

Applying to the Military Departments' Discharge Review Boards

Video transcript:

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Welcome to today's webinar titled, "Applying to the Military Departments' Discharge Review Boards."

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Learn how to successfully petition your Military Departments' Discharge Review Board, DRBs, for an upgrade in a military discharge with an overall broad explanation of the DRBs, as well as specific information on filling out the DD Form 293. We are thrilled to have with us today Robert Powers. Mr. Powers is the Navy Discharge Review Board president. Without further delay, I will turn things over to Mr. Powers.

Robert Powers:

Well, thank you, and certainly it's my professional honor, personal privilege to present this on behalf of the service Discharge Review Boards, and our senior leadership has asked us to present an overview of what are the Discharge Review Boards?

And beginning with that, the Discharge Review Boards are administrative boards, not courts of law, which afford former service members an opportunity to request a change in their discharge, except for discharges or dismissals by general court martial within 15 years of the date of separation.

Each military department, Air Force, Army, Navy has its own DRB. Each application before a DRB is heard by a DRB panel, typically composed of a minimum of three members.

DRBs review the merits of each application on a case-by-case basis. DRBs determine if the applicant's discharge was granted in a proper manner, according to regulatory policies and procedures in effect at the time of the discharge, and that the discharge was fair, equitable, considering the current policy, mitigating factors and the total service record.

However, the DRBs are not authorized to revoke a discharge to reinstate a person who was separated from military service, authorize military or disability retirement, or to recall reinstate a person back to active duty.

Now why apply for discharge upgrade? A Discharge Review Board is not necessary for most veterans, but the DRBs provide service members who live military service with an opportunity to request changes to the discharge or upgrade the characterization of the discharge narrative reason or reentry code.

A veteran's DD Form 214 should accurately reflect their period of service to include all aspects of their discharge. Additionally, veterans are eligible for many benefits once they leave military service. However, the availability of benefits often depends on the characterization of a service member's discharge as documented on their DD 214.

If the DRB upgrades an applicant's discharge characterization, they may be eligible for these additional veterans' benefits. A DRB may not lower an applicant's discharge. In other words, an applicant may not receive a less favorable discharge than that which was issued at the time of their separation.

Now, who may apply to the DRB? Former members of the armed forces who served on active duty, reserve or guard status whose discharge or dismissal was not issued more than 15 years ago and who were not punitively discharged by a general court martial.

If the former service member has died or is no longer mentally competent, their surviving spouse, next of kin or legal representative can apply to the DRB on their behalf.

Legal proof of qualifying status relationship must accompany the application as well as former service members who were discharged more than 15 years ago must apply to the Service Members Board for Correction of Military Records, Board for Correction of Naval Records. The Board for Correction of Military Records, BCMR/BCNR uses a different application form than the DRBs. The process procedures by the Board for Corrections Military records will be addressed in a separate webinar.

The DRB application process. The general overall application process for DRB cases is as follows:

Step one, the applicant gathers relevant discharge documentation and other relevant evidence to include requesting a copy of their military service records from the National Archives, National Personal Records Center, NPRC, if needed.

Step two, the applicant completes and submits the DD Form 293 application to their service specific DRB. An applicant's submission should include any supporting documentation.

Step three, once received, this application package is screened by the DRBs intake or screening staff. If the application does not meet any requirements or is incomplete, it will be returned to the applicant with the letter of explanation and the opportunity to resubmit.

On step four, DRB staff contacts the applicant to confirm receipt and request any additional information.

Step five, if a personal appearance hearing is requested, the DRB staff will notify the applicant of the date and time and other pertinent scheduling details. U.S. Army applicants will be contacted directly to schedule their personal appearance hearing.

Finally, the applicant and/or their representative participates in the personal appearance hearing submitting any additional relevant information prior to the start of the hearing. Absent a request for any additional documentation by the DRB, the application process is complete, and the case is taken under submission for a decision by the DRB.

How to apply. The first step in applying for discharge upgrade or correction is to complete the application form.

The Department of Defense has created an application form for applying to DRBs to streamline this process. It is a Department of Defense Form 293, application for the review of discharge from the armed forces of the United States.

When applying, applicants should make certain that they are filling out the most current version of the form, and it can be downloaded at the website noted below on this slide. Also, noted on the resource slide.

It is important to fill out each applicable section of this form. Generally, it takes approximately 45 minutes to fill out this form and most of the information requested in the form should be readily known to the former service member or found in their discharge documentation, such as on their DD Form 214.

Requesting service records. This can be done by submitting a signed application.

The former service member authorizes the DRB to review records available through the U.S. government system of records, which generally include the official military personnel file, in service medical records and any other records in the Department of Veterans Affairs electronic medical records.

Applicants are not required to include their military personnel service record as part of their application. However, because it is possible that such government records may be incomplete, applicants are encouraged to provide the DRB with copies of any relevant military records, for example, their DD Form 214 or discharge paperwork and medical records in their possession.

If an applicant would like a copy of their official military personnel file to assist with the completion of their application, they can request a copy through the National Archives, National Personnel Record Center electronically through the portal at the following website noted on this slide — or hard copy, mail or fax submission of current standard Form 180 requests pertaining to military records.

Applicants are strongly encouraged to request copies of their military personnel records well in advance of submitting their application to ensure there are no processing delays for your DRB case.

Section 1 of DD Form 293, Service Member Information. Section 1 provides the information necessary to identify the applicant and relevant period of military service.

This information should be known to the former service member but can also be found on the DD Form 214 issued at the time of their discharge. For block six, applicants should provide a current mailing address, phone number and email address.

Note, it is important that whenever an applicant's contact information changes after submission of their application, they update this DRB with any changes.

Section 2, Service Information. Section 2 is primarily completed using information from this former service member's DD Form 214. It is very helpful to reference this document when completing this portion of the form. Section 2 requests the applicant identify the terms of their original discharge, including the characterization of service, separation code, reentry code and the narrative reason for separation.

Section 2, Block 10. Block 10 is where the applicant specifies what type of relief they are seeking before the DRB. In other words, what change to the discharge terms on their DD 214 is the applicant requesting? While the DRBs cannot undo a discharge, they can change or upgrade the characterization of service, the separation code, the reentry code and the narrative reason for separation.

Block 16, Request for Reconsideration. This block should be completed if the former service member has already had their case heard by the DRB. Normally, DRB decisions are not subject to reconsideration. However, there are some exceptions that exist when the only previous consideration was on the motion of the DRB, a change in policy is announced after an earlier review of the applicant's discharge and the new policy is made expressly retroactive.

There is the presentation of new, substantial, relevant evidence not available to the applicant at the time of their original discharge review. Applying for reconsideration is most likely to be successful if the subsequent application is significantly different from the last time they applied.

The decision on whether evidence offered by an applicant in support of their request for reconsideration is in fact new, substantial, relevant and was not available to the applicant during their original review, shall be based on a comparison of such evidence with the evidence considered in the previous discharge review.

For example, submitting additional evidence that wasn't available when the former service member last applied or referencing new rules issued by the Department of Defense regarding the applicable type of discharge. Of note, DOD rules have changed for discharges relating to sexual orientation as of 2011 — PTSD, TBI and mental health as of 2014 — and military sexual harassment and assault in 2017.

Section 3, Block 17, Types of Review That Can Be Requested. There are two types of review available before the DRBs. One, documentary record review and a personal appearance hearing.

Each applicant is entitled to one documentary record review and one personal appearance hearing.

A documentary record review is a paper-only review of the available military personnel records, service medical records, if applicable to the case, and documentary evidence provided with the application.

In a record review, the DRB's decision is based solely on the information found in the record. A personal appearance hearing allows the applicant to submit documentary evidence as part of their application, and also appear before the DRB with or without an attorney.

Now, during a personal appearance hearing, the applicant has an opportunity to directly present their case to the DRB panel, including the option to provide witnesses and/or additional evidence. Although not required, it is recommended applicant's request a records-only review first. If they are unsatisfied with the results of the documentary record review, they still have the option to request, then a personal appearance.

If an applicant chooses to first request a personal appearance, they are no longer eligible for a records-only review. In other words, requesting a records-only review allows the applicant two separate opportunities to have their case considered by the DRB.

Related Issues and Conditions. There have been recent statutory and DOD policy changes that provide for consideration of unique issues in discharge review cases relating to or arising from specific circumstances.

In blocks 18 and 19, they are designed to help the DRBs identify those potential cases where these policy considerations apply. For block 18, applicants who discharge upgrade request as related in their participation in any war contingency operation, they should select the YES block, then identify or list the applicable war or contingency operation.

For block 19, applicants who discharge upgrade request is related to the listed issues or conditions should check the appropriate box or boxes. Here, the acronym PTSD stands for Post Traumatic Stress Disorder, TBI stands for Traumatic Brain Injury, and the acronym DADT refers to Don't Ask, Don't Tell policy.

Applicants who select one of the boxes in block 19 should ensure that they explain how the selected condition is related or connected to their discharge in block 20. Additional information regarding policy changes pertaining to these conditions can be found on the review board agency's website and DOD and Department of VA websites. These web addresses are listed on the resource slide at the end of this webinar.

Outlining the Issues. Block 20 is perhaps the most critical block on DD Form 293 to complete. In block 20, the applicant should explain all of the issues related to their discharge that they want the DRB to consider and address in their decision.

The DRB is not an investigative body, and it presumes regularity in the conduct of government affairs. This means that, absent evidence to the contrary, the DRB will presume that commanders, supervisors and other government officials involved with the applicant's discharge action acted fairly and in good faith.

Therefore, the applicant bears the burden of providing evidence to overcome this presumption and the DRB will only grant relief if it determines there is sufficient evidence to conclude that the applicant's discharge was not proper or equitable.

Applicants should list each issue separately and provide detailed information to explain how the issues raised relates to their discharge — and the specific reason or reasons for why the issue or issues involve propriety, equity and clemency. An applicant's explanation in block 20 should be thorough, detailed and as complete as possible.

Note, applicants are not limited to the space provided in block 20. If additional space is needed, applicants are highly encouraged to attach additional separate sheets to DD Form 293 to fully explain their case. This can't be stressed enough.

What is an issue of propriety? A discharge shall be deemed proper unless it is determined that the military made an error of fact, law, procedure or discretion in deciding upon the discharge, and there is substantial doubt that the applicant would have received the same discharge if the military had not made the error.

The first part means that the military may not have properly applied the facts or reasoning behind the discharge. The second part means that there must be a reason to believe if the mistake had not been made, the applicant would have received a different discharge or there has been a change in discharge policy made expressly retroactive.

What does this mean? It means that the applicant should identify a change in official policies since the time of their discharge and that this new policy declares that even things that happened in the past should have followed this new policy.

Issues of Equity. A discharge is deemed to be equitable unless the applicant was discharged because of policies that are different in important ways from the current policies; and the current policies are better for service members who are currently being discharged; and there is substantial doubt that the applicant would have received the same discharge under these new policies. Or equity can mean at the time of issuance the discharge was inconsistent with standards of discipline. Or equity could mean it is determined that relief is warrant based upon consideration of the applicant's service record and other evidence presented to the DRB, viewed in conjunction with the quality of service and capability to serve factors and the regulations under which the applicant was discharged.

What is an issue of clemency? Clemency refers to the relief specifically granted from a criminal sentence, and it is a part of the broad authority that DRBs have to ensure

fundamental fairness. The DRBs are authorized to grant clemency in all cases except for discharges and dismissals issued at a general court martial.

Additionally, recent DOD policy guidance now permits the DRB to consider granting discharge relief to ensure fundamental fairness and directs the DRBs to consider both clemency and rehabilitation in their decision-making process, even when the discharge was a result of an administrative proceeding rather than a criminal sentence.

In determining whether to grant relief based on clemency grounds, the DRBs may consider factors such as the severity of the misconduct; the aggravating and mitigating factors related to the record or punishment from which the member wants relief; an applicant's candor and acceptance of responsibility, remorse or atonement for misconduct was the punishment, including any collateral consequence, is too harsh; positive or negative post-conviction conduct, including any arrest being taken into custody by law enforcement, any charges or any convictions since the incident at issue; the length of time since the misconduct; the character and reputation of the applicant and/or evidence of rehabilitation; and even victim support, opposition for relief and any reasons provided.

Evidence and records. Although encouraged, applicants are not required to submit evidence to the DRBs. A DRB will initiate a review of the applicant's available service records. However, the DRBs are not investigative bodies.

Therefore, the applicant has the burden to show why their discharge request should be granted. Applicants are encouraged to submit any information or documents that can help explain the issues in their case, especially if such documentation is not likely to be found within their official military records.

In block 21, applicants should list general description. Titles can be used, the evidence they are attaching to DD Form 293 for submission. Evidence can include such things as a personal statement, character references or statement affidavits from fellow service members explaining the underlying reason for the discharge, evidence of the quality of service such as awards and decorations, combat service, promotions responsibility, evidence of post-service conduct, such as letters of recommendation, accommodation, promotion from supervisors, performance reports and/or resume.

For cases involving a medical, mental or behavioral health conditions, evidence can be submitted, such as documentation or testimony about symptoms or signs of any of these conditions or experiences, even without a diagnosis. In addition to medical records or other similar documentation, applicants may also submit signed official statements from other sources, such as family, peers, doctors, counselors, or other service members with whom they serve or anyone who can testify or assert that the applicant experienced signs or symptoms of a mental or behavioral health condition during the period of service.

What types of evidence should be submitted? Applicant should only submit relevant evidence. Relevant evidence is any information that tends to make fact of consequences more or less probable. Relevant evidence has direct connection to the issues in the case.

It does not help a case to submit documents or evidences unrelated to the issues raised. More pages of evidence submitted does not equate to a greater likelihood of success.

So examples of supporting documents include copies of medical records, copies of military record or separation packets, reference letters, copies of medical or mental health diagnosis, transcripts, et cetera. Do not submit original documents however.

When submitting a DD Form 293, applicant should only submit legible copies of all relevant documents and retain the original copies for their personal records.

Applicants are urged to submit any available evidence at the same time as a DD Form 293 application to ensure timely consideration of the case. There is no reason or advantage in delaying to submit available relevant evidence. Generally, applicants do not need to submit copies of any applicable laws, regulations or military department policies. However, if the applicant cites a prior decision, the applicant must submit the particular provision or unpublished decisions relating to that treaty's manual or similar sources supporting the applicant's contention.

Representation or Counsel. Section 5 is used to notify the DRB if the applicant has a representative or attorney assisting with their discharge review case.

All applicants are entitled to be represented by a lawyer or other authorized representative at their election before the DRB. However, please note the cost of representation, if any, are paid by the applicant and not subject to reimbursement by the DRB, even if the application is successful.

Many legal aid and veteran service organizations will assist veterans free of charge with their applications and or legal representation. Although applicants are not entitled to representation by counsel, and applicant does not need to have a representative or attorney to apply to the DRB. Applicants who do not wish to use a lawyer or legal representative for their application may leave Section 5 blank.

Section 6. Section 6 is used to notify the DRB if someone other than the former service member is applying on their behalf. If the former service member is applying on their own, Section 6 can be left blank. If the service member is deceased or legally incompetent, their next of kin, surviving spouse or a legal representative can apply on their behalf, but the application will need to include evidence in support of the service member's death or incompetency and the relationship of the person applying to that of the former service member.

The individual applying on the former service member's behalf will need to fill out Section 6 and provide the needed documentation.

Common supporting documents, supported and provided to establish eligibility to apply on someone's behalf includes death certificates, court incompetency documents, marriage licenses, birth certificates, court appointment of conservatorship or notarized powers of attorney.

Signature. In Section 7, the applicant should indicate their preferred method of receiving correspondence from the DRB. To receive correspondence electronically, check the YES box. This is recommended because it may reduce the overall processing time for a case to receive correspondence by mail, check the NO box.

Section 7 also contains a certification that by signing and dating the form keyword signing, the applicant is attesting that all the information provided in the DD Form 293 application is true. An attorney may not sign Section 7 of the application unless the applicant is incompetent or deceased and, as discussed earlier, legal proof of such is attached.

How to Submit Your Application. For those applying to the Air Force DRB, the preferred method of submission is electronically through the Air Force Review Board Agency online application portal. This online application portal allows the DRB's intake staff to securely work with the digital application and build the case file more quickly and efficiency than with a hard copy application.

Alternatively, Air Force DRB applicants may submit a hard copy application through the U.S. mail, but processing times for this message will take longer than electronic submissions. For those who apply to the Army DRB, the preferred method of submission is electronically through the Army Review Board Agency online application portal at the enclosed website.

Alternatively, Army DRB applicants can submit their application through the U.S. mail.

For former Marines and sailors applying to the Naval Discharge Review Board, the preferred method of submission is through the U.S. mail.

Current mailing addresses for the DRBs can be found at the bottom of the DD Form 293.

What happens after submission of an application? For the Air Force DRB, within 10 business days of receipt, the DRB intake staff will review the application and supporting documents, validate the contact information, the email addresses and send the applicant confirmation of their docket and eApplication numbers.

For the Army DRB, within 4 to 12 weeks of receipt, the DRB will contact the applicant to confirm receipt.

For the Naval DRB, within eight weeks from the date the application package is submitted, the applicant should receive a letter from the DRB regarding submission. If the case is accepted, the applicant will receive a letter of acceptance with a docket number/case number. If the applicant's application is denied or rejected, the package will be returned with a letter of explanation.

What happens at a personal appearance hearing? DRBs are administrative boards, not courts of law. The formal rules of evidence do not apply during a DRB hearing. DRB hearings are non-adversarial proceedings and are not intended to intimidate or challenge an applicant for the purpose of impugning their motives or the integrity of their case.

In fact, applicants should feel comfortable throughout the hearing. And the applicants may provide additional documentary evidence to include personal statements or other written supporting statements or endorsements and may bring supporting witnesses or representatives during the hearing. Applicants may, at their option, testify under oath, make an unsworn statement or say nothing.

Prior to the hearing, the DRB will be briefed on the highlights of the case and the applicants can assume the panel will be familiar with the general chronology of their military service. Prior to the hearing's commencement, the applicant and their representative or witnesses will be admitted to the hearing by the recorder assigned to the case.

Preliminary or administrative questions will be asked to identify those present and to verify the record, and the applicant and witnesses will be sworn in. At this point, the recorder will invite the applicant and, if applicable, their attorney representative to present the case. During this time, the applicant should present all evidence to include their testimony, documents and support of the issues in their case.

After their case has been presented, the presiding officer will assume, unless otherwise informed, there are no objections to questioning of the applicant by the board member.

Some board members may not have questions. However, questions are important to resolve doubt and clarify confusing testimony or evidence. All questions are relevant, although it may not appear so. The DRBs are not interested in asking trick questions, but the applicant should anticipate some hard questions and, in some cases, personal questions which have a bearing on the case. The applicant or representative will be invited to provide closing statement.

How long does it take for a DRB case to be decided? Each DRB case is evaluated on its own individual merits, which means case processing time varies depending on a number of factors, including the complexity of the issues raised, if a personal hearing is requested and the availability of relevant service records.

DRB cases are heard in the order in which they are received, and due to the number of applications already on hand, it may be as long as 12 months before an applicant receives notification of the DRB's decision.

Is there a way to check the status of a case? For applications submitted to the Air Force DRB, applicants may check the status of an active application using the Air Force Review Board Agency portal at the website enclosed and their assigned eApplication ID number.

For applications submitted to the Army DRB, applicants may check the status of an active application by contacting the ADRB via email at the enclosed Army email stated.

For the applications submitted to the Navy DRB, applicants may check the status of an active application by contacting the NDRB via their email, ndrb@navy.mil.

Where can you get help with an application? The Department of Defense does not recommend any advocate or organization to assist with the DRB application process.

However, several veteran-focused organizations may provide free or reduced-cost assistance regarding applications to the DRB.

The Department of Veterans Affairs website has the search tool for accredited attorneys, claims agents and a veteran service organization representative at the enclosed website.

DRB resources. There are a number of online DRB-related resources that former service members can access to assist them with their DRB application process. These resources include both DOD websites that focus on a particular issue, such as Don't Ask, Don't Tell, and more general resources like the webpages of each of the Military Department Review Board Agency or account.

Questions and answers.

Female 1:

So, the first question we have is, what should I do if it's been more than 15 years since my date of discharge?

Robert Powers:

Thank you. That is an outstanding question. What you should do is you should apply to your service-specific BCMR or for Marines and sailor, BCNR. So, more specifically on that question and, in fact, unfortunately, we have a fair number of applicants that applied to the Discharge Review Board even though the date of their discharge was more than 15 years, and then that delays their case.

They should, again, if you look at the when you were discharged, calculate if it's more than 15 years, then if you are Air Force or Army, you would apply to the Board for Correction of Military Records; and if you were a sailor or Marine and it's been more than 15 years, you would apply to the Board of Correction of Naval Records. Thank you for the question.

Female 1:

What are some of the common mistakes you see made by applicants to the DRB?

Robert Powers:

Some of the common things that we see often that delay a case for processing would be the first thing is, they fill out their applications, but then they fail to sign it. So, if they could make sure that they signed their application.

The other issue that we see is one of the common mistakes we see is they will reference that they provided documents, but they'll fail to provide it with their original application or then they won't submit it at the time, wanting to submit it later, and then they never submit it. So, that's one of the other things.

Some of the other issues is that ... we talked about this earlier in the webinar about providing in that block 20 the reason and issues you want addressed and they'll only write one single sentence or maybe two sentences and they won't clarify their issues. And so, clarifying the issues and outlining what you are actually seeking for your discharge review is very important.

The other issue that I think would be important to raise is that many of these applicants, they'll have a change of address, phone number, email and then they won't update the DRBs with their new point of contact information. And so, then, they don't receive their decision. So, if one of the other things we see a common mistake is the failure to, once they move or change their information, to renotify the DRB. Thank you.

Female 1:

As the president of the Navy, is there any advice you would give applicants to better present their case to the DRB?

Robert Powers:

Yes. As the president of the Naval Discharge Review Board, what I would offer is I think one of the biggest things that in the end, the boards are trying to determine whether a discharge upgrade is warranted based on the principles of propriety, equity and clemency.

So, based on those three principles, we certainly will see a DD 214 that will have the characterization of service assigned with the narrative reason for separation assigned, and the board, as we talked about it, is going to presume that that the commanders acted fairly and in good faith.

What I would offer to applicants is that they would define the issue of why they believe they did not have a fair discharge characterization based on one of those principles, and then provide supporting documents explaining that case. And in block 20, we talked about state basically what their issue is, why they think it's unfair based on whether its propriety, equity or clemency, provide an explanation of why it happened and then clearly state the release that they are seeking.

Female 1:

How will I know when my case has been decided? Do I get some kind of letter back?

Robert Powers:

Once the case is decided, we will notify the service headquarters of whether a change was made or not and also send the decision to the applicant to the last known address on record.

Female 1:

Why can I not receive a records review if I had opted to first receive a personal appearance before a records review?

Robert Powers:

As we have talked about in the webinar, you are authorized in essence to review the document review and a personal appearance hearing. However, the personal appearance hearing is your most thorough hearing.

So, if you've actually been given a personal appearance hearing, that was your opportunity to actually talk with the board members, present your case, have them ask questions concerning your case, have the opportunity for legal representation or a representative if you wanted it and go over the specific evidence that you wanted to discuss. So, it's a very thorough opportunity to be heard. If you've had that personal appearance hearing, then you have exhausted your reviews before the DRB. However, you still have the opportunity to then go to the Board of Correction Military Records or BCNR.

Female:

If an Army Reserve component soldier receives an uncharacterized discharge and only received an order and not a DD Form 214, should they submit an application through the Army DRB or some other process?

Robert Powers:

I am going to recuse myself on that question, a great question. I would defer to the Army Discharge Review Board to answer that.

Female 1:

Those are all of the questions that we have today. I want to thank Mr. Powers and his team for sharing their invaluable experience and expertise. I would also like to thank our attendees for participating in today's webinar. If you find yourself having any questions after the webinar is over, please email moswebinars@militaryonesource.com, and we'll

send them over to the presenter for an answer. This concludes today's webinar on applying to the Military Departments' Discharge Review Boards. Thank you.