

has accepted an application, information concerning the availability of the index shall be provided in the NDRB's response to the application.

§ 724.811 Privacy Act information.

Information protected under the Privacy Act is involved in the discharge review functions. The provisions of SECNAVINST 5211.5C shall be observed throughout the processing of a request for review of discharge or dismissal.

§ 724.812 Responsibilities of the Reading Room.

(a) Copies of decisional documents will be provided to individuals or organizations outside the NCR in response to written requests for such documents. Although the Reading Room shall try to make timely responses to such requests, certain factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties may cause some delays. A fee may be charged for such documents under appropriate DOD and Department of the Army directives and regulations. The manual that accompanies the index of decisions shall notify the public that if an applicant indicates that a review is scheduled for a specific date, an effort will be made to provide requested decisional documents before that date. The individual or organization will be advised if that cannot be accomplished.

(b) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

§ 724.813 The recommendation of the NDRB president.

(a) *General.* The president of the NDRB may forward cases for consideration by the Secretarial Review Authority (SRA). There is no requirement that the president submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be

prepared under the guidance in § 724.813b.

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

(1) *Adoption of the NDRB's decisional document.* The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this enclosure.

(2) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(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:

(i) The issues on which the president's recommendation is based. Each such decisional issue shall be addressed by the president.

(ii) The president's response to items submitted as issues by the applicant.

(iii) Reasons for rejecting the conclusion of the majority with respect to the decisional document which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Such issues shall be addressed under the principles in § 724.806.

§ 724.814 Secretarial Review Authority (SRA).

(a) *Review by the SRA.* The Secretarial Review Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(1) The SRA may review the following types of cases before issuance of the final notification of a decision:

(i) Any specific case in which the SRA has an interest.

(ii) Any specific case that the president of the NDRB believes is of significant interest to the SRA.

(2) Cases reviewed by the SRA shall be considered under the standards set forth in this part.

(b) *Processing the decisional document.*

(1) The decisional document shall be transmitted by the NDRB president under § 724.813.

(2) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the NDRB's own motion, without the participation of the applicant or the applicant's counsel:

(i) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the NDRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(ii) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. Any issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the NDRB or NDRB president on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record before the NDRB closed the case for deliberation or in the president's recommendation.

(c) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the NDRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the decision by the NDRB (or NDRB president) of the issues raised by the majority or the applicant.

(d) *The addendum of the SRA.* The decision of the SRA shall be in writing

and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(1) *The SRA's decision.* The addendum shall set forth the SRA's decision whether there will 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 NDRB or the NDRB president, the decisional document shall contain a reference to the matter adopted.

(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 NDRB and the NDRB president in accordance with the following guidance:

(i) *Adoption of the NDRB president's recommendation.* The addendum may state that the SRA has adopted the NDRB president's recommendation.

(ii) *Adoption of the NDRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the NDRB.

(iii) *Adoption of specific statements from the majority or the NDRB president.* If the SRA adopts the views of the NDRB or the NDRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the NDRB or the NDRB president, the addendum shall set forth the modification.

(iv) *Response to issues not included in matter adopted from the NDRB or the NDRB president.* The addendum shall set forth the following if not adopted in whole or in part from the NDRB or the NDRB president:

(A) A list of the issues on which the SRA's decision is based. Each such decisional document issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the NDRB or the NDRB 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 § 724.806(f).

(B) The SRA's response to items submitted as issues by the applicant.

(3) *Response to the rebuttal.* (i) 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 and no further response to the rebuttal is required.

(ii) 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:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principals in § 724.806.

(B) 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.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material, that fact shall be noted.

(4) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the NDRB's proposed decisional document.

§ 724.815 Complaints.

A complaint is any correspondence in which it is alleged that a decisional document issued by the NDRB or the SRA contains a specifically identified violation of 32 CFR part 70 or any references thereto. Complaints will be reviewed pursuant to 32 CFR part 70.

Subpart I—Standards for Discharge Review

§ 724.901 Objective of discharge review.

The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of the review and the underlying factors

which aid in determining whether the standards are met shall be consistent with historical criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in a discharge. Neither the NDRB nor the Secretary of the Navy shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the NDRB shall give full, fair, and impartial consideration to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

§ 724.902 Propriety of the discharge.

(a) A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedure, or discretion 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

(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.

(b) 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 NDRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(c) The primary function of the NDRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the NDRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight