

(3) To insure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Correction Board Reading Room), the applicant must provide the DRB with copies of such decisions or of the relevant portion of treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

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

(k) *Identification by the DRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of all materials and information is made.

(1) *Issues on DD Form 293.* The DRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein) in accordance with this part. With respect to applications submitted before November 27, 1982, the DRB shall consider all issues clearly and specifically stated in accordance with the rules in effect at the time of the submission.

(2) *Amendment of issues.* The DRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. This provision does not:

(i) Limit by DRB's authority to question an applicant as to the meaning of such matter;

(ii) Preclude the DRB from developing decisional issues based upon such questions:

(iii) Prevent the applicant from amending or withdrawing such matter any time before the DRB closes the review process for deliberation; or

(iv) Prevent 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 will state that the applicant's decision to take such action (or

decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional Issues Identified During a Hearing.* The following additional procedure shall be used during a hearing in order to promote the DRB's understanding of an applicant's presentation. If before closing the hearing for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the FRB may so 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.

(1) *Notification of possible bar to benefits.* Written notification shall be made to each applicant whose record indicates a reason for discharge that bars receipt of benefits under 38 U.S.C. 3103(a). This notification will advise the applicant that separate action by the Board for Correction of Military Records or the Veterans Administration may confer eligibility for VA benefits. Regarding the bar to benefits based upon the 180 days consecutive unauthorized absence, the following applies:

(1) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(2) Such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

§865.107 DRB composition and meeting location.

(a) The DRB consists of five members, with the senior line officer acting as the presiding officer. The presiding officer convenes, recesses and adjourns the Board.

(b) In addition to holding hearings in Washington, DC, the DRB, as a convenience to applicants, periodically conducts hearings at selected locations throughout the Continental United States. Reviews are conducted at locations central to those areas with the greatest number of applicants. A continuing review and appraisal is conducted to ensure the selected hearing locations are responsive to a majority of applicants. Administrative details

and responsibilities for Regional Boards are outlined in §865.124.

§865.108 Availability of records and documents.

(a) Before applying for discharge review, potential applicants or their designated representatives may, and are encouraged to obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC) 9700 Page Boulevard, St. Louis, Mo 63132; thus avoiding any lengthy delays in the processing of the application (DD Form 293) and the scheduling of reviews.

(1) 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 or Privacy Act 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, are copied, and 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.

(2) Applicants and their designated representatives also may examine their military personnel records at the site of their scheduled review before the hearing. The DRB shall notify applicants and their designated representatives of the dates the records are available for examination in their standard scheduling information.

(b) The DRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity. Applications for such information must be made by the applicant to the cognizant authority. The DRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) 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 less 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.

(d) The DRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or 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 that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on the request of an applicant, the DRB shall provide the applicant and counsel or representative, if any, 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 also notify the applicant or counsel or representative (i) of the right to examine such documents or to be provided with copies of documents upon request; (ii) of the date by which such request must be received; and (iii) of the opportunity to respond within a reasonable period of time to be set by the DRB.

(2) When necessary to acquaint the applicant with the substance of 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 reference to source of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interest of the United