



Department of Defense

INSTRUCTION

NUMBER 1332.28
April 4, 2004

USD(P&R)

SUBJECT: Discharge Review Board (DRB) Procedures and Standards

References: (a) DoD Directive 1332.41, "Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)," March 8, 2004
(b) Section 1553 of title 10, United States Code
(c) through (g), see enclosure 1

1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Issues uniform procedures and standards for the review of discharges under the authority of reference (a), reference (b), and reference (c).

1.2. Provides for public inspection, searching, and downloading of DRB decisional documents through the DoD Boards' Electronic Reading Room.

2. APPLICABILITY

The provisions of this Instruction apply to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereinafter referred to as the "DoD Components").

3. DEFINITIONS

Terms used herein are defined in enclosure 2.

4. RESPONSIBILITIES

4.1. The Deputy Under Secretary of Defense (Program Integration) (DUSD(PI)), under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness shall:

4.1.1. Resolve all issues concerning DRBs that may not be resolved among the Military Departments.

4.1.2. Ensure uniformity among the Military Departments in the rights afforded applicants in discharge reviews.

4.1.3. Modify or supplement the enclosures to this Instruction.

4.2. The Secretaries of the Military Departments have the authority for final decision and the responsibility for the operation of their respective discharge review programs under reference (b).

4.3. The Secretary of the Army, as the designated DoD lead and administrative focal point for DRB matters (under reference (b)), shall:

4.3.1. Effect necessary coordination with other governmental agencies regarding continuing applicability of this Instruction and resolve administrative procedures.

4.3.2. Review suggested modifications to this Instruction, including implementing documents; monitor the implementing documents of the Military Departments; resolve differences, when practicable; recommend specific changes; provide supporting rationale to the DUSD(PI) for decision; and include appropriate documentation through the Office of the DUSD(PI) and the OSD Federal Register liaison officer to effect publication in the Federal Register.

4.3.3. Maintain the DD Form 293, "Application for the Review of Discharge from the Armed Forces of the United States," and republish, as necessary, with appropriate coordination of the other Military Departments and the Office of Management and Budget.

4.3.4. Respond to all inquiries from private individuals, organizations, or public officials with regard to DRB matters. When the specific Military Service may be identified, refer such correspondence to the appropriate DRB for response or designate an appropriate activity to perform this task.

4.3.5. Provide overall guidance and supervision to the DoD Boards' Electronic Reading Room to ensure decisional documents and application forms are available for applicants.

5. PROCEDURES

5.1. Discharge review procedures are prescribed in enclosure 3.

5.2. Discharge review standards are prescribed in enclosure 4 and constitute the basic guidelines for determining the granting or denying of relief in a discharge review.

5.3. Complaint procedures about decisional documents are prescribed in enclosure 5.

6. EFFECTIVE DATE

This Instruction is effective immediately.



David S. C. Chu
Under Secretary of Defense
(Personnel and Readiness)

Enclosures - 5

- E1. References, continued
- E2. Definitions
- E3. Discharge Review Procedures
- E4. Discharge Review Standards
- E5. Complaints Concerning Decisional Documents

E1. ENCLOSURE 1

REFERENCES, continued

- (c) Section 5303 of title 38, United States Code
- (d) DoD Directive 1332.14, "Enlisted Administrative Separations," December 21, 1993
- (e) DoD Directive 5400.7, "DoD Freedom of Information Act (FOIA) Program,"
September 29, 1997
- (f) DoD Directive 5400.11, "DoD Privacy Program," December 13, 1999
- (g) Chapter 47 of title 10, United States Code, "Uniform Code of Military Justice"

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Applicant. A former member of the Armed Forces previously discharged in accordance with Military Service regulations or by sentence of a court-martial (other than a general court-martial) whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. The term "applicant" used in enclosures 3 through 5, includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the DRB an appropriate power of attorney or other written consent of the applicant.

E2.1.2. Complainant. A former member of the Armed Forces (or the former member's counsel) submitting a complaint under enclosure 5 with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) submitting a complaint under enclosure 5 stating that correction of the decisional document shall assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

E2.1.3. Counsel or Representative. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: a lawyer admitted to the bar of a Federal court or of the highest court of a State; an accredited representative designated by an organization recognized by the Secretary of Veterans Affairs; a representative from a State agency concerned with veterans affairs; and representatives of a private organization or local government agency.

E2.1.4. Discharge. The complete severance from all military status gained by the enlistment or induction concerned, including the assignment of a reason for such discharge and characterization of service (DoD Directive 1332.14 (reference (d))).

E2.1.5. Discharge Review. The evaluation of the reason for separation, the procedures followed in accomplishing separation, and the characterization of service. This includes determinations made under the provisions of 38 U.S.C. 5303(e)(2) (reference (c)).

E2.1.6. Discharge Review Board (DRB). An administrative board constituted by the Secretary of the Military Department concerned and vested with discretionary authority to review discharges under the provisions of 10 U.S.C. 1553 (reference (b)). It

may be configured as one element or two or more elements as designated by the Secretary concerned.

E2.1.7. DoD Boards' Electronic Reading Room: A public website, located at <http://boards.law.af.mil>, where potential complainants are able to review prior decisional documents issued by their respective Boards and obtain application forms to process a complaint.

E2.1.8. DRB Panel. An element of a DRB, consisting of five members, authorized by the Secretary concerned to review discharges.

E2.1.9. DRB Traveling or Regional Panel. A DRB panel conducting discharge reviews in a location outside the National Capital Region (NCR).

E2.1.10. Hearing. A review involving an appearance before the DRB by the applicant or on the applicant's behalf by a counsel or representative.

E2.1.11. Hearing Examination. The process for a designated panel member or official of a DRB to prepare a presentation for consideration by a DRB in accordance with regulations prescribed by the Secretary concerned.

E2.1.12. National Capital Region (NCR). The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

E2.1.13. President, DRB. A person designated by the Secretary concerned and responsible for the supervision of the discharge review function and other duties as assigned.

E3. ENCLOSURE 3

DISCHARGE REVIEW PROCEDURES

E3.1. APPLICATION FOR REVIEW

E3.1.1. General. Applications shall be submitted to the appropriate DRB on DD Form 293, "Application for the Review of Discharge from the Armed Forces of the United States," or computer-generated equivalent, with such other statements, affidavits, or documentation as desired. The DD Form 293 is available for downloading on the DoD Boards' Electronic Reading Room website at <http://boards.law.af.mil>, at most DoD installations, and at regional offices of the Veterans Administration, or by writing to:

Army Review Boards Agency, Attention: SFBA (Reading Room)
Room 211
1941 Jefferson Davis Highway, 2nd Floor
Arlington, VA 22202-4508

E3.1.2. Timing. A motion or request for review must be made within 15 years after the date of discharge.

E3.1.3. Applicant's Options. An applicant may request a change in the character of or reason for discharge (or both).

E3.1.3.1. Reason for Discharge. An applicant may request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the DRB shall presume that the request for review does not involve a request for change in the reason for discharge. The DRB shall change the reason for discharge if such a change is warranted.

E3.1.3.2. Character of Discharge. An applicant may request a specific change in character of discharge. A request for review from an applicant without an Honorable Discharge shall be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

E3.1.4. Request for Consideration of Specific Issues. An applicant may request the DRB to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both.

E3.1.5. Use of DD Form 293. DD Form 293 provides applicants with a standard format for submitting issues to the DRB, and its use:

E3.1.5.1. Provides a means for an applicant to set forth clearly and specifically those matters that, in the opinion of the applicant, provide a basis for changing the discharge;

E3.1.5.2. Assists the DRB in focusing on those matters considered to be important by an applicant;

E3.1.5.3. Assists the DRB in distinguishing between a matter submitted by an applicant in the expectation that it shall be treated as a decisional issue under section E3.5., below, and those matters submitted simply as background or supporting materials;

E3.1.5.4. Provides the applicant with greater rights in the event that the applicant later submits a complaint under section E5.4., of enclosure 5, concerning the decisional document; and

E3.1.5.5. Reduces the potential for disagreement as to the content of an applicant's issue.

E3.1.6. Relationship of Issues to the Standards for Discharge Review. The DRB reviews discharges on the basis of issues of propriety and equity. The standards used by the DRB are set forth in enclosure 4. The applicant shall review those standards before submitting any issue that the applicant believes a change in discharge should be based.

E3.1.6.1. Issues Concerning the Equity of the Discharge. An issue of equity is a matter that involves a determination whether a discharge should be changed under the equity standards of enclosure 4. This includes any issue, submitted by the applicant, that is addressed to the discretionary authority of the DRB.

E3.1.6.2. Issues Concerning the Propriety of a Discharge. An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of enclosure 4. This includes an applicant's issue in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires determining if the action by military authorities was arbitrary, capricious, or an abuse of discretion). The context of the regulation or a description of the procedures allegedly violated normally must be set forth in order to inform the DRB adequately of the basis for the applicant's position.

E3.1.6.3. The Applicant's Identification of an Issue. The applicant is encouraged, but not required, to identify an issue as pertaining to the propriety or the equity of the discharge. This will assist the DRB in assessing the relationship of the issue to propriety or equity under subparagraph E3.5.1.3., below.

E3.1.7. Citation of Matter From Decisions. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring to the

DRB's attention a prior decision as background or illustrative material, the citation shall be placed in a brief or other supporting document. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements apply:

E3.1.7.1. The issue must be set forth or expressly incorporated in DD Form 293.

E3.1.7.2. If an applicant's issue cites a prior decision (of the DRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts contained in the prior decision and explain the relevance of cited matter to the applicant's case.

E3.1.7.3. Applicants must provide the DRB with copies of unpublished decisions or of the relevant portion of the treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials shall be returned.

E3.1.7.4. If the applicant fails to comply with the above requirements, the decisional document shall note the defect, and respond to the issue without regard to the citation.

E3.1.8. Issues on DD Form 293. The DRB shall consider all items submitted as issues by an applicant on DD Form 293 or incorporated therein.

E3.1.8.1. Amendment of Issues. Any amendment or withdrawal of an issue shall be submitted by the applicant in writing. The applicant may amend or withdraw any issue before the DRB closes the review process for deliberation.

E3.1.8.2. Nothing in this provision prevents the DRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information shall state that the applicant's decision to take or decline action shall not be used against the applicant in the consideration of the case.

E3.1.8.3. Additional Issues Identified During a Hearing. The following additional procedure shall be used during a hearing to promote the DRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the DRB may inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the DRB from developing its own decisional issues.

E3.2. CONDUCT OF REVIEWS

E3.2.1. Members. As designated by the Secretary concerned, the DRB and its panels, if any, shall consist of five members. One member of the DRB shall be designated as the DRB President and may serve as a presiding officer. Other members may be designated to serve as presiding officers for DRB panels under regulations prescribed by the Secretary concerned.

E3.2.2. Locations. Reviews by a DRB shall be conducted in the NCR and such other locations as designated by the Secretary concerned.

E3.2.3. Types of Review. An applicant, upon request, is entitled to a records review and a hearing. If the applicant elects and receives a hearing first, the applicant is no longer eligible for a records review.

E3.2.3.1. Records Review. A review of the application, available Service records, and additional documents (if any) submitted by the applicant.

E3.2.3.2. Hearing. A review involving an appearance before the DRB by the applicant and the applicant's counsel or representative, if so designated.

E3.2.4. Applicant's Expenses. Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, counsel or representative shall not be paid by the Department of Defense.

E3.2.5. Withdrawal of Application. An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review.

E3.2.6. Failure to Appear at a Hearing or Respond to a Scheduling Notice

E3.2.6.1. Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be available to an applicant requesting a hearing when:

E3.2.6.1.1. The applicant receives a letter containing the time and place of a proposed hearing and fails to make a timely response; or

E3.2.6.1.2. The applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

E3.2.6.2. In such cases, the applicant shall be deemed to have waived the right to a hearing, and the DRB shall complete its review of the discharge. Any further request

for a hearing shall not be granted unless the applicant can demonstrate the failure to appear or respond was due to circumstances beyond the applicant's control.

E3.2.7. Continuance and Postponement

E3.2.7.1. A continuance of a discharge review hearing may be authorized by the President of the DRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

E3.2.7.2. Postponement of a scheduled review normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner, or for the convenience of the Government.

E3.2.8. Reconsideration. A discharge review shall not be subject to reconsideration except:

E3.2.8.1. When the only previous consideration of the case was on the motion of the DRB;

E3.2.8.2. When the original discharge review did not involve a hearing and a hearing is now desired, and the provisions of paragraph E3.2.6. of this enclosure do not apply;

E3.2.8.3. When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

E3.2.8.4. When the DRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; or

E3.2.8.5. On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision on whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant during the original review shall be based on a comparison of such evidence with the evidence considered in the previous discharge review. The request for reconsideration shall be granted if this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge.

E3.2.9. Availability of Records and Documents

E3.2.9.1. Before applying for discharge review, potential applicants or their designated representatives should obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the appropriate address indicated on the form. Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the DRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act (reference (e)) or Privacy Act (reference (f)) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, and copies are returned to the headquarters of the DRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293 to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel may examine their military personnel records at the site of their scheduled review before the hearing. DRBs shall notify applicants when the records are available for examination in their standard scheduling information.

E3.2.9.2. If the DRB is not authorized to provide copies of documents that are under the control of other Government Agencies, then the applicant must apply for such information with the appropriate authority. The DRB shall advise the applicant of the mailing address of the Government Agency to which the request must be submitted.

E3.2.9.3. If the official records relevant to the discharge review are not available at the Agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not fewer than 30 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the DRB.

E3.2.9.4. The DRB may obtain additional evidence relevant to the discharge under consideration beyond the contents of the official military records or evidence submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents requiring additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

E3.2.9.4.1. In any case heard on request of an applicant, the DRB shall provide the applicant, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The DRB shall notify the applicant of the right to examine such documents or to be provided with copies of the documents upon request; of

the date by which such requests must be received; and of the opportunity to respond within a reasonable period of time to be set by the DRB.

E3.2.9.4.2. When an applicant requires access to a classified document, the classifying authority, on the request of the DRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which would be detrimental to the National Security interests of the United States. If a summary is deemed impracticable by the classifying authority, then the information from the classified source shall not be considered by the DRB in its review of the case.

E3.2.9.5. Regulations of a Military Service may be obtained at many installations under the jurisdiction of the Military Service concerned or by writing to the following address:

National Technical Information Service
5285 Port Royal Road (Reading Room)
Springfield, VA 22161

E3.2.10. Recorder/Secretary or Assistant. Such a person shall be designated to assist in the functioning of each DRB in accordance with the procedures prescribed by the Secretary of the Military Department concerned.

E3.2.11. Hearings. The individual's right to privacy shall be recognized at all hearings (including hearing examinations). Accordingly, presence at hearings of individuals shall be limited to persons authorized by the Secretary concerned or expressly requested by the applicant, subject to reasonable limitations based on available space. If, in the opinion of the presiding officer, the presence of other individuals could be prejudicial to the interests of the applicant or the Government, hearings may be closed to all but required participants.

E3.2.12. Evidence and Testimony

E3.2.12.1. The DRB may consider any evidence obtained in accordance with this Instruction.

E3.2.12.2. Formal rules of evidence shall not be applied in DRB proceedings. The presiding officer shall rule on matters of procedure and shall ensure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses.

E3.2.12.3. Applicants undergoing hearings shall be permitted to make sworn or unsworn statements or to introduce witnesses, documents, or other information on their behalf, at no expense to the Department of Defense.

E3.2.12.4. Applicants may also make oral or written arguments personally or through counsel or representatives.

E3.2.12.5. Applicants and witnesses presenting sworn statements may be questioned by the DRB. All testimony shall be taken under oath or affirmation unless the applicant specifically requests to make an unsworn statement. If an applicant or witness makes an unsworn statement, the DRB may not ask questions unless such questions are agreed upon.

E3.2.12.6. There is a presumption of regularity in the conduct of governmental affairs. This presumption shall be applied in any review unless there is substantial credible evidence to rebut the presumption.

E3.3. DECISION PROCESS

E3.3.1. The DRB or the DRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standards set forth in enclosure 4.

E3.3.2. The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the DRB panel, as appropriate, and shall maintain an atmosphere of dignity and decorum at all times.

E3.3.3. Each DRB member shall act under oath or affirmation requiring careful, objective consideration of the application. DRB members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all information presented by the applicant. In addition, the DRB shall consider available military service and health records, other records that may be in the files of the Military Service concerned and relevant to the issues before the DRB, and any other evidence obtained in accordance with this Instruction.

E3.3.4. The DRB shall identify and address issues after a review of the following: available official records, documentary evidence submitted by or on behalf of an applicant, the hearing examiner's presentation, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence obtained and presented in accordance with this Instruction and the implementing instructions of the DRB.

E3.3.5. If an applicant requests a hearing and does not respond to a notification letter or does not appear for a scheduled hearing, the DRB may complete the review on the basis of material previously submitted.

E3.3.6. Application of Standards

E3.3.6.1. When a DRB determines an applicant's discharge was improper (enclosure 4, section E4.2.), the DRB shall determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the Service regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable (enclosure 4, section E4.3.), the provisions as to characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

E3.3.6.2. When the DRB determines that an applicant's discharge was inequitable (see enclosure 4, section E4.3.), any change shall be based on the evaluation of the applicant's overall record of service and relevant regulations of the applicant's Military Service.

E3.3.7. Voting shall be conducted in closed session, a majority of the five members' votes constituting the DRB decision. Voting procedures shall be prescribed by the Secretary of the Military Department concerned.

E3.3.8. Details of closed session deliberations of a DRB are privileged information and shall not be divulged.

E3.3.9. There is no requirement for a statement of minority views in the event of a split vote. The minority, however, may submit a brief statement of its views under procedures established by the Secretary concerned.

E3.3.10. DRBs may request advisory opinions from staff officers of their Military Service. These opinions are advisory in nature and are not binding on the DRB in its decision-making process.

E3.3.11. The preliminary determinations required by reference (c) shall be made upon majority vote of the DRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in enclosure 4 of this Instruction.

E3.3.12. The DRB shall:

E3.3.12.1. Address items submitted as issues by the applicant under section E3.4., below;

E3.3.12.2. Address decisional issues under section E3.5., below; and

E3.3.12.3. Prepare a decisional document in accordance with section E3.8., below.

E3.4. RESPONSE TO ITEMS SUBMITTED AS ISSUES BY THE APPLICANT

E3.4.1. General Guidance

E3.4.1.1. If an issue submitted by an applicant contains two or more clearly separate issues, the DRB should respond separately to each issue under the guidance of this paragraph.

E3.4.1.2. If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues leading to a single conclusion purportedly warranting a change in the applicant's discharge), normally, there should be a separate response to each issue.

E3.4.1.3. Nothing in this paragraph precludes the DRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

E3.4.2. Decisional Issues. An item submitted as an issue by an applicant in accordance with this Instruction shall be addressed as a decisional issue under section E3.5., below, in the following circumstances:

E3.4.2.1. When the DRB decides a change in discharge shall be granted, and the DRB bases its decision in whole or in part on the applicant's issue; or

E3.4.2.2. When the DRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the DRB's disagreement on the merits with an issue submitted by the applicant.

E3.4.3. Response to Items Not Addressed as Decisional Issues

E3.4.3.1. If the applicant receives the full change in discharge requested or a more favorable change, that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

E3.4.3.2. If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the DRB shall address the items submitted by the applicant under section E3.5., below (decisional issues) unless one of the following responses is applicable:

E3.4.3.2.1. Duplicate Issues. The DRB may state that a full response to the issue submitted by the applicant is under a specified decisional issue. This response may be used only if one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

E3.4.3.2.2. Citations Without Principles and Facts. The DRB may state that the applicant's issue, consisting of a citation to a decision without setting forth any

principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of paragraph E3.1.7., above.

E3.4.3.2.3. Unclear Issues. The DRB may not be able to respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under paragraph E3.3.4., above.

E3.4.3.2.4. Nonspecific Issues. The DRB may not be able to respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered under paragraph E3.3.4., above, cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may only be used if the submission is expressed in such general terms that no other response is applicable. For example, if the DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally shall set forth the nature of the disagreement under the guidance in section E3.5., below, with respect to decisional issues, or it shall reject the applicant's position on the basis of subparagraphs E3.4.3.2.1. or E3.4.3.2.2., above. If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

E3.5. DECISIONAL ISSUES

E3.5.1. General. Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. To enhance clarity, the DRB shall not address matters other than issues relied upon in the decision or raised by the applicant.

E3.5.1.1. Partial Change. When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the granted and denied issues decided by the DRB.

E3.5.1.2. Relationship of Issue to Character of or Reason for Discharge. Generally, the decisional document shall specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

E3.5.1.3. Relationship of an Issue to Propriety or Equity

E3.5.1.3.1. If an applicant identifies an issue as pertaining to both propriety and equity, the DRB shall consider it under both standards.

E3.5.1.3.2. If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the DRB shall consider the issue solely as a matter of propriety. Except as provided in subparagraph E3.5.1.3.4., below, the DRB is not required to consider such an issue under the equity standards.

E3.5.1.3.3. If the applicant's issue contends that the DRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under paragraphs E3.5.2. or E3.5.3., below.

E3.5.1.3.4. If the applicant's issue sets forth principles of equity contained in a prior DRB decision, describes the relationship to the applicant's case, and contends that the DRB is required as a matter of law to follow the prior case, the decisional document shall note that the DRB is not bound by its discretionary decisions in prior cases under the standards in enclosure 4. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards and addressed under paragraphs E3.5.5. or E3.5.6., below.

E3.5.1.3.5. If the applicant's issue cannot be identified as a matter of propriety or equity, the DRB shall address it as an issue of equity.

E3.5.2. Change of Discharge: Issues of Propriety. If a change in the discharge is warranted under the propriety standards in enclosure 4, the decisional document shall state that conclusion and list the errors or expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed under the guidance in paragraphs E3.5.3. or E3.5.6., below.

E3.5.3. Denial of the Full Change Requested: Issues of Propriety

E3.5.3.1. If the decision rejects the applicant's position on an issue of propriety, or if it is decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

E3.5.3.2. The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

E3.5.3.2.1. If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the DRB

shall cite the pertinent source of law and the facts in the record that are relevant to the particular circumstances in the case.

E3.5.3.2.2. If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Military Service regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

E3.5.3.2.2.1. For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

E3.5.3.2.2.2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence and explain the reasons the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain the reasons the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

E3.5.3.2.3. If the DRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in subparagraphs E3.5.3.2.1. and E3.5.3.2.2., above:

E3.5.3.2.3.1. The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph E3.1.7., above).

E3.5.3.2.3.2. The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with subparagraph E3.1.7., above) are not relevant to the applicant's case.

E3.5.3.2.3.3. The DRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the DRB grants a change in discharge, and by providing an explanation for this position. When the applicant

indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation shall address all such specified issues.

E3.5.3.2.3.4. The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of the DRB's agreement with the applicant's position.

E3.5.3.2.3.5. If the applicant takes the position that the discharge shall be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it shall presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the DRB shall provide the applicant with a brief description of the procedures for requesting correction of the record. If the DRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue under paragraphs E3.5.5. or E3.5.6., below.

E3.5.3.2.3.6. When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the DRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

E3.5.4. Denial of the Full Change in Discharge Requested When Propriety Is Not at Issue. If the applicant has not submitted an issue of propriety and the DRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The DRB is not required to provide any further discussion as to the propriety of the discharge.

E3.5.5. Change of Discharge: Issues of Equity. If the DRB concludes that a change in the discharge is warranted under the equity standards in enclosure 4, the decisional document shall list each issue of equity upon which this conclusion is based. The DRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed under the guidance in paragraph E3.5.6., below.

E3.5.6. Denial of the Full Change in Discharge Requested: Issues of Equity

E3.5.6.1. If the DRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

E3.5.6.2. The DRB shall list reasons for its conclusion on each issue of equity under the following guidance:

E3.5.6.2.1. If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

E3.5.6.2.2. If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Service regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

E3.5.6.2.2.1. For each such finding, the decisional document shall list the specific source of the information. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

E3.5.6.2.2.2. If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall set forth the basis for relying on the presumption of regularity and explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

E3.5.6.2.3. If the DRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in subparagraphs E3.5.6.2.1. and E3.5.6.2.2., above:

E3.5.6.2.3.1. The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph E3.1.7., above).

E3.5.6.2.3.2. The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

E3.5.6.2.3.3. The DRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the DRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation shall address all such specified issues.

E3.5.6.2.3.4. The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

E3.5.6.2.3.5. If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it shall presume the validity of the record in the absence of such corrective action. The DRB shall consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

E3.5.6.2.4. The DRB may conclude that aggravating factors outweigh mitigating factors by setting forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, the number of offenses, lack of the mitigating circumstances, or similar factors. The DRB is not required to explain why it relied on any such factors, unless the applicability or weight of such a factor is expressly raised as an issue by the applicant.

E3.5.6.2.5. If the applicant has not submitted any issues and the DRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

E3.6. THE RECOMMENDATION OF THE DRB PRESIDENT

E3.6.1. General. The President of the DRB may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary concerned. The DRB President is not required to submit a recommendation for cases forwarded to the SRA. If the DRB President makes a recommendation based on the

character of or reason for discharge, the recommendation shall be prepared under the guidance in paragraph E3.6.2., below.

E3.6.2. Format for Recommendation. If a recommendation is provided, it shall contain the DRB President's views on whether there should be a change in the character of or reason for discharge (or both). If the DRB President recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the DRB President's position on decisional issues and issues submitted by the applicant under the following guidance:

E3.6.2.1. Adoption of the DRB's Decisional Document. The recommendation may state that the DRB President has adopted the decisional document prepared by the majority. The DRB President shall ensure that the decisional document meets the requirements of this enclosure.

E3.6.2.2. Adoption of the Specific Statements From the Majority. If the DRB President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the DRB President modifies a statement submitted by the majority, the recommendation shall set forth the modification.

E3.6.2.3. Response to Issues Not Included in Matter Adopted From the Majority. The recommendation shall set forth the following if not adopted in whole or in part from the majority:

E3.6.2.3.1. The issues on which the DRB President's recommendation is based. Each such decisional issue shall be addressed by the DRB President under section E3.5., above;

E3.6.2.3.2. The DRB President's response to items submitted as issues by the applicant under section E3.4., above;

E3.6.2.3.3. Reasons for rejecting the conclusions of the majority with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the DRB President's recommendation. Such issues shall be addressed under the principles in section E3.5., above.

E3.7. SECRETARIAL REVIEWING AUTHORITY (SRA)

E3.7.1. Review by the SRA. The SRA is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

E3.7.1.1. The SRA may review the following types of cases before issuance of the final notification of a decision:

E3.7.1.1.1. Any specific case in which the SRA has an interest.

E3.7.1.1.2. Any specific case the DRB President believes is of significant interest to the SRA.

E3.7.1.2. Cases reviewed by the SRA shall be considered under the standards set forth in enclosure 4.

E3.7.2. Processing the Decisional Document

E3.7.2.1. The decisional document shall be transmitted by the DRB President under section E3.5., above.

E3.7.2.2. The following guidance applies to cases forwarded to the SRA, except for cases reviewed on the DRB's own motion without the participation of the applicant or the applicant's counsel:

E3.7.2.2.1. The applicant shall be provided with a copy of the proposed decisional document, including the DRB President's recommendation to the SRA, if any. Classified information shall be summarized.

E3.7.2.2.2. The applicant shall be provided with a reasonable period of time, but not less than 25 calendar days, to submit a rebuttal to the SRA. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the DRB or DRB President on decisional issues and other clear and specific issues submitted by the applicant. The rebuttal shall be based solely on matters in the record before when the DRB closed the case for deliberation or in the DRB President's recommendation.

E3.7.3. Review of the Decisional Document. If corrections in the decisional document are required, the decisional document shall be returned to the DRB for corrective action. The corrected decisional document shall be sent to the applicant, but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the discussion by the DRB (or DRB President) of the issues raised by the majority or the applicant.

E3.7.4. The Addendum of the SRA. The SRA's decision shall be in writing and be appended as an addendum to the decisional document under the guidance in this paragraph.

E3.7.4.1. The SRA's Decision. The addendum shall set forth the SRA's decision as to whether there shall be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or the DRB President, the decisional document shall contain a reference to the matter adopted.

E3.7.4.2. Discussion of Issues. In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant, and issues raised by the DRB and the DRB President in accordance with the following guidance:

E3.7.4.2.1. Adoption of the DRB President's Recommendation. The addendum may state that the SRA has adopted the DRB President's recommendation.

E3.7.4.2.2. Adoption of the DRB's Proposed Decisional Document. The addendum may state that the SRA has adopted the proposed decisional document prepared by the DRB.

E3.7.4.2.3. Adoption of Specific Statements From the Majority or the DRB President. If the SRA adopts the views of the DRB or the DRB President only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the DRB or the DRB President, the addendum shall set forth the modification.

E3.7.4.2.4. Response to Issues Not Included in Matter Adopted From the DRB or the DRB President. The addendum shall set forth the following if not adopted in whole or in part from the DRB or the DRB President:

E3.7.4.2.4.1. A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the DRB or the DRB President with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in a change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in section E3.5., above.

E3.7.4.2.4.2. The SRA's response to items submitted as issues by the applicant under section E3.4., above.

E3.7.4.3. Response to the Rebuttal

E3.7.4.3.1. If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed under section E3.5., and no further response to the rebuttal is required.

E3.7.4.3.2. If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

E3.7.4.3.2.1. If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in section E3.5.

E3.7.4.3.2.2. If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

E3.7.4.3.2.3. If the matter submitted by the applicant does not meet the requirements for rebuttal material in subparagraph E3.7.2.2.2., above, that fact shall be noted.

E3.8. THE DECISIONAL DOCUMENT

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

E3.8.1. The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other Government authorities or the applicant, such as, but not limited to:

E3.8.1.1. Information concerning the discharge at issue in the review, including:

E3.8.1.1.1. Date (YYYYMMDD) of discharge.

E3.8.1.1.2. Character of discharge.

E3.8.1.1.3. Reason for discharge.

E3.8.1.1.4. The specific regulatory authority under which the discharge was issued.

E3.8.1.2. Date (YYYYMMDD) of enlistment.

E3.8.1.3. Period of enlistment.

E3.8.1.4. Age at enlistment.

E3.8.1.5. Length of service.

E3.8.1.6. Periods of unauthorized absence.

E3.8.1.7. Conduct and efficiency ratings (numerical or narrative).

E3.8.1.8. Highest rank achieved.

E3.8.1.9. Awards and decorations.

E3.8.1.10. Educational level.

E3.8.1.11. Aptitude test scores.

E3.8.1.12. Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (reference (g)) (including nature and date (YYYYMMDD) of offense or punishment).

E3.8.1.13. Convictions by court-martial.

E3.8.1.14. Prior military service and type of discharge received.

E3.8.2. A list of the type of documents submitted by or on behalf of the applicant (including a written brief, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

E3.8.3. A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

E3.8.4. A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

E3.8.5. The DRB's conclusions on the following:

E3.8.5.1. Whether the character of or reason for discharge should be changed.

E3.8.5.2. The specific changes to be made, if any.

E3.8.6. A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and any other issues submitted by the applicant. Issues withdrawn or modified with the consent of the applicant need not be listed.

E3.8.7. The response to the items submitted as issues by the applicant under the guidance in section E3.4., above.

E3.8.8. A list of decisional issues and a discussion of such issues under the guidance in section E3.5., above.

E3.8.9. Minority views, if any, when authorized under rules of the Military Services concerned.

E3.8.10. The recommendation of the DRB President when required by section E3.6., above.

E3.8.11. The addendum of the SRA when required by section E3.7., above.

E3.8.12. Advisory opinions (including those containing factual information), when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the application shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

E3.8.13. A record of the voting, including:

E3.8.13.1. The number of votes for the DRB's decision and the number of votes in the minority, if any.

E3.8.13.2. The DRB members' names (last name, first initial and middle initial) and votes. The copy provided to the applicant may substitute a statement that the names and votes shall be available at the applicant's request.

E3.8.14. An authentication of the document by an appropriate official.

E3.9. ISSUANCE OF DECISIONS FOLLOWING DISCHARGE REVIEW

The applicant shall be provided with a copy of the decisional document and of any further action in review. The applicant shall be notified of the availability of the complaint process under enclosure 5. Final notification of decisions shall be issued to the applicant and to the Military Service concerned.

E3.9.1. Notification to applicants shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, and a copy of the decisional document.

E3.9.2. The Military Service concerned shall be notified for appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

E3.9.3. Actions on review by superior authority shall be provided to the applicant in the same manner as the notification of the review decision.

E3.10. RECORD OF DRB PROCEEDINGS

E3.10.1. When the DRB proceedings have been concluded, a record shall be prepared. Records may include written records, electromagnetic records, videotape recordings, or a combination thereof.

E3.10.2. At a minimum, the record shall include the following:

E3.10.2.1. The application for review.

E3.10.2.2. A record of the testimony in verbatim, summarized, or recorded form at the option of the DRB concerned.

E3.10.2.3. Documentary evidence or copies thereof, considered by the DRB other than the Military Service record.

E3.10.2.4. Briefs and arguments submitted by or on behalf of the applicant.

E3.10.2.5. Advisory opinions considered by the DRB, if any.

E3.10.2.6. The findings, conclusions, and reasons developed by the DRB.

E3.10.2.7. Notification of the DRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document.

E3.10.2.8. Minority reports, if any.

E3.10.2.9. A copy of the decisional document.

E3.11. FINAL DISPOSITION OF THE RECORD OF PROCEEDINGS

The original record of proceedings and all appendices shall in all cases be incorporated in the Military Service record of the applicant, which shall be returned to the custody of the appropriate records holding facility. If a portion of the original record of the proceedings cannot be stored with the Military Service record, the Military Service record shall contain a notation as to the place where the record is stored. Other copies shall be filed and disposed of in accordance with appropriate Military Service regulations.

E3.12. AVAILABILITY OF DISCHARGE REVIEW BOARD DOCUMENTS

E3.12.1. A copy of the decisional document prepared in accordance with section E3.4. of this enclosure shall be made available promptly for public access after a notice of final decision is sent to the applicant.

E3.12.2. To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons shall be deleted from documents made available for public access.

E3.12.2.1. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and be available to the public.

E3.12.2.2. Each DRB shall ensure that there is a means for relating a decisional document number to the name of the applicant, to permit retrieval of the applicant's records when processing a complaint under enclosure 5.

E3.12.3. All classified or For Official Use Only (FOUO) material contained in or appended to any documents required by this Instruction shall be deleted prior to publication. A written statement of the basis for the deletions shall be made available to the applicant and the public. The statement need not detail the nature of the withheld material.

E3.12.4. DRB documents shall be made available for public inspection and downloading via the DoD Boards' Electronic Reading Room located at <http://boards.law.af.mil>.

E3.12.4.1. The documents shall be retrievable in a usable and concise form so as to enable the public, and those representing applicants before the DRBs, to isolate from all decisions those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the DRB or the Secretary concerned granted or denied relief.

E3.12.4.2. DRB decisional documents shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason, and authority for the discharge. It shall also include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

E3.13. PRIVACY ACT INFORMATION

Information protected under reference (f) is involved in the discharge review function. The provisions of reference (e) shall be complied with throughout the processing of a request for review of discharge.

E4. ENCLOSURE 4

DISCHARGE REVIEW STANDARDS

E4.1. OBJECTIVE OF REVIEW

The objective of a discharge review is to examine the propriety and equity of the applicant's discharge. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. In each case, the DRB or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than issued at the time of separation. This does not preclude correction of clerical errors.

E4.1.1. The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis.

E4.1.2. The DRB is not bound by prior decisions in its review of subsequent cases because no two cases present the same issues of equity.

E4.2. PROPRIETY

E4.2.1. A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

E4.2.1.1. An error of fact, law, procedure, or discretion exists associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

E4.2.1.2. A change in policy by the Military Service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

E4.2.2. When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another board, agency, or court), the DRB shall recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

E4.3. EQUITY

A discharge shall be deemed to be equitable unless:

E4.3.1. In a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from those currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

E4.3.1.1. Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

E4.3.1.2. There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

E4.3.2. At the time of issuance, the discharge was inconsistent with standards of discipline in the Military Service of which the applicant was a member.

E4.3.3. In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

E4.3.3.1. Quality of service, as evidenced by factors such as:

E4.3.3.1.1. Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative);

E4.3.3.1.2. Awards and decorations;

E4.3.3.1.3. Letters of commendation or reprimand;

E4.3.3.1.4. Combat service;

E4.3.3.1.5. Wounds received in action;

E4.3.3.1.6. Records of promotions and demotions;

E4.3.3.1.7. Level of responsibility at which the applicant served;

E4.3.3.1.8. Other acts of merit that may not have resulted in a formal recognition through an award or commendation;

E4.3.3.1.9. Length of service during the service period that is the subject of the discharge review;

E4.3.3.1.10. Prior military service and type of discharge received or outstanding post-service conduct that may provide a basis for a more thorough understanding of the performance of the applicant during the period of service that is the subject of the discharge review;

E4.3.3.1.11. Convictions by court-martial;

E4.3.3.1.12. Records of nonjudicial punishment;

E4.3.3.1.13. Convictions by civil authorities while a member was in military service, reflected in the discharge proceedings or otherwise noted in Military Service records;

E4.3.3.1.14. Records of periods of unauthorized absence;

E4.3.3.1.15. Records relating to a discharge instead of court-martial.

E4.3.3.2. Capability to serve, as evidenced by factors such as:

E4.3.3.2.1. Total Capabilities. This includes an evaluation of matters, such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

E4.3.3.2.2. Family and Personal Problems. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

E4.3.3.2.3. Arbitrary or Capricious Action. This includes actions by individuals in authority constituting a clear abuse of such authority and, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

E4.3.3.2.4. Discrimination. This includes unauthorized acts as documented by records or other evidence.

E5. ENCLOSURE 5
COMPLAINTS CONCERNING DECISIONAL DOCUMENTS

E5.1. GENERAL

E5.1.1. The procedures in this enclosure are established for the sole purpose of ensuring that decisional documents issued by the DRBs comply with the decisional document principles of this Instruction.

E5.1.2. This enclosure may be modified or supplemented by the DUSD(PI).

E5.1.3. The following persons may submit complaints:

E5.1.3.1. A former member of the Armed Forces with respect to the decisional document issued in the former member's own case; and

E5.1.3.2. A former member of the Armed Forces stating that correction of a decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

E5.1.4. The DUSD(PI) is the final authority with respect to action on such complaints.

E5.2. THE JOINT SERVICE REVIEW ACTIVITY (JSRA)

A three member JSRA consisting of one judge advocate from each Military Department shall advise the DUSD(PI). The operations of the JSRA shall be coordinated by an administrative director, who shall serve as recorder during meetings of the JSRA. The members and the administrative director shall serve at the direction of the DUSD(PI).

E5.3. CLASSIFICATION AND CONTROL OF CORRESPONDENCE

E5.3.1. Address of the JSRA. Correspondence with the JSRA concerning decisional documents issued by the DRBs shall be addressed as follows:

E5.3.2. All such correspondence shall be controlled by the administrative director through the use of a docketing procedure.

E5.3.3. Classification. Correspondence shall be reviewed by the administrative director and categorized either as a complaint or an inquiry in accordance with the following:

E5.3.3.1. Complaints. A complaint is any correspondence in which it is alleged that a decisional document issued by a DRB or SRA contains a specifically identified violation of the principles of this Instruction.

E5.3.3.2. Inquiries. An inquiry is any correspondence other than a complaint.

E5.4. REVIEW OF COMPLAINTS

E5.4.1. Standards. Complaints shall be considered under the following standards:

E5.4.1.1. The Applicant's Case. A complaint by an applicant with respect to the decisional document issued in the applicant's own discharge review shall be considered under decisional document requirements applicable at the time the document was issued. If the authority empowered to take corrective action has a reasonable doubt whether a decisional document meets applicable requirements, the complaint shall be resolved in the applicant's favor.

E5.4.1.2. Other Cases. With respect to all other complaints, the standard shall be whether a reasonable person familiar with the discharge review process can understand the basis for the decision, including the disposition of issues raised by the applicant. This standard is designed to ensure that the complaint process is not burdened with correcting minor errors in the preparation of decisional documents.

E5.4.2. Use of DD Form 293. A complaint alleging failure of the DRB to address adequately matters not submitted on DD Form 293 or expressly incorporated therein shall be resolved in the complainant's favor only if the failure to address the issue was arbitrary, capricious, or an abuse of discretion.

E5.4.3. Scope of Review. When a complaint concerns a specific issue in the applicant's own discharge review, the complaint review process shall involve a review of all the evidence that was before the DRB or SRA, including the testimony and written submissions of the applicant, to determine whether the issue was submitted, and if so, whether it was addressed adequately. With respect to all other complaints about specific issues, the complaint review process may be based solely on the decisional document.

E5.4.4. Allegations Pertaining to an Applicant's Submission. The following additional requirements apply to complaints about modification of an applicant's issue or the failure to list or address an applicant's issue:

E5.4.4.1. When the complaint is submitted by the applicant, and the record of the hearing is ambiguous on the question of whether there was a meeting of minds between the applicant and the DRB as to modification or omission of the issue, the ambiguity shall be resolved in favor of the applicant.

E5.4.4.2. Complaints submitted by a person other than the applicant must set forth facts (other than the mere omission or modification of an issue) demonstrating a reasonable likelihood that the issue was omitted or modified without the applicant's consent.

E5.4.4.3. Complaints rejected on the basis of the presumption of regularity shall set forth in the decisional document the reasons why the evidence submitted by the complainant was not sufficient to overcome the presumption.

E5.4.4.4. Any references in the decisional document to matters not raised by the applicant and not otherwise relied on in the decision, do not require that such matters be accompanied by a statement of findings, conclusions, or reasons. For example, when the DRB discusses an aspect of the service record not raised as an issue by the applicant, and the issue is not a basis for the DRB's decision, the DRB is not required to discuss the reasons for declining to list that aspect of the service record as an issue.

E5.4.5. Guidance as to Other Types of Complaints. The following guidance governs other types of complaints:

E5.4.5.1. Only those facts that are essential to the decision must be listed in the decisional document.

E5.4.5.2. When an applicant submits a brief containing material in support of a proposed conclusion on an issue, the DRB is not required to address each aspect of the supporting material in the brief. However, the decisional document should permit the applicant to understand the DRB's position on the issue and provide reviewing authorities with a sufficient explanation to permit review of the DRB's decision. When an applicant submits specific issues and later makes a statement before the DRB that contains matter in support of that issue, it is not necessary to list such supporting matter as a separate issue.

E5.4.5.3. When a case is reviewed upon request of an applicant, and the DRB upgrades the discharge to a General Discharge, the DRB must provide reasons why it did not upgrade to an Honorable Discharge unless the applicant expressly requests lesser relief. This requirement applies to all requests for corrective action submitted by an applicant with respect to his or her decisional document. When a discharge is upgraded to a General Discharge, the explanation for not upgrading to an Honorable Discharge may consist of reference to adverse matters from the applicant's military record. When a discharge is upgraded to a General Discharge in a review on the DRB's own motion, there is no requirement to explain why the discharge was not upgraded to an Honorable Discharge.

E5.4.5.4. If an uncontested issue of fact forms the basis for a grant or denial of a change in discharge, the decisional document shall list the specific source of

information used in reaching the conclusion, except when the information is listed in the portion of the decisional document that summarizes the service record.

E5.4.6. Duties of the Administrative Director. The administrative director shall take the following actions:

E5.4.6.1. Acknowledge receipt of the complaint;

E5.4.6.2. Note the date of receipt; and

E5.4.6.3. Forward the complaint to the Military Department concerned, except that the case may be forwarded directly to the DUSD(PI) when the administrative director makes an initial determination that corrective action is not required.

E5.4.7. The administrative director is responsible for monitoring compliance with the following processing goals:

E5.4.7.1. The administrative director normally shall forward correspondence to the Military Department concerned within 3 working days after the date of receipt. Correspondence forwarded directly to the DUSD(PI) under paragraph E5.3.1., above, normally shall be transmitted within 7 working days after the date of receipt.

E5.4.7.2. The Military Department normally shall request the necessary records within 5 working days after the date of receipt from the administrative director. The Military Department normally shall complete action under paragraph E5.4.8., below, 45 calendar days after receipt of all necessary records. If action by the Military Department is required under paragraph E5.4.13., below, normally it shall be completed within 45 calendar days after action is taken by the DUSD(PI).

E5.4.7.3. The JSRA normally shall complete action under paragraph E5.4.11., below, at the first monthly meeting held during any period commencing 10 calendar days after the administrative director receives the action of the Military Department under paragraph E5.4.9., below.

E5.4.7.4. The DUSD(PI) normally shall complete action under paragraph E5.4.12., below, within 30 calendar days after action is taken by the JSRA under paragraph E5.4.11., below, or by the administrative director under subparagraph E5.4.6.3., above.

E5.4.7.5. If action is not completed within the overall processing goals specified in this paragraph, the complainant shall be notified of the reason for the delay by the administrative director and be provided with an approximate date for completion of the action.

E5.4.8. Review of Complaints by the Military Departments. The Military Departments shall review the complaint under the following guidance:

E5.4.8.1. Rejection of Complaint. If the Military Department determines all allegations contained in the complaint are not specific or without merit, it shall address the allegations using the format at attachment 1 (Review of Complaint).

E5.4.8.2. Partial Agreement. If the Military Department determines that some of the allegations contained in the complaint are not specific or have no merit and that some of the allegations contained in the complaint have merit, it shall address the allegations using the format at attachment 1, and its DRB shall take appropriate corrective action in accordance with subparagraph E5.4.8.5., below.

E5.4.8.3. Full Agreement. If the Military Department determines all allegations contained in the complaint have merit, its DRB shall take appropriate corrective action in accordance with subparagraph E5.4.8.5., below.

E5.4.8.4. Other Defects. If, during the course of its review, the Military Department notes any other defects in the decisional document or under this Instruction, the DRB shall take appropriate corrective action under subparagraph E5.4.8.5., below. This does not establish a requirement for the Military Department to review a complaint for any purpose other than to determine whether the allegations contained in the complaint are specific and have merit; rather, it simply provides a format for the Military Department to address other defects noted during the course of processing the complaint.

E5.4.8.5. Appropriate Corrective Action. The following procedures govern appropriate corrective action:

E5.4.8.5.1. If a complaint concerns the decisional document in the complainant's own discharge review case, appropriate corrective action consists of amending the decisional document or providing the complainant with an opportunity for a new discharge review. An amended decisional document shall be provided if requested by the applicant.

E5.4.8.5.2. If a complaint concerns a decisional document in which the applicant received an Honorable discharge and the full relief requested, if any, with respect to the reason for discharge, appropriate corrective action consists of amending the decisional document.

E5.4.8.5.3. In all other cases, appropriate corrective action consists of amending the decisional document or providing the applicant with the opportunity for a new review, except that an amended decisional document shall be provided when the complainant expressly requests that form of corrective action.

E5.4.8.6. Amended Decisional Documents. One that reflects a determination by a DRB panel (or the SRA) as to what the DRB panel (or SRA) that prepared the defective decisional document would have entered on the decisional document to support its decision in this case.

E5.4.8.6.1. The action of the amending authority does not necessarily reflect substantive agreement with the decision of the original DRB panel (or SRA) on the merits of the case.

E5.4.8.6.2. A corrected decisional document created by amending a decisional document in response to a complaint shall be based upon the complete record before the DRB (or the SRA) at the time of the original defective statement was issued, including, if available, a transcript, tape recording, videotape or other record of a hearing.

E5.4.8.6.3. When an amended decisional document is required under subparagraph E5.4.8.5., above, and the necessary records may not be located, a notation shall be made on the decisional document, and the applicant shall be afforded an opportunity for a new review, and the complainant shall be informed of the action.

E5.4.8.7. Time Limit for Requesting a New Review. An applicant who is afforded an opportunity to request a new review should do so at the earliest opportunity after receipt of the decisional document.

E5.4.8.8. Interim Notification. When the Military Department determines that some or all of the allegations contained in the complaint are not specific or without merit, but its DRB takes corrective action under subparagraphs E5.4.8.2. or E5.4.8.4., above, the DRB's notification to the applicant or complainant shall include the following or similar wording: "This is in partial response to (your)/(a) complaint to the Office of the Deputy Under Secretary of Defense (Program Integration) dated _____ concerning _____ Discharge Review Board decisional document _____. A final response to (your)/(the) complaint, which has been returned to the Office of the Deputy Under Secretary of Defense (Program Integration) for further review, will be provided to you in the near future."

E5.4.8.9. Final Notification. When the DRB takes corrective action under subparagraph E5.4.8.3., above, and paragraph E5.4.13., below, its notification to the applicant and counsel, if any, and to the complainant, if other, than the applicant or counsel, shall include the following or similar wording: "This is in response to (your)/(a) complaint to the Office of the Deputy Under Secretary of Defense (Program Integration) dated _____ concerning _____ Discharge Review Board decisional document _____."

E5.4.9. Transmittal to the Administrative Director. The Military Department shall return the complaint to the administrative director with a copy of the decisional document and, when applicable, any of the following documents:

E5.4.9.1. The "Review of Complaint."

E5.4.9.2. A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant or complainant.

E5.4.9.3. A copy of the notification to the applicant of the opportunity to request a new review, and a copy of the notification to the complainant that the applicant has been authorized a new review.

E5.4.10. Review by the Administrative Director. The administrative director shall review the complaint and accompanying documents to ensure the following:

E5.4.10.1. If the Military Department determined that any of the allegations contained in the complaint are not specific or without merit, the JSRA shall review the complaint and accompanying documents. The JSRA shall address the allegations using the format at attachment 2 (Review of and Recommended Action on Complaint) and shall note any other defects in the decisional document not previously noted by the Military Department. This does not establish a requirement for the JSRA to review such complaints for any purpose other than to address the allegations contained in the complaint; rather, it simply provides a format for the JSRA to address other defects noted in the course of processing the complaint.

E5.4.10.2. If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA using the format at attachment 3 (Review of any Recommendation on Amended Decisional Document).

E5.4.10.3. If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB notified the applicant of the opportunity to request a new review, review of such corrective action is not required.

E5.4.11. Review by the JSRA. The JSRA shall conduct the reviews required in subparagraphs E5.4.10.1. and E5.4.10.2., above, and E5.4.13.3.1., below. The administrative director shall call meetings once a month, or as necessary. Matters before the JSRA shall be presented to the members by the recorder. Each member shall have one vote in determining matters before the JSRA, a majority vote of the members determining all matters. Determinations of the JSRA shall be reported to the DUSD(PI) as JSRA recommendations using the prescribed format. If a JSRA recommendation is not unanimous, the minority member may prepare a separate recommendation for consideration by the DUSD(PI) using the same format. Alternatively, the minority member may indicate "dissent" next to his signature on the JSRA recommendation.

E5.4.12. Review by the DUSD(PI). The DUSD(PI) shall review all recommendations of the JSRA and the administrative director as follows:

E5.4.12.1. The DUSD(PI) shall review complaints using the format at attachment 4 (Review of and Action on Complaint). The DUSD(PI) is the final authority in determining whether the allegations contained in a complaint are specific and have merit. If the DUSD(PI) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DUSD(PI) determines that further action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its DRB and the complainant shall be provided an appropriate interim response.

E5.4.12.2. The DUSD(PI) shall review amended decisional documents using the format at attachment 5 (Review of and Action on Amended Decisional Document). The DUSD(PI) is the final authority in determining the compliance of an amended decisional document with this Instruction. The Military Department shall be informed if no further corrective action is warranted by the DUSD(PI). The Military Department shall ensure that appropriate corrective actions are taken by its DRB, if determined necessary by the DUSD(PI).

E5.4.13. Further Action By the Military Department

E5.4.13.1. When the DUSD(PI) determines further action by the Military Department is required, its DRB shall take appropriate corrective action in accordance with paragraph E5.4.8., above.

E5.4.13.2. The Military Department shall provide the administrative director with the following documents when relevant to corrective action taken in accordance with paragraph E5.4.8., above:

E5.4.13.2.1. A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant or to the complainant.

E5.4.13.2.2. A copy of the notification to the applicant of the opportunity to request a new review, and a copy of the notification to the complainant that the applicant has been authorized a new review.

E5.4.13.3. The administrative director shall review the documents relevant to corrective action taken in accordance with paragraph E5.4.8., above, and ensure the following:

E5.4.13.3.1. If the DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA using the format at attachment 3 (Review of and Recommended Action on Amended Decisional Document).

E5.4.13.3.2. If the DRB notified the applicant of the opportunity to request a new review, review of such corrective action is not required.

E5.4.14. Documents Required by the JSRA or the DUSD(PI). Upon request, the Military Department shall provide the administrative director with other documents required by the JSRA or the DUSD(PI) in the conduct of their reviews.

E5.5. RESPONSES TO INQUIRIES

The following procedures shall be used in processing inquiries:

E5.5.1. The administrative director shall assign a docket number to the inquiry.

E5.5.2. The administrative director shall forward the inquiry to the Military Department concerned.

E5.5.3. The Military Department shall prepare a response to the inquiry and provide the administrative director with a copy of the response.

E5.5.4. The Military Department's response shall include the following or similar wording: "This is in response to your inquiry to the Office of the Deputy Under Secretary of Defense (Program Integration) dated _____ concerning _____."

E5.6. DISPOSITION OF DOCUMENTS

The DRB concerned shall provide copies of the amendments to the decisional documents to the DoD Boards' Electronic Reading Room. The administrative director is responsible for the disposition of all Military Department, DRB, JSRA, and DUSD(PI) documents relevant to processing complaints and inquiries.

E5.7. DECISIONAL DOCUMENT PRINCIPLES

The DUSD(PI) shall identify significant principles concerning the preparation of decisional documents as derived from decisions under this section. The significant principles identified in the review shall be coordinated as proposed amendments to the enclosures to this Instruction.

Attachments - 5

- E5.A1. Review of the Complaint
- E5.A2. Review of the Joint Service Review Activity
- E5.A3. Review of Amended Decisional Document
- E5.A4. Review of Complaint (DUSD(PI))
- E5.A5. Review of Amended Decisional Document (DUSD(PI))

E5.A1. ATTACHMENT 1 TO ENCLOSURE 5

REVIEW OF COMPLAINT

Military Service:

Decisional Document Number:

Name of Complainant:

Docket Number:

Date of this Review:

1. Specific allegation(s) noted:
2. With respect in support of the conclusion, enter the following information:
 - a. Conclusion whether corrective action is required.
 - b. Reasons in support of the conclusion, including findings of fact upon which the conclusion is based.
3. Other defects noted in the decisional document:

(AUTHENTICATION)

E5.A2. ATTACHMENT 2 TO ENCLOSURE 5

JOINT SERVICE REVIEW ACTIVITY
OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(PROGRAM INTEGRATION)
REVIEW OF THE JOINT SERVICE REVIEW ACTIVITY

Military Service:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

1. The Military Service's "Review of Complaint" is attached as enclosure 1.
2. Specific Allegations: See Part 1 of Military Service's "Review of Complaint" (enclosure 1).
3. Specific allegation(s) not noted by the Military Service:
4. With respect to each allegation, enter the following information:
 - a. Conclusion on corrective action required.
 - b. Reasons supporting the conclusion, including findings of fact upon which conclusion is based.
5. Other defects in the decisional document not noted by the Military Services:

6. Recommendation:

[] The complainant and the Military Service shall be informed that no further action on the complaint is warranted.

[] The Military Service shall take corrective action consistent with the above comments.

Army Member, JSRA Navy Member, JSRA

Air Force Member, JSRA Recorder, JSRA

E5.A3. ATTACHMENT 3 TO ENCLOSURE 5

JOINT SERVICE REVIEW ACTIVITY
OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(PROGRAM INTEGRATION)
REVIEW OF AMENDED DECISIONAL DOCUMENT

Military Service:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

Recommendation:

[] The amended decisional document complies with the requirements of DoD Instruction 1332.28. The Military Service shall be informed that no further corrective action is warranted.

[] The amended decisional document does not comply with DoD Instruction 1332.28, as noted herein. The Military Service shall ensure that corrective action consistent with the defects noted is taken by its DRB.

Army Member, JSRA Navy Member, JSRA

Air Force Member, JSRA Recorder, JSRA

<u>YES</u>	<u>NO</u>	<u>NA</u>	<u>ITEM</u>	<u>SOURCE</u>
			1. <u>Date of Discharge.</u>	1. DoD Instruction 1332.28, enclosure 3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Date of discharge	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Character of discharge	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Reason for discharge	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Specific regulatory authority under which discharge was issued	
			2. <u>Service data.</u>	2. DoD Instruction 1332.28, enclosure 3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Date of enlistment	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Period of enlistment	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Age at enlistment	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Length of service	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Periods of unauthorized absence*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Conduct and efficiency ratings (numerical and narrative)*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Highest rank achieved	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Awards and decorations*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Educational level	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. Aptitude test scores	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	k. Art. 15s (including nature and date of offense or punishment)*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Convictions by court-martial*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	m. Prior military service and type of discharge(s) received*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. <u>Reference to materials presented by applicant.</u>	3. DoD Instruction 1332.28, enclosure 3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Written brief*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Documentary evidence*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Testimony*	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. <u>Items submitted as issues.</u> (See issues worksheet)	4. DoD Instruction 1332.28, enclosure 3
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5. <u>Conclusions.</u> The decisional document must indicate clearly the DRB's conclusion concerning:	5. DoD Instruction 1332.28, enclosure 2

- [] [] [] a. Character of discharge, when applicable.¹
- [] [] [] b. Reason for discharge, when applicable.²
- 6. Reasons for conclusions. The decisional document must list and discuss the items submitted as issues by the applicant; and list and discuss the decisional issues providing the basis for the DRB's conclusion concerning:
 - 6. DoD Instruction 1332.28, enclosure 3
- [[[a. Character of discharge, where applicable.¹
-]]]
- [[[b. Reason for discharge, where applicable.²
-]]]
- [[[7. Advisory opinions.*
-]]]
- [[[8. Recommendation of DRB President.
-]]]
- [[[9. A record of voting.
-]]]
- [[[10. Authentication of decisional document. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.)
-]]]
- [[[11. Other.
-]]]

Explanation of items marked "No"

ISSUES WORKSHEETS³

CORRECTIVE ACTION REQUIRED

LISTED ADDRESSED

A. Decisional issues providing a basis for the

conclusion regarding a change in the character of or reason for discharge. (DoD Instruction 1332.28, enclosure 3)

- 1. _____ [] [] []

- 2. _____ [] [] []

- 3. _____ [] [] []

B. Items submitted as issues by the applicant that are not identified as decisional issues. (DoD Instruction 1332.28, enclosure 2)

- 1. _____ [] [] []

- 2. _____ [] [] []

- 3. _____ [] [] []

C. Remarks: _____

KEY

YES: The decisional document meets the requirements of DoD Instruction 1332.28.

NO: The decisional document does not meet the requirements of DoD Instruction 1332.28.

NA: Not applicable

*Items marked by an asterisk do not necessarily pertain to each review. If the decisional document contains no reference to such an item, NA shall be indicated. When there is a specific complaint addressed to an item, the underlying discharge review record shall be examined to address the complaint.

FOOTNOTES

¹ In this instance "when applicable" means all reviews except:

- a. Reviews in which the applicant requested only a change in the reason for discharge and the DRB did not raise the character of discharge as a decisional issue.

² In this instance "when applicable" means all reviews in which:

- a. The applicant requested a change in the reason for discharge.

b. The DRB raised the reason for discharge as a decisional issue.

c. A change in the reason for discharge is a necessary component of a change in the character of discharge.

³ This review may be made based upon the decisional document without reference to the underlying discharge review record except as follows: if there is an allegation that a specific contention made by the applicant to the DRB was not addressed by the DRB. In such a case, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to DoD Instruction 1332.28.

This review may be based upon the decisional document without reference to the regulation governing the discharge in question except as follows: if there is a specific complaint that the DRB failed to address a specific factor required by applicable regulations to be considered for determination of the character of and reason for the discharge in question where such factors are a basis for denial of any of the relief requested by the applicant.

E5.A4. ATTACHMENT 4 TO ENCLOSURE 5
OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(PROGRAM INTEGRATION)
REVIEW OF COMPLAINT (DUSD(PI))

Military Service:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

1. Each allegation is addressed as follows:
 - a. Allegation.
 - b. Conclusion whether corrective action is required.
 - c. Reasons in support of the conclusion, including findings of fact upon which the conclusion is based.

NOTE: If the DUSD(PI) agrees with the JSRA, he/she may respond by entering a statement of adoption.

2. Other defects noted in the decisional document:

3. Determinations:

- [] No further action on the complaint is warranted.
[] Corrective action consistent with the above comments is required.

Deputy Under Secretary of Defense
(Program Integration)

E5.A5. ATTACHMENT 5 TO ENCLOSURE 5

OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE

Military Service:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

Recommendation:

[] The amended decisional document complies with the requirements of DoD Instruction 1332.28. No further corrective action is warranted.

[] The amended decisional document does not comply with DoD Instruction 1332.28, as noted herein. Further corrective action is required consistent with the defects noted in the attachment.

Deputy Under Secretary of Defense
(Program Integration)

Remarks: