

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) *Administrative Specialist.* An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.* (1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in "Giles v. Secretary of the Army" (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY "G" in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

[50 FR 33035, Aug. 16, 1985]

### § 581.3 Army Board for Correction of Military Records.

(a) *Purpose.* This section establishes procedures for making application, and the consideration of applications, for the corrections of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (hereinafter referred to as the Board).

(b) *Establishment, functions, and jurisdiction of the Board—*(1) *Establishment and composition.* (i) Pursuant to 10 U.S.C. 1552, the Army Board for Correction of Military Records is established in the Office of the Secretary of the Army.

(ii) The Board will consist of civilian officers or employees of the Department of the Army in such number, not less than three, as may be appointed by the Secretary of the Army. Three members present will constitute a quorum of the Board. The Secretary of the Army will designate one member as the Chairman. In the event of absence or incapacity of the Chairman, an Acting Chairman chosen by the Board will act as Chairman for all purposes.

(2) *Function.* The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice.

(3) *Jurisdiction.* The Board will have jurisdiction to review and determine all matters properly brought before it consistent with existing law.

(c) *Application for correction—*(1) *General requirements.* (i) The application for correction should be submitted on DD Form 149 (Application for Correction of Military or Naval Record) and should be addressed to Army Board for Correction of Military Records, Department of the Army, Washington, DC 20310. Forms and explanatory matter may be obtained from The Adjutant General, Washington, DC 20310. For those applicants in the military service, these forms may be obtained through normal AG publications supply channels.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in

the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287, 1001).

(iii) When the record in question is that of a person who is incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made by a spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted as may be required by the Board.

(2) *Time limit for filing application.* A claimant, his heir, or legal representative must file the application for correction of a record within 3 years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than 3 years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse the failure to file application within the time prescribed in this subparagraph.

(3) *Exhaustion of other remedies.* No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

(4) *Other proceedings not stayed.* The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

(5) *Consideration of application.* (i) Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for reason that the applicant has not exhausted all other

effective administrative remedies available to him, or for the reason the applicant did not file the application within 3 years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

(ii) The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or the Secretary in connection with proceedings other than proceedings of a Board for the correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate the existence of probable material error or injustice is without prejudice to further consideration in the event new relevant evidence is submitted. The applicant will be informed of his privilege to submit newly discovered relevant evidence for consideration.

(iii) All requests for further consideration may be initially screened by the staff of the Board to determine whether any evidence or other matter (including, but not limited to, any factual allegations or any arguments why the relief should be granted) has been submitted by the applicant that was not in the record at the time of any prior Board consideration. If such evidence or other matter has been submitted, the request will be forwarded to the Board for a determination in accordance with this paragraph. If no such evidence or other matter has been submitted, the applicant will be informed that his/her request was not considered by the Board because it did not contain any evidence or other matter that was not in the record at the time of any previous Board consideration.

(iv) When an original application or a request for further consideration of a previously denied application is denied without a hearing, the Board's determination shall be made in writing and include a brief statement of the grounds for denial.

(v) The brief statement of the grounds for denial shall include the reasons for the determination that relief should not be granted, including the applicant's claims of constitutional, statutory and/or regulatory violations rejected, together with all essential facts upon which the denial is based, including, if applicable, factors required by regulation to be considered for determination of the character of and reasons for a discharge. Attached to the statement shall be any advisory staff opinions considered by the Board not fully set forth in the statement and any minority opinions. Counsel and applicant will be informed that the name and final vote of Board members will be furnished or made available upon request.

(vi) The brief statement of the grounds for denial, together with all attachments, shall be furnished promptly to applicant and counsel. Classified or privileged material contained in or attached to the statement of grounds for denial may be deleted only if a written statement of the basis for the deletion is provided the applicant and counsel.

(d) *Entitlement to hearing*—(1) *General*. In each case in which the Board determines that a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

(2) *Notice*. (i) In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

(ii) Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at

the hearing, will be considered in accordance with paragraph (e)(2)(ii) of this section.

(3) *Counsel*. As used in this section, the term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under section 3402 of title 38, United States Code, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

(4) *Witnesses*. The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

(5) *Access to records*. (i) The applicant will be assured access to all official records that are necessary to an adequate presentation of his case consistent with regulations governing privileged or classified material. It is the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Army as he desires to present in support of his case.

(ii) The Board shall not release classified material to the applicant or to his counsel or personal representative. In such cases the Board shall take steps in accordance with established regulations to obtain a review of the material to determine whether declassification is possible so that the evidence can be released to the applicant; or if declassification is not possible, prepare or cause to be prepared a summary of the content of such material in sufficient detail, consistent with the interests of national security, to enable the applicant to prepare a response.

(iii) This section does not authorize the furnishing of copies of official records by the Board. Requests for copies of official records should be processed in accordance with AR 345-20.

(e) *Hearing*—(1) *Convening of Board*. The Board will be convened at the call

of the Chairman and will recess or adjourn at his order.

(2) *Conduct of hearing.* (i) The hearing will be conducted by the Chairman, and will be subject to his rulings so as to insure a full and fair hearing. The Board will not be limited by legal rules of evidence but will maintain reasonable bounds of competency, relevancy, and materiality.

(ii) If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(iii) If the applicant, after being duly notified has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with paragraph (e)(2)(ii) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(iv) All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

(3) *Continuance.* The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

(f) *Action on applications—(1) Action by the Board—(i) Deliberations, findings, conclusions, and recommendations.* (a) Only members of the Board and its staff will be present during the deliberations of the Board.

(b) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the

Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(c) Following a hearing, the Board will make written findings, conclusions, and recommendations. The name and final vote of each Board member will be recorded. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(d) Where the Board deems it necessary to submit comments or recommendations to the Secretary of the Army as to matters arising from but not directly related to, the issues of any case, such comments or recommendations will be the subject of separate communication.

(ii) *Minority report.* In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, conclusions, or the recommendations or to all, including the reasons therefor.

(iii) *Record of proceedings.* When the Board has completed its proceedings, a record thereof will be prepared. Such record will indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record will include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, conclusions and recommendations of the Board, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

(iv) *Withdrawal.* The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Army.

(2) *Action by Secretary of Army.* The record of proceedings of the Board, except in cases finalized by the Board under authority delegated in paragraph (f)(1)(v) of this section or those denied the Board without a hearing, will be forwarded to the Secretary of the Army who will direct such action in

each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary. If the Secretary's decision is to deny relief, such decision shall be in writing and, unless he expressly adopts in whole or in part the findings, conclusions and recommendation of the Board, shall include a brief statement of the grounds for denial. See paragraph (c)(5)(v) of this section.

(3) *Staff action.* (i) Upon final action by the Secretary of the Army the complete record in each case will be returned to the Board. The Board will transmit the decision of the Secretary of the Army to The Adjutant General for appropriate action.

(ii) Upon receipt of the record of proceedings after final action by the Secretary of the Army, or by the Board acting under the authority contained in paragraph (f)(1)(v) of this section, the Board will communicate the decision to the applicant and counsel.

(a) If the recommendation of the Board was to deny relief or if the final decision of the Secretary or the Board was to deny relief, the following material will be made available to the applicant and counsel:

(1) A statement of the findings, conclusions and recommendations made by the Board;

(2) Any advisory staff opinions considered by the Board or the reviewing authority;

(3) The name and final vote of each Board member;

(4) Any minority reports; and

(5) Any material prepared by the Secretary of the Army as required in paragraph (f)(2) of this section. To the extent that any of the above material consists of classified or otherwise privileged matters, deletions may be made only if a written statement of the basis therefore is provided the applicant and counsel.

(b) If the final decision was other than to deny relief, the applicant and counsel are entitled, upon request, to receive a copy of the Board's findings, conclusions and recommendations.

(iii) When all necessary administrative action has been completed the applicant will be informed of such action by The Adjutant General.

(iv) Written notice specifying the action taken and the date thereof will be transmitted to the Chairman of the Board.

(v) The record of the decision of the Secretary of the Army will not be filed in the military records of the subject of the application where the effect of such action would be to nullify the relief granted.

(vi) After action by the Secretary of the Army on the record, the applicant or his counsel is entitled, upon request, to inspect the record of proceedings and to receive a copy of the Board's findings, conclusions, and recommendations, unless the Chairman considers that granting the request would be detrimental to the public interest.

(4) *Reconsideration.* After final adjudication, further consideration will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Army.

(g) *Settlement of claims—(1) Authority.*

(i) The Department of the Army is authorized to pay claims in accordance with section 1552, title 10, United States Code.

(ii) The Department of the Army is not authorized to pay any claim theretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans Affairs.

(2) *Application for settlement.* (i) Settlement and payment of claims will be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(ii) In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the surviving spouse,

heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment; or if there is no such law covering order of payment, in the order set forth in section 2771 of title 10, United States Code; or as otherwise prescribed by the law applicable to that kind of payment.

(iii) Upon request, the applicant or applicants will be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(3) *Settlement.* (i) Settlement of claims shall be based on the decision of the Secretary of the Army. Computation of the amounts due shall be made by the Finance Center, U.S. Army, Indianapolis, Ind. 46249. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government, arising from military service.

(ii) Prior to or at the time of payment, the person or persons to whom payments are to be made shall be advised by the Finance Center, U.S. Army, as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of the record.

(4) *Report of settlement.* In every case where payment is made, the amount of such payment and the names of the payee or payees will be reported to the Chairman of the Board.

(h) *Miscellaneous—(1) Staff assistance.* (i) At the request of the Board, The Adjutant General will assemble the original or certified copies of all available military records pertinent to the relief requested. Such records and all supporting papers will be transmitted to the Board.

(ii) The Board is authorized to call upon the Office of the Secretary of the Army and the Department of the Army General and Special Staffs for investigative and advisory services and upon any other Department of the Army agency for assistance, within the specialized jurisdiction of that agency.

(2) *Expenses.* No expenses of any nature whatsoever, voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf will be paid by the Government.

(3) *Changes in procedures.* The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Army and of the Secretary of Defense.

(4) *Index of Cases.* Documents sent to each applicant and counsel in accordance with paragraphs (c)(5)(v) and (f)(3) of this section, together with the record of the votes of board members and all other statements of findings, conclusions and recommendations made on final determination of an application by the Board or the Secretary of the Army will be indexed and promptly made available for public inspection and copying at a reading room within the Washington, DC metropolitan area.

(i) The index prepared shall be in a usable and concise form so as to indicate the grounds for which the Board and/or Secretary granted or denied relief. This index shall be published quarterly and shall be distributed by sale or otherwise. In addition, it shall be available for inspection and distribution at the reading room in the Washington, DC area.

(ii) *Deletions.* To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from the documents made available for public inspection and copying. Names, addresses, social security numbers and military service numbers must be deleted. Deletions of other information which may result in a clearly unwarranted invasion of personal privacy or which is privileged or classified may be made only if a written statement of the

basis for such deletion is made available for public inspection.

(5) *Special Standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army servicemember is entitled to an honorable discharge if a less than honorable discharge was issued to the servicemember in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (h)(5)(i) of this section, should place the word Category "G" in block (11), DD Form 149, Application for Correction of Military or Naval Record. Such applications shall be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (h)(5)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (h)(5)(i) of this section. The action of the designated official shall not constitute an action or decision by the Board for the Correction of Military Records.

[35 FR 15992, Oct. 10, 1970, as amended at 42 FR 17442, Apr. 1, 1977; 45 FR 17990, Mar. 20, 1980; 46 FR 33518, June 30, 1981]

#### PART 583—FORMER PERSONNEL [RESERVED]

#### PART 584—FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY

Sec.

- 584.1 General.
- 584.2 Family support and child custody.
- 584.3 Paternity claims.
- 584.4 Adoption proceedings.
- 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.

584.6 Procedures governing nonactive duty or discharged personnel.

584.7 Basic allowance for quarters.

584.8 Garnishment.

584.9 Involuntary allotments.

#### APPENDIX A TO PART 584—REFERENCE

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 50 FR 52447, Dec. 24, 1985, unless otherwise noted.

#### §584.1 General.

(a) *Purpose.* This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

(1) Support and nonsupport of family members.

(2) Child custody.

(3) Paternity claims.

(4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

(i) Nonsupport complaints.

(ii) Child custody complaints.

(iii) Paternity claims.

(iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—

(i) Set procedures for processing the following:

(A) Nonsupport complaints.

(B) Child custody complaints.

(C) Paternity claims.

(D) Requests regarding adoption proceedings of children of soldiers.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims received at USACFSC regarding Army soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, the family, and the interests of the Army.

(iv) Advise and assist the heads of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other