



## **SEPARATION FOR MISCONDUCT CHAPTER 12**

This information paper provides general information on Chapter 12, AR 135-178, Separation for Misconduct. AR 135-178 contains more specific information. Please consult with a Trial Defense Service (TDS) attorney for any additional questions.

I. **Basis for Separation.** Chapter 12 permits discharges for five types of misconduct: (a) minor disciplinary infractions; (b) pattern of misconduct; (c) commission of a serious offense; (d) abuse of illegal drugs; and (e) civil conviction. A TDS attorney's review of your discharge paperwork can ensure your commander has satisfied the required grounds for separation under this chapter.

- A. **Minor Disciplinary Infractions (paragraph 12-1a).** Requires evidence of a pattern of misconduct consisting solely of two or more minor disciplinary infractions. Commanders determine what type of behavior qualifies as a minor disciplinary infraction. Requires at least one formal counseling under paragraph 2-4 followed by a reasonable opportunity to overcome the deficiency. Reassignment is required if practical, at least once to a unit within commuting distance, unless reassignment restricted or waived.
- B. **Pattern of Misconduct (paragraph 12-1b).** Requires evidence of a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes violations of the UCMJ, Army Regulations, civil law, and/or military customs and traditions. Requires at least one formal counseling under paragraph 2-4 followed by a reasonable opportunity to overcome the deficiency. Reassignment required if practical, at least once to a unit within commuting distance, unless reassignment restricted or waived.
- C. **Commission of a Serious Offense (paragraph 12-1c).** Requires evidence of a specific military or civilian offense that warrants discharge and authorizes a punitive discharge under the UCMJ. A punitive discharge must be authorized for conviction of the same or a closely related offense.
- D. **Abuse of Illegal Drugs (paragraph 12-1d).** Abuse of illegal drugs is serious misconduct and any soldier identified as using illegal drugs must be processed for separation, unless the soldier voluntarily self-referred into the Army Substance Abuse Program (ASAP) under AR 600-85.

- E. Civil Conviction (paragraph 12-1e). Requires evidence of a conviction or determination of guilt by civil authorities, to include juvenile proceedings, which warrants discharge. Requires a sentence by civil authorities of 6 months or more (without regard to suspension or probation), or authorization for a punitive discharge for the same or a closely related offense under the UCMJ. Failure to initiate a discharge action under this paragraph within 2 years of the conviction creates a rebuttable presumption that the commander determined retention is in the best interests of the Army. Appeals do not halt or delay the separation process. However, unless you request immediate discharge, the separation authority recommends immediate discharge as an exception, or the commander believes your presence is detrimental to good order and discipline or you present a threat to the safety and welfare of the unit, execution of an approved discharge under this paragraph must be withheld until: (1) you indicate in writing you will not appeal; (2) the time to appeal expires; or (3) until final action is taken if an appeal was made. Special procedures exist for civil court cases in foreign countries and are discussed in paragraph 12-3.
  
- III. Effects of Initiation of Separation Proceedings. Initiation of a separation under Chapter 12 requires suspension of favorable personnel actions per AR 600-8-2. If separated you could receive one of three types of discharges: Honorable, General (Under Honorable Conditions), also called a General discharge, or a discharge Under Other Than Honorable Conditions, also called an OTH. An Honorable discharge is the best discharge available from the service. A General discharge is the second best discharge the Army gives, but it is also “good paper.” An OTH discharge deprives you of most of the benefits you would receive with an Honorable discharge and may cause you substantial prejudice in civilian life. Generally, a Chapter 12 discharge will be an OTH, however, characterization as General (under honorable conditions) may be received. An Honorable discharge is only authorized if: (1) your record is otherwise so meritorious that any other characterization would be inappropriate; (2) the sole evidence of misconduct is command-directed urinalysis results; or (3) an administrative separation board recommends separation with an Honorable characterization of service.
  
- IV. Actions and Rights after Initiation of Separation Proceedings. Your commander will forward a full report of the recommended proceedings through intermediate commanders, if any, to the Separation Authority. Intermediate commanders may disapprove the recommendations and direct reassignment, or approve the recommendations and forward the report to the Separation Authority. The Separation Authority, a general officer, ultimately determines whether you should be separated, and if so, what type of discharge you receive. You are entitled to copies of all documents forwarded to the Separation Authority.
  - A. If you have less than 6 years of active and reserve military service, and you are not being considered for an OTH discharge, you are not entitled to a board but may submit statements in your own behalf. Such statements may be from you, or individuals you work for or with, or in the event of abuse of illegal drugs, from

counselors or treatment providers. The statements should discuss your duty performance, potential, reasons for retention, successful rehabilitation, and any significant contributions you made. The statements may ask that you be retained or given an Honorable discharge, and should be submitted to your commander to be forwarded to the Separation Authority.

B. If you have 6 or more years of active and reserve military service, or you are being considered for an OTH discharge, you have two options:

1. Proceed before an administrative separation board. A board normally consists of two officers and one senior enlisted. You are entitled to representation at a board by a detailed TDS attorney, or you can hire a civilian attorney. You may make a statement to the board. If you proceed to an administrative separation board, the Separation Authority may approve the recommendations of the board or modify the recommendations. However, the Separation Authority may not authorize a characterization of service less favorable than that recommended by the board and may not direct discharge if the board recommends retention.
2. Submit a conditional waiver. A conditional waiver informs the Separation Authority you agree to waive your right to a board on the condition you receive a better discharge than what is recommended. If the Separation Authority agrees, you receive the better discharge, and if your proposal is turned down, you retain your right to a board.

V. Special Considerations. If you have more than 18 but less than 20 years of qualifying service for retirement pay, HQDA must approve your discharge under Chapter 12, and you may not waive your right to a board hearing or your right to representation by counsel at board hearings. If you have served less than 180 days of continuous active service, and qualify for entry level status, any discharge you receive under Chapter 12 will be uncharacterized unless an OTH discharge is warranted.