

CHAPTER 13

SEPARATION FOR UNFITNESS OR UNSUITABILITY

Section I. General

13-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service.

13-2. Policy. *a.* Action will be taken to separate an individual for unfitness when it is clearly established that-

(1) Despite attempts to rehabilitate or develop him as a satisfactory soldier, further effort is unlikely to succeed ; or

(2) Rehabilitation is impracticable or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record) ; or

(3) An unfit medical condition (AR 40-501) is not the direct or substantial contributing cause of his unfitness (para 13-11 *b*).

b. Action will be taken to separate an individual for unsuitability when it is clearly established that-

(1) It is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory soldier, *and*

(2) He meets retention medical standards (AR 40-501) (para 13-11 *a*).

c. Action will be taken only when an individual is under military control, except that an individual confined by civil authorities may be processed for discharge when his military record indicates that he should be processed for separation by reason of unfitness or unsuitability.

d. Commanders will not take action under this chapter in lieu of disciplinary action solely to spare an individual who may have committed serious misconduct the harsher penalties which may be imposed under the Uniform Code of Military Justice.

13-3. Assignment action for personnel en route to an oversea area. *a.* When action has been initiated under paragraph 13-5a (2) or (3) against an individual assigned to an oversea replacement station, he will be transferred to the Army garrison at that or another installation to await final action on his case.

b. If the convening authority disapproves the recommendation for separation, the individual will again be assigned to the oversea replacement station for compliance with his original orders.

13-4. Authority. *a.* HQDA approval is required before individuals who have completed 18 or more years of active Federal service may be discharged.

b. Commanders exercising general court-martial jurisdiction are authorized to convene boards of officers for unfitness and unsuitability and to order separation, except that they may not order discharge of personnel referred to in a above. This authority may be delegated to a general in command who has a judge advocate on his staff for cases arising in that command. Every action taken pursuant to such a delegation will state the authority therefor. All references to commanders exercising general court-martial jurisdiction, general court-martial convening authority, and general court-martial authority in this chapter include this delegation authority.

c. Commanders exercising special court-martial jurisdiction are authorized to convene boards of officers for unsuitability and to order separation, except that they may not order discharge of personnel referred to in a above.

13-5. Applicability. An individual is subject to separation under this chapter when one or more of the following conditions exist :

a. Unfitness.

(1) Frequent incidents of a discreditable nature with civil or military authorities.

(2) Sexual perversion, including but not limited to-

(*a*) Lewd and lascivious acts.

(*b*) Indecent exposure.

(*c*) Indecent acts with or assault upon a child.

(*d*) Other indecent acts or offenses.

(3) Drug abuse, defined as-

(*a*) Drug dependence, or the unauthorized use, sale, possession, or transfer of any controlled substance as defined in AR 600-50, or the intro-

duction of such controlled substance onto any Army installation or other Government property under Army jurisdiction.

(b) Use or possession for one's own use of controlled substances, or dependence thereon, elicited as a result of an individual's volunteering for treatment or being identified by programmed biochemical testing, if the sole basis for separation. In such cases, separation will be under honorable conditions as specified in paragraph 13-31 a.

(4) An established pattern for shirking.

(5) An established pattern showing dishonorable failure to pay just debts.

(6) An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(7) Homosexual acts. Homosexual act means bodily contact between persons of the same sex, actively undertaken or passively permitted by either or both, with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act. Individuals who have been involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication normally will not be processed for discharge because of homosexual acts. If other conduct is involved, individuals may be considered for discharge for other reasons set forth in this chapter. This applies to those cases in which personnel have engaged in one or more homosexual acts during military service and-

(a) Trial by court-martial is not considered as the course of action to be taken ; or

(b) The individual has been referred to trial, but has not been tried by court-martial within the meaning of article 44(c), UCMJ; or

(c) The individual has been tried by court-martial within the meaning of article 44(c), UCMJ, subject to the limitations on administrative action set forth in paragraph 1-13.

b. Unsuitability.

(1) *Inaptitude.* Applicable to those persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

(2) *Character and behavior disorders.* As determined by medical authority, character and behavior disorders and disorders of intelligence as suggested by various symptoms as enuresis or somnambulism, listed in TB MED 15, except for combat exhaustion (3263) and other acute situational maladjustments (3264) when such disorders are chronic and recalcitrant to attempts at rehabilitation, and interfere with the serviceman's ability to adequately perform his duties.

(3) *Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.* While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects or mental or organic diseases, including psychoneurosis, these traits are not necessarily produced by the physical or disease process. On the other hand, individuals considered for elimination may attempt to excuse immature, inadequate, and undisciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect-producing impairment of function insufficient to warrant separation under the provisions of AR 635-40 and related regulations is no bar to discharge for unsuitability.

(4) *Alcoholism.* Unsuitability by reason of chronic alcoholism may develop in persons who have previously rendered many years of adequate service. It is a fully treatable condition. Rehabilitation of an individual with this condition often requires patient and repetitive effort. Its success is enhanced by early recognition. When it becomes apparent that an individual has become chronically ineffective and has not responded to rehabilitative measures within a reasonable time, or is not motivated to take advantage of available therapeutic measures, elimination may be indicated. Personnel will be separated for unsuitability only if the major reason for separation is noneffective duty performance due to failure to cooperate with or succeed in an alcohol rehabilitation program. These conditions should not be confused with occasional drunken episodes during which an individual commits antisocial acts. In determining whether separation will be for unfitness or unsuitability, the neuropsychiatric report, record of prior service, and other reasons for separation under a

above should be considered and, if determined to be overriding, may be used as a basis for separation for unfitness.

(5) *Homosexual (homosexual tendencies, desires, or interest but without overt homosexual*

acts). Applicable to personnel who have not engaged in a homosexual act during military service, but who have a verified record of preservice homosexual acts. It is also applicable to other cases which do not fall within the purview of a (7) above

Section II. COUNSELING AND REHABILITATING REQUIREMENTS

13-6. General. Commanders will insure that before taking separation action against an individual under this chapter, adequate counseling and rehabilitation measures have been taken. Reassignments accomplished in connection with rehabilitation attempts will normally be made without expending permanent change of station or military personnel Army (PCS-MPA) funds. See paragraph 13-8c for exceptions to this policy.

13-7. Counseling. *a.* When an individual's behavior has been such that continued behavior of a similar nature may warrant f&ion against him, the individual will be counseled by a responsible person or persons. Each counseling session will be recorded (to include date and by whom counseled).

b. Counseling will include but will not be limited to the following:

(1) Reasons for counseling.

(2) The fact that continued behavior of a similar nature may result in initiating elimination actions.

(3) The type of discharge that may be issued and the effect of each type, if such action is taken and separation accomplished. The counseling regarding types and effects of various discharges will be conducted in accordance with procedures of paragraph 3, AR 350-21, and will be equally comprehensive, to include the showing of the film, "Take the Smart Way Cut-It's Honorable," if practicable.

13-8. Rehabilitation. As a minimum, one of the following measures will be taken :

a. Replacement stream personnel. Individuals will be recycled (reassigned between training companies) at least once.

b. Other than replacement stream personnel. Individuals will be reassigned at least once, with a minimum of 2 months of duty in each unit. Reassignment should be between special court-martial jurisdictions when this is possible, without a permanent change of station. If this is not possible and if reassignment between article 15 jurisdictions is not considered desirable because of the cir-

cumstances involved in a case, the procedure prescribed in c below will apply.

c. Permanent change of station transfer. When a permanent change of station is considered essential to provide a change in commanders, associates, and living or working conditions as a means of rehabilitating an individual, the commander exercising general court-martial jurisdiction over the individual may authorize such reassignment within the same command (or may request the Office of Personnel Operations to accomplish assignment to another command) provided-

(1) The individual involved is in grade E-4, or below, with less than 4 years of service. Individuals in grade E-4 with over 2 years of active service and total obligated active service of 6 years and all other personnel who are eligible by virtue of grade and service for transportation of dependents and shipment of household goods are not eligible for reassignment under provisions of this paragraph.

(2) A transfer to another station would not be detrimental to the individual or to the Army (e.g., cases involving indebtedness, personnel undergoing special counseling or other rehabilitative type mental hygiene treatment programs, or mal-adjusted or apathetic personnel who could not be expected to respond to disciplinary controls or to benefit from change of associates, regardless of assignment locale).

13-9. Waivers. Counseling and rehabilitation may be waived as follows:

a. Counseling required in paragraph 13-7 and rehabilitation required in paragraph 13-3 may be waived by the convening authority when separation is being considered under the provisions of paragraph 13-5a(2) or 13-5a(7), or under the provisions of 13-5b (5).

b. The general court-martial convening authority may waive the requirements of paragraphs 13-7 and 13-8 when he determines that further duty of the individual will, in his best judgment, create

serious disciplinary problems or a hazard to the military mission or to the individual.

c. The general court-martial convening authority may waive the requirements of paragraphs 13-7

and 13-8 when he determines that the individual is obviously resisting all attempts to be rehabilitated or that rehabilitation will not produce the quality soldier acceptable in the baseline force

Section III. MEDICAL PROCESSING

13-10. Medical evaluation. when an individual is to be processed for separation, the unit commander must insure that an appropriate medical evaluation and mental status evaluation are obtained. Sufficiently detailed information about the reasons for considering the individual unfit or unsuitable should be furnished to allow the medical examiners a thorough understanding of the contemplated action.

a. When the individual is under military control.

(1) The medical treatment facility providing dispensary care will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when :

(a) Specifically requested by the individual subject to separation action.

(b) Specifically requested by the commanding officer recommending separation action.

(c) Deemed necessary and appropriate by the medical examiner performing the requested evaluation.

(d) Requested by the board considering separation action.

(e) Individual is being considered for discharge under the provisions of paragraph 13-5a (7) or b (5).

(2) In all other cases, the physician performing the physical examination will accomplish the mental status evaluation. In the exceptional cases detailed in (1) (a) through (d) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist.

(3) When an individual is being considered for discharge under the provisions of paragraph B-5a (7) or b (5) the psychiatrist doing the psychiatric portion of the medical evaluation will be furnished a copy of the documents which detail the behavior upon which the suspicion of homosexuality rests. In addition to the SF 88 (Report of Medical Examination) and the SF 93 (Report of Medical History), the medical treatment facility

will prepare a report of mental status evaluation (fig. 14-2). The medical evaluation and the Psychiatric study of the individual will include the personal history, an opinion regarding the existence of homosexuality, and an opinion as to whether the individual should be eliminated from the service under paragraph 13-5a(7) or b (5), or retained in the service. If retention is recommended and if considered appropriate, a statement of procedures likely to be of value in the individual's rehabilitation may be included.

b. When individual is in civil confinement. When a member is confined by civil authorities, the unit commander may recommend elimination action to the commander exercising general or special court martial authority, as appropriate. If the commander approves initiation of elimination action, a type A medical examination will be scheduled. The examination will be accomplished at the nearest Armed Forces medical treatment facility, if feasible, or by fee-basis physicians employed for this purpose. If the medical examination is accomplished by a civilian physician, the reports (SF 88, SF 93, consultation reports, and mental status evaluation) will be reviewed by a military physician prior to separation action. Physical examination and mental status evaluation will be accomplished and reported as provided in a above.

13-11. Disposition through medical channels. *a.* When the medical treatment facility commander determines that an individual being considered for elimination for unsuitability does not meet retention medical standards (AR 40-501) he will process the individual in accordance with AR 40-3. The individual's unit commander will be notified of this action, and the elimination action will be closed.

b. If it appears to the examining medical officer that an individual being considered for elimination for unfitness does not meet the retention medical standards, he will refer the individual to a medical board or, if there is no medical board at the

examining facility, to the nearest medical treatment facility that does have a medical board. The medical treatment facility commander will furnish a copy of the approved board proceedings to the commander exercising general court-martial jurisdiction over the individual concerned and a copy will be furnished to the unit commander. The commander exercising general court-martial jurisdiction will direct the individual to be processed through disability channels in accordance with AR 635-40 when it is determined that-

(1) The disability is the cause or substantial contributing cause of the unfitness; or

(2) When circumstances warrant disability processing in lieu of administrative processing.

c. A copy of the signed decision of the general court-martial authority to process the individual through disability channels will be included in the records. The commander exercising general court-martial jurisdiction will notify the medical treatment facility commander of his decision so that appropriate further medical processing may be expedited. He will also notify the unit commander of his decision to process the individual through medical channels. The unit commander will close the elimination action.

Section IV. PROCEDURES

13-12. Action by commanding officer when member is under military control. The unit commander of the individual will recommend whether action under this chapter, or disciplinary action should be initiated. The unit commander may-

a. Afford the individual the opportunity to waive his right of a hearing before a board of officers. In such cases-

(1) The commander will advise the individual in writing of the basis for the proposed discharge action and advise him that he has the following rights :

(*a*) To present his case before a board of officers.

(*b*) To submit statements in his own behalf.

(*c*) To be represented by counsel.

(*d*) To waive the above rights in writing.

(*e*) To withdraw his waiver of his rights in (*a*), (*b*), and (*c*) above any time prior to the date the discharge authority directs or approves his discharge and requests that his case be presented before a board of officers.

(2) An enlisted member will be given a reasonable time (not less than 48 hours) to consider waiver of board proceedings and shall have an opportunity to consult with counsel prior to waiving his rights. An enlisted person serving on an unspecified enlistment may tender his resignation in lieu of board action pursuant to chapter 9.

(3) The individual will submit a signed statement (fig. 13-1) indicating that he has been advised of the basis for the contemplated separation and its effect and of the rights listed in (1) above. The statement, will include a request or a waiver

by the individual of each right. The counsel will sign the statement and the statement will be included in the unit commander's report forwarded in compliance with paragraph 13-15. If the individual refuses to sign the statement it will be considered that the individual has not waived the rights listed in (1) above.

(4) Waivers of board hearings will not be accepted in the cases of members who have completed 18 or more years of active Federal service. Such members appearing before a board of officers convened under this chapter must be represented by counsel. They may not waive this requirement.

(5) An individual who holds a Reserve status as a commissioned or warrant officer will include in his statement whether a waiver of board hearing applies to his Reserve status.

b. Forward the case with a recommendation that elimination proceedings pursuant to this chapter be initiated (para 13-15). No recommendation will be made as to the type of discharge to be awarded an individual.

c. Forward the case with a recommendation that the individual be processed through medical channels. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered, and action under the Uniform Code of Military Justice is not initiated.

d. Initiate action under the Uniform Code of Military Justice.

e. Take the following action for personnel being considered for discharge under paragraph 13-5a (7) or b(5) :

(1) Inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. Any investigation required normally should be referred to the local provost marshal for investigation and recording on DA Form 2800 (CID Report of Investigation (Military Police)). The facts and circumstances of each case will govern the commander's decision as to the appropriate agency of investigation. Suspension of favorable action will be initiated in accordance with AR 600-31 unless the appropriate commander determines the allegation is baseless.

(2) If the information available is of sufficient stature to warrant investigation, take necessary action to protect the security of his command, including suspension of security clearance, if any, and denial of access to classified defense information pending completion of actions on the case. When the report of investigation substantiates such allegations, the commanding officer will refer the individual for medical evaluation, revoke his security clearance, if any, and prepare a memorandum for the record outlining action taken and forward it with the subject's revoked Certificate of Clearance and/or Security Determination under EO 10450 (DA Form 873) to the Commander, US Army Investigative Records Repository, Fort Holabird, MD 21219. Revocation of security clearance will be in accordance with AR 604-5.

(3) In all cases, the report will include a statement of the individual's date and place of birth; the amount of active service of the individual concerned ; the date and period of the individual's current period of service; statements of witnesses; a detailed signed statement from the individual concerned relative to his tendencies (para 13-5b (5)) and any past homosexual actions (UCMJ, art. 31) or his statement to the effect that he does not desire to make a statement.

13-13. Action by commanding officer when individual is confined. a. An individual unable to appear in person before a board of officers by reason of confinement will be advised by registered mail of the proposed discharge action, the

type of discharge certificate that may be issued, and the fact that action has been suspended to give him the opportunity to exercise the following :

(1) To request appointment of military counsel to represent him and, in the individual's absence, present his case before a board of officers.

(2) To submit statements in his own behalf.

(3) To waive the foregoing rights in writing or by declining to reply to the letter of notification within 30 days.

b. The individual will be requested to expedite his reply and will be advised that if reply is not received within 30 days of the date of receipt of the letter of notification, the recommendation for his discharge, if approved by the discharge authority, may be accomplished with the type of discharge certificate as determined to be appropriate. If the individual does not reply within the prescribed time, discharge may be finalized, as indicated. When warranted by the distances involved or other circumstances, a period in excess of 30 days may be allowed for the enlisted person to reply.

13-14. Flagging action. When flagging action under AR 600-31 has been initiated solely because an individual is being considered for elimination under this chapter and he is to be processed for separation under medical jurisdiction (para 13-10), his unit commander will remove the flagging action in order that disposition through medical channels will not be delayed.

13-15. Commanding officer's report. a. *Elimination by reason of unfitness.* When the immediate commander determines that the best interest of the service will be met by elimination action because of unfitness, he will report the fact, in letter form, to the general court-martial convening authority, through the appropriate intermediate commander, if applicable, furnishing the following :

(1) Name, grade, SSN, age, date of enlistment or induction, length of term for which enlisted (if applicable), and prior service. (Reduction in grade is not a prerequisite to board action.)

(2) Statement indicating whether the individual has a Reserve commission or a warrant. (If so, show grade, and date of appointment.)

(3) Reason for action recommended. General, nondescriptive terms will not be used.

(4) Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and duty military occupational specialty (MOS).

(5) Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

(6) Record of counseling.

(7) Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment (sec II, this chap.)

(8) Statement indicating why he does not consider it feasible or appropriate to recommend elimination for unsuitability or to accomplish other disposition.

(9) Conduct and efficiency ratings (chap. 5, AR 600-200).

(10) Record of trials by court-martial.

(11) Record of other disciplinary action. (Include record of nonjudicial punishment.)

(12) Report of mental status evaluation (fig. 14-2) or psychiatric report, if applicable. Include probable effectiveness of further rehabilitative efforts.)

(13) A statement by the individual indicating that he has been advised of his rights (para 13-12).

(14) Any other information pertinent to the case.

b. Elimination by reason of unsuitability. When the immediate commander determines that the best interest of the service will be met by elimination action for unsuitability, he will forward his recommendation in letter form to the officer exercising special court-martial jurisdiction. He will furnish information outlined in a above, except that a (8) will state why he does not consider it feasible or appropriate to effect other disposition.

13-16. Action by intermediate commander. Intermediate commander may take the following action:

a. Unfitness cases.

(1) Disapprove the recommendation and direct reassignment of the individual to another organization or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

(2) Approve the commanding officer's recommendation and forward the report to the commander exercising general courts-martial jurisdiction. Disposition through medical chan-

nels is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this regulation is being considered, and action under the Uniform Code of Military Justice is not initiated.

(3) Recommend separation for unsuitability. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to unfitness and take further action under paragraph 13-18.

b. Unsuitability cases.

(1) Disapprove the recommendation and direct reassignment of the individual to another organization or direct disposition by another means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

(2) Approve the commanding officer's recommendations and forward the report to the commander exercising special courts-martial jurisdiction, unless he exercises such jurisdiction. Disposition through medical channels is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered, and action under the Uniform Code of Military Justice is not initiated.

13-17. Action by commander exercising general court-martial jurisdiction. On receiving a recommendation for separation for unfitness, the commander exercising general court-martial jurisdiction may-

a. Disapprove the recommendation and direct reassignment of the individual to another organization, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Disapprove the recommendation relating to unfitness and convene a board of officers, or refer the case to the commander exercising special court-martial jurisdiction to convene a board of officers, to determine whether the individual should be separated for unsuitability; *or*

d. Convene a board of officers to determine whether the individual should be separated for un-

fitness, When such action is taken, or if the case is referred to a board for separation by reason of unsuitability, the termination or transfer status of each witness will be ascertained promptly in order to assure the availability of essential military witnesses at the board proceedings. No witness will be transferred or separated from the Service prior to the beginning of a board hearing except when an enlistment or period of service fixed by law expires. In such cases, an attempt will be made to obtain the individual's consent to retention. If the individual does not consent, a deposition or affidavit will be obtained as appropriate; or

e. When the board hearing has been properly and effectively waived, direct separation of the individual for unfitness or unsuitability (para 13-31) ; or

f. When the board hearing has been properly effectively waived, approve separation of the individual for unfitness or unsuitability and suspend execution of the separation (para 13-27); or

g. Direct that the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this chapter is being considered, and action under the Uniform Code of Military Justice is not initiated. A copy of the signed decision of the general court-martial authority will be included with the records. Authority to determine that a case will be referred for disability processing in lieu of other administrative processing will not be delegated; or

h. Disapprove recommendation relating to unfitness and direct action under section VI, AR 635-206.

13-18. Action by commander exercising special court-martial jurisdiction. On receiving a recommendation for separation for unsuitability, the commander exercising special court-martial jurisdiction may-

a. Disapprove the recommendation and direct reassignment of the individual to another organization, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Convene a board of officers to determine whether the individual should be separated for unsuitability. When such action is taken, the termination or transfer status of each witness will be ascertained promptly in order to assure the availability of essential military witnesses at the board proceedings. No witness will be transferred or separated from the service prior to the beginning of a board hearing except when an enlistment or period of service fixed by law expires. In such cases, an attempt will be made to obtain the individual's consent to retention. If the individual does not consent, a deposition or affidavit will be obtained as appropriate ; or

d. When the board hearing has been properly and effectively waived, direct separation of the individual for unsuitability (para 13-31); or

e. When the board hearing has been properly and effectively waived, approve separation for unsuitability and suspend execution of the separation (para 13-27); or

f. Disapprove recommendation relating to unsuitability and direct action under section VI, AR 635-206.

13-19. Appointment of counsel. *a. Counsel for personnel being considered for discharge because of unfitness.* Appointed counsel will be a lawyer within the meaning of article 27 (b) (1) of the Uniform Code of Military Justice, unless general court-martial authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. The original of the certification of nonavailability of qualified counsel must be appended as an exhibit to the report of proceedings. (See exhibit C, appendix C for example.)

b. Counsel for personnel being considered for discharge because of unsuitability. If appointed counsel is not a lawyer, a commissioned officer in the grade of first lieutenant or higher will be appointed as counsel. Counsel appointed will be an officer who is fully aware of his responsibility to prepare and present the respondent's case.

c. General court-martial authority. When the commander exercising general court-martial jurisdiction takes action under paragraph 13-17d, he will appoint a counsel; appoint a military counsel of the individual's choice, provided the requested counsel is reasonably available; or permit the in-

dividual to be represented by civilian counsel at his own expense, as indicated by the individual's signed statement (fig. 13-1).

d. Special court-martial authority. When the commander exercising special court-martial jurisdiction takes action under paragraph 13-18c, he

will appoint a counsel; appoint a military counsel of the individual's choice, provided the requested counsel is reasonably available ; or permit the individual to be represented by civilian counsel at his own expense, as indicated by the individual's signed statement (fig. 13-1).

Section V. BOARD OF OFFICERS

13-20. Organization. *a.* Boards of officers convened to determine whether an individual should be discharged under the provisions of this chapter will consist of not less than three commissioned officers, at least one of whom is in the grade of major or higher, and a nonvoting recorder.

b. Care will be exercised to insure that-

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

(3) In the case of an enlisted member of the Women's Army Corps, the board will include an officer of the Women's Army Corps.

(4) In the case of an individual who has a Reserve enlisted status, the membership of the board will include a majority of Reserve officers if reasonably available. When a Reserve majority is not available: the board will include at least one Reserve component officer.

(5) In the case of an enlisted member of the Army who holds a Reserve commission or warrant, the board will be composed of an uneven number of commissioned officers. The officers will be senior in permanent grade to the Reserve grade held by the enlisted member. One member of the board will be a Regular Army officer and the remainder Reserve officers of the Army who are serving on active duty. If the enlisted member also is an ARNGUS officer, at least one member of the board will be an ARNGUS officer if reasonably available.

(6) The board is provided a competent reporter (or stenographer).

(7) The officer initiating the action under this chapter or any intervening officer who had direct knowledge of the case is not a member of the board.

13-21. Effective processing procedures. The following procedures have proved useful in effective processing by boards:

a. Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board, the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the individual and the Service.

b. Disseminating procedural instructions to lower units by the recorder of the board serving the units.

c. Recessing a hearing for 30 to 90 days when the board members are unable to reach an agreement based on the data at hand so that further rehabilitation data may be secured.

d. As an exception to paragraph 13b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of an affidavit. However, if the respondent desires to present such evidence, he is entitled to have the witness appear in person, if they are reasonably available.

13-22. Board procedures. *a.* A minimum of 15 days' written notice before date of hearing will be given an individual who is to appear before a board of officers so that he or his counsel may prepare his case. The individual will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the individual, endeavor to arrange for the presence of any available witness he desires to call. A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the individual. When, for overriding reasons, the minimum of 15 days cannot be granted, the president of the board will insure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a

total of 30 days after notice) will be granted if, in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

b. An enlisted person who has not waived a hearing before a board of officers, who is not in civil confinement, and whose case is presented to such a board has the following rights, which will be explained to the individual by the president of the board:

(1) He may appear in person, with or without counsel, at all open proceedings of the board. He may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When an enlisted person appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board action, the effects of such discharge in later life, and that he may request counsel. The record will reflect the respondent's response.

(2) He may challenge any voting member of the board for cause only.

(3) He may request the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that he is reasonably available and that his testimony can add materially to the case. The attendance of military witnesses under the control of the convening authority will be ordered if reasonably available. The attendance of other military witnesses will be requested through command channels. However, witnesses not on active duty must appear voluntarily and at no expense to the Government.

(4) He may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(5) He may or may not submit to examination by the board. The provisions of Article 31, Uniform Code of Military Justice will apply.

(6) He and his counsel may question any witness who appears before the board.

(7) Failure of the individual to invoke any of the above rights, after he has been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

c. In the case of an enlisted member holding a Reserve commission or warrant, the board will notify the individual that the action involves his Reserve status and may result in the termination of such status.

d. For rules of procedure and evidence and swearing of witnesses, see AR 15-6.

e. The president of the board will insure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the individual. The testimony will be specific as to circumstances, events: times, dates, and other facts.

f. The proceedings of the board will be as complete as possible and will contain a verbatim record of the findings and recommendations.

g. When the board is considering a case in which the respondent has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the respondent, or of the type of discharge which had been recommended in his case. When it has come to the attention of respondent or his counsel that facts intended to be excluded are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule.

13-23. Recommendations. *a.* The board convened to determine whether an individual should be separated for unfitness will recommend that he be

(1) Separated because of unfitness (indicating type of discharge certificate-honorable, general, undesirable-to be furnished), or

(2) Separated because of unsuitability (indicating type of discharge certificate-honorable or general-to be furnished), or

(3) Retained in the Service. The recommendation will indicate the type of duty which it is believed he can perform satisfactorily.

b. The board convened to determine whether an individual should be separated for unsuitability will recommend that he be-

(1) Separated because of unsuitability (indicating type of discharge certificate-honorable or general-to be furnished), or

(2) Retained in the Service. The recommendation will indicate the type of duty which it is believed he can perform satisfactorily.

c. In the case of an enlisted member holding a Reserve commission or warrant, the board will make separate recommendations concerning Reserve status, including type of discharge certificate to be issued. The recommendations should be compatible with enlisted status recommendations. Normally, facts warranting separation from an active enlisted status under this chapter will also warrant termination of a Reserve commission or warrant. Under certain circumstances, it may be reasonable to recommend retention in an active en-

listed status but termination of a Reserve commission or warrant

13-24. Forwarding report of proceedings. The completed report of proceedings will be forwarded to the commander exercising general or special court-martial jurisdiction, as appropriate, for final determination and disposition (See appendix C for sample report of proceedings.) When board action is completed on an individual referred to in paragraph 13-4a, the findings and recommendations of the board with complete documentation and the recommendation of the convening authority will be forwarded to HQDA (DAAG-PSS-S), WASH DC 20314, for final determination when the convening authority recommends discharge.

13-25. Limitations on administrative discharges and board hearings. See paragraph 1-13 for limitations on administrative discharges and board hearings and rehearing.

Section VI. ACTIONS AFTER BOARD HEARINGS

13-26. Convening authority action. *a.* When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative discharge proceedings. When the board recommends that an undesirable discharge be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps. Upon completion of the review, the commander may-

(1) When the board has recommended separation for unfitness-

(*a*) Direct separation of the individual for unfitness (except for individuals referred to in para 13-4a) (see para 13-24) ; or

(*b*) Direct separation of the individual for unsuitability (except for individuals referred to in para 13-4a) (see para 13-24); or

(*c*) Disapprove the recommendation and direct retention of the individual; or

(*d*) Approve separation for unfitness and suspend execution of the separation (para 13-27).

(2) When the board has recommended separation for unsuitability-

(*a*) Direct separation of the individual for unsuitability (except for individual referred to in para 13-4a) (see para 13-24) ; or

(*b*) Disapprove the recommendation and direct retention of the individual; or

(*c*) Approve separation for unsuitability and suspend execution of the separation (para 13-27).

b. The convening authority's deputy or other officer within his headquarters may be delegated the authority (including the authority contained in para 13-17 e and f) to approve, disapprove, or otherwise appropriately dispose of cases, except to direct an undesirable discharge. The convening authority is required to personally sign any action directing an undesirable discharge of an enlisted member under his command. He may direct other appropriate disposition of the case. When the officer exercising special court-martial jurisdiction is the convening authority, authority to approve, disapprove or otherwise appropriately dispose of a case will not be delegated.

c. The convening authority will not direct a discharge for unfitness when the board of officers has recommended discharge because of unsuitability ; nor will he direct discharge when the board of officers has recommended retention.

d. When a board recommends that an individual be retained and the convening authority believes that separation is warranted and in the Army's best interests, the convening authority may for-

ward the case to HQDA (DAAG-PSS-S), WASH DC 20314, with supporting reasons, requesting that separation be authorized (para 1-13c.1).

e. The convening authority will not direct the issuance of a discharge of a lesser character than that recommended by the board (i.e., honorable to general or general to undesirable). He may direct issuance of a discharge of a higher character than that recommended by the board (i.e., general to honorable or undesirable to general or honorable).

f. An individual who has completed 19 1/2 or more years of active service creditable toward retirement for whom elimination is recommended to HQDA will be afforded the opportunity of applying for retirement to be effective immediately or on completion of 20 years' Active Federal service. He will, however, be advised that authority to submit the application does not carry assurance that the application will be approved. DA Form 2339 (Application for Voluntary Retirement) will be appended when the case is forwarded to HQDA.

SF 88, as prescribed in chapter 12, will be appended to the application for retirement,

g. When a member of the Reserve components is to be eliminated under this chapter, the convening authority will determine specifically from board findings whether the member concerned is being eliminated because of moral or professional dereliction.

13-27. Suspension of execution of approved discharge. In order to afford a highly deserving member a probationary period to demonstrate successful rehabilitation prior to expiration of his enlistment or period of obligated service, the convening authority may suspend execution of an approved discharge for a period not to exceed 6 months. (See paragraph 1-15 for procedures.)

13-28. Reduction in grade. When an individual is to be discharged as unfit with an undesirable discharge, the convening authority will direct his immediate reduction to the lowest enlisted grade under the provisions of section VII, chapter 7, AR 600-200.

Section VII. RECORDS AND DISCHARGE

13-29. Disposition of proceedings. *a.* When separation is ordered, the approved proceedings will be forwarded to the commander having custody of the individual's records for the purpose of transfer processing in accordance with AR 635-10. The original copy of the proceedings will be filed as permanent material in the "Field 201 file section" of the individual's DA Form 201.

b. When separation is not ordered by the convening authority, the proceedings will be filed at the headquarters, and the enlisted person's commanding officer will be notified of the final action. When practicable, the convening authority will direct reassignment of the individual to a different organization. Ultimate disposition of the board proceedings will be governed by AR 340-B-7.

c. An individual who is to be separated will be furnished a copy of the board proceedings, minus such written medical testimony and reports as would prove injurious to his physical or mental health.

(1) The respondent's copy of the proceedings will be marked "Copy for (name and SSN of the individual)" and furnished the individual or his counsel. A signed receipt will be obtained from the

individual or his counsel and filed with the original board proceedings. If the individual refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the individual or his counsel does not desire a copy of the board proceedings, or if for any other reason a copy is not furnished, a notation will be made on the individual's copy to accompany the original. Release of this copy thereafter may be made only by The Adjutant, General.

d. When the convening authority approves a recommendation that an enlisted member may be discharged from a Reserve commission or warrant, he will forward a copy of the approved proceedings to the Commander, US Army Reserve Components Personnel and Administration Center. ATTN: AGUZ-PAD-S, St. Louis, MO 63132, for appropriate action under the provisions of AR 135-175. action under AR 135-175 will be taken after member's separation from enlisted status.

13-30. Reason and authority for separation. When an individual is discharged, released from active duty for training, or discharged from status as "a Reserve of the Army" pursuant to this chapter, the specific reason and authority for discharge

(item 11c, DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)) will be entered as shown in appendix A, AR 635-5.

13-31. Types of separations. *a.* An individual separated by reason of unfitness will be furnished an undesirable discharge certificate (DD Form 258A), except that an honorable (DD Form 256A) or general (DD Form 257A) discharge certificate may be awarded if the individual has been awarded a personal decoration or if warranted by the particular circumstances in a given case. When the sole reason for separation is drug abuse as specified in paragraph 13-5a(3)(b), the individual will be furnished an honorable or general discharge certificate as warranted by the particular circumstances in a given case. The type of discharge will be directed by the convening authority.

b. An individual separated by reason of unsuitability will be furnished an honorable (DD Form 256A) or general (DD Form 2578) discharge certificate as warranted by his military record. The type of discharge will be directed by the convening authority.

13-32 Separation of ARNGUS and USAR trainees. *a.* ARNGUS trainees will be released from active duty for training and returned to the control of the appropriate State National Guard authorities for discharge. A copy of the approved

proceedings will be forwarded to the adjutant general of the State.

b. USAR trainees will be discharged from their status as "a Reserve of the Army".

13-33. Errors and discrepancies noted before accomplishing discharge. The type of discharge directed by the convening authority may be changed only by HQDA. If material errors or discrepancies in approved board proceedings are found by other headquarters processing the case (i.e., transfer activities), the case will be referred for review before discharge to HQDA (DAAG-PSS-S), WASH DC 20314.

13-34. Reentry into Army. *a.* To preclude reentry into the Army unless authorized by appropriate authority, the DD Form 214 of individuals, with the exception of all enlisted women and those enlisted men referred to in paragraph 13-4a who are discharged under this chapter, will be coded "RE-3" and "tables 2-4 and 2-5, AR 601-210, or tables 2-2 and 2-3, AR 601-280, apply" will be entered in item 30.

b. All enlisted women and those enlisted men referred to in paragraph 13-4a who are discharged under this chapter, are not eligible for reenlistment. The DD Form 214 will be coded "RE-4," and "tables 2-6 and 2-7, AR 601-210, or table 2-4, AR 601-280, applies" will be entered in item 30.

(Date individual and counsel sign statement)

SUBJECT : Separation under Chapter 13, AR 635-200

TO : (Unit commander)

1. I have been advised by counsel of the basis for the contemplated action to accomplish my separation for (unfitness) (unsuitability) under chapter 13, AR 635-200.

2. I (request) (waive) consideration of my case by a board of officers.
* (This waiver (does) (does not) apply to my Reserve officer status)

3. I (request) (waive) personal appearance before a board of officers.

4. Statements in my own behalf (are) (are not) submitted herewith (incl _____).

5. I (request) (waive) representation by (my appointed counsel) (_____ as military counsel) (civilian counsel at my own expense).

6. I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to me. *(I further understand that, as the result of issuance of an undesirable discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.)

7. I understand that I may, up until the date the discharge authority directs or approves my discharge, withdraw this Fairer and request that a board of officers hear my case.

8. I have retained a copy of this statement.

(Signature of individual)
(Typed name, SSN, grade)

Having been advised by me of the basis for his contemplated separation and its effects and the rights available to him, (Name of individual), who appeared of sound mind, personally and knowingly made the choices indicated in the foregoing statement

(signature of counsel)
(Typed name, SSN grade branch)

* To be used if the individual holds status as a Reserve commissioned or warrant officer.

** To be used if the individual has been recommended for discharge for unfitness.

Figure 13-1. Individual's statement