorized to grant clemency except for discharges or dismissals issued at a general court-martial. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the NDRB may consider the following:

1. Severity of misconduct.
2. The aggravating and mitigating facts related to the record or punishment from which the member wants relief.
3. An applicant's candor and acceptance of responsibility, remorse, or atonement for misconduct.
4. Was the punishment, including any collateral consequences, too harsh.
5. Positive or negative post-conviction conduct including any arrests, being taken into custody by law enforcement, any charges, or any convictions since the incident at issue.
6. Length of time since misconduct.
7. Character and reputation of the applicant, and/or evidence of rehabilitation.
8. Victim support or opposition for relief, and any reasons provided.

211. Applications

a. The applicant is encouraged, but not required, to identify an issue or issues as pertaining to the propriety or the equity of the discharge. Similarly, the applicant is encouraged, but not required, to submit any supporting documentation along with the application.

b. Applications shall be submitted to the NDRB on DD Form 293, "Application for the Review of Discharge or Dismissal from the Armed Forces of the United States," or computer-generated, with such other statements, affidavits, or documentation as desired. The DD Form 293 is available on the DoD Electronic Reading Room website at <http://boards.law.af.mil>, at most DoD installations and regional offices of the Veterans Administration, or by writing to:

Secretary of the Navy Council of Review Boards
Naval Discharge Review Board
720 Kennon Avenue SE, Room 409
Washington Navy Yard, D.C. 20374-5023

c. Generally, an application for review of a discharge will result in one of three dispositions:

(1) The application may be rejected for reason of:

(a) Absence of jurisdiction.

(b) Previous review on the same evidence; or previous reviews (record and a personal appearance hearing review).

(c) Incomplete information on the application.

(2) The application may be withdrawn by the applicant.

(3) The application may be accepted and the discharge reviewed by the NDRB, resulting in:

(a) Change to the discharge.

(b) No change to the discharge.

212. Procedural Rights of the Applicant

a. Timing. A motion or request for review must be made within fifteen years after the date of discharge or dismissal. The request may include such other statements, affidavits, or documentation, as desired.

b. Applicant's options. An applicant may request a change in the characterization, reason for discharge, or both.

(1) Characterization of discharge. An applicant may request a specific change in their characterization of service. A request for review from an applicant who does not have an Honorable Discharge shall be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another characterization of discharge.

(2) Narrative reason for separation. An applicant may request a specific change in the narrative reason for separation. If an applicant does not request a specific change in the reason for discharge, the Board shall presume that the request for review does not involve a request for change in the reason for discharge. Under the NDRB's responsibility to examine the propriety and equity of an applicant's discharge, the NDRB shall change the reason for discharge if such a change is warranted.

(3) Re-enlistment code. The NDRB is authorized to change an NDRB applicant's re-enlistment code if related to the discharge characterization or narrative.

c. Request for consideration of specific issues. An applicant may request the NDRB consider specific issues, which, in the opinion of the applicant, form a basis for changing the character or reason for discharge, or both.

d. Use of DD Form 293. DD Form 293 provides the applicant with a standard format for submitting issues to the NDRB and must be used.

e. Availability of Records

(1) Before applying for discharge review, potential applicants or their designated representatives may 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 9700 Page Boulevard, St. Louis, MO 63132.

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

(3) If no official records are forthcoming, or they are missing substantive portions, the NDRB has the authority to request the applicant submit additional records for review. If the applicant is unwilling or unable to comply within 60 days, the NDRB may proceed with the information available to the NDRB.

(4) The NDRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant. Information beyond that found in the official military records and used in the NDRB's adjudication shall be made available to the applicant with appropriate modifications regarding classified material.

(5) When materials requested for review are classified, the NDRB will request that the original classifying authority produce an unclassified version that allows the applicant or counsel or representative to gain a complete an understanding of the material as possible per the regulations. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

213. Withdrawal of Application. An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review; however, failure to appear for a scheduled hearing shall be construed as the applicant waived the right to the hearing.

214. Review on Motion of the NDRB. Reviews of discharges may be initiated by the NDRB on its own motion under the provisions of

reference (a).

215. Hearings

a. An applicant, upon request, is entitled to a records review and a personal appearance hearing. The NDRB normally suggests the applicant conduct a record review prior to a personal appearance hearing. However, if the applicant receives a personal appearance hearing prior to a record review, the applicant is no longer entitled to a record review.

b. Hearings and deliberations are closed to the general public and shall generally recognize the rights of the individual to privacy. Accordingly, presence at hearings of individuals other than those required shall be limited to persons authorized by the President, NDRB or expressly requested by the applicant, subject to reasonable limitations based upon available space. If, in the opinion of the PO, the presence of other individuals could be prejudicial to the interests of the applicant or the Government, hearings may be held in closed session.

c. Hearings will be conducted in a non-adversarial and impartial manner with the objective of fairly addressing all the facts bearing on a case.

216. Scheduling of Discharge Reviews

a. If an applicant requests a personal appearance discharge review, or to be represented in absentia, the NDRB shall provide a hearing.

b. The NDRB shall subsequently notify the applicant and representative (if any) in writing of the proposed personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. If the applicant elects, this time limit may be waived and an earlier date set.

c. When an applicant requests a documentary (record) review, the NDRB shall conduct the review as soon as practicable. Normally, documentary (record) reviews shall be conducted in the order in which they are received.

217. Attendance of Witnesses. Arrangement for attendance of witnesses testifying on behalf of the applicant at discharge review hearings is the responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

218. Applicant's Expenses. Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the DoD. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

219. Government (Military or Civilian) Representation. Military officers and Government employees, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before a NDRB Panel, are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by reference (p).

220. Continuance and Postponements

a. The President of the NDRB or PO of the panel concerned may authorize a continuance of a discharge review hearing, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is ready for review.

b. Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner or for the convenience of the government.

221. Failure to Appear or Respond to Scheduling Notice

a. Except as otherwise authorized by the Secretary of the Navy, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a

timely response.

(2) When the applicant, after being notified by letter of the time and place of the hearing, fails 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.

b. In such cases, the applicant shall be deemed to have waived the right to a hearing, and if the NDRB has not conducted a record review, the NDRB shall complete a record review of the discharge. Further request for a hearing shall not be granted unless the applicant demonstrates that the failure to appear or respond was due to circumstances beyond the applicant's control.

222. Evidence and Testimony. In the absence of any other evidence, the discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence outside of what is available in the service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted may be returned for completion and resubmission.

a. The NDRB may consider any evidence obtained in accordance with this manual, and may obtain evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant. Information beyond that found in the official military records and used in the NDRB's adjudication shall be made available to the applicant with appropriate modifications regarding classified material.

b. Formal rules of evidence shall not be applied in NDRB proceedings. However, the PO shall rule on matters of procedure and shall ensure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses.

c. Applicants undergoing hearings shall be permitted to make sworn or unsworn statements, if they so desire, or to introduce witnesses, documents, or other information on their behalf, at no expense to the DON.

d. Applicants may also make oral or written arguments personally or through counsel or representatives.

e. Applicants and witnesses who present sworn statements may be questioned by the NDRB. All testimony shall be taken under oath or affirmation unless the applicant specifically requests to make an unsworn statement. If an applicant or witness makes an unsworn statement, they may not be questioned by the NDRB unless they agree to answer such questions.

f. There is a presumption of regularity in the conduct of governmental affairs. This presumption will be applied in any review unless there is substantial credible evidence to rebut the presumption.

g. Presumption Concerning Court-Martial Specifications.

(1) Relevant and material facts stated in a court-martial specification shall be presumed by the NDRB Panel to be established facts. With respect to a discharge or dismissal adjudged by a court-martial tried under the Uniform Code of Military Justice, the action may extend only to changing the discharge or dismissal for purposes of clemency.

(2) Relevant and material facts stated in a court-martial specification, in the face of which the applicant requested a discharge for the good of the service to avoid trial by court-martial, shall be considered in accordance with the following:

(a) If the applicant/accused was required to admit the facts contained in the charge sheet, or if the discharge authority was required to find that the stated facts were true, then the NDRB can presume the truth of such facts, unless there is substantial credible evidence to rebut this presumption.

(b) If the discharge in lieu of court-martial only required a valid preferral of charges, the NDRB may presume the signer either had personal knowledge of, or had investigated the matters set forth, and the charges were true in fact to the best of the signer's knowledge and belief. The weight to be given this presumption in determining whether the facts stated in the charge sheet are true is a matter to be determined by the NDRB. To the extent the discharge proceeding reflects an official determination that the facts stated in the charge sheet are

true; that the applicant/accused admitted the facts stated in the charge sheet; or that the applicant/accused admitted guilt of the offense(s), then the presumption is strengthened. That presumption may be rebutted by substantial credible evidence.

h. The board will consider all written, audio, or video material submitted by or on behalf of the applicant. The applicant also has the right to have a personal representative (defined in reference (a)) appear on their behalf at no cost to the government. The applicant will be afforded the opportunity to sign/forward a Privacy Act Waiver/Release Statement as part of the personal appearance request. The board retains the authority to determine who may be permitted to appear, to limit the time for presentations to the board, and ensure the orderly conduct of the proceedings.

223. Decision Process

a. The NDRB shall meet to review discharges and exercise its discretion on a case-by-case basis applying the standards enumerated in paragraph 210.

b. The PO is responsible for the conduct of the discharge review. The PO shall convene, recess, and adjourn the NDRB panel, as appropriate, and shall maintain an atmosphere of dignity and decorum at all times.

c. Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the military department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this manual.

d. The NDRB shall identify and address issues after a review of the following: material obtained and presented in accordance with this manual; available official records; documentary evidence submitted by or on behalf of an applicant; presentation of a hearing examination; testimony by or on behalf of an applicant; oral or written arguments presented by or on behalf of an applicant; and any other relevant evidence.

e. If the applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted, provided a record review has not already been done.

224. Decisional Issues

a. General. Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision. In order to enhance clarity, the NDRB is not required to address matters other than issues relied upon in the decision or raised by the applicant.

(1) Partial change. When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) Relationship of issue to character or reason for discharge. Generally, the decisional document should specify whether a decisional issue applies to the character or reason for discharge (or both), but it is not required to do so.

(3) Relationship of an issue to propriety or equity.

(a) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB shall consider it under both standards.

(b) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming a change in discharge is required as a matter of law), the NDRB shall consider the issue solely as a matter of propriety.

(c) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards addressed below.

(d) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends the NDRB is required as a matter of law to follow the prior case, the decisional document shall note the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards.

(e) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

b. Change of discharge; issues of propriety. If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors or expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed.

c. Denial of full change requested; issues of propriety

(1) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(2) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(a) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(b) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

1. For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(c) If the NDRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance above:

1. The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue.

2. The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue are not relevant to the applicant's case.

3. The NDRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the NDRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

4. The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

5. If the applicant takes the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the DoD, the NDRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the NDRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue under subparagraphs e. and f. below.

6. When an applicant's issue raises a general allegation that his or her constitutional rights were violated, the NDRB may analyze that issue through the lens of the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation.

d. Denial of the full change in discharge requested when propriety is not at issue. If the applicant has not submitted an issue of propriety and the NDRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The NDRB is not required to provide any further discussion as to the

propriety of the discharge.

e. Change of discharge; issues of equity. If the NDRB concludes a change in the discharge is warranted under the equity standards the decisional document shall list each issue of equity upon which this conclusion is based. The NDRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed under the guidance in subparagraph f. below.

f. Denial of the full change in discharge requested; issues of equity.

(1) If the NDRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(2) The NDRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(a) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the NDRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(b) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the NDRB shall make a finding of fact for each such event or circumstance.

1. For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the NDRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the NDRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(c) If the NDRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance above:

1. The NDRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue.

2. The NDRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

3. The NDRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the NDRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation shall address all such specified issues.

4. The NDRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the NDRB agreed with the applicant's position.

5. If the applicant takes the position that the

discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the NDRB may respond that it shall presume the validity of the record in the absence of such corrective action. However, the NDRB shall consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(d) When the NDRB concludes that aggravating factors outweigh mitigating factors, the NDRB shall set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The NDRB is not required, however, to explain why it relied on any such factors, unless the applicant expressly raises the applicability or weight of such a factor as an issue.

(e) If the applicant has not submitted any issues and the NDRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

225. Decisional Document. This section will seek to explain how the NDRB captures their determinations of an applicant's issues. Nothing in this section precludes the NDRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue. A decisional document shall be prepared for each review. In addition to all the substantive provisions captured elsewhere in this manual, all decisional documents will, at a minimum, 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 at issue in the review, including:

(a) Date (YYYYMMDD) of discharge.

(b) Character of discharge.

(c) Reason for discharge.

(d) The specific regulatory authority under which the discharge was issued.

(2) Date (YYYYMMDD) of enlistment.

(3) Period of enlistment.

(4) Age at enlistment.

(5) Length of service.

(6) Periods of unauthorized absence.

(7) Conduct and efficiency ratings (numerical or narrative).

(8) Highest rank achieved.

(9) Awards and decorations.

(10) Educational level.

(11) Aptitude test scores.

(12) Incidents of punishment pursuant to reference (q) (including nature and date (YYYYMMDD) of offense or punishment).

(13) Convictions by court-martial.

(14) Prior military service and type of discharge received.

b. A list of the type of documents submitted by or on behalf of the applicant (including a written brief, 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 (expert or character), 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. The 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.

f. A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and any other issues submitted by the applicant. Issues that have been withdrawn or modified with the consent of the applicant need not be listed.

g. The response to the items submitted as issues.

h. A list of decisional issues and a discussion of each issue.

i. Minority views, if any, when authorized.

j. The recommendation of the NDRB President when required.

k. The addendum of the SRA when required.

l. 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 thereof that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted, as issues, by the application 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.

m. 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 member's names (last name, first initial, and middle initial) 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.

(3) An authentication of the document by an appropriate official.

226. The Recommendation of the NDRB President

a. General. The NDRB President may forward cases for consideration by the SRA under rules established by the Secretary of the Navy. There is no requirement the President submit a recommendation when a case is forwarded to the SRA. If the President makes a recommendation with respect to the character or reason for discharge, however, the recommendation shall be prepared under the guidance in subparagraph b. below.

b. Format for recommendation. If a recommendation is provided, it shall contain the President's views whether there should be a change in the character or reason for discharge (or both). If the President recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the President's position on decisional issues and issues submitted by the applicant under the following guidance:

(1) Adoption of the NDRB's decisional document. The recommendation may state that the President has adopted the decisional document prepared by the majority. The President shall ensure that the decisional document meets the requirements of this enclosure.

(2) Adoption of the specific statements from the majority. If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the President modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) Response to issues not included in matter adopted from

the majority. The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(a) The issues on which the President's recommendation is based. The President shall address each such decisional issue.

(b) The President's response to items submitted as issues by the applicant.

(c) Reasons for rejecting the conclusions of the majority with respect to decisional issues, which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the President's recommendation. Such issues shall be addressed under the principles in paragraph 224 above.

227. SRA

a. Review by the SRA. The SRA is the Secretary of the Navy or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(a) Any specific case in which the SRA has an interest.

(b) Any specific case the President of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the same standards as the NDRB.

b. Processing the Decisional Document.

(1) The decisional document shall be transmitted by the NDRB President under paragraph 226 above.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion without the participation of the applicant or the applicant's counsel:

(a) The applicant shall be provided with a copy of the proposed decisional document, including the NDRB President's recommendation to the SRA, if any. Classified information shall be summarized.

(b) The applicant shall be provided with a reasonable period of time, but not less than 25 calendar days, to submit a rebuttal to the SRA. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB President on decisional issues and other clear and specific issues submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the President's recommendation.

c. Review of the decisional document. If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant, but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the discussion by the NDRB (or NDRB President) of the issues raised by the majority or the applicant.

d. The Addendum of the SRA. The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) The SRA's decision. The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the NDRB or the NDRB President, the decisional document shall contain a reference to the matter adopted.

(2) Discussion of issues. In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant, and issues raised by the NDRB and the NDRB President in accordance with the following guidance:

(a) Adoption of the NDRB President's recommendation. The addendum may state the SRA has adopted the NDRB President's

recommendation.

(b) Adoption of the NDRB's proposed decisional document. The addendum may state the SRA has adopted the proposed decisional document prepared by the NDRB.

(c) Adoption of specific statements from the majority or the NDRB President. If the SRA adopts the views of the NDRB or the NDRB President only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB President, the addendum shall set forth the modification.

(d) Response to issues not included in matters adopted from the NDRB or the NDRB President. The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB President:

1. A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB President with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in paragraph 224 above.

2. The SRA's response to items submitted as issues by the applicant.

(3) Response to the rebuttal

(a) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed as outlined in paragraph 224 above, and no further response to the rebuttal is required.

(b) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

1. If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in paragraph 224 above.

2. If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note the fact and cite the specific matter adopted that responds to the issue in rebuttal.

3. If the matter submitted by the applicant does not meet the requirements for rebuttal material in subparagraph b.(2)(b), above, that fact shall be noted.

228. Issuance of Decisions Following Discharge Review. The applicant shall be provided with a copy of the decisional document and of any further action in review. The applicant shall be notified of the availability of the complaint process under Chapter 3. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the military service concerned.

a. Notification to the applicant and counsel or representative, if any, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

b. Notification to the military service concerned shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy. Generally, the military service concerned should issue a DD214 for any changes granted by the NDRB.

c. Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative, if any, in the same manner as the notification of the review decision.

229. Record of NDRB Proceedings

a. When the NDRB proceedings have been concluded, a record will be prepared. Records may include written records,

electromagnetic records, videotape recordings, or a combination thereof.

b. At a minimum, the record shall include the following:

(1) The application for review.

(2) A record of the testimony in verbatim, summarized, or recorded form at the option of the NDRB concerned.

(3) Documentary evidence or copies thereof, considered by the NDRB other than the military service record.

(4) Briefs and arguments submitted by or on behalf of the applicant.

(5) Advisory opinions considered by the NDRB, if any.

(6) The findings, conclusions, and reasons developed by the NDRB.

(7) Notification of the NDRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document.

(8) A copy of the decisional document.

230. Availability of Discharge Review Board Documents

a. A copy of the decisional document prepared in accordance with this manual shall be made available promptly for public access after a notice of final decision is sent to the applicant.

b. To prevent a clearly unwarranted invasion of personal privacy, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available to the public. The NDRB shall ensure there is a means for relating a decisional document number to the name of the applicant, to permit retrieval of the applicant's records when processing a complaint under Chapter 3.

c. Any other privileged, classified, or For Official Use Only material contained in or appended to any documents required

by this manual may be deleted only if a written statement of the basis for the deletions is provided to the applicant and made available to the public. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

d. NDRB documents will be made available for public inspection and downloading via the DoD Boards' Electronic Reading Room located at <http://boards.law.af.mil>.

(1) The documents shall be retrievable in a usable and concise form so as to enable the public, and those who represent applicants before the NDRB, to isolate from all decisions those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the NDRB or the Secretary concerned granted or denied relief.

(2) NDRB decisional documents shall include the case number, the date, character, reason, and authority for the discharge. It shall also include the decisions of the NDRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

231. Reconsideration

a. Previous reviews of discharges may be reconsidered by the NDRB under the provisions of reference (a), and can be initiated by petition or by the NDRB's own motion. A reconsideration is a privilege and not a right, and does not entitle the applicant to demand a personal appearance hearing.

b. The NDRB may conduct a reconsideration when changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive.

c. The NDRB may conduct a reconsideration when the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings.

d. The NDRB may conduct a reconsideration when the NDRB determines that a material error/inequity has occurred in the prior review by the NDRB.

232. Correspondence and Questions. Correspondence and questions pertaining to the DON discharge review systems as contained within this manual should be directed to the NDRB, attention: President, Naval Discharge Review Board, 720 Kennon Avenue, SE, Room 309, Washington Navy Yard, Washington, DC 20374-5023. Telephonic requests may be made at DSN 325-6600 or Commercial (202) 685-6600. FAX requests may be made to DSN 325-6577 or Commercial (202) 685-6577. Internet inquiries soliciting general information about the NDRB should be directed to NDRB@Navy.mil or the following website:
<http://www.secnav.navy.mil/mra/CORB/pages/ndrb/default.aspx>.

CHAPTER 3
COMPLAINTS CONCERNING DECISIONAL DOCUMENTS

301. General

a. The procedures in this chapter are established for the sole purpose of ensuring decisional documents issued by the NDRB comply with the decisional document principles of reference (b), and may be modified or supplemented by the Under Secretary of Defense for Program Integration (DUSD(PI)).

b. The following persons may submit complaints:

(1) A former member of the Armed Forces with respect to the decisional document issued in the former member's own case.

(2) A former member of the Armed Forces who states that correction of a decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

c. The DUSD(PI) is the final authority with respect to action on such correspondence.

302. Joint Service Review Activity (JSRA). A three member JSRA consisting of one judge advocate from each Military Department shall advise the DUSD(PI). The operations of the JSRA shall be coordinated by an administrative director, who shall serve as recorder during meetings of the JSRA. The members and the administrative director shall serve at the direction of the DUSD(PI).

303. Review Of Complaints, Classification, And Control Of Correspondence. A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically identified violation of the references. Complaints shall be submitted and reviewed in accordance with the references.

a. Address of the JSRA. Correspondence with the JSRA concerning decisional documents issued by the NDRBs shall be addressed as follows:

Joint Service Review Activity
OUSD(P&R)PI-LP
The Pentagon
Washington, DC 20301-4000

b. All such correspondence shall be controlled by the administrative director through the use of a docketing procedure.

c. Classification. Correspondence shall be reviewed by the administrative director and categorized either as a complaint or an inquiry in accordance with the following:

(1) Complaints. A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or SRA contains a specifically identified violation of the principles of reference (b).

(2) Inquiries. An inquiry is any correspondence other than a complaint.

APPENDIX A

DEFINITIONS

1. Administrative Discharge. A discharge upon expiration of enlistment or required period of service, or prior thereto, in a manner prescribed by the CMC, or the CNPC, but specifically excluding separation by sentence of a court-martial. The type of administrative discharge is a determination reflecting a member's military behavior and performance of duty during a specific period of service.

2. Applicant. A former member of the naval service who has been discharged or dismissed administratively in accordance with the naval directives/regulations or by sentence of a court-martial (other than a general court-martial) whose application is accepted by the NDRB or whose case is heard on the NDRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. When the term "applicant" is used it includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the NDRB an appropriate power of attorney or other written consent of the applicant.

3. Application. In the context of this manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin, or legal representative. DD Form 293 must be used for the application.

4. Bad Conduct Discharge. A Bad-Conduct Discharge (which is an authorized sentence at both a General Court-Martial and a Special Court-Martial) is a severe punishment, although less severe than a dishonorable discharge, and may be adjudged for one who in the discretion of the court warrants severe punishment for bad conduct even though such bad conduct may not include the commission of serious offenses of a military or civil nature. Applies only to enlisted persons and may be adjudged by a general or special court-martial. A bad conduct

discharge is less severe than a dishonorable discharge and is designed as a punishment for bad conduct rather than as a punishment for serious offenses of either a civilian or military nature. It is also appropriate for an accused who has been convicted repeatedly of minor offenses and whose punitive separation appears to be necessary.

5. Clemency. A general term for the administrative review or action, other than the correction of legal error, which results in mitigation, remission, or suspension of the whole or any part of the unexecuted portion of a court-martial sentence, restoration to duty, the voluntary retention on active duty beyond the obligated term of enlistment, or reenlistment. Clemency also includes substitution for good cause of an administrative discharge for an executed punitive discharge or dismissal in select cases.

6. Complainant. A former member of the Armed Forces (or the former member's counsel) who submits a complaint under Chapter 3 with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under Chapter 3 stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

7. Counsel or Representative. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a federal court or of the highest court of a State; an accredited representative designated by an organization recognized by the Secretary of Veterans Affairs; a representative from a State agency concerned with veterans affairs; or representatives from private organizations or local government agencies.

8. Decisional Document. The written recordation of the applicant's summary of service, the issue or issues presented together with any evidence offered in support of the application, the NDRB's response to the issue or issues, the votes of the members of the panel, and any recommendations by the President of the NDRB or SRA, as appropriate. The decisional document is promulgated by an "en bloc" letter.

9. Discharge. The complete severance of all military status gained by the enlistment or induction concerned, including the assignment of a reason for such discharge and characterization of service per reference (d).

10. Discharge Review. The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated.

11. Dishonorable Discharge. A separation from the naval service under dishonorable conditions. Applies only to enlisted persons and warrant officers who are not commissioned and may be adjudged only by a general court-martial. A dishonorable discharge should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies, or of offenses of a military nature requiring severe punishment.

12. Dismissal. A complete severance from all military status. Dismissal applies only to commissioned officers, commissioned warrant officers, cadets, and midshipmen and may be adjudged only by a general court-martial. A dismissal may be adjudged for any offense of which a commissioned officer, commissioned warrant officer, cadet, or midshipman has been found guilty.

13. General (Under Honorable Conditions). A separation from the naval service under honorable conditions. A discharge characterized as under honorable conditions (also termed "general discharge") is warranted when the quality of the member's service has been honest and faithful; however, significant negative aspects of the member's conduct or performance of duty outweighed the positive aspects of the member's service record. In the absence of a specific finding from an administrative board, a characterization of service as General may be awarded based on a review of a member's overall service record.

14. Honorable. A separation from the naval service with honor. A discharge characterized as honorable is warranted when the quality of the member's service generally met the standard of acceptable conduct and performance for naval

personnel, or is otherwise so meritorious that any other characterization of service would be clearly inappropriate.

15. Mitigation. Action taken to lessen the severity of the punishment in quantity or quality, or both.

16. NDRB. An administrative board, referred to as the "NDRB," established by the Secretary of the Navy and vested with discretionary authority to review discharges.

17. NDRB Panel. An element of the NDRB, consisting of five members, authorized to review discharges. In plenary review session, an NDRB panel acts with the authority delegated by the Secretary of the Navy to the NDRB.

18. Naval Service. The Naval Service is comprised of the uniformed members of the United States Navy and the United States Marine Corps, including active and inactive reserve components.

19. Other Than Honorable Conditions. A discharge characterized as Under Other Than Honorable Conditions (formerly termed "undesirable discharge") is warranted when a member engages in conduct involving one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Naval Service. It is issued to terminate the service of a member of the naval service for one or more of the reasons/basis listed in the Naval Military Personnel Manual, Marine Corps Separation and Retirement Manual and their predecessor publications.

20. Personal Appearance Hearing Review. A formal session of the NDRB convened for reviewing an applicant's discharge on the basis of a personal appearance, as well as military records and documentary data provided. The review involves an appearance before the NDRB by the applicant without counsel/representative, or the applicant with the counsel/representative, or on the applicant's behalf by a counsel/representative.

21. President, NDRB. The person designated by the Director, SECNAVCORB, who is responsible for the supervision of the discharge review function within the Naval Service and other duties as assigned.

22. PO, NDRB Panel. The senior member of the NDRB Panel shall normally be the PO. The PO shall convene, recess, and adjourn the NDRB Panel as appropriate.

23. Punitive Separation. A dismissal, dishonorable discharge or bad conduct discharge adjudged as a sentence by a court-martial and approved by a convening authority (CA). (In accordance with the Military Justice Act of 2016, as of 1 January 2019, CAs are no longer required to approve punitive separations).

24. Recorder, NDRB Panel. A panel member responsible for briefing an applicant's case from the documentary and record evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance hearings, and preparing the decisional document subsequent to the hearing. Any member of a panel of the NDRB, other than the PO, may act as recorder for cases assigned. The recorder may participate as a voting member of the panel.

25. Reason/Basis For Administrative Discharge. The terms "reason for discharge" and "basis for discharge" have the same meaning. The first is a Navy term and the second is Marine Corps term. These terms identify why an administrative discharge was issued, e.g., Convenience of the Government or Misconduct. Reasons/bases for discharge are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

26. Reconsideration. A second review of a Record Discharge Review or Personal Appearance Hearing granted for specific reasons. It can be initiated by petition or by the NDRB's own motion. A Reconsideration is a privilege and not a right, and does not require the applicant receive a Personal Appearance Hearing.

27. Record Discharge Review. A formal session of the NDRB convened for reviewing, on the basis of documentary data, an applicant's discharge. The documentary data shall include the application, with all information accompanying the application, available service and medical records, and

any other information considered relevant by the NDRB.

28. Uncharacterized. An entry level characterization of service initiated while a member is in entry level status (i.e., within first 180 days of continuous active duty, computation starts upon enlistment and terminates on the date notification of separation proceedings are initiated) will be described as Uncharacterized except when characterization of service as "under other than honorable" is authorized under reasons for separation and are warranted by circumstances of the case; or if "honorable" is clearly warranted by presence of unusual circumstances involving personal conduct and performance, and is approved by the SECNAV based on the following reasons: selected changes in service obligation, convenience of the Government, disability, or best interest of the Service.

APPENDIX B

MEMBER OATH/AFFIRMATION

Prior to assuming their duties as members of the NDRB, each individual will execute the following oath or affirmation administered by the President or PO, NDRB, which continues in effect throughout their service with the NDRB:

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 the Naval Discharge Review Board.