SERVICE REVIEW BOARDS

I. REFERENCES.

A. Chapter 36 – Promotion, Separation, and Involuntary Retirement of Officers on the Active-Duty List, 10 U.S.C. §630 – Discharge of regular commissioned officers with less than six years of active commissioned service . . . .

B. Chapter 55 – Medical and Dental Care, 10 U.S.C. §1102 – Confidentiality of medical quality assurance records: qualified immunity for participants.


D. Chapter 60 – Separation of regular officers for substandard performance of duty or for certain other reasons, 10 U.S.C. §1186 – Officer considered for removal: voluntary retirement or discharge.

E. Chapter 69 – Retired Grade, 10 U.S.C. §1370 – Commissioned officers: general rule; exceptions.


G. Chapter 69 – Retired Grade, 10 U.S.C. §1372 – Grade on retirement for physical disability: members of armed forces.


I. Chapter 73 – Annuities based on retired or retainer pay, Subchapter II – Survivor Benefit Plan (SBP).
J. Chapter 79 -- Correction of Military Records, 10 U.S.C. §1552. Correction of military records: claims incident thereto. (a)(1) The Secretary of a military department may correct any military record of the Secretary’s department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.


M. Chapter 79 – Correction of Military Records, 10 U.S.C. §1554a -- Review of separation with disability rating of 20 percent disabled or less.


O. Chapter 367 – Retirement for length of service, 10 U.S.C. §3911 – Twenty years or more: regular or reserve commissioned officers.


Q. Chapter 369 – Retired grade, 10 U.S.C. §3963 – Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member’s misconduct.


S. Chapter 1219 – Standards and procedures for retention and promotion, 10 U.S.C. §12643 – Boards for appointment, promotion, and certain other purposes: composition.


W. Chapter 1411 – Additional provisions relating to involuntary separations, 10 U.S.C. §14905 – Officer considered for removal: retirement or discharge.

X. DoD Directive 1332.41, Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs), March 8, 2004.

Y. DoD Instruction 1300.6, Conscientious Objectors, June 11, 2007.


DD. AR 15-80, Army Grade Determination Review Board and Grade Determinations, 12 July 2002.


UU. SECNAVINST 5420.135F, Secretary of the Navy Council of Review Boards (SECNAVCORB), 11 March 2009.


AAA. AF Instruction 36-2603, Air Force Board for Correction of Military Records, 1 March 1996.


CCC. AF Instruction 36-3206, Administrative Discharge Procedures for Commissioned Officers, 9 June 2004, AFGM 1.1, 14 October 2010.

DDD. AF Instruction 36-3207, Separating Commissioned Officers, 9 July 2004, AFGM 1.1, 13 October 2010.

EEE. AF Instruction 36-3208, Administrative Separations of Airmen, 9 July 2004, change 5, 14 September 2010.

II. MISSION STATEMENT – ARMY REVIEW BOARDS AGENCY (ARBA)

III. FIFTEEN (ARBA) BOARDS

A. Army Board for Correction of Military Records (ABCMR).


2. Corrects (legal or factual) errors or removes injustices (equity).

3. Common issues – BCMRs are jurisdictionally limited to errors or injustices raised by the applicant.

4. Actions involving state (as opposed to federal) records are advisory to the state’s TAG. However, if the TAG rejects the ABCMR’s recommendation, the Board in appropriate cases can exercise its extraordinary authority to grant relief through the Army Reserves.


6. Practice tips for applicants.

a. Prepare and submit timely and complete application. The BCMRs are not investigative bodies. Burden of proof is on the applicant.
b. Electronic applications can be submitted for the Army through the ARBA webpage.

c. Three-year statute of limitations can be waived in the interest of justice.

7. Practice tips for the Government.

a. BCMR decides whether the Government has the opportunity to rebut matters raised in the application.

b. Ensure a complete record of the personnel action is filed in the OMPF.

c. Draft and compile all documents and files with a view toward withstanding appellate review.

B. Army Discharge Review Board (ADRB).

1. Established by 10 USC 1553.

2. Uniform policies, procedures, and standards for the review of discharges and dismissals.

3. Service Secretaries have final authority and operational responsibility. However, appeals of State (as opposed to federal) separations must first be appealed to the State Adjutant General, and ADRB action on a subsequent appeal to the Board are merely advisory to the State Adjutant General.

4. Services coordinate on administrative issues.

5. Fifteen-year statute of limitations cannot be waived.

6. Cannot review discharges or dismissals adjudged by a general court-martial.
7. Upgrades are not automatic.

8. Practice tips for the Government.
   a. Discharge packets should contain all available evidence. Like the BCMRs, DRBs are not investigative bodies. Burden of proof is on the applicant, but presumption of government regularity can be easily overcome (destroyed) by an incomplete record. Additionally, DRBs will independently examine errors not raised by applicants but apparent from the records. (NOTE: Unlike BCMRs, DRBs can review discharges on their own motion or at the Services’ requests without an applicant request.)
   b. Applicants should submit favorable post service information. DRBs will consider post service conduct to determine whether the period of service was properly characterized.
   c. “Declined Article 15” misconduct that is handled by administrative discharge rather than court-martial will be more closely scrutinized.
   d. Memorandums of Reprimand need to tell the story and be supported by evidence.
   e. Proper separation authority.
      (1) GCMCA v. SPCMCA for active duty cases. See MILPER Message 04-265; AR 635-200, chapter 2; and AR 135-178, paragraph 3-16. Conditional waivers of boards do not change the separation authority.
         (a) Board procedure.
         (b) Notification procedure.
      (2) Rear detachment commanders.
(3) Document separation authority’s authority to act, if it is not obvious, for instance O-5 commanders who are special court-martial convening authorities in O-5 billets.

f. Violation or the appearance of violation of the Limited Use policy UP AR 600-85, The Army Substance Abuse Program, chapter 10 (chapter 6 in former edition), is a common basis for upgrade of discharges to honorable. Unit personnel commonly misunderstand the meaning of “command directed” urinalysis. Initial use of limited use evidence by the Government will result in an honorable discharge. See AR 135-175, paragraph 2-10a.

C. Army Clemency and Parole Board.

D. Army Regulatory Review Boards.

1. Army Active Duty Board. AR 600-8-24, paras. 2-27 & 2-28.

2. Board of Review for Eliminations. AR 600-8-24, para. 4-17.

a. Reviews a Board of Inquiry’s findings and recommendations. Most labor intensive and time consuming of the officer separation boards. Neither the command nor the defense should assume the outcome is a foregone conclusion.
b. Practice tips for the Government.

(1) Board membership – at least one of same reserve component and gender, and if available, same branch & minority representation. Improper membership can affect jurisdiction. Reserve component respondent must have a reserve component member. Regular Army respondent must have all Regular Army members.

(2) Specifically address issues raised in appellate briefs in the legal response.

(3) UP 10 U.S.C. §1166, §1186(b) & §14905(b) officers eligible for retirement will be retired, even if “boarded-out.” Therefore, do not recommend disapproval of a retirement in lieu of elimination, if the officer is retirement eligible. However, see grade determination boards.

(4) Take the Board of Inquiry as seriously as a court-martial. Ensure proper notice memorandum. Introduce best evidence available. The record must convince the Board of Review by a preponderance of the evidence that the officer should be eliminated and that the recommended characterization of discharge is appropriate. Government needs to include clear and sufficient evidentiary support for the bases of elimination and characterization of discharge in the record of the Board of Inquiry. The Board of Review can and will draw adverse inferences against the Government where there is a lack of relevant information in the record.

(5) Board of Inquiry must make a separate finding (including a brief statement) on each factual allegation and reason for involuntary separation. AR 600-8-24, para. 4-15b. Conclusions are not acceptable.
(6) Ensure that all information contained in the packet has been provided to the respondent, that service on respondent has been documented, and that respondent has had an opportunity to respond. This is a fundamental due process issue. See also AR 600-37, *Unfavorable Information*, paras 3-2a and 3-6. Exception: the GOSCA’s final decision/recommendation is served on the respondent, but respondent has no right to respond so long as the GOSCA does not introduce any new evidence.

(7) Make sure the original notification letter incorporates correct provisions for probationary v. non-probationary officers, as the rights of the two types of respondents differ.

(8) Be aware of the limited use policy under AR 600-85, *The Army Substance Abuse Program*, chapter 10. Violation of the policy normally results in an honorable discharge.

(9) If dealing with medical personnel, make sure you are aware of limitations on use of quality assurance records IAW 10 U.S.C. §1102 and AR 40-68, *Clinical Quality Management*, para. 3-7 and Appendix B.

(10) Respondent and counsel can waive appearance before the Board of Inquiry, but absent a respondent’s request for discharge/resignation/retirement in lieu of elimination, the Board of Inquiry must be held.
3. Ad Hoc Boards – not required by statute or regulation.

a. Probationary Officer Eliminations. AR 600-8-24, para. 4-20. Probationary officers are not entitled to boards of inquiry if the command is seeking no worse than a general discharge. Therefore, an officer being processed under probationary officer elimination procedure who submits a conditional resignation/request for discharge in lieu of elimination waiving a board in return for an honorable characterization of separation has offered nothing of value. Likewise, although a probationary officer has a right to submit a resignation/request for discharge in lieu of elimination, doing so provides little, if any, value to the Service because the Secretary can as easily approve the probationary officer elimination as the resignation/request for discharge in lieu of elimination. However, probationary officers can submit matters supporting a request for retention or an honorable discharge.

Who are probationary officers?

In the Army, warrant officers with less than three years of service since appointment in their present component. Warrant officers normally start as Reserve Component officers when appointed as WO1s. They are integrated into the Regular Army after appointment to CW2. Therefore, a warrant officer could serve two consecutive three-year probationary periods, depending upon the length of service as a WO1. The Navy includes Regular warrant officers with less than 3 years and Reserve warrant officers, including those serving in the grade of W-1, with less than 6 years of service as a warrant officer.
Officers above warrant officer ranks who have less than five years of commissioned service. NOTE: Statutory change and OSD policy change authorize a six-year probationary period. The longer probationary period will not be effective until implemented in each Service by a regulatory change by that Service. The Navy has increased the probationary period to 6 years of active commissioned service. NOTE: AR 600-8-24 provides contradictory guidance in defining an RA probationary officer – Is it less than five years commissioned service or five years active commissioned service (active duty or full-time NG duty above warrant officer)?

What if the officer changes status from probationary to non-probationary during pendency of elimination? If officer changes or will change status before the decision is made, the officer must be treated as a non-probationary officer.

b. Resignations for the Good of the Service in Lieu of General Court-Martial. AR 600-8-24, para. 3-13.

(1) Command may proceed to trial while resignation is pending, but cannot take action on court-martial results while resignation is pending.

(2) Must be expeditiously forwarded.

(3) In the Army under current policy, Secretarial approval of resignation will also direct dismissal of court-martial charges, even if officer is convicted and serving confinement. See U.S. v. Woods, 26 M.J. 372 (CMA 1988) for the effect of a Secretarial approval of a resignation after initial action on findings and sentence. AR 27-10 leaves dismissal of charges within the discretion of the Secretary or his or her designee.
c.  Resignations or Discharges in Lieu of Elimination.  AR 600-8-24, para. 4-24.

(1)  No longer a difference between the two.

(2)  Conditional requests will be entertained.

(3)  Do not recommend disapproval if the request is conditioned on an acceptable characterization of service (“I don’t want to let the officer quit; I want the officer fired!). There is no practical difference between an involuntary discharge and a resignation/discharge in lieu of elimination that carry the same service characterization.


(5)  Practice tips.

(a)  Supporting documentation must be complete.

(b)  Ensure proper wording of resignations.

(6)  Requests to withdraw resignations are not automatically approved.

(7)  Regardless of reason for separation, recoupment of educational costs will be an issue for officers with outstanding service obligations from bonuses and some types of schooling, usually service academies; ROTC scholarships; medical, dental, or nursing degrees; and other advanced civilian degrees. 10 U.S.C. §2005; AR 37-104-4, Chapter 31.

a. Determines highest grade in which member served satisfactorily for retired pay or disability separation pay.

(1) Enlisted boards can only result in current or higher rank. Enlisted service members normally retire in the grade in which serving the day before retirement. Exceptions: (1) disability retirements (10 USC 1372) and (2) regular retirements after 30 September 1996 for reserve enlisted members retiring from active duty or full-time National Guard duty who were administratively reduced not due to misconduct can result in advancement at time of retirement (10 USC §3963).

(2) Warrant officer boards can result in current or higher grades (10 U.S.C. §1371).

(3) Commissioned officer (other than warrant officer) boards can result in current or lower grade. Officers (above warrant) retire in the highest grade satisfactorily served (10 U.S.C. §1370). Cases are processed through Human Resources Command or Senior Leadership Division (COLs and General Officers) who will alert ARBA of the need to hold a board. In the Army referral for grade determination is mandatory if there is adverse information since last promotion that is filed or should have been filed by regulation in the OMPF. Adverse information since the last promotion not required to be filed in the OMPF can still generate a grade determination review as a matter of discretion. To have served satisfactorily, officers must also meet time in grade requirements (10 USC §§ 1370, 1371, and 3911).

(1) For enlisted soldiers and warrant officers who did not retire at their highest grade served on active duty.

(2) Takes effect when active duty time plus time on the retired list equals thirty years.

(3) As an exception to the need to complete statutory time in grade requirements, former commissioned officers who reverted to a warrant officer or enlisted grade UP 10 U.S.C. §3911, can be advanced to the former commissioned officer grade held before retirement through the 30-year grade determination.

c. Officer grade is normally determined at time of retirement; however, it can be determined after retirement based on misconduct during active duty before retirement that is documented or adjudicated after retirement.

d. Exception: disability cases are determined at time of separation/retirement for all grades.

e. Non-regular retirement grade determinations are normally determined near age 60 before retired pay begins.

f. Failure to complete statutory time-in-grade requirements will prevent a finding of satisfactory service in that grade, unless separation is for disability, involuntary retirement, or an officer was promoted from the grade before time-in-grade requirement was satisfied. Approval of a retirement will waive regulatory time-in-grade requirements.
5. Disability Appeal Boards.

a. Army Physical Disability Appeal Board. AR 635-40.


d. Physical Disability Board of Review (PDBR) – not an ARBA board, but its recommendations are processed through ARBA for final decision by the Deputy Assistant Secretary of the Army (Review Boards). 10 U.S.C. §1554a.

6. Former Special Review Boards—moved from the Army Staff (G-1) to the Army Secretariat (OASA (M&RA)/ARBA).


(1) Appeals of filings of adverse information in OMPF.

(a) Removal from OMPF if clear and convincing evidence the document is untrue or unjust. Does not include authority to remove Article 15s.

(b) Transfer Article 15s, memorandums of reprimand, admonition, or censure to restricted section, if document has served its intended purpose and transfer would be in the best interest of the Army.

(2) Referrals of unfavorable information for filing, where there is no other regulatory procedure for filing.
b. Officer Special Review Board (OSRB) and Enlisted Special Review Board (ESRB). AR 623-3.

(1) Evaluation and academic report appeals.

(2) Promotion reconsideration requests, if relief is granted.

c. Department of the Army Conscientious Objector Review Board (DACORB). DoDI 1300.6 and AR 600-43.

(1) Reviews applications for noncombatant conscientious objector status (1-A-0) approved by GCMCA for compliance with policy.

(2) Decides applications for noncombatant conscientious objector status recommended for disapproval by GCMCA.

(3) Decides conscientious objector (1-0) applications requesting discharge.

7. Interment, Inurnment, and Memorialization Review Board recommends whether the Secretary of the Army should deny interment, inurnment, or memorialization at (primarily) Arlington National Cemetery to certain Veterans who may have committed a capital crime as defined by 38 USC 2411. Hearings will usually involve personal appearances by one more of the deceased's relatives.


1. Final action on behalf of SAF, or recommends action.

(1) Actions initiated by wing commanders, GCMCA, or higher.

(2) Limited to the record.
(3) Composed of three colonels. USAFR member required when respondent is reservist.

2. Reviews actions normally reviewed by several different Army Review Boards, including

   (1) Active Duty Board.

   (2) Grade Determination Review Board.

   (3) Ad Hoc Boards.

   (4) Army Board of Review for Eliminations.

   (5) Army Physical Disability Review Board.

   (6) Department of the Army Conscientious Objector Board.

3. USAF Personnel Board – considers cases or requests for:

   (1) Resignation, retirement, release, or separation from active duty.

   (2) Continuation or end of active duty or active status.

   (3) Physical disability retirement or separation.

   (4) Conscientious objectors and probationary officer elimination.

   (5) Involuntary administrative discharge, resignations in lieu of court-martial, resignations/discharges in lieu of elimination. AFI 36-3206; AFI 36-3207.
(6) Establishes highest grade satisfactorily held. Conducts grade determinations for officers and enlisted. Air Force officers will be referred for a grade determination at retirement if they have received an Article 15 within last two years before retirement, have a court-martial conviction, civilian conviction involving moral turpitude or in which the sentence includes confinement for more than one year without regard to probation or suspension, or if chain of command recommends one based on other good cause, such as a reprimand.

(7) Numerous other personnel actions. See AFI 36-2023 for an exhaustive list.

F. Navy and Marine Corps.

1. No regulatory Review Boards for SECNAV (ASN (M&RA) (except for flag and general officers). Do have statutory boards – Board for Correction of Naval Records, Discharge Review Board, and Clemency and Parole Board.

   a. No Active Duty Board. Only Regular or Reserve officers released from AD for unsatisfactory performance with Honorable discharge considered for Reserve duty.


   c. No Grade Determination Review Board.

   d. No Ad Hoc Boards.


   a. Probationary officers (<5 years active commissioned service).

      (1) Notification process (honorable, general discharge).
(2) Show Cause Authority (SCA) (Chief Naval Personnel or Dep. Chief of Staff (M&RA), Marine Corps) recommends on issues of separation, character of discharge, and grade determinations.

(3) SECNAV - takes action after review by line officer or JAG.

b. Non-probationary officer (>5 years active commissioned service).

(1) SCA reviews file and directs BOI.

(2) BOI (formal hearing) recommends on separation, characterization of service, and grade determination.

(3) SCA – reviews and makes recommendations to SECNAV.

(4) SECNAV - takes action after review by line officer or JAG.

3. Advisory Boards v. Streamlined Process: Value added?

IV. RESOURCES.

A. ARBA Legal Office.

1. Mr. John Taitt, Senior Legal Advisor, DSN 327-1878, Commercial (703) 607-1878, john.p.taitt.civ@mail.mil.

2. Mr. Jan Serene, (703) 867-2872, jan.w.serene.civ@mail.mil specializes in grade determinations and officer separation issues.
3. Ms. Mary McCord, DSN 327-1625, Commercial (703) 607-1625, mary.m.mccord.civ@mail.mil specializes in Army Board for Correction of Military Records and Army Clemency and Parole Board issues.

4. Mr. Douglas Huff, DSN 327-1609, Commercial (703) 607-1609, douglas.c.huff.civ@mail.mil, specializes in Army Board for Correction of Military Records and conscientious objector issues.

5. Mr. W. Sherwin Fulton III, Paralegal, DSN 327-1838, Commercial (703) 607-1838, william.s.fulton2.civ@mail.mil, primarily supports processing of grade determinations and officer separations.

6. FAX: Commercial (703) 607-0542.

B. Congressional and Special Actions Office – assists applicants also (703) 607-1600/DSN 327-1600.


D. ARBA Webpage: http://arba.army.pentagon.mil. Includes application forms and procedures; frequently asked questions; some relevant DoD Directives and Army Regulations; and links to other web sites.

E. DoD On-line Reading Room is at: http://boards.law.af.mil/. Contains past decisional documents for service corrections and discharge review boards, which are also located in hard copy at CONUS regional reading rooms.

F. Board for Correction of Naval Records:

G. Naval Council of Review Boards Web Page:

H. Coast Guard Board for Correction of Military Records Web Page:
I. Air Force Review Boards Office Web Page:  

J. Web Page for DoD Directives & Instructions, Army regulations, SECNAV Instructions, and Air Force regulations:  


N. Marine Corps Publications Webpage:  