

PERSONNEL SEPARATIONS**ENLISTED PERSONNEL**

This copy is a reprint which includes current pages from Changes 1 through 44.

Individuals serving overseas on accompanied tours whose assignment instructions are issued on or after 1 July 1975 will be required to complete five-sixths of the prescribed tour prior to becoming retirement eligible. Examples: 30 months of a 36-month tour must have been completed or 20 months of a 24-month tour. This does not apply to individuals currently serving overseas or to those who receive assignment instructions prior to 1 July 1975.

CHAPTER 13

SEPARATION FOR UNFITNESS OR UNSUITABILITY

Section I. GENERAL

3-1. Purpose. This chapter establishes policy and provides procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service.

3-2. 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 40-01) is not the direct or substantial contributing cause of his unfitness (para 13-11b).

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 efficiently to participate in further military training and/or become a satisfactory soldier, *and*

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

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 prescribed in 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 prescribed in paragraph 13-5a(2) or (3) has been initiated 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 separations, except that they may not order discharge of personnel referred to in a above. This authority, including the authority to direct an undesirable discharge for reasons of unfitness, may be delegated to a general officer 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 designated 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 the provisions of 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

(a) Drug dependence, or the unauthorized use, sale, possession, or transfer of any controlled substance as defined in AR 600-50, or the introduction of such a 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 13-31a.

(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 acts are 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 cases in which personnel have engaged in one or more homosexual acts during military services 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 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 elim-

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*See para 13-17e and f and 13-26b for delegation authorized for post-board actions and actions when the board has been waived.

inaction 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 non-effective 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 anti-social acts. In determining whether separation will be for unfitness or unsuitability, the neuropsychiatric report, record of prior service, and other reasons for separation (a above) should be considered and, if determined to be overriding, may be used as a basis for separation for unfitness.

(5) *Homosexuality (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 the provisions of 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 action 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 Out-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 circumstances 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 HQDA (DAPC-EPC-appropriate branch), 2461 Eisenhower Avenue, Alexandria, VA 22331, 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 maladjusted 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 13-8 may be waived by the convening authority when separation is being considered under the provisions of paragraph 13-5a(2) or (7), or b(5).

b. The general courts 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.

**d.* The special courts-marital convening authority in grade O6 and above may waive the counseling and rehabilitation requirements of paragraphs 13-7 and 13-8 in unsuitability cases under the same conditions as outlined in b and c above.

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 will 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 13-5a(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 SF 88 (Report of Medical Examination) and 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 the provisions of 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 procedures in 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) 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 prescribed in 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 consult with a consulting counsel (para 1-3c and 13-19).

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

(c) To submit statements in his own behalf.

(d) To be represented at any hearing by appointed counsel for representation (para 1-3d and 13-19).

(e) To waive in writing the rights in (b), (c), and (d) above.

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

(2) An enlisted member will be given a reasonable time (not less than 72 hours) to consider waiver of board proceedings and will 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 listed in (1) (b), (c), and (d) above. 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 years or more of active Federal service. Members appearing before a board of officers convened under the provisions of 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 a 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 prescribed in 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 specified in 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, together with the subject's revoked DA Form 873 (Certificate of Clearance and/or Security Determination) under EO 10450, 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 his active service ; the date and period of his current period of service; statements of witnesses ; and 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 by civil authorities 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 consult by correspondence with a consulting counsel (para 3c). (Consulting counsel's name and address will be included.)

(2) To request appointment of a counsel for representation, a named military counsel, if available, or employ civilian counsel at his

own expense to represent him and, in his absence, present his case before an administrative discharge board.

(3) To submit statements in his own behalf.

(4) To waive the foregoing rights, either in writing or by declining to reply to the letter of notification within 30 days from the date of receipt.

b. The individual will be requested to expedite his reply and will be advised that if a 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 determined to be appropriate. If the individual does not reply within the prescribed time, discharge may be finalized, as indicated. When warranted by the distance involved or other circumstances, a period in excess of 30 days may be allowed for the enlisted person to to reply.

***13-14. Suspension of favorable personnel action.** When suspension of favorable personnel prescribed in action AR 600-31 has been initiated solely because an individual is being considered for elimination in accordance with the provisions of this chapter and he is to be processed for separation under medical jurisdiction (para 13-10), his unit commander will remove the suspension of favorable action so 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 one of the following actions:

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 court-martial 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 prescribed in 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 prescribed in 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 court-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 prescribed in 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 take one of the following actions:

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.

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

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.

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

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

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

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 prescribed in 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.

h. Disapprove recommendation relating to unfitness and direct action prescribed in 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 take one of the following actions :

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.

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

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 to insure 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, deposition or affidavit will be obtained as appropriate.

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

*This authority, except for the authority to direct an undesirable discharge, may be delegated to the convening authority's deputy or other officer within his headquarters. Every action taken in accordance with such delegation will state the authority. **13-9**

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

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

***13-19. Appointment of counsel.** *a.* Appointed counsel for consultation in cases of unfitness or unsuitability will be a lawyer as described in paragraph 1-3c.

b. Appointed counsel for representation for personnel being considered for discharge because of unfitness is described in paragraph 1-3d(1). The original of the certification on nonavailability of qualified counsel must be appended as an exhibit to the report of proceedings (fig. 1-1).

c. Appointed counsel for representation for

personnel being considered for discharge because of unsuitability is described in paragraph 1-3d(2).

d. When the commander exercising general court-martial jurisdiction takes action prescribed in paragraph 13-17d, he will appoint a representing 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).

e. When the commander exercising special court-martial jurisdiction takes action prescribed in paragraph 13-18c, he will appoint a representing 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 non-voting 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) If an enlisted member of the Women's Army Corps, the board will include an officer of the Women's Army Corps.

(4) If 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) If 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 AD. 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 prescribed in 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 insures 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 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 any counsel representing him before the board of officers 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 an appointed counsel of representation. 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 he may receive as a result of the board action and the effects of such a 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 AD 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 exa-

mination 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 them, 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 the 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. If the enlisted member holds a Reserve commission or warrant, the board will make separate recommendations concerning his 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 prescribed in 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 enlisted 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 app 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 rehearings.

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's Corps. Upon completion of the review, the commander-

(1) When the board has recommended separation for unfitness, may take one of the following actions:

(a) Direct separation of the individual for unfitness (except for individuals referred to in para 13-4a). (See also para 13-24.)

(b) Direct separation of the individual for unsuitability (except for individuals referred to in para 13-4a). (See also para 13-24.)

(c) Disapprove the recommendation and direct retention of the individual.

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

(2) When the board has recommended separation for unsuitability, may take one of the following actions:

(a) Direct separation of the individual for unsuitability (except for individual referred to in para 13-4a). (See also para 13-24.)

(b) Disapprove the recommendation and direct retention of the individual.

(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 dis-

position 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 forward 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 (e.g., honorable to general or general to undesirable). He may direct issuance of a discharge of a higher character than that recommended by the board (e.g., 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 upon completion of 20 years of 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 the provisions of this chapter, the convening authority will determine specifically from board findings whether the member concerned is being elimi-

nated 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 and is issued 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 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 340-18-7.

c. An individual who is to be separated will be furnished a copy of the board proceedings, minus any written medical testimony and reports that 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 to him 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 (AR 135-175). Action prescribed in AR 135-175 will be taken after member's separation from enlisted status.

13-30. Reason and authority for separation.

a. When an individual is discharged, released from ADT, or discharged from his status as a Reserve of the Army pursuant to this chapter, the specific reason and authority for discharge (item 9c, DD Form 214) will be entered as shown in AR 635-5-1.

13-31. Types of separations. *a.* An individual separated by reason of unfitness will be furnished an undesirable discharge certificate, except that an honorable or general discharge certificate may be issued if the individual has been awarded a personal decoration or if warranted by the particular circumstances in his case. When the sole reason for separation is drug abuse, (para X3-5a(3) (b)), the individual will be furnished an honorable or general discharge certificate as warranted by the particular circumstances in his case. The type of discharge will be directed by the convening authority.

b. An individual separated because of unsuitability will be furnished an honorable or general 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 ADT 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 proc-

essing the case (transfer activities), the case will be referred for review before discharge to HQDA (DAPC-PAS-S), 200 Stovall St., Alexandria, VA 22332.

***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 enlisted men referred to in paragraph 13-4a who are discharged under the provisions of this chapter, will be coded "RE-3"; and "tables 2-4 and 2-5, AR 601-210 apply," or "tables 2-2 and 2-3, AR. 601-280, apply" will be entered in item 27.

b. All enlisted women and enlisted men referred to in paragraph 13-4a who are discharged under the provisions of this chapter are not eligible for reenlistment. 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, apply" will be entered in item 27.

(Date individual and counsel sign statement)

SUBJECT: Separation under the Provisions of Chapter 13, AR 635-200

TO: (Unit Commander)

1. I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my separation for (unfitness) (unsuitability) under the provisions of chapter 13, AR 635-200 and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights.

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) [**(consulting counsel)] representation by (counsel of representation) (_____) as my military counsel) (civilian counsel at my own expense).

6. I understand that I may expect to encounter substantial prejudice in civilian life if 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 waiver 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, the rights available to him and the effect of a waiver of his rights, _____ (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 only when the individual is in civil confinement.

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

**Figure 13-1. Individual's statement.*

CHAPTER 14

*MISCONDUCT - FRAUDULENT ENTRY

Section I. GENERAL

14-1. Purpose. This chapter establishes policy and prescribes procedures for processing fraudulent entry cases and provides for the administrative disposition of enlisted personnel for misconduct by reason of fraudulent entry into the Service.

14-2. Scope. The provisions of this chapter apply equally to persons enlisted, inducted, or ordered to active duty and to Reserve component personnel participating in active duty for training under the Reserve Enlistment Program of 1963.

*14-3. Authority. a. Commanders exercising general court-martial jurisdiction are authorized to-

(1) Convene a board of officers and to approve discharge of an enlisted person for fraudulent entry.

(2) Void a fraudulent entry (other than by a minor enlisted member discussed in para 7-5) by issuing special orders releasing the individual from Army control because of fraudulent entry if he is AWOL, in desertion, or absent in the custody of civil authorities.

b. This authority, including the authority to direct an undesirable discharge for reasons of fraudulent entry, may be delegated to a general officer 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 officers and commanders exercising general court-martial jurisdiction, convening authority, general court-martial authority, or general court-martial convening auth-

ority under the provisions of this delegation authority.

14-4 Trial by courts-martial. The provisions of this chapter do not preclude trial-by court-martial for violations of Article 83, UCMJ, when in the best interest of the Service, if trial by court-martial is not considered appropriate, elimination action will be taken. Inductees will not be tried by court-martial for fraudulent entry.

14-5. Incident of fraudulent entry. Fraudulent entry is the procurement of an enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known, might have resulted in rejection. Any incident which meets the foregoing may be cause for discharge for fraudulent entry. Some examples of fraudulent entry are-

**a. Concealment of prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records. Accordingly, commanders will not request field investigations to establish evidence of prior military service. When additional evidence (such as a statement of service or certificate of service) is required from the custodian of the records to establish prior service, an inquiry will be forwarded to the Commander, US Army Enlisted Records Center, Fort Benjamin Harrison IN 46249. The request will include the name(s), SSN, and all available information concerning the alleged period of service.

(1) To support an administrative action, a statement of service is sufficient evidence.

(2) If trial by court-martial is contemplated (para 162, MCM 1969) a certificate of service is required.

b. Concealment of true citizenship status.

(1) When information is received from the Immigration and Naturalization Service that a warrant for the individual's arrest has been issued by immigration officials, or that deportation proceedings are currently pending upon completion of military service, the individual will not be considered for retention.

(2) The nearest office of the Immigration and Naturalization Service will be informed when an individual will be discharged so that arrangements may be made ; if desired, to take him into custody upon discharge.

(3) A report of the facts, together with a report of action taken, will be submitted to HQDA (DAMI), WASH, DC 20310, through intelligence channels.

**c. Concealment of conviction by civil court.*

An individual who concealed his conviction by civil court of a felonious offense normally will not be considered for retention. If information concerning the existence of a civil criminal record is required from the Federal Bureau of Investigation, the contact with the FBI must be made by HQDA. Accordingly, the inquiry will be addressed to HQDA (DAPC-PAS-S), 200 Stovall Street, Alexandria, VA 22332. Specific details of circumstances in a case may be obtained however by direct communication with the appropriate civil law enforcement agency, other than the FBI, by the commander concerned. When information is required from both sources, the inquiries will be dispatched concurrently.

d. Concealment of record as a juvenile offender.

(1) An individual who concealed his adjudication as a juvenile offender for a felonious offense will normally not be considered for retention.

(2) The evidence must clearly show that the individual gave a negative answer to a specific question as to whether he had a record

of being a juvenile offender, or denied that civil custody, as a result of such record, existed at time of entry into the Service.

e. Concealment of medical defects. Concealment of a medical defect or disability is not considered fraudulent entry within the purview of this chapter, unless it is established that such concealment was for the purpose of obtaining veteran's benefits, hospitalization, disability retirement, or monetary benefits to which the individual was not entitled.

f. Concealment of absence without leave or desertion from prior service.

**(1) From one of the other Services.* When a member of the Army is discovered to be a deserter from another Service, the commanding officer will report the circumstances to HQDA (DAPC-PAS-S) 200 Stovall Street, Alexandria, VA 22332, and request disposition instructions. After determining if the appropriate Service desires custody of the individual, the CG, MILPERCEN will direct that the member be-

(a) Released from control of the Army without a discharge certificate or DD Form 214, or

(b) Considered for discharge in accordance with procedures outlined in section II.

(2) From the US Army.

(a) If trial is not barred by the statute of limitations (Art. 43, UCMJ), the individual will be dropped from the current period of service and held to his first untermiated period of service. When this action is taken, an entry will be made on DA Form 20, showing the reason for the drop and the period of service to which held. No discharge certificate will be furnished. Appropriate disposition will be made of the desertion charges for the untermiated period of service.

**(b)* If trial is barred by the statute of limitations, the individual will be discharged from the prior period of service in accordance with section II, chapter 15 and considered for discharge from the current period of service in accordance with procedures outlined in section II. In accomplishing the discharge from a prior period of service, the individual will not be sent to the transfer activity.

(3) *Procedure when DA Form 3835 has been circulated.* When the member was the subject of DA Form 3835 (Notice of Unauthorized Absence from US Army) a report of action taken will be furnished the US Army Deserter Information Point (USADIP) Fort Benjamin Harrison, IN 46249.

(a) Custody reverts to another branch of the *Service*.

(b) Released from control of the US Army.

(c) Discharged from the US Army from prior or current service.

g. Concealment of other disqualifications. Concealment of any other disqualifications, including assuming the identity of another individual through the use of a birth certificate, discharge certificate, or any other record belonging to another will be considered cause for consideration for discharge under the provisions of this chapter. Exceptions to this policy are the concealment of minority (chap. 7) and concealment of true name. However, if true name is concealed for the purpose of concealing a disqualification as outlined in this paragraph, it will be considered fraudulent entry.

Section II. ADMINISTRATIVE PROCEDURES

14-6. Responsibilities. *a. The unit commander will-

(1) Initiate action to obtain the appointment of appointed counsel for consultation (para 1-3c).

(2) Initiate action to obtain substantiating evidence as required.

(3) Request a medical evaluation.

b. The officer exercising general court-martial jurisdiction will-

(1) Determine if the incident of fraudulent entry is substantiated.

(2) Insure that the rights of the suspected fraudulent enlistee are protected.

(3) Direct disposition in accordance with paragraph 14-12.

14-7. Medical evaluation. a. When a unit commander determines that an individual under military control will be recommended for discharge under the provisions of this chapter, he will refer the individual to Army medical treatment facility for a medical and mental status evaluation. The reason for considering the individual for separation will be furnished the medical treatment facility providing dispensary care. The individual will not be referred to a psychiatrist for an evaluation except when-

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

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

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

(4) Requested by the board considering separation action.

b. In all other cases, the physician performing the medical examination will accomplish the mental status evaluation. In exceptional cases in (a above), reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist. Under no circumstances will medical personnel be used as an investigative agency to determine facts relative to the individual's behavior.

c. In addition to SF 88 and SF 93, the medical treatment facility will prepare DA Form 3822-R (Report of Mental Status Evaluation) in duplicate. (See fig. 142.)

d. The medical treatment facility commander will forward the original of the evaluation report to the unit commander. A copy will be filed in the individual's health record.

e. DA Form 3822-R will be reproduced locally on 8 x 10 1/2 inch paper.

14-8. Disposition through medical channels. If it appears that the individual being considered for elimination does not meet retention medical standards, he will be referred to a

medical board or, if there is no board at the examining facility, to the nearest facility having a medical board. The facility commander will furnish a copy of the approved medical board proceedings to the individual's unit commander.

a. When the medical board proceedings indicate that an incapacitating medical condition is the direct or substantially contributing cause of the individual's misconduct, he will be retained under medical jurisdiction. For appropriate treatment and disposition in accordance with AR 40-3.

**b.* When the medical board proceedings indicate that the individual does not meet retention standards and the incapacitating medical condition is not the direct or substantially contributing cause of the individual's misconduct, the unit commander will forward the proceedings to the general court-martial authority, who will determine whether physical disability or administrative processing will be followed. If the general court-martial authority determines that the member will be processed for discharge under the provisions of this chapter and the member is also eligible for retirement under the provisions of chapter 12, the case will be referred to HQDA (DAPC-PAS-S), 200 Stovall Street, Alexandria, VA 22332 for decision.

***14-9. Rights of individuals.** The appointed counsel for consultation will advise the member of the basis for the proposed discharge action, the types of discharges which may be awarded, the effects of the discharges, and if member is being considered for an undesirable discharge, of his rights as set forth in paragraph 1-10. He also may advise the individual regarding the merits of the contemplated action and assist him in preparing any statements or other evidence for consideration by the general court-martial convening authority (para 1-3c).

14-10. Suspension of favorable personnel action. When suspension of favorable personnel action under the provisions of AR 600-31 has been initiated solely because an individual is being considered for elimination under

the provisions of this chapter and he is to be processed for separation under medical jurisdiction, the individual's unit commander will expedite action to complete the case and remove the suspension action to preclude delay in disposition of the case through medical channels.

14-11. Action by unit commander. **a.* When the evidence to support a deliberate misrepresentation, omission, or concealment of facts which might have resulted in rejection, has been obtained, the unit commander will forward a military letter to the commander exercising general court-martial jurisdiction. The unit commander will inclose a statement by the individual concerning his rights (para 1-10 and fig. 14-1), any other statements or evidence submitted by the individual, and include the following:

(1) Name, grade, SSN, age, date and term of enlistment, and prior service.

(2) Statement whether the individual holds Reserve status as a commissioned or warrant officer. If affirmative, show grade and date of appointment.

(3) Conduct and efficiency ratings. Include primary MOS evaluation score, if available.

(4) Record of trials by court-martial.

(5) Record of other disciplinary action, including nonjudicial punishment.

(6) Recommendation for discharge or retention if it is determined that fraudulent entry did occur. The unit commander will not recommend the type of discharge certificate to be awarded.

(7) Report of medical evaluation when discharge is recommended.

b. When the character of service rendered by the individual supports the issuance of an honorable or general discharge certificate (para 1-9), the unit commander will forward the letter described in a above, except for the individual's statement (fig. 14-1), to the commander exercising general court-martial jurisdiction, with the least practicable delay. In these cases the individual need not be afforded the opportunity of a hearing by a board of

authority to direct an undesirable discharge may be delegated to a officer in command who has a judge advocate on his staff for cases arising in that command. Every action taken in accordance with such delegation will state the authority.

officers in accordance with paragraph 1-10, unless the general court-martial authority considers that an undesirable discharge is appropriate.

14-12. Action by general court-martial authority prior to board proceedings. Upon receipt of the recommended action, the commander exercising general court-martial jurisdiction will determine whether the fact of fraudulent entry has been completely verified and proven. If further substantiating facts and evidence are required, they will be obtained, or confirmed as unobtainable, and final determination made. If the fraudulent entry is verified, action will be taken to suspend the individual's pay and allowances in accordance with Part One, chapter 4, DOD Military Pay and Allowances Entitlements Manual. If the fraudulent entry is verified, the general court-martial authority will also take one of the following actions as appropriate:

a. Direct discharge and issuance of an honorable or general discharge certificate.

b. Direct discharge and issuance of an undesirable discharge certificate provided the individual has waived his rights to present his case before a board of officers (para 1-10).

c. Return the case to the unit commander for compliance with paragraph 1-10.

d. Direct that a board of officers be convened to determine whether the individual should be discharged.

e. Direct retention, provided the individual entered the Service with a waivable disqualification as specified in table 2-5, AR 601-210; paragraph 3-9, AR 601-270; or table 2-2 AR 601-280, and the incident of fraudulent entry was for some reason other than concealment of a felony conviction by civil court (para 14-5c) or adjudication as a juvenile offender for a felonious offense (para 14-5d).

**f.* Forward the proceedings, with recommendations, to HQDA (DAPC-PAS-S), 200 Stovall Street, Alexandria, VA 22332, when he believes that exceptional circumstances in a case warrants retention even though the individual entered the Service with a nonwaivable disqualification, or the incident of fraudulent entry was concealment of a felony conviction by civil court or adjudication as a juvenile offender for a felonious offense

**g.* Direct that the fraudulent entry be voided when the individual is in a status of unauthorized absence or desertion, or absent in the hands of civil authorities. The orders issuing authority will issue special orders releasing the individual from custody and control of the Army (TC 302, AR 310-10).

(1) A copy of the special orders will be forwarded to the individual's last known address.

(2) When the member was the subject of DA Form 3835 a report of action taken will be furnished the US Army Deserter Information Point (USADIP) Fort Benjamin Harrison, IN 46249.

Section III. BOARD OF OFFICERS

14-13. Composition of board. Boards of officers convened to determine whether an individual should be discharged by reason of fraudulent entry will be comprised of at least three commissioned officers, at least one in the grade of major or higher, and a nonvoting recorder. Care will be exercised to insure that-

a. The board is composed of experienced, unbiased officers of mature judgment who are fully cognizant of applicable regulations and policies pertaining to cases of this nature.

b. If the individual is an enlisted member

of the Women's Army Corps, the board membership will include an officer of the Women's Army Corps.

c. If the individual has a Reserve enlisted status, the membership of the board will include a majority of Reserve officers, if reasonable available. When a Reserve majority is not available, the board membership will include at least one Reserve component officer.

d. If the individual is an enlisted member who holds Reserve status as a commissioned or warrant officer, the board will be composed of

Authority to approve, disapprove, or otherwise appropriately dispose of these cases may be delegated to the convening authority's deputy or other officer within his headquarters. Every action taken in accordance with such delegation will state the authority.

an uneven number of commissioned officers, but not less than three. The officers will be senior in permanent grade to the Reserve grade held by the respondent. One member of the board will be Regular Army. The remainder will be Reserve officers of the Army who are serving on AD. If the convening authority determines that a Regular Army officer is not available, a Reserve officer serving on AD may be substituted for the Regular Army officer. If the individual is an enlisted member who is also an ARNGUS officer, at least one member of the board will be an ARNGUS officer, if reasonably available.

e. The board is provided a competent reporter or stenographer

14-14. Witnesses. The expiration of term of service date or transfer status of each expected witness will be ascertained to insure that essential military witnesses will be available at the board proceedings. No witness will be transferred or separated 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 he does not consent, a deposition or affidavit will be obtained, as appropriate.

14-15. Board procedures. **a.* An individual under military control will be notified in writing of the date of the board hearing. He will be notified at least 15 days before the date of hearing so that he and his appointed counsel for representation (para 1-3d) may prepare his case. He will also 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 in person 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 prior to that time is fully explained and recorded in the proceedings of the board. Requests for an additional delay, normally

not to exceed a total of 30 days after initial notice, will be granted if in the judgment of the convening authority or the president of the board such delay is warranted to insure that the respondent receives a full and fair hearing.

**b.* The individual may appear in person, with *or* without representing counsel, or, in his absence, he may be represented by counsel at all open proceedings of the board. When the individual appears before a board without representing counsel, the record will show that the president of the board counseled the individual as to type of discharge he may receive as a result of the board action and the effects of such a discharge in later life, and that he may request representing counsel. The record will reflect the individual's response.

c. The individual 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. Military witnesses under the control of the convening authority will be ordered to attend if reasonably available. The attendance of other military witnesses will be requested through command channels. Witnesses not on active duty must appear voluntarily and at no expense to the Government.

d. The individual 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 who are unwilling to appear voluntarily.

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

f. The individual and his counsel may question any witness who appears before the board.

g. If the individual holds Reserve status as a commissioned or warrant officer, the board will notify him that the action also involves

his Reserve status and could terminate such status.

h. The individual may challenge any voting member of the board for cause only.

i. Failure of the individual to invoke any of the above rights after he has been apprised of same will not have an effect upon the validity of the elimination proceedings.

j. When the board meets in closed session, only voting members will be present.

k. Except as modified herein, the board will conform to the provisions of AR 15-6. As an exception to paragraph 13b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of affidavits. However, if the individual desires to present such evidence, he is entitled to have the witnesses appear in person, if they are reasonably available.

l. The proceedings of the board will include a verbatim record of the findings and recommendations (fig. 14-3).

m. When the board is considering a case in which the individual 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 individual, or of the type of discharge which had been recommended in his case. When it has come to the attention of the individual or his counsel that facts intended to be excluded by this paragraph 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 of this paragraph.

14-16. Recommendations of the board. The board will recommend that the individual be-

a. Retained in the Service; or

b. Discharged. If discharge is recommended, the type of discharge certificate to be issued will be specified. If the individual holds Reserve status as a commissioned or warrant officer, the board will include a recommendation whether such status should be terminated and the type of discharge to be issued.

14-17. Action by convening authority (commander exercising general court-martial jurisdiction) on board proceedings. *a.* The convening authority will not discharge an individual if a board recommends retention, nor will he authorize the issuance of a discharge of a less favorable character than that recommended by the board. When a case has been referred to, and action completed by a board of officers, the convening authority will take one of the following actions:

*(1) When a board recommends that an individual be retained and the convening authority believes that separation is warranted and in the Army's best interest, or the individual entered the service with a nonwaivable disqualification, or the incident of fraudulent entry was concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense, the convening authority will forward the HQDA (DAPC-PAS-S), 200 Stovall Street, Alexandria, VA 22332, with supporting reasons, for final decision.

(2) Approve a recommendation for discharge and direct issuance of the type of discharge certificate recommended by the board. The convening authority may direct issuance of a superior type certificate, but will not direct issuance of a lesser type certificate.

(3) Approve recommendation for retention if the member entered the Service with a waivable disqualification and the incident of fraudulent entry was not concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense.

(4) Disapprove a recommendation for discharge and direct retention, if the member entered the Service with a waivable disqualification and the incident of fraudulent entry was not concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense.

b. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to

a above. With respect to substantial defects, he may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required in this chapter, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

c. Boards may be reconvened or a new board convened only in accordance with the provisions of chapter 1.

d. The convening authority may delegate to his deputy or other officer within his headquarters the authority to approve, disapprove, or make other appropriate disposition of cases, except to direct an undesirable discharge. The convening authority is required to personally sign any action directing undesirable discharge of an enlisted member under his command. He may direct other appropriate disposition of the case.

14-18. Disposition of proceedings. a. When discharge of an enlisted person has been accomplished by appropriate authority under the provisions of this chapter, the complete file of the case will be filed in accordance with AR 640-10.

*b. When retention is directed, the retention constitutes a waiver of the fraudulent entry. The following statement will be entered in item 42, DA Form 20: "Discharge action based on fraudulent entry is waived and retention authorized on _____." The original copy of the approved document will be forwarded to the Commander, US Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249, for inclusion in the member's official personnel record.

c. When the convening authority approves a recommendation that an enlisted member be discharged from Reserve status as a commissioned or warrant officer, he will forward a

copy of the approved proceedings to the Commander, 'RCPAC, for appropriate action under the provisions of AR 135-175.

d. When an ARNGUS trainee is released from ADT under the provisions of this chapter, a copy of the approved proceedings will be forwarded to the adjutant general of the State concerned.

14-19. Type of discharge. An individual discharged under the provisions of this chapter will be furnished DD Form 256A (Honorable Discharge Certificate), DD Form 257A (General Discharge Certificate), or DD Form 258A (Undesirable Discharge Certificate). In addition to section III, chapter 1, the following factors will be considered in determining the type of discharge certificate to be issued:

a. The character of service will be based on in-service records and activities.

b. False pre-enlistment or pre-induction records will not be used as a basis for characterizing a period of service.

c. The offense of fraudulent enlistment (10 USC 883; Art. 83, UCMJ) occurs when the member accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment of his qualifications. Thus, upon receipt of pay and allowances, it becomes an in-service activity by the member and may be considered in characterizing his period of service, even though he is not tried for the offense.

d. A fraudulent induction is not an offense under the Uniform Code of Military Justice. (See Art. 83, UCMJ; 10 USC 883; US vs. Jenkins, 7 USCMA 251, 22 CMR 51 (1956).) Since a fraudulent induction is accomplished by pre-induction activities on the part of the inductee, it cannot be used as a basis for characterizing a period of service.

***14-20. Entries on DD Form 214.** a. When an individual is discharged for fraudulent entry, the entry on DD Form 214 will be "Chapter 14, AR 635-200." The SPD will be entered in accordance with AR 635-5-1.

b. When an individual is discharged for de-

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C 42, AR 635-200

sertion, trial barred, the entry on DD Form 214 will be "Section II, chapter 15." The SPD will be entered in accordance with AR 635-5-1.

(Date individual and counsel sign statement)

SUBJECT : Discharge For Fraudulent Entry

TO: (Discharge Authority)

1. *I have been advised by my consulting counsel of the basis for the contemplated action to accomplish my discharge for fraudulent entry under chapter 14, AR 635-200.
2. I (request) (waive) consideration of my case by a board of officers.
3. I (request) (waive) personal appearance before a board of officer.
4. Statements in my own behalf (are) (are not) submitted herewith as inclosure _____.
5. I (request) (waive) representation by (appointed counsel for representation) (_____ as my military counsel) (civilian counsel at my own expense).
6. I understand that, as a result of issuance of a 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 have retained a copy of this statement.

(Signature of individual)

(Typed name, SSN, and grade)

Having been advised by me of the basis for this contemplated discharge and its effect and the rights available to him, (name of individual) personally made the choices indicated in the foregoing statement.

(Signature of consulting counsel)

(Typed name, SSN, and grade)

*If the individual declines to consult with consulting counsel prior to waiving his rights, he will be ordered to do so by his commander. If he persists in his refusal, a statement to this effect will be prepared by the commander and placed in his file. Separation action will then proceed as if the member had consulted with consulting counsel. In all cases, except the above, consulting counsel will witness this statement and indicate that he is a commissioned officer of the Judge Advocate General's Corps.

Note. An individual who holds a Reserve status as a commissioned or warrant officer will include in his statement whether a waiver of board hearing does or does not apply to his Reserve status.

**Figure 14-1.*

REPORT OF MENTAL STATUS EVALUATION		
For use of this form, see AR 635-200; the proponent agency is The Adjutant General's Office.		
REQUEST A MENTAL STATUS EVALUATION FOR THE BELOW NAMED INDIVIDUAL WHO IS BEING CONSIDERED FOR DISCHARGE BECAUSE OF <input type="checkbox"/> CONVICTION BY CIVIL COURT <input type="checkbox"/> FRAUDULENT ENTRY <input type="checkbox"/> DESERTION <input type="checkbox"/> UNSUITABILITY <input type="checkbox"/> UNFITNESS		
NAME	GRADE	SSN
EVALUATION		
1. BEHAVIOR <input type="checkbox"/> NORMAL <input type="checkbox"/> PASSIVE <input type="checkbox"/> AGGRESSIVE <input type="checkbox"/> HOSTILE <input type="checkbox"/> SUSPICIOUS <input type="checkbox"/> BIZARRE		
2. LEVEL OF ALERTNESS <input type="checkbox"/> FULLY ALERT <input type="checkbox"/> DULL <input type="checkbox"/> SOMNOLENT		
3. LEVEL OF ORIENTATION <input type="checkbox"/> FULLY ORIENTED <input type="checkbox"/> PARTIAL <input type="checkbox"/> DISORIENTED		
4. MOOD <input type="checkbox"/> DEPRESSED <input type="checkbox"/> LEVEL <input type="checkbox"/> HYPERACTIVE		
5. THINKING PROCESS <input type="checkbox"/> CLEAR <input type="checkbox"/> CONFUSED <input type="checkbox"/> BIZARRE		
6. THOUGHT CONTENT <input type="checkbox"/> NORMAL <input type="checkbox"/> ABNORMAL <input type="checkbox"/> HALLUCINATIONS <input type="checkbox"/> PARANOID IDEATION <input type="checkbox"/> DELUSIONS		
7. MEMORY <input type="checkbox"/> G O O D <input type="checkbox"/> FAIR <input type="checkbox"/> POOR		
IMPRESSIONS		YES
		NO
8. SIGNIFICANT MENTAL ILLNESS.		
9. MENTALLY RESPONSIBLE.		
10. ABLE TO DISTINGUISH RIGHT FROM WRONG.		
11. ABLE TO ADHERE TO THE RIGHT.		
12. HAS THE MENTAL CAPACITY TO UNDERSTAND AND PARTICIPATE IN BOARD PROCEEDINGS.		
13. MEETS THE RETENTION STANDARDS PRESCRIBED IN CHAPTER 3, AR 40-50L.		
REMARKS		
DATE	SIGNATURE	

FINDINGS: In the board proceedings concerning Private (E-2) John A. Doe, 000-00-0000, the board carefully considered the evidence before it and finds:

Private Doe is undesirable for further retention in the military service because of fraudulent entry.

RECOMMENDATION:

In view of the findings, the board recommends that Private Doe be discharged from the service because of fraudulent entry with issuance of a _____ Discharge Certificate (DD Form_____).

President

Member

Member

Recorder

Figure 14-3. Verbatim findings and recommendations.