

Chapter 2

Overview of Military Discharges

A member seeking early release from military service needs to know what grounds exist for discharge, whether continued service in the inactive reserves will be required, and what characterization of service is likely. This chapter provides a brief overview of the various reasons for separation, and some possible consequences of discharges.

When a member of the military is separated from active (or Ready Reserve) duty, there are two issues that are of concern:

- What the “characterization of service” will be.
- Whether the member will be discharged from all military obligations, or merely separated to an inactive reserve status.

CHARACTERIZATION OF SERVICE

There are five characterizations of service given to servicemembers when they are separated from active duty:

- Honorable,
- General (under Honorable Conditions),
- Under Other Than Honorable Conditions (OTH),
- Bad Conduct Discharge (BCD),
- Dishonorable Discharge (DD).

Under certain circumstances, the military will issue an “uncharacterized separation.” The Bad Conduct Discharge (BCD) and Dishonorable Discharge (DD) (along with Dismissal for officers) are “punitive discharges” which can

only be given as part of a court-martial sentence. This guide covers administrative discharges, which can not result in a worse characterization of service than Under Other Than Honorable Conditions.

When considering the quality of a member's service for the purposes of characterization of service, commanders are instructed by regulation to consider the member's "age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty."¹ Department of Defense Directive 1332.14 goes on to state:

Reason for Separation

• The "reason for separation" is the ground for discharge — such as conscientious objection, hardship, or misconduct.

The quality of service... is affected adversely by conduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline....² The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization.³

Characterization may also be based on conduct in the civilian community, and it is the burden of the servicemember to prove that such conduct did not adversely affect the member's military service.⁴

Any discharge other than a fully honorable discharge can make it difficult to obtain veteran's benefits and sometimes difficulty getting a civilian job. Each discharge chapter in this guide discusses the likely characterization of service for each reason for separation.

Honorable

The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.⁵

An Honorable characterization is the most common — 70 to 75 percent of all discharged members receive this characterization.

General (under Honorable Conditions)

If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.⁶

A General (under Honorable Conditions) characterization will deprive a member of some benefits, most notably Montgomery GI Bill education benefits. (However, even with an Honorable characterization, Montgomery GI Bill benefits generally require a minimum of three years duty.)

1. DoD Directive 1332.14 Part 2 §C.2.a.(4).
2. DoD Directive 1332.14 Part 2 §C.2.a.(2).
3. DoD Directive 1332.14 Part 2 §C.2.a.(3).
4. DoD Directive 1332.14 Part 2 §C.2.a.
5. DoD Directive 1332.14 Part 2 §C.2.b.(1).
6. DoD Directive 1332.14 Part 2 §C.2.b.(2).

Under Other Than Honorable Conditions

Known as an “OTH,” this characterization may only be given when a member is processed for:

- homosexual conduct under certain “aggravated circumstances,”
- misconduct,
- fraudulent enlistment,
- discharge in lieu of court-martial, and
- reservist unsatisfactory participation.

Even when processed for the above discharges, an OTH is appropriate only when the reason for separation is based upon:

- A “pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.”
- One or more

acts or omissions that constitute a significant departure from the conduct expected of members of the Military Service. Examples of factors that may be considered include the use of force or violence to produce serious injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships [known as fraternization], acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Service, and deliberate acts or omissions that seriously endanger the health and safety of other persons.⁷

A characterization of OTH will deprive a member of virtually all veterans benefits. A member may also encounter significant difficulties when seeking a civilian job, depending on the attitude of the employer.

Uncharacterized Separations

Entry Level Separation (ELS)

An Entry Level Separation will be issued if separation processing is initiated while a member is in “entry level status” unless characterization of Honorable or Under Other Than Honorable Conditions is warranted.⁸

Void Enlistment

A void enlistment results from certain enlistment-related separations, such as minority enlistment. The separation is described as an “order of release from custody or control” of the military.⁹ (See Chapter 16, *Erroneous, Defective, and Fraudulent Enlistment*.)

Entry Level Status

- Entry level status is generally considered to be the first 180 days of continuous active duty. (See Chapter 7, *Entry Level Performance and Conduct*.)

7. DoD Directive 1332.14 Part 2 §C.2.b.(3).

8. DoD Directive 1332.14 Part 2 §C.3.a.

9. DoD Directive 1332.14 Part 2 §C.3.b.

DISCHARGE OR SEPARATION?

When servicemembers are separated from active duty, they are not necessarily discharged from all military duty. Every enlistment agreement requires an eight year military service obligation (MSO), which is fulfilled through a combination of active duty and reserve duty. For example, if an enlistment agreement obligates a member to four years of active duty, it will also require four years in the Individual Ready Reserve (IRR). Members who are given an administrative separation are either transferred to the IRR to complete their MSO, or are completely discharged and not required to complete their military service obligation. Each Service has varying criteria for determining the appropriate option. Members of the IRR are not required to attend drills but could be called to involuntary active duty in a mobilization. (See Chapter 18, *Mobilization and Involuntary Active Duty*.)

Army

Transfer to the IRR is mandatory for members who have completed basic training, unless the member has been discharged for conscientious objection, alcohol or other drug abuse rehabilitation failure, misconduct, homosexual conduct, with a characterization of service Under Other Than Honorable Conditions (OTH), or “clearly have no potential for useful service under conditions of full mobilization.”¹⁰

Navy

Members who have “any potential for future mobilization will normally be transferred to the IRR.” However, members will be discharged if characterization of service is OTH, or if separation is based on conscientious objection, drug trafficking, homosexual conduct, defective enlistment, or medical reasons causing the member to be ineligible for mobilization.¹¹

Marine Corps

Members determined to be a mobilization asset will be transferred to the IRR. Members will be discharged when characterization of service is OTH, or if separation is based on conscientious objection, homosexual conduct, misconduct, drug trafficking, defective enlistment or medical reasons causing the member to be ineligible for mobilization.¹²

10. AR 635-200 §1-36.

11. MILPERSMAN §3610100.5.

12. MARCORSEPMAN §6311.3.

Air Force

The Air Force will discharge all members with administrative separations except those based on expiration of enlistment, early release to further education, and a few other miscellaneous categories.¹³

REASONS FOR SEPARATION

Administrative discharges can be roughly divided into those which are voluntary (or member-initiated) and those which are involuntary (or command-initiated). Discharges that must be requested by the member include:

Punitive Discharges

• Servicemembers may also receive punitive discharges, which can only be imposed as punishment by a court-martial and are not covered in this guide.

- conscientious objection,
- hardship and dependency,
- defective and erroneous enlistment, and
- discharge in lieu of court-martial.

Involuntary discharges must be initiated by commanding officers, who may choose to discharge enlisted members with or without their consent. Ultimately, the regulations are intended to give commanders control over their troops to maintain good order and discipline. When servicemembers seek involuntary discharges, they must persuade the command that a separation is warranted, and that separation is in the best interests of the military. Involuntary discharges include:

- entry level performance and conduct,
- other designated physical and mental conditions,
- unsatisfactory performance, and
- reservist unsatisfactory performance.

There are two discharges that do not follow the same procedures as other involuntary discharges but are not requested by a servicemember directly. They are:

- disability, and
- homosexual conduct.

Other involuntary discharges are not usually sought by servicemembers. They are initiated by a commander to punish a servicemember, sometimes while a servicemember is seeking a different discharge. Members will likely want to fight separation when being processed for one of the following discharges:

- misconduct, and
- fraudulent enlistment.

The following overview of reasons for separation gives a brief description of each of the discharges discussed in this guide. To find out more about specific discharges, and the regulations that govern them, please refer to the relevant

13. AFI 36-3208 Table 1.4

chapters. Other less common administrative discharges are discussed under “Other Miscellaneous Discharges” on page 2.10.

Delayed Enlistment Program (See Chapter 4)

When a recruit enlists in the military, he or she is commonly placed in the Delayed Enlistment Program (DEP). Members of the DEP take an oath of enlistment, sign an enlistment agreement obligating them to military service, and are given a date to report for active duty. However, DEP members who make a written request for discharge will eventually be released.

Entry Level Performance and Conduct (See Chapter 7)

The military is a way of life, with its own standards of conduct, unique customs and traditions, and different pressures and expectations. New recruits must learn to think differently about themselves and others. They face difficult training programs, an abundance of rules and regulations, and lose many of the freedoms they enjoyed as civilians. Some do not adapt to the military world and demonstrate that they are not succeeding within it. An entry level performance and conduct discharge is an involuntary discharge for service-members in entry level status. The separation, which can be a discharge or transfer to the Individual Ready Reserve, must be initiated while the member is still in entry level status, and results in an uncharacterized, Entry Level Separation (ELS).

Conscientious Objection (See Chapter 8)

Members of the military who develop a “firm, fixed, and sincere objection to participation in war in any form or the bearing of arms,” based on moral, ethical, or religious beliefs, are entitled to discharge from the military or transfer to non-combatant status. An applicant for conscientious objector (CO) status must submit a written application and be interviewed by a chaplain, military psychiatrist, and investigating officer. The written application must describe:

- The nature of the applicant’s beliefs about participation in war.
- How those beliefs changed or developed since entering the military.
- When and why the applicant’s beliefs prevented him or her from continuing to serve in the military.
- How the applicant’s daily lifestyle has changed as a result of his or her beliefs.

Homosexual Conduct (See Chapter 9)

Many servicemembers are discharged each year for “homosexual conduct.” While some request this discharge, many others are discharged involuntarily. Members suspected of being lesbian or gay are often subjected to intrusive investigations about their sexuality and may face harassment within their commands. A few are court-martialed each year for homosexual acts.

A member may be separated for stating that he or she is homosexual or bisexual; for engaging in, attempting to engage in, or soliciting a homosexual act; or for marrying, or attempting to marry, someone of the same sex. Characterization will be Honorable, General (under Honorable Conditions), or an Entry Level Separation, unless the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act under certain “aggravating circumstances.” In such cases characterization may be Under Other Than Honorable Conditions (OTH).

Hardship and Dependency (See Chapter 10)

Some men and women in the military have family problems which can be resolved only by their discharge from the military. A member of the military may be granted a voluntary separation for a “genuine dependency or undue hardship” if all of the following conditions are met:

- The hardship is severe and not temporary.
- It has arisen or been aggravated since entry into the military.
- The member has made every reasonable effort to remedy the situation.
- Separation is the only remedy.

An application for a hardship or dependency separation can result in either discharge or transfer to the inactive reserves. Servicemembers may also apply for humanitarian reassignment closer to home for hardships of shorter duration. Characterization of service will be Honorable or General (under Honorable Conditions).

Disability (See Chapter 11)

A physical or psychological condition which interferes significantly with an individual’s fitness for duty is grounds for discharge. Each Service’s disability evaluation system will determine if a servicemember is unfit for duty due to physical disability and, if so, whether the member is entitled to disability benefits. Medical problems which existed prior to enlistment, and those which resulted from a member’s misconduct, may lead to a medical discharge without disability benefits. Smaller medical problems may also lead to discharge without benefits or, in some cases, to an involuntary discharge such as other designated physical and mental conditions. This discharge will be characterized as Honorable, General (under Honorable Conditions), or as an Entry Level Separation.

Other Designated Physical or Mental Conditions (See Chapter 12)

The military may discharge servicemembers for “other designated physical and mental conditions” who have a physical or mental condition which does not qualify for a disability discharge, but “that potentially interfere with assignment to or performance of duty. . . .” Each Service considers different conditions which qualify for discharge, including: seasickness, bedwetting, airsickness, sleep walking, certain allergies, severe nightmares, severe stuttering, obesity, excessive height, and personality disorders. Common symptoms of some personality disorders include feeling depressed, helpless, or out of control, difficulty sleeping or inability to cope with work or people, or occasional thoughts of suicide.

This involuntary discharge will be characterized as Honorable, General (under Honorable Conditions), or as an Entry Level Separation.

Unsatisfactory Performance (See Chapter 13)

A servicemember may be talented and intelligent, but performing poorly because he or she can not adapt to military life. Each Service has its own guidelines for factors that constitute unsatisfactory performance, including:

- Failure to perform assigned duties properly.
- A progressively downward trend in performance ratings.
- Failure to demonstrate leadership potential.

There can be a fine line between unsatisfactory performance (which results in a General (under Honorable Conditions) or Honorable characterization) and misconduct (which will likely be characterized as Under Other Than Honorable Conditions). Unsatisfactory performance is more likely where it can be shown that performance problems are not intentional or the fault of the member. Members in entry level status will be processed for entry level performance and conduct. (See Chapter 7, *Entry Level Performance and Conduct*.)

Misconduct (See Chapter 14)

Members can be discharged for misconduct on the basis of:

- minor disciplinary infractions,
- a pattern of misconduct,
- commission of a serious offense (including drug use), and
- civilian conviction.

Unlike separations for unsatisfactory performance or other designated physical and mental conditions, a misconduct separation indicates that the member is at fault or to blame for his or her behavior. Because the military regards drug use as behavior for which the individual is culpable, it generally processes these cases for a discharge on the grounds of misconduct.

This involuntary discharge will normally be characterized as Under Other Than Honorable Conditions. A General (or, very rarely, Honorable) characterization may be given where the misconduct is minor, there are strong mitigating circumstances, or (in all branches but the Navy) the member is allowed to make a “conditional waiver” of rights in exchange for a General characterization.

Members facing the prospect of a misconduct discharge will most often want to fight separation for misconduct in order to avoid characterization of Under Other Than Honorable Conditions. Members may be facing “dual processing” for misconduct and a more favorable discharge. Misconduct processing may also be initiated as improper punishment of members for asserting their rights.

Discharge in Lieu of Court-Martial (See Chapter 15)

Servicemembers charged with a court-martial offense may request an administrative discharge “in lieu of court-martial.” This discharge is almost always characterized Under Other Than Honorable Conditions (OTH). Submitting the discharge request, which must contain specific elements outlined in the regulations, does not automatically suspend court-martial proceedings. The general court-martial convening authority decides whether to proceed with court-martial or to grant the discharge request.

Erroneous, Defective, and Fraudulent Enlistment (See Chapter 16)

There are large numbers of enlistees who believe either that recruiters made false promises to them or that they were not qualified for enlistment when they signed up. Unfortunately, because of time-limits for claims, waivers, “constructive enlistment,” and difficulty documenting recruiter’s verbal promises, a separation on these grounds is often difficult to obtain.

Recruits qualifying for separation on the basis of defective, erroneous, or fraudulent enlistment must fall into one of the following categories:

- **Minority:** It is illegal to enlist under age 17; written parental consent is required for enlistment of persons aged 17.
- **Erroneous Enlistment:** A recruit did not meet minimum enlistment standards at the time of enlistment.
- **Defective Enlistment Agreement:** A recruiter made an unfulfilled promise upon which the recruit relied.
- **Fraudulent Enlistment:** An enlistment obtained through deliberate misrepresentation or concealment by the recruit. (This can result in a characterization of service Under Other Than Honorable Conditions or, very rarely, in court-martial.)

The vast majority of recruits are now placed in the Delayed Enlistment Program (DEP) for up to a year before entering active duty. The criteria for discharge from the DEP are much less strict than for recruits already on active

duty. If a recruit has not yet reported for active duty, see Chapter 4, *The Delayed Enlistment Program*.

The characterization of service, except for fraudulent enlistment, will be Entry Level Separation, Honorable, or General (under Honorable Conditions); in some cases discharge will result in a void enlistment.

Reservist Unsatisfactory Participation (See Chapter 17)

Selected Reservists who do not satisfactorily fulfill their drilling or training requirements may be charged with unsatisfactory participation. As punishment, such reservists may be ordered to involuntary active duty, transferred to the Individual Ready Reserve, or discharged. This discharge is involuntary and may be characterized as Honorable, General (under Honorable Conditions), or Under Other Than Honorable Conditions (OTH).

ROTC: Disenrollment and Separation (See Chapter 19)

“Obligated members” of ROTC agree to complete the requirements of the ROTC program, accept a commission, and serve a specified number of years of active or reserve duty. All ROTC scholarship recipients become obligated members after their freshman year and must serve their agreed time on active duty or, if the military waives the active duty requirement, reimburse the military for scholarship money they received (unless that requirement is also waived). Nonscholarship students who enroll in the “advanced course” (the final two years of the ROTC program) contract for active duty service, and become obligated members. Students who are not obligated members may leave ROTC at any time without military obligation.

Obligated members of ROTC who want to be separated must seek disenrollment from ROTC and discharge from their military obligations. Students may be disenrolled from ROTC on familiar grounds, such as conscientious objection, hardship, medical conditions, and homosexual conduct, as well as reasons unique to ROTC. Characterization of service will depend on the reasons for discharge.

OTHER MISCELLANEOUS DISCHARGES

Processing for the following discharges follows the procedures outlined in Chapter 3, *Understanding the Discharge Process*. For additional information, consult the regulations cited.

Surviving Son or Daughter

Servicemembers are eligible for separation if their father or mother, or one or more sons or daughters:

- “Have been killed in action, or have died when serving in the US Armed Forces from wounds, accident, or disease.”

- Have been placed in a “captured or missing-in-action status.”
- “Have a permanent 100 percent Service-related disability (including 100 percent mental disability), as determined by the Veterans Administration or one of the Military Services, and are not gainfully employed because of the disability.”¹⁴

This separation is not available during a war or national emergency declared by Congress. Commissioned and warrant officers are not eligible for this separation. Servicemembers waive eligibility for surviving son/daughter separation if they enlist, reenlist, or voluntarily extend their active duty period after having been notified of both a qualifying family casualty and the provision for survivorship separation.

Pregnancy or Childbirth

A female member may be separated on the basis of pregnancy or childbirth upon her request, unless the military determines that retention is in the best interests of the Service.¹⁵

Parenthood

A member may be separated by reason of parenthood if the demands of parenthood prevent the member from satisfactorily performing his or her duties, or make the member unavailable for worldwide assignment or deployment.¹⁶

Early Release to Further Education

The Department of Defense authorizes the Services to separate military personnel to attend a college, university, or a vocational or technical school who are within 90 days of their expiration of term of service.¹⁷

Other Convenience of the Government Separations

Each Service may “provide additional grounds for separation for the convenience of the government.”¹⁸ The Navy regulations do not provide for such a discharge.

14. DoD Directive 1315.15 §C.2.; see AR 635-200 §5-4.; MILPERSMAN §3620240.; MARCORSEPMAN §6410.; AFI 36-3208 §3.12.

15. DoD Directive 1332.14 Part 1 §C.4.d.; see AR 635-200 §8-1.; MILPERSMAN §3620220.; AFI 36-3208 §3.17.

16. DoD Directive 1332.14 Part 1 §C.4.e.; see AR 635-200 §5-8.; MILPERSMAN §3620215.; MARCORSEPMAN §6203.1.; AFI 36-3208 §5.9.

17. DoD Directive 1332.14 Part 1 §C.4.a.; see AR 635-200 §5-17.; MILPERSMAN 3620235.1.; MARCORSEPMAN §6405.; AFI 36-3208 §3.8.

18. DoD Directive 1332.14 Part 1 §C.4.i.; see AR 635-200 §5-9. through 5-14.; MARCORSEPMAN §6412. through §6417.; AFI 36-3208 3.15.

Drug/Alcohol Abuse Rehabilitation Failure

A member who has been referred to a program of rehabilitation for personal drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

- There is a lack of potential for continued military service; or
- Long-term rehabilitation is determined necessary, and the member is transferred to a civilian medical facility for rehabilitation.

Characterization of service will be Honorable, General (under Honorable Conditions) or an Entry Level Separation.¹⁹

Security

When retention is clearly inconsistent with the interests of national security, a member may be separated on this basis.²⁰

Secretarial Plenary Authority (In the Best Interest of the Service)

The Secretary of each Service has the authority to separate any member if the Secretary determines it to be in the best interest of the Service. Such separations will be characterized as Honorable, General (under Honorable Conditions), or ELS. There is no provision for an administrative board hearing, which is a right accorded under other discharges.²¹

Weight Control Failure

A member may be separated for failure to meet the weight control standards established under DoD Directive 1308.1, when it is determined that the member is unqualified for further military service and meets both of the following conditions:

- “The member is not medically diagnosed with a medical condition that precludes or interferes with weight control. Members with a medically diagnosed condition that precludes or interferes with weight control may be separated either through medical channels, if appropriate, or [for other designated physical and mental conditions].”
- “The member fails to meet weight control standards, and the sole reason for separation is failure to meet the weight control standard.”²²

19. DoD Directive 1332.14 Part 1 \$I. and J.; see AR 635-200 §9-1.; MILPERSMAN §3630500. and §3630550.; MARCORSEPMAN §6208. and §6209.; AFI 36-3208 §5.31. and §5.32.

20. DoD Directive 1332.14 Part 1 \$M.; see MILPERSMAN §3630700.; MARCORSEPMAN §6212.; AFI 36-3208 §5.57.

21. DoD Directive 1332.14 Part 1 \$O.; see MILPERSMAN §3630900.; MARCORSEPMAN §6214. and §6421.

22. DoD Directive 1332.14 Part 1 \$Q.; see AR 635-200 §5-15.; MILPERSMAN §3620260.; AFI 36-3208 §5.65. and AFI 40-502 §7.

OFFICER DISCHARGES

The regulations that govern commissioned officer separations are generally separate from those that govern enlisted member separations. However, discharge for conscientious objection, hardship and dependency, disability, and homosexual conduct follow essentially the same procedures as for enlisted members. Officers may also be separated for “substandard performance of duty,” “acts of misconduct or moral or professional dereliction,” and when “retention is not consistent with the interests of national security.”²³ Commissioned officers with less than five years service may be discharged “when there is a need to reduce the number of officers...to meet budgetary or force size requirements.”²⁴

Examples of substandard performance of duty include substandard:

- performance of duty,
- efficiency,
- leadership,
- lack of response to training “to the degree of being unsatisfactory”,
- attitude or character.²⁵

Acts of misconduct include, but are not limited to:

- “Serious or recurring wrongdoing, punishable by military or civilian authorities.”
- “Intentional or discreditable mismanagement of personal affairs, including financial affairs.”
- “Drug abuse.”
- “Intentional neglect of, or failure to perform, assigned duties or complete required training.”
- “Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties.”
- “Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.”²⁶

23. DoD Directive 1332.30 Enclosure: “Reasons for Separation” §A., §B. and §D.; see also AR 635-100 Chapter 5; SECNAVINST 1920.6 A “Policy Governing Involuntary Separation”; AFI 36-3206 Chapters 2 and 3.

24. DoD Directive 1332.30 §D.2.

25. DoD Directive 1332.30 Enclosure: “Reasons for Separation” §A.

26. DoD Directive 1332.30 Enclosure: “Reasons for Separation” §B.

References

Department of Defense

- DoD Directive 1332.14, *Enlisted Administrative Separations* [December 21, 1993]
- DoD Directive 1308.1, *DoD Physical Fitness and Body Fat Program* [July 20, 1995]
- DoD Directive 1315.15, *Special Separation Policies for Survivorship* [September 26, 1988]
- DoD Directive 1332.30, *Separation of Regular Commissioned Officers* [December 21, 1993, through Change 1, March 4, 1994]

Army

- AR 635-200, *Personnel Separations; Enlisted Personnel* [October 17, 1990]
- AR 635-100, *Personnel Separations; Officer Personnel* [May 1, 1989]

Navy

- MILPERSMAN (NAVPERS 15560 C), *Naval Military Personnel Manual* [Through Change 15, February 28, 1997]

SECNAVINST 1920.6 A, *Administrative Separation of Officers* [November 21, 1983 through Change 3, January 31, 1996]

Marine Corps

MARCORSEPMAN (MCO P1900.16 E), *Marine Corps Separation and Retirement Manual* [August 18, 1995]

Air Force

- AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers* [October 14, 1994]
- AFI 36-3207, *Separating Commissioned Officers* [May 29, 1997]
- AFI 36-3208, *Administrative Separation of Airmen* [October 14, 1994]
- AFI 40-502 §7., *Weight Management Program* [November 7, 1994]

To find out about revisions to regulations, see Appendix 1, *Regulations*, for instructions.

Chapter 20

Unauthorized Absence

It is a crime for members of the military to be absent from their units, organizations, or places of duty without authority. An unauthorized absence, which might be only minutes long or could continue for years, can result in being charged with one or more of the following absence offenses:

- absence without leave (AWOL), which is also referred to as unauthorized absence (UA),
- missing movement, and
- desertion.

Absent members may face nonjudicial punishment, court-martial, or request a discharge in lieu of court-martial after being charged.

Members of the military go AWOL or UA for a wide variety of reasons. They may fear for their own physical safety and go AWOL to escape harassment, threats, violence, or physically dangerous living and working conditions. Some people go AWOL because of stress or psychological problems created or exacerbated by military life. These servicemembers, like those escaping from threats or violence, may be very frightened about returning to the military.

Members may leave to take care of family problems, such as a sick relative or a marital problem. If the servicemember is not officially granted leave to deal with such problems, he or she may decide to leave without permission to settle them. A member may be motivated to go AWOL by a commander's improper refusal to accept or process a request for discharge, or denial of proper medical attention.

Often AWOL servicemembers are guilty of nothing more than attempting to quit their jobs — a uniquely military crime. They may no longer be interested in preparing for, or fighting in, wars but do not know that a discharge for conscientious objection exists. Or, they may simply be disillusioned with military life. An unauthorized absence can be a last, desperate attempt to get out of the military. Members of the military, even those eligible for an administrative discharge, are sometimes told that they can not be discharged unless they “get in trouble.” Servicemembers may also go AWOL or UA to escape punishment.

A counselor can assist a member absent without authority by:

- Providing accurate information about absence offenses and military policies for processing absent members on their return to military control.
- Assisting with a surrender to military control at a time and place that will lead to the most favorable resolution of the case.
- Helping to resolve the factors that motivated the absence.

It is legal to assist servicemembers absent without leave to resolve their cases. However, US law places some restrictions on what advice and assistance may be provided to members who are (or are considering going) absent without leave.

ABSENCE OFFENSES

What crime absent servicemembers will be charged with, and how they will be punished, depends on the circumstances of the case, current military policy, and command discretion. Circumstances that affect the case include the length of the absence and whether the member surrendered or was apprehended. Individual commands determine how absent members will be charged and punished, including under what circumstances requests for discharge in lieu of court-martial will be considered.

Members absent without authority may be charged with:

- absence without leave;
- desertion; or
- missing movement.

Absence Without Leave (AWOL)

Under Article 86, UCMJ, a servicemember is absent without leave “who without authority —

- “fails to go to his [or her] appointed place of duty at the time prescribed;
- “goes from that place;” or
- “absents himself [or herself] or remains absent from his [or her] unit, organization or place of duty at which he [or she] is required to be at the time prescribed.”¹

Maximum punishments for an absence without leave offense are:

- Absent for not more than three days: confinement for one month.
- Absent for more than three, but not more than 30 days: confinement for six months.
- Absent for more than 30 days: confinement for one year and a punitive discharge.
- Absent for more than 30 days and terminated by apprehension: confinement for one year, six months and a punitive discharge.²

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1. UCMJ Article 86 at 10 USC §886.
 2. *Manual for Courts-Martial*, 1995, Appendix 12 "Maximum Punishment Chart."

Definition of Terms

Absence Without Leave (AWOL)

See "Absence Without Leave (AWOL)" on page 20.2.

Unauthorized Absence (UA)

The Navy and Marine Corps refer to absence without leave as "unauthorized absence."

Desertion

See "Desertion" on page 20.4.

Missing Movement

See "Missing Movement" on page 20.5.

Deserter (Administrative Classification)

A deserter can be someone convicted of desertion. More commonly, it is a term used by the military for administrative purposes only. The DoD requires an absentee to be administratively classified as a deserter when:

- "The facts and circumstances of absence, without regard to the length of absence, indicate that the member may have committed the offense of desertion..." or
- "The member has been absent without leave for 30 consecutive days;" or
- "The member is absent without authority" and "has gone to or remains in a foreign country and, while in the foreign country, has requested, applied for, or accepted any type of asylum or residence permit from that country, or any governmental agency thereof."¹

Deserter Information Point

Each Service maintains a deserter information point which serves as a clearinghouse for information on absent members administratively classified as deserters. For locations of deserter information points, see CCCO's *Report on AWOL/UA Policies*.

Return to Military Control

The date and hour:

- "An absentee or deserter surrenders to, is delivered to, or is apprehended by or for military authorities;" or
- "A civilian authority holding the absentee or deserter for some reason other than at the request of the military informs the military of his or her availability;" or
- "An absentee or deserter otherwise comes under the control of military personnel."²

Personnel Control Facility

An Army unit which processes soldiers administratively classified as deserters.

CCCO's *Report on AWOL/UA Policies*

CCCO publishes an annual report on Service policies for processing members administratively classified as deserters. The report includes policies and contact names for major processing centers for absent members in every Service.

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1. DoD Directive 1325.2 §D.1.
 2. DoD Directive 1325.2 §C.4.

Desertion

Under Article 85, UCMJ, a servicemember is guilty of desertion who:

- “without authority goes or remains absent from his [or her] unit, organization or place of duty with intent to remain away therefrom permanently;”
- “quits his [or her] unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service;” or
- “without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he [or she] has not been regularly separated, or enters any foreign armed service except when authorized by the United States.”³

To be found guilty of desertion, an absent member must have, “at the time the absence began or at some time during the absence,” intended “to remain away from his or her unit, organization, or place of duty permanently.”⁴ Such an intent is difficult to prove and desertion prosecutions are consequentially unusual. No factor alone will determine whether an absent member formed an intent to stay away permanently, but the following actions are examples of circumstantial evidence considered by military courts to be some evidence of desertion:

- “that the period of absence was lengthy;”
- “that the accused attempted to, or did, dispose of uniforms or other military property;”
- “that the accused purchased a ticket for a distant point or was arrested, apprehended or surrendered a considerable distance from the accused’s station;”
- “that the accused could have conveniently surrendered to military control but did not;”
- “that the accused was dissatisfied with the accused’s unit, ship, or with military service;”
- “that the accused made remarks indicating an intention to desert;”
- “that the accused was under charges or had escaped from confinement at the time of the absence;” or,
- “that the accused made preparations indicative of an intent not to return (for example, financial arrangements).”⁵

The military considers several actions that tend to negate an intent to remain away permanently:

- “previous excellent and long service;”
- “that the accused left valuable personal property in the unit or on the ship;”

3. UCMJ Article 85 at 10 USC §885.

4. *Manual for Courts-Martial*, 1995, Part IV §9b(c).

5. *Manual for Courts-Martial*, 1995, Part IV §9c(1)(c)(iii).

- “that the accused was under the influence of alcohol or drugs during the absence.”⁶

Maximum punishments for desertion are:

- Terminated by apprehension: confinement for three years and a punitive discharge.
- Otherwise terminated: confinement for two years and a punitive discharge.
- With intent to avoid hazardous duty or shirk important service: confinement for five years and a punitive discharge.⁷

Missing Movement

A servicemember “who through neglect or design misses the movement of a ship, aircraft, or unit with which he [or she] is required in the course of duty to move” may be charged with missing movement under Article 87, UCMJ.⁸ To be convicted of missing movement, the accused must have had actual knowledge of the movement.⁹

Maximum punishments for missing movement are:

- Through neglect: confinement for one year and a punitive discharge.
- Through design: confinement for two years and a punitive discharge.¹⁰

Deserter Warrants

The military will classify an absent member as a “deserter” for administrative purposes, generally after 30 consecutive days of absence. An absent member who has been classified as a “deserter” for administrative purposes has rarely committed the crime of desertion. A deserter warrant is issued by the military when an absentee is administratively classified as a deserter.¹¹ The warrant is forwarded to the National Crime Information Center and is available for all civilian law enforcement when they run computer checks. An absentee may be classified as a deserter more quickly, or deserter warrants may be issued more quickly, during a mobilization, when the absentee has had access to highly classified information, or at a commander’s discretion.¹²

Deserter?

- The military’s use of the term “deserter” is confusing. The offense of desertion is far more serious than absence without leave. Because it is difficult for the military to prove, the charge is rarely made (although the military will sometimes make the charge and drop it shortly before trial). However, long-term absentees are administratively classified, and routinely referred to by the military, as deserters. Absentees may even refer to themselves as deserters.

- Inform clients of the difference between the administrative term deserter and the legal offense of desertion while encouraging them to refer to themselves as AWOL or UA.

6. *Manual for Courts-Martial*, 1995, Part IV §9c(1)(c)(iii).

7. *Manual for Courts-Martial*, 1995, Appendix 12 “Maximum Punishment Chart.”

8. UCMJ Article 87 at 10 USC §887.

9. *Manual for Courts-Martial*, 1995, Part IV §11c.(5).

10. *Manual for Courts-Martial*, 1995, Appendix 12 “Maximum Punishment Chart.”

11. DoD Directive 1325.2 §D.1.

12. MCO P5800.8 §5002.1.

COUNSELING

A primary goal of counseling absent servicemembers is to assist with a surrender to military control, at a time and place acceptable to the client, that will lead to the most favorable resolution of the member's case. In cases of absences over 30 days, the most favorable resolution of an absentee's case is usually approval of a request for discharge in lieu of court-martial. The discharge can often be executed in a few weeks (or even days!), there is no sentence for jail-time but the characterization of service will almost always be Under Other Than Honorable Conditions (OTH).

A member absent over 30 days, when considering their limited options, needs accurate information about military policies. To prepare for a return to military control, members will need information on:

- Where they will be processed on return to military control.
- What the charges and punishment are likely to be.
- How likely a request for a discharge in lieu of court-martial is to be accepted, as well as how long it will take to process.

An absentee normally will be either returned to their original unit or assigned to a major disciplinary facility for processing on return to military control. (Under compelling circumstances, it may be possible to persuade the Service, or even a federal court, that a servicemember should be allowed to return to a different base.)

It is important to research unit policies regarding court-martial and discharge. However, military officials will rarely discuss a specific case before the absent member returns to military control. Even if they do, there is no way to hold the command to any assurances they might give. The standard response to any inquiry is that it is in the member's best interest to surrender immediately to the nearest military facility. However, by speaking with a JAG officer or military defense counsel at a particular base you can often find out general policies for processing most AWOL/UA cases. In addition, there are some policies that apply throughout each Service. (See "Official Process" on page 20.9.)

Counseling absent servicemembers can be difficult. They are often wary and unsure whom to trust. Asking too many questions can put absentees on their guard. However, it is hard to provide accurate information on how a member will be processed or charged without specific information.

While some absentees can clearly articulate why they left their unit, others may be unable or unwilling to tell their entire story and will not always provide complete information about previous offenses or pending charges. Counselors can overcome some of this reluctance by explaining, where applicable, that they do not work for the military, have no ties or duty to the military, and do not receive military or government funding. If a counselor's work is covered by the confidentiality of an attorney or other appropriate professional, inform the member of this. (See Chapter 1, *Advocating for GIs*, under "Security" on page 1.7.) Whether there is such a privilege or not, counselors can

Counseling Tips

- Stress the importance of the client staying out of trouble (including traffic tickets and civil disobedience) while AWOL/UA, particularly if they have been absent more than 30 days.
- Be careful about predicting what will happen to clients upon return to the military.
- Warn AWOL/UA members that they may be given drug tests following their return to military control.
- Many servicemembers who are AWOL/UA are in crisis — be prepared for the client to be undependable.
- Clients may need emotional support, may have trouble deciding what to do, and may have trouble returning even if they want to go back.

explain that they have no legal obligation to turn anyone in for being AWOL or force them to return.

Never assume that you have the entire story. If possible, request a copy of the member's personnel file. (See "Documentation" on page 20.11.) To protect the absentee, make sure he or she understands the consequences of pending charges or previous offenses on general processing policies. When explaining general policies and trends make clear that, while it is likely such policies will be followed, each case is decided on individually.

The client may need to make quick decisions about whether to return before the passage of a deadline. Note any approaching deadlines that may affect the case, such as: three days of absence, 30 days of absence, a date of deployment or movement, or a date the member is to report to a new command.

Staying in touch with absentees can be problematic. It is difficult but sometimes necessary to counsel AWOL members over the phone. Avoid giving detailed information over the telephone because it is hard to elicit enough accurate information in an initial telephone conversation to be reasonably sure of giving the right advice. Never say anything on the phone that you would not want the military command to hear.

Members who fear for their own safety at their original unit will need support in returning to military control, or need to remain absent until their Services policies no longer call for processing at their original unit. (Contact CCCO when a member fears for their own safety.)

Counseling Questions

Some important information to find out from clients includes:

- when the absence began;
- where the member was stationed;
- if there have been previous unauthorized absences or other disciplinary actions;
- if any other charges are pending;
- whether the command moved and if the member knew it was going to move;
- why the member left;
- if the absent member left to avoid hazardous duty;
- what the member wants in the long run;
- how the member feels about returning to his or her command, or to any command;
- whether the member was being harassed at the old command;
- whether the member was awaiting transfer or had received transfer orders when he or she left (on receipt of orders, the member technically belongs to the new command); and
- whether the member made formal or informal complaints, came out to the command, or told the command that he or she wanted out for any reason.

Restrictions on Assistance

It is illegal to "entice" any member of the Armed Forces to "desert therefrom."¹³ This includes advising a servicemember to go AWOL or remain AWOL indefinitely. The law does not forbid explaining military policy and saying, if the facts justify it, "Going AWOL for over 30 days will result in a discharge in lieu of court-martial," or "If you decide to stay UA two days more until your psychiatric appointment, that will not put you into the more serious UA category of over 30 days." Such remarks can be prefaced by saying, "It would be illegal for me to tell you to go (or remain) AWOL."

Anyone who "harbors, conceals, protects, or assists" a person "knowing him [or her] to have deserted" from the military violates US law.¹⁴ This statute does not prohibit the kinds of services counselors generally provide. Legal information may be provided to any absentee, regardless of his or her status. Providing assistance (such as housing, transportation, or money) is not illegal if the intention is to prepare the absent member for an eventual return to military control. Of approximately ten reported prosecutions under this statute, almost all involved family members of deserters who provided a more-or-less permanent hiding place.¹⁵

Many counselors make it a policy not to provide physical assistance, such as money or housing, to absentees. Scared and emotionally unstable, absentees may use money provided to buy a bus ticket to the border, or counselors may finally have to force the member to leave their home. Further, if the absentee is an agent or "turns" under command pressure, it is easier to claim the physical help was intended to prolong or assist in the crime of UA than to claim counseling was done for those purposes.

Counseling Tips

- Many AWOL/UA clients do not need a civilian attorney, but it is helpful in some cases.
- AWOL/UA clients are often reluctant to reveal all the details about their military record and outstanding charges. The longer the absence, the more likely a client will withhold information.
- Contact CCCO for the latest copy of CCCO's *Report of AWOL/UA Policies* to find out if the member has a choice of bases and, if so, the best base for an absent servicemember to return to military control.
- Try to talk to a military defense counsel and legal officer at the base about procedures for processing AWOL/UA clients.

Security

An AWOL member preparing for return to military control does not want to be apprehended — it is in the client's best interest to surrender. Surrendering may allow the member to choose the place where he or she will be processed, or to return via a medical facility in an effort to obtain an immediate medical evaluation; surrendering allows the member to choose the time of return and have his or her affairs in place; and, surrendering reduces the possible maximum sentence for the absence.

The military relies almost exclusively on civilian authorities to apprehend members absent without leave. An absent member who commits a crime, is pulled over while driving or riding in a vehicle, or has his or her identity checked by police for any reason, will be arrested and delivered to military authorities based on a deserter warrant recorded at the National Crime Infor-

13. 18 USC §1381.

14. 18 USC §1381.

15. See e.g., *Breeze v US*, 398 F.2d 178 (10th Cir 1968); *Beauchamp v US*, 154 F.2d 413 (6th Cir 1946), cert. den. 329 US 723, rehearing denied, 329 US 826; *Firpo v US*, 261 F. 850 (2d Cir 1919); *Haley v US*, 215 F.2d 778 (9th Cir 1954); *Michael v US*, 393 F.2d 22 (10th Cir 1968); *US v Williams*, 59 F.Supp. 300 (DNY 1945).

mation Center. Local police are paid a reward for apprehending an absentee (as of 1997, \$50).¹⁶

Inform an AWOL member of the dangers of driving, and even traveling in, cars and visiting bus stations, bars, and other places where random police checks are common. The military routinely contacts an AWOL's "home of record" (as shown in the member's military personnel file) and primary next of kin by phone or letter. Local police are sent a copy of the deserter warrant and may, especially in small towns, take a particular interest in the case. While in-person visits by military or civilian police are currently rare, it is still not advisable to stay at the home of record or with the primary next of kin. It is less common, but frustrating, when friends or relatives turn the member in out of a desire to help (or out of spite).

OFFICIAL PROCESS

The policies for processing absent members are complicated and vary for each Service. The first step in sorting out military policy is to identify where the absent member will be assigned for processing upon return to military control. Regardless of the length of absence, an absentee may be returned to his or her original unit if there are other disciplinary charges pending.

Processing and Assignment of Absent Members

Army members absent over 30 days are "dropped from the rolls" of their original unit when they are administratively classified as a deserter. They will be processed at the personnel control facility (PCF) responsible for the location where they returned.¹⁷

The Navy has the most complicated policy for determining where absent members will be processed. Members absent for more than a year will normally be assigned to the "major disciplinary activity...closest to the point of return to military control."¹⁸ Members absent less than a year will normally be returned to their original unit. However, there are several exceptions:

- Members absent from overseas commands who return to military control in the continental US and Puerto Rico will be processed at the disciplinary activity closest to the point of return to military control.
- Members assigned to deployed submarines will be returned to the group or squadron.
- Members absent for six months to a year whose original unit is deployed when the member returns will be processed at the disciplinary activity closest to the point of return to military control. However, if the unit is scheduled to return to home port within 30 days, the member will be

Processing Locations

- For the location of the Army's personnel control facilities, Navy major disciplinary activities, and facilities for processing members absent over 30 days in the Marines and Air Force, see CCCO's *Report on AWOL/UA Policies*.

16. DoD Directive 1325.2 §D.2.d.; AFI 36-2911 §14.1.1.

17. AR 630-10 §4-6.a.

18. MILPERSMAN §3430100.5.c.

delivered to the disciplinary activity nearest to the unit's home port to await transfer to the unit. If the member cannot be returned to his or her unit within 30 days, the member will be processed at that disciplinary activity.¹⁹

Marines absent 180 days or less will be returned to their original command. Marines absent over 180 days will be assigned to the "major command nearest place of apprehension or surrender."²⁰

Air Force members absent less than one year will be returned to their original unit. Those absent more than one year are assigned to the "nearest Air Force installation with facilities for disposing of the case" unless the unit of assignment requests otherwise.²¹

Charges and Punishment

Charges are usually preferred at the time an absentee is administratively classified as a deserter. Military policies for charging absent members vary among Services and commands and may change rapidly. For instance, during the Gulf War absent members were more likely to be court-martialed, more likely to be charged with missing movement or desertion, and generally received harsher sentences than during peacetime. Additional factors to consider include: the member's prior disciplinary record, command attitude toward the member, and whether the member has taken an unpopular position (such as filing a complaint or applying for conscientious objection).

Members absent under three days, especially first-time offenders, are almost always given nonjudicial punishment at their original unit. Those absent under 30 days are generally given nonjudicial punishment, but may be court-martialed, at their original unit.

Members absent over 30 days may be discharged, either after serving a sentence imposed by court-martial, as a result of a discharge in lieu of court-martial, or for misconduct by reason of a serious offense. For members absent over 30 days, the policies of both the Service and the unit the member is assigned to will determine:

- whether the servicemember will be given nonjudicial punishment, court-martialed, given a discharge in lieu of court-martial, or processed for misconduct;
- whether the member will be placed in pretrial confinement.

Members under charges may face pretrial restraint (for instance, by restriction to a certain area of a base). However, pretrial *confinement* is authorized only when a commander believes, based "upon probable cause, that is, upon reasonable grounds," that:

- The member "will not appear at trial, pretrial hearing or investigation;" or
- The member "will engage in serious criminal misconduct;" and

Counseling Tips

- Remember that you are legally prohibited from encouraging people to indefinitely stay AWOL/UA, so remind clients that the only way to settle the AWOL/UA case is to eventually return to military control.

- If a client is returning to a base nearby:

Try to get the client into a legal administrative unit rather than his or her original unit or the military police.

Make sure the client dresses nicely.

If you are accompanying the client, also dress nicely.

Stay with the client as long as possible.

- If a client is returning to military control at a distant base, contact CCCO for a reference to a counselor near that base.

19. MILPERSMAN §3430100.5.b.

20. MCO P5800.8 §5009.3.a.

21. AFI 36-2911 §22.1.4.

Unit Policies

• For information on policies of, and processing times for, units processing large numbers of members absent over 30 days, see CCCO's *Report on AWOL/UA Policies*.

- "Less severe forms of restraint are inadequate."²²

In the past, commanders have interpreted "serious criminal misconduct" to include conscientious objection and injured sailors who refuse to perform unpleasant duties. In some commands it is routine to initially confine returning AWOL members before their cases are reviewed to determine if pretrial confinement is necessary.

Notification

It is standard practice for a letter to be sent ten days after an absence begins to the absentee's primary next of kin. The letter provides a contact where information on the whereabouts of the AWOL member may be sent and requests assistance in "returning the absentee to military control."²³ The Marines also call the primary next of kin after 48 hours. When a deserter warrant is issued another letter will be sent.

DOCUMENTATION

Charges of AWOL are based on records of absence completed by the unit and recorded in the automated personnel accounting system of the Service (such as the Army's SIDPERS (Standard Installation Division Personnel System) and AFLETS (Air Force Law Enforcement Terminal System)). Irregularities in the documentation of the absence could lead to the dismissal of charges. However, charges can sometimes be re-filed where the error can be corrected. According to the Navy, "In numerous cases, [administratively classified] deserters have not been brought to trial or have not been convicted due to lack of sufficient documentary evidence to establish commission of the offenses involved."²⁴ However, sloppy charging and documentation is less common than it once was. Information obtained from the member without an Article 31 warning against self-incrimination is not admissible as evidence of the absence.

To check documentation of the absence, counselors can request a copy of the absent member's personnel file using a power of attorney form. (See Appendix 2, *Power of Attorney*.) Request a member's file from his or her original unit; if the member has been absent over a year, also make a request to the Service's deserter information point.

Intent to Return and Mitigation

Requesting a copy of the absent member's personnel file can also be useful to check for:

22. *Manual for Courts-Martial*, 1995, RCM 305(h)(2)(B).
23. MCO P5800.8 §5002.4. and §5002.5.; also AR 630-10 §2-3.e.; MILPERSMAN §3430150.1.g; AFI 36-2911 §6.1.2.
24. MILPERSMAN §3430250.2.e.

- previous absences and disciplinary actions,
- other charges pending against the member.

In cases where an absentee is likely to be court-martialed, it is important to document an intent to return to military control. The most important evidence of an intent to return is for the member to surrender rather than be apprehended.

In addition to the factors listed under "Desertion" on page 20.4, documentation of an intent to return to military control can include:

- If the member retained his or her military ID, military clothing, or military records.

Case Study: "Steve"

Steve was UA from Camp Lejeune Marine Base in Jacksonville, NC, for the second time when he called Quaker House of Fayetteville, NC, in January, 1996.

He had arrived at Camp Lejeune in the fall of 1995 and completed basic training, despite a growing hatred for the Marine Corps and homesickness for his family and his girlfriend. A week into Advanced Infantry Training, however, he walked off the base and caught a plane back to his parents' home in Philadelphia.

He was there a couple of weeks before he flew back and returned to the base unaccompanied. When he arrived, he was greeted by a screaming NCO who spit on and hit him before leaving him alone in an unguarded room. After an hour alone, Steve went UA again and travelled back to Philadelphia.

By the time he hooked up with Quaker House's military counselors in January, Steve was five weeks into his second UA and gathering the courage to go back to Jacksonville. While he was resolved to get out of the Marine Corps, he was also scared and looking for reassurance that he wouldn't be beaten again, or worse — forced to stay in the military.

Quaker House staff called CCCO to confirm that Steve had few options other than returning to Camp Lejeune: unless he stayed out for months longer he would be returned to Jacksonville no matter where he turned himself in. Quaker House also called a military defense attorney on base who suggested that Steve would likely be attached to an administrative unit for four to six weeks before he was given a discharge in lieu of court martial.

While Quaker House staff stressed that anything could happen once he got back on base, Steve was reassured by the defense attorney's news and drove down to Fayetteville

with his older brother. Upon their arrival, Quaker House staff helped Steve type a brief letter explaining why he left the military and requesting that he be discharged for the good of the Marines and his family.

Steve and his brother spent the night in Fayetteville, then travelled to Jacksonville with a Quaker House counselor and one of the organization's board members. Both Quaker House representatives wore suits and carried bibles (as well as an earlier edition of this book).

When they got on base, Steve's entourage went first to the unit chapel, where Quaker House staff discussed Steve's case with a chaplain. When Steve was directed back to his original unit, his counselor explained what had happened to Steve the last time he returned, outlined his desire to leave the military legally and requested that the chaplain see about other options for Steve's reassignment.

After some haggling with the military police and the chaplain, Steve was assigned to an administrative unit which included other UA soldiers and petty offenders awaiting processing. After conversations with the unit's command and reassurances from Steve that he felt safely settled, his brother and the Quaker House representatives returned to Fayetteville. Steve and his counselors agreed that he would call Quaker House nightly for a week to check in and that if he didn't call, the counselor would call the command and the chaplain to confirm his safety.

Steve spent three weeks picking up garbage and cleaning tables while awaiting his discharge. During that time he was assigned a military defense attorney and kept in regular contact with Quaker House staff. Three weeks after returning to Camp Lejeune, Steve was granted an Other Than Honorable discharge and sent home.

- If the member did something during the period of AWOL indicating an intent to return some day (such as writing a letter evidencing such intent, taking a job, using their social security number, and supporting and living with their family where they could count on being arrested sooner or later).

If an absent servicemember is not immediately planning to return to military control, it may help to have the member write a statement that he or she plans to return soon. (The member might write a letter, to a counselor or lawyer for instance, asking for help in returning to military control.) If necessary, the letter might be used as evidence of an intent to return to military control.

The documentation above, and any other documentation for a request for discharge in lieu of court-martial or for release from pretrial confinement, should be gathered before returning to military control. The client may want to gather documentation of mitigating circumstances while absent, when he or she has relative mobility (for instance, to see a civilian psychiatrist before being restricted to base). There may also be a link between the absence and a ground for discharge that can be documented. For information on documenting a request for discharge in lieu of court-martial, see Chapter 15, *Discharge in Lieu of Court-Martial*.

Review any documentation gathered by the member for discharge, mitigation, etc., before it is shown to the command. It is generally wise to suggest that members who may face court-martial also show these materials to their defense counsel, military or civilian, before making use of it. Counsel may have more familiarity with the particular command, or may want to suggest an alternate strategy.

RETURNING TO MILITARY CONTROL

Surrendering can be a stressful time for absentees. If possible, clients should avoid surrendering to a military unit that does not regularly handle absentees. Returning to military control at a major disciplinary activity, where numerous absentees are processed, is not only routine and but can also speed processing. Returning to an absentee's original unit can be more traumatic, especially if the absence was motivated by problems at the unit. When problems are anticipated, consider intervention by a counselor or other civilian advocate (such as a religious advisor, civilian psychiatrist, or other professional). Such intervention can include a faxed letter to the commanding officer, officer of the day, or medical officer about a client's problems.

A servicemember who experienced threats or improper treatment at his or her unit might want to ask for Congressional assistance in resolving the problem that led to the unauthorized absence, or ensuring fair treatment once he or she returns. Only on rare occasions will Congressional offices take any action before the servicemember returns to military control. However, it can be helpful to alert a caseworker that an absent servicemember intends to

return to military control shortly, so the caseworker can make inquiries soon after the servicemember does return. (See Chapter 6, *Grievances and Filing Complaints*, under "Congressional Assistance" on page 6.5.)

After returning to military control, absentees may be escorted to the unit where they will be processed or given travel orders and instructed to report on their own recognizance (in the Navy, this is known as a "Technical Arrest Order"). A member's pay may be docked to cover the cost of any travel (this is particularly true in the Navy²⁵).

There is a multitude of paperwork and other processing that must be completed, often in various offices, at the time of return to military control. If an absentee surrenders on a weekend or holiday, no processing will begin until offices open again. Returning in the late afternoon or evening may also result in delays. Surrendering to civilian authorities is not a good idea, as it will result in several days of delay and unnecessary time spent in jail.

Local procedures can determine whether it is helpful or harmful to return during regular working hours when processing may begin more quickly, but unpleasant action may, too. For instance, at commands where restriction or pretrial confinement are common for returning absentees, it is possible that no one would be available after hours on Friday to authorize the restriction or confinement. The returnee might be allowed relative freedom until Monday, by which time she or he would have demonstrated some intent to remain under military control.

If the absentee is likely to be court-martialed, and there is doubt about whether the military adequately documented the absence or preferred charges correctly, the returning absentee may want to exercise the right to remain silent. The right to remain silent is not limited to direct questions about suspected criminal actions. Servicemembers can also choose to answer some questions and not others, begin answering questions and decide to stop talking at any time, or ask that a lawyer be present to advise them if the interview is to continue.

Absentees Outside the US

Absentees must report, at their own expense, to a US military installation in the United States or overseas. When entering the US, members with a deserter warrant will likely be apprehended at the border. Only when the US government is "directly responsible" for a member's presence in a country that has no US military installation will an embassy or consulate arrange to transport the absentee to a US military installation.²⁶

Discharge In Absentia for AWOL/UA

The DoD authorizes the Services to discharge absent members without their return to military control if one of the following conditions is met:

25. MILPERSMAN §3430200.3.c.

26. DoD Directive 1325.2 §D.2.c.(4).

Accompanying Clients

When accompanying clients, there are a few strategies to keep in mind:

- Make an appointment with the commanding officer, the chaplain, military defense counsel, or someone similar and walk the client in to that person directly.
- When no appointment is made, persevere far enough into the command to talk with an officer having some authority.
- Discuss with the client a common strategy based on the approach to discharge, confronting harassment, etc.
- Be assertive and review the appropriate regulations to avoid being bullied.

- "Absence without authority [occurs] after receiving notice of initiation of separation processing."
- "When prosecution of a member who is absent without authority appears to be barred by the statute of limitations, Article 43, UCMJ...."
- "When a member who is an alien is absent without leave and appears to have gone to a foreign country where the United States has no authority to apprehend the member under a treaty or other agreement."²⁷

TYPE OF SEPARATION

Repeated instances of short-term AWOL, a single AWOL of more than 30 days, or an AWOL of any length in addition to other offenses could lead to an administrative discharge for misconduct. (See Chapter 14, *Misconduct*.) Members absent over 30 days may face court-martial and can be sentenced to serve time in jail as well as a Bad Conduct or Dishonorable Discharge. Absentees facing court-martial may request an administrative discharge in lieu of court-martial, which almost always results in a characterization of service Under Other Than Honorable Conditions (OTH). Members who request a discharge in lieu and are still in entry level status may be considered for an Entry Level Separation. (See Chapter 15, *Discharge in Lieu of Court-Martial*.)

Army AWOLs

• As of 1997, AWOL members of the Army in entry level status may still be eligible for an uncharacterized Entry Level Separation. Contact CCCO for details.

APPEALS

Fighting Separation

Members who wish to fight separation will need to defend themselves at a court-martial, an administrative board, or both. Some possible defenses against absence offense charges include:

- Inability to return: The fact that an absence was "enforced or involuntary" by reason of "sickness, lack of transportation facilities, or other disabilities" is "a factor in extenuation."²⁸
- Duress: Where the absence "was caused by a reasonable apprehension that the accused or another innocent person would be immediately killed or would immediately suffer serious bodily injury...."²⁹
- Ignorance or mistake of fact: Absence offenses "require proof that the accused actually knew of the appointed time and place of duty."³⁰
- Statute of limitations: If there were errors in the documentation or original charges, the five year statute of limitations may have run.³¹

27. DoD Directive 1332.14 Part 3 §F.1.; see AR 635-200 §2-15.a.; MILPERSMAN §3640200.4.a.; AFI 36-3208 §1.12.

28. *Manual for Courts-Martial*, 1995, Part IV §10c(6) and RCM 916(i).

29. *Manual for Courts-Martial*, 1995, RCM 916(h).

30. *Manual for Courts-Martial*, 1995, Part IV §10c(2) and RCM 916(j).

Other defenses might also include improper denial of a conscientious objection claim³² or errors in the documentation of the absence. For more information on defenses to absence offenses, see "Other Resources" below.

RESERVISTS

During a mobilization, deserter warrants will be issued 7-10 days after a reservist fails to report for active duty as ordered.³³ As of 1997, Army reservists who fail to report for Initial Active Duty for Training (IADT), including the second part of split training, will not be reported as deserters, do not need to return to military control, and will be given an uncharacterized Entry Level Separation.³⁴

31. See UCMJ Article 43 at 10 USC §843.
32. *US v Lenox*, 21 USCMA 314, 45 CMR 88 (1972); see also *US v Goguen*, 42 CMR 807 (ACMR 1970); 20 USCMA 527, 43 CMR 367 (1971); *US v Stewart*, 20 USCMA 272, 43 CMR 112 (1971); *Parisi v Davidson*, No. C-69-470 LHB (ND Cal., May 10, 1972), 405 US 34, 46; 92 S.Ct. 815, 31 L.Ed. 2d 17 (1972).
33. AR 630-10 §6-2.b.(2).; AFI 36-2911 §1.4.
34. AR 630-10 §5-2.b.(2).

References

Department of Defense

DoD Directive 1325.2, *Desertion and Unauthorized Absence* [August 20, 1979, through Change 3, January 31, 1990]

DoD Directive 1332.14 Part 3 §F, *Enlisted Administrative Separations* [December 21, 1993]

Army

AR 630-10, *Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings* [June 10, 1992]

AR 190-9, *Military Police; Military Absentee and Deserter Apprehension Program* [July 24, 1992]

Navy

MILPERSMAN (NAVPERS 15560 C) §3430100., §3430150., §3630200., and §3430250., *Naval Military Personnel Manual* [Through Change 15, February 28, 1997]

Marine Corps

LEGADMINMAN (MCO P5800.8 C) §5002. and §5009., *Marine Corps Manual For Legal Administration* [June 30, 1992]

MCO 5800.10, *Return of Marine Corps Absentees* [September 20, 1994]

Air Force

AFI 36-2911, *Desertion and Unauthorized Absence* [July 28, 1994]

AFI 36-3208 §5.52.2. and §1.12., *Administrative Separation of Airmen* [October 14, 1994]

Other Resources

CCCO's *Report on AWOL/UA Policies* is available directly from CCCO.

Francis A. Gilligan and Frederic I. Lederer, *Court-Martial Procedure*, (Charlottesville, VA, The Michie Company), 1991.

Stephen A. Saltzburg, Lee D. Schinasi, and David A. Schlueter, *Military Rules of Evidence Manual* (Third Edition), (Charlottesville, VA, The Michie Company), 1991.

David A. Schlueter, *Military Criminal Justice: Practice and Procedure* (Fourth Edition), (Charlottesville, VA, The Michie Company), 1996.

To find out about revisions to regulations, see Appendix 1, *Regulations*, for instructions.

Appendix 4

Sample Letter for Release from the DEP

[recruit's address]

[date]

Commanding Officer [no actual name is required, the title is enough]
[address of recruiting station where recruit enlisted]

Dear Commander,

I am currently a member of the Navy DEP scheduled to enter active duty on [date]. I am requesting complete separation from the DEP and the Navy. I enlisted in the DEP [date] at the West Portal Navy Recruiting Station in San Francisco, where I was recruited by [name of recruiter]. My request for separation is based on the following factor(s):

Since my entrance in DEP, my mother's arthritic condition has worsened considerably. I am the oldest child in my family with two siblings aged 7 and 12. My mother now has great difficulty doing simple household chores and her doctor has informed her that her condition is likely to deteriorate further. She now feels that she must have my help at home to take care of my brothers.

In addition, in the past 5 months I have had a complete change of career plans. I had planned on becoming a technician at the time of joining the Navy but now I have decided to become a graphic artist. I was hired by Schmidt Advertising on January 19, 1997. They plan to provide me with further training on the job. With this job I will still be able to live at my family home.

Therefore, I request separation from the DEP and the Navy, and I hereby request prompt processing of this separation request. In the event that this separation request has not been fully processed on the date I am scheduled to report for active duty, I request an extension in my delay status until my separation request has been finally decided.

Sincerely,

[recruit's name and
social security number]

Appendix 5

Sample Article 138

Complaint

Initial Request

FROM: X. Y. Zee, SN, USN, 123-34-4566
TO: Commanding Officer, My Unit
SUBJ: Request for redress of grievances under Article 138

1. Two months ago I put in a chit to get leave to go home this week. I was told that it would be no problem, and that no one else had requested this date.
2. Last week I went to the Personnel Office to see if they were typing up my leave papers and was told that no one had authorized it. My Division Officer and my Department Head both then told me that they wanted me here for the inspection next week and would not let me go.
3. My parents have been notified that I'll be home and I have written to other people whom I haven't seen and told them I'd be there. I have not been home in a year and this is a hardship for which there is no excuse. My division does not rely on me alone to pass inspections, and I was told two months ago that the leave would be granted.
4. Please order the Personnel Office to prepare my leave papers for tomorrow as originally scheduled. Please instruct my Department Head and Division Officer not to prevent me from going home.
5. This request is being made in accordance with Article 138, UCMJ. I understand that if you do not comply with my request I may submit my complaint to the officer holding general court-martial convening authority over you, and that officer must perform an investigation and submit a report to the Secretary of the Service.
6. Thank you very much for your attention to this problem.

Very respectfully,
X. Y. Zee

Formal Complaint

FROM: X. Y. Zee, SN, USN, 123-34-4566
TO: COMCRUDLANT 4, Norfolk
VIA: Commanding Officer, My Unit
SUBJ: Request for redress of grievances
ENCL: (1) My request to Commanding Officer, My Unit, of [date]
REF: Article 138, Uniform Code of Military Justice

1. Yesterday I requested that my commanding officer grant me the leave which I had requested and which had been approved over two months ago. I told him how I was being kept on board for no good reason and that it was a great hardship to disrupt plans which had been made so far in advance. See enclosure (1).
2. Instead of granting my request, my commanding officer cursed me and angrily told me that I cannot force him to do anything. He then told me that I will be written up for disrespect because I slouched while he was addressing me. My compartment mate, A. B. Cee, SA, USN, was there and can testify to this.
3. I hereby request that you correct my original problem by ordering that my leave be granted at once. Further, I request that you order my commanding officer to apologize for cursing me and that you order him to drop the charges against me, as they clearly stem from my attempts to enjoy the benefits of my rights under the UCMJ.
4. This complaint is submitted in accordance with reference (a). I understand that the law requires you to order a complete investigation into this matter and that you must send a true copy of my complaint along with the results of your investigation to the Secretary of the Navy. I request that I be permitted to testify before the investigating officer.
5. Thank you very much for your help in this distressing situation.

Very respectfully,
X. Y. Zee

cc: Member of Congress; Advance Copy: Secretary of the Navy

Appendix 6

Supporting Letters for Conscientious Objectors

Letters in support of a conscientious objector claim may be written by anyone who knows the applicant (including friends, coworkers, teachers, family, members of their faith, etc.). Letter writers need to understand the requirements for receiving CO status and the role supporting letters play in attesting to an applicant's sincerity.

Laws And Regulations Regarding Conscientious Objectors

Members of the military who develop a "firm, fixed, and sincere objection to participation in war in any form or the bearing of arms," based on moral, ethical, or religious beliefs, are entitled to discharge from military service or transfer to non-combatant status. An applicant for conscientious objector status must submit a written application, and be interviewed by a chaplain, military psychiatrist, and investigating officer. The written application must describe:

- The nature of the applicant's beliefs about participation in war;
- How those beliefs changed or developed since entering the military;
- When and why the applicant's beliefs prevented him or her from continuing to serve in the military; and
- How the applicant's daily lifestyle has changed as a result of his or her beliefs.

A conscientious objector must:

- Have a firm, fixed and sincere objection to participation in war;
- Object to participation in war in any form;
- Base the objection in strongly held religious, moral, or ethical beliefs; and
- Base the objection in beliefs that arose or became central to the applicant's life after enlistment.

While the applicant must object to all war — not solely to a war that might be going on at any given moment — they need not know what they would do in the future or would have done in the past. A CO does not have to

belong to a religious sect, and need not believe in any kind of Supreme Being. If he or she is not religious in the conventional sense, she or he must show that the beliefs that form the basis of their objection are as important in their life as those in the life of a religious CO. The applicant's conscientious objection must have "crystallized," or become definite, *after* enlistment. It's okay if he or she had strong feelings against war before, but those feelings must have become objections for them to qualify.

Once an applicant demonstrates that their beliefs conform to the accepted definition of conscientious objection, the applicant must demonstrate that their beliefs are sincerely and strongly held. Letters of support are the best evidence of an applicant's sincerity and serve as testimonials to how strongly their beliefs are held.

Effective Letters

Supporting letters are important to document the applicant's general sincerity and integrity and to corroborate the specific events and dates that are cited in the applicant's claim. It is very helpful you have talked with the applicant about their CO beliefs or read their application. If you do not know the CO's beliefs firsthand, you can still write about the applicant's sincerity and general good character.

A personal letter, using your own words, is more convincing than one which uses legal phrases. Details about particular conversations or events, particularly if they corroborate the written application, provide compelling evidence of the applicant's sincerity. Specific incidents and exact words are most convincing. Try to express why you believe her or him. If you have had a part in the applicant's upbringing, or have discussed their beliefs with them, mention this.

The form of the letter is up to you, but typed letters, especially on letterhead stationary, of one to three pages, are most likely to be read. Address the letter to "The Commanding Officer of [the name of the applicant, including their service number if possible]." The letter, while

Supporting Letters for Conscientious

addressed to the commanding officer, must be delivered to the applicant to be included in their application. The applicant may ask you to revise your letter to support key evidence in their application. Make sure to keep a copy for yourself.

You may not agree with the applicant's beliefs but still believe they are sincere. Often a letter from someone who disagrees with the applicant's position but believes in the applicant's sincerity, is given high consideration. If you agree with the applicant's beliefs, avoid arguing against the military in your letter. It is the applicant's sincerity that needs to be supported — a buttressing of their arguments is not necessary.

It is perfectly legitimate for members of the military to write a supporting letter — many high-ranking military men and women do so every year. After all, you are writing about a friend, relative, or associate, not about yourself. If

you have ever served in the military, please state that in your letter.

Begin the letter by stating who you are and your relationship to the applicant, including how long you have known them. Discuss as many of the following three topics below as you feel capable of addressing:

- The applicant's sincerity.
 - Your knowledge of the experiences, and discussions that played a role in the development of the beliefs that are the basis of the applicant's request for conscientious objector status.
 - The point at which the applicant's beliefs "crystallized" into a firm objection to participation in war.
- The applicant may request that letter writers near their duty station appear as witnesses at a hearing with their investigating officer. Appearing at the hearing reinforces your belief in the sincerity of the applicant.

Appendix 7

Supporting Statements for Hardship & Dependency Claims

The military provides for the discharge of people who are needed at home because someone in their immediate family becomes severely dependent on the servicemember. In order to qualify for discharge on the basis of hardship or dependency, the servicemember must document for military authorities that his or her retention in the military perpetuates this hardship on the dependent.

The person submitting the application for discharge on the basis of dependency or hardship must submit letters which substantiate the claim. These letters can come from persons who know the situation well, such as friends, neighbors, clergy, social workers, and doctors. These letters greatly improve the likelihood of discharge.

The servicemember who has requested that you write a letter of support must show the following:

- That his or her presence and/or increased financial support is essential to prevent the dependent from suffering severe hardship, and that there is no one else both able and willing to take the servicemember's place.
- That the hardship condition developed after the member entered the military.
- That the condition is not temporary in nature.
- That every other means of attempting to solve the problem has been tried and that discharge from the military is now the only remaining solution which offers the possibility of greatly reducing or eliminating the problem.

To help you write an effective supporting letter, the following guidelines are offered. Please use specific examples to support your statements.

State how you are familiar with the situation.

Please describe:

- Your relationship to the family (friend, employer, grocer, minister, doctor, teacher, etc.).
- How long you have known the family and the person filing the claim.
- How much contact you have with them (note frequency of visits, correspondence, etc.).

Describe the circumstances of the hardship or dependency.

Include information such as:

- How long the problem has existed.
- When it began, or got worse, after the person entered the military.
- What services and support are needed and how the servicemember could provide these.
- Why no one else in the family can provide the support in his or her place.
- What other solutions have been tried.

Explain the consequences of the member's discharge, including:

- Why and how the discharge would help.
- What, in your opinion, will happen to the dependent if the discharge is denied.

Make the letter concise — usually no longer than two pages. If possible, it should be typed, and where applicable, on letterhead indicating title and organizational affiliation. If it is convenient, it helps to have the letter notarized.

Address the letter to "Commanding Officer of [applicant's name]" but send it to the applicant to include in the request for discharge. Please keep a copy for your records.

Appendix 8

Supporting Statements from Medical Professionals

Why Is An Evaluation Needed?

Military personnel may need medical documentation to show the existence of a condition requiring discharge, the severity of the condition of a dependent, or mitigating circumstances for an unexcused absence. Although the military has its own health care system, individual and specialized attention is difficult to find. In many cases, your evaluation may be the only way to ensure that your patient's needs are considered.

Your evaluation will be used to provide evidence of your patient's medical or psychiatric condition. However, your evaluation will not be protected by patient/doctor privilege once it has been submitted. Anything you say may be used as evidence against the patient. For example, discussion of illegal drug use or homosexual acts (even before enlistment) could result in criminal prosecution for your client.

Nobody expects you to spend time on legal technicalities. Instead, *a knowledgeable counselor or attorney should always review your letter.* Submit your evaluation directly to the attorney or counselor, when possible.

It is perfectly legal to medically evaluate a member of the military — even when the member is absent without leave (AWOL). In fact, medical evaluation is a proper step toward return to military jurisdiction. The risk of being pulled away from your practice for hearings or trials is virtually nonexistent.

Contents of the Evaluation

- **Opening.** Use your letterhead and address the letter "To Whom It May Concern," or "To the Commanding Officer of ____." Mark your letter "Confidential." (Remember, however, this will not stop the military from using your evaluation as evidence against the patient.)

- **Military Experience.** If you have had military experience, please cite it.
- **History.** If you have been treating the patient for some time, say so: your letter will be given more weight.
- **Test Results.** Military personnel favor numbers and pictures. Whenever possible, clinical impressions should be corroborated with objective findings.
- **Diagnosis.** Try to use the exact words of the military medical regulation (Department of Defense Directive 1332.18 "Separation from the Military Service by Reason of Physical Disability"). For a copy, contact the GI Rights Hotline at (800) 394-9544 or visit the CCCO/GI Rights Web Site at URL <www.liberty-net.org/ccco>. The regulation sometimes uses antiquated language, and the military has been known to refuse to recognize a newer name for the same phenomenon. For psychiatric diagnoses, consult the DSM-IV.
- **Prescriptions.** Emphasize any prescriptions which may be difficult to fill under military conditions, such as special clothing, special diet, or limits on activity.
- **Prognoses and Conclusion.** Consider providing two prognoses: one if the prescription is followed, and the other if it is not. For example, "If the patient scrupulously adheres to a bland diet she may experience few gastrointestinal difficulties. But if the restricted diet cannot be adhered to, acute and painful episodes will continue, probably requiring surgical intervention."

Stress Military Needs — Not Patient Welfare

The military wants to know whether the patient can perform their duties without causing trouble, embarrassment, or expense. His or her welfare is distinctly less important. Emphasize the impact of your patient's condi-

tion on job performance. If, however, the patient's problem may result in death, suicide, or serious disability, stress this fact.

Military authorities do not like civilians to tell them what to do. They often believe that civilians don't understand military needs. Therefore, it is unwise to offer an opinion of the patient's ability to "adjust to military service."

It is also unwise to directly express criticisms of the military. Instead, offer your opinion of the patient's ability to adjust to specific factors which may be present in military service. If the patient requires a special adjustment you suspect the military could not provide, state the requirement. *The exception to this rule is if you have previous military medical experience.* In this case, cite your experience.

Some poor examples of medical evaluations are:

- "This person should be discharged."
- "This person will not be able to adjust to military life."

Excellent examples of evaluations include:

- "This person should not be required to live or work in close quarters."
- "This person should only be required to walk moderate distances."

Avoid Documenting Incriminating Evidence

Criminal behavior, drug use and homosexual conduct should not be mentioned without consulting the servicemember's civilian counselor or attorney first. Remember, your evaluation will not be kept confidential and may be used against the patient.

A servicemember may want a letter stating that they are homosexual to help establish grounds for discharge. Military authorities often like to rely on medical opinions about a person's homosexual identification. Focus your evaluation on your patient's sexual desires, interests and feelings. Do not discuss a patient's sexual acts. Consult with the patient's counselor or lawyer.

Psychological Cases

For psychological cases, consult the regulations when possible, and stress the basic question of the patient's continued ability to serve. Pay special attention to cases with several applicable diagnoses. A diagnosis of "personality disorder" and "neurosis" often results in (Honorable) discharge. A diagnosis of "adjustment disorder," however, may be considered a disciplinary, nonmedical problem (and will seldom result in treatment or separation from the military), while a diagnosis of "psychosis" may result in compelled hospitalization or employment problems later.

Evaluations of Family Members

You may be asked to evaluate a family member of the servicemember. Military service is difficult for everyone. Yet, a discharge based on dependency is allowed only when the hardship to the family member is "undue," extreme, or life-threatening. The service member requesting a hardship discharge must show the following:

- That his or her presence and/or increased financial support is essential to prevent the dependent from suffering severe hardship, and that there is no one else both able and willing to take the servicemember's place.
- That the hardship condition developed after the member entered the military.
- That the condition is not temporary in nature.
- That every other means of attempting to solve the problem has been tried and that discharge from the military is now the only remaining solution which offers the possibility of greatly reducing or eliminating the problem.

The purpose of your evaluation is to show that the patient's situation is critical, and that the family member is dependent upon the presence of the servicemember. The complex regulations in this area require clear statements on the nature of the family member's problem, its duration, and possible deterioration if the servicemember is not released.

Appendix 9

Psychiatric Interviews

Members of the military may be referred to a mental health professional as part of an evaluation for discharge. For many servicemembers, this may be the first time they have visited a mental health professional or been asked direct questions about personal matters. They need to be told what to expect at the interview and be encouraged to talk about conditions and feelings which people often hide. When encouraging members to share personal thoughts and feelings, also stress the need for honesty.

There are some things that should not be volunteered to a mental health professional:

- Anything Illegal: There is no confidentiality with a military psychiatrist and a civilian psychiatrist may decide that an illegal act should be included in the report.
- Homosexual acts.
- Preservice offenses, drug use, illegal acts or psychiatric care that are not in a member's enlistment record and could result in processing for fraudulent enlistment.

Encourage members to share their feelings, rather than simply list their complaints. The member can talk about why military service is difficult for them rather than why they want to get out. Emphasize the problem and how it interferes with performance of duties, not a desire for discharge. A mental health evaluator needs to know the member's feelings, not logical explanations or psychiatric language.

Mental health tests can seem strange. Advise clients to answer all questions and be as cooperative as possible. If there is a particular problem a member is having, make sure they are prepared to talk about it even if the interviewer does not ask specific questions about it.

Mental health professionals have been known to test patients. They may say, "This doesn't sound serious," or, "I think you're faking." If this happens, the client can keep telling the interviewer about the problem and why they are serious. The client should not walk out. The psychiatrist may ask point-blank about information that might be incriminating (for example, "Do you use drugs?"). Talk in advance about how to respond to such questions.

Sometimes the psychiatrist will ask a member what they want, or if they want out. A member might say they do

not know what alternative there is to a discharge, since they can not go on the way they are. Make it clear that the problems are really bothersome and are the reason a discharge is appropriate.

Possible Symptoms

Members can let an evaluator know if they:

- can't sleep;
- have troubled sleep, or wake up exhausted;
- have nightmares or troubled dreams;
- sleep more than they think they should;
- can't eat;
- eat all the time;
- have a sudden loss or gain in weight;
- have nervous rashes, or break out;
- have adrenaline rushes, their heart races, they get shaky or tremble;
- have headaches, backaches, stomach troubles or other pains where the cause does not seem physical;
- cry sometimes;
- space out and lose track of where they are or what they are doing;
- have trouble concentrating, especially at work;
- have to have friends cover for them at work because they can not concentrate or keep up;
- think about hurting themselves, now or in the past (including fantasies and planning on how to do it);
- have ever contemplated suicide, however fleetingly;
- think about hurting anyone else;
- have to hold back from hurting anyone;
- get into fights (remember that some fights may be grounds for disciplinary action);
- break things (damaging government property can be grounds for disciplinary action);
- throw things;
- hit walls;
- become frightened;
- are a loner;
- feel they have lost their friends;
- have to have people around them;
- rely on their friends to keep them from freaking out.

Background Information

Providing background information can help an evaluation. Members can say if they:

- come from a broken home;
- had an alcoholic parent;
- had a parent who received psychiatric help, or whom they think needed help;
- had a parent or family member who abused them, physically, sexually, or psychologically;
- had a family that didn't give much love and support;
- had a family that was so tight they had no room to breathe or be on their own;
- got into legal trouble (however, if the military doesn't know about this, it might cause trouble);
- got suspended or kicked out of school;
- dropped out of school;
- had to see the school counselor sometimes;
- saw a child psychologist or psychiatrist;
- were counseled by pastors or teachers about problems;
- got into fights or acted rowdy;
- spent time in a reform school, jail or any kind of institution (again, if this comes as a surprise to the military, there might be problems);
- ever tried to hurt themselves or other people;
- ever freaked out, whether or not anyone else knew about it;
- ever had problems with alcohol or problems with drugs (if they came in on a drug waiver, repeating that information is OK).

Appendix 10

Guide to Acronyms

ADC	Area Defense Counsel	ASNJ	Assigned-Not-Joined
AD	Active Duty	A School	Advanced School
ADT	Active Duty for Training	ASVAB	Armed Services Vocational Aptitude Battery
AETC	Air Education and Training Command (Air Force)	AT	Annual Training
AFR	Air Force Regulation	AUS	Army of the United States
AFS	Active Federal Service	AWOL	Absent Without Leave
AIT	Advanced Individual Training	BAQ	Basic Allowance for Quarters
AR	Army Regulation	BCD	Bad Conduct Discharge
ARNGUS	Army National Guard of US	BCMR	Board for Correction of Military Records
AF PAM	Air Force Pamphlet	BCNR	Board for Correction of Naval Records
AR PAM	Army Pamphlet	BT	Basic Training
ARPERCEN	Army Reserve Personnel Center	CA	Convening Authority

CFR	Code of Federal Regulations	DES	Disability Evaluation System
CG	Commanding General	DFR	Dropped From Rolls
CID	Criminal Investigation Division	DoD	Department of Defense
CMR	Court of Military Review	DRB	Discharge Review Board
CNET	Naval Education and Training Command	DSM IV	Diagnostic and Statistical Manual
CO	Commanding Officer <i>or</i> Conscientious Objector	E1 to E9	Enlisted Pay Grades
COG	Convenience of the Government (Discharge)	ELS	Entry Level Separation
COMA	Court of Military Appeals	EMF	Enlisted Master File
COMDINST	Commandant Instruction (Coast Guard)	ETS	Expiration of Term of Service
CONUS	Continental United States	GCM	General Court-Martial
DA	Department of the Army	GCMCA	General Court-Martial Convening Authority
DB	Disciplinary Barracks	GOS	Good of the Service (Discharge)
DCSPER	Deputy Chief of Staff for Personnel	HQDA	Headquarters, Department of the Army
DD	Dishonorable Discharge	IADT	Initial Active Duty for Training
DEP	Delayed Enlistment (or Entry) Program	IDT	Inactive Duty Training

IG	Inspector General	NCO	Noncommissioned Officer
IRR	Individual Ready Reserve	NIS	Naval Investigation Service
JAG	Judge Advocate General	NOK	Next Of Kin
MAAG	Military Assistance Advisory Group	NPRC	National Personnel Records Center
MACOM	Major Army Command	01 to 010	Officer Pay Grades
MAP	Marines Awaiting Processing	OBC	Officer Basic Course
MCM	Manual for Courts-Martial	OCONUS	Outside the Continental US
MDW	Military District of Washington	ODPMC	Other Designated Physical and Mental Conditions
MEPS	Military Entrance Processing Station	OMPF	Official Military Personnel File
MILPERCEN	Army Military Personnel Center	OSI	Office of Special Investigations
MILPERSMAN	Naval Military Personnel Manual	OTH	Other Than Honorable Discharge
MOS	Military Occupational Specialty	PAP	Personnel Assistance Point
MP	Military Police	PCF	Personnel Control Facility (Army)
MPF	Military Personnel Flight (Air Force)	PCS	Permanent Change of Station
MPRJ	Military Personnel Records Jacket (Army)	PERSCOM	Total Personnel Command (Army)

PERSINCOM	Personnel Information Systems Command (Army)	TRADOC	Training and Doctrine Command (Army)
PSC	Personnel Service Center	UA	Unauthorized Absence
PT	Physical Training	UCMJ	Uniform Code of Military Justice
RA	Regular Army	USADIP	US Army Deserter Information Point
RMC	Return to Military Control	USAEREC	US Army Enlisted Records and Evaluation Center
SIDPERS	Standard Installation/Division Personnel System	USAREC	US Army Recruiting Command
SJA	Staff Judge Advocate	USAMPOA	US Army Military Police Operations Agency
SM	Service Member	USAR	US Army Reserve
SPCM	Special Court-Martial	USC	United States Code
SPCMA	Special Court-Martial Convening Authority	USDB	US Disciplinary Barracks
STA	Separation Transfer Activity	VA	Veterans Administration
TAD	Temporarily Attached Duty	VASRD	Veterans Administration Schedule for Rating Disabilities
TDRL	Temporary Disability Retired List	XO	Executive Officer
TDY	Temporary Duty		

Glossary

Absence Without Leave (AWOL)

Under Article 86, UCMJ, a servicemember is absent without leave "who without authority—

- "fails to go to his [or her] appointed place of duty at the time prescribed;
- "goes from that place; or
- "absents himself [or herself] or remains absent from his [or her] unit, organization or place of duty at which he [or she] is required to be at the time prescribed."

See Chapter 20, *Unauthorized Absence*.

Administrative Board

A panel of commissioned officers and non-commissioned officers, appointed by a commander, which determines facts and makes recommendations concerning administrative separations. An administrative board hearing is available to a servicemember with six years or more of military service. Members with less than six years service have a right to a board when being processed for a homosexual conduct discharge, or for a separation which may be characterized as Under Other Than Honorable Conditions (OTH).

See Chapter 3, *Understanding the Discharge Process*.

Advanced Course

The portion of the ROTC program undertaken by students [generally, in the last two years of college] who have entered into a contractual agreement with the Military Service concerned to accept a commission upon completion of all requirements of the ROTC program.

See Chapter 19, *ROTC: Disenrollment and Separation*.

Advanced Individual Training

The Army and Air Force term for the specialized training following basic training which teaches a servicemember the skills needed for his or her Military Occupational Specialty.

Advanced School

The Navy and Marine Corps term for the specialized training following basic training which teaches a servicemember the skills needed for his or her Military Occupational Specialty.

Alcohol and Drug Abuse

The DoD defines drug abuse for operational purposes as "the use of alcohol and/or other drugs to an extent that it has an adverse effect on the user's health or behavior, family community or the Department of Defense and/or the illegal use of such substances." Each military service defines drug abuse for the purposes of determination of misconduct.

Area Defense Counsel

The chief defense counsel at a Judge Advocate General facility.

Armed Services Vocational and Aptitude Battery

Test given to all potential recruits as a means of determining eligibility and placement.

Army Pamphlet

A pamphlet which is issued in order to provide officers with guidelines for administering a specific Army regulation.

Article 15

The term used in the Army and Air Force to refer to nonjudicial punishment.

Article 31, UCMJ

Article 31 of the UCMJ, 10 USC §831, protects a member of the military from being compelled to make a statement "the answer to which may tend to incriminate him [or her]."

See Chapter 5, *Military Justice and GI Rights*.

Article 32 Investigation

An article of the Uniform Code of Military Justice that requires an investigation prior to the convening of a general court-martial, in order to determine whether or not the evidence warrants trial.

Article 134

An article of the Uniform Code of Military Justice, often referred to as the "General Article."
See Chapter 5, *Military Justice and GI Rights*.

Article 138

An article of the Uniform Code of Military Justice, Article 138 entitles a servicemember to seek formal redress of grievance against a superior.
See Chapter 6, *Grievances and Filing Complaints*.

Bad Conduct Discharge

A punitive discharge that can only be given as part of a sentence following a special or general court-martial.

Basic Course

The portion of the ROTC program undertaken by students in the first two years [of college] and prior to students' undertaking a contractual obligation to receive a commission in the Armed Forces.
See Chapter 19, *ROTC: Disenrollment and Separation*.

Basic Training

Often referred to as "boot camp," generally a six week intensive training course for recruits to instruct and initiate them in military life.

Bisexual

A person who engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual and heterosexual acts.
See Chapter 9, *Homosexual Conduct*.

Breach of Contract (Army ROTC)

Any act, performance or nonperformance on the part of a student that breaches the terms of the contract regardless of whether the act, performance or nonperformance was done with specific intent to breach the contract or whether the student knew

that the act, performance or nonperformance breaches the contract.

See Chapter 19, *ROTC: Disenrollment and Separation*.

Brig

The Navy and Marine Corps term for a correctional facility.

Cadet

An ROTC or military academy student in the Army or Air Force.
See Chapter 19, *ROTC: Disenrollment and Separation*.

Captain's Mast

The Navy term for nonjudicial punishment.

Chapter 10

The Army guidelines for a discharge in lieu of court-martial are outlined in Chapter 10 of Army Regulation 635-200 and the discharge is often referred to in the Army as a "Chapter 10."

Characterization of Service

The characterization of a member's military behavior and performance of duty during a specific period of service as: Honorable, General (under Honorable Conditions), and Under Other Than Honorable Conditions (OTH).

See Chapter 3, *Understanding the Discharge Process*.

Chit

A request submitted through the chain of command.

Class 1-A-0 Conscientious Objector

A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a non-combatant status.

See Chapter 8, *Conscientious Objection*.

Class 1-0 Conscientious Objector

A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

See Chapter 8, *Conscientious Objection*.

Commandant Instruction

Coast Guard regulations.

Compassionate Reassignment

If a hardship or dependency is of short duration, the member can apply for "humanitarian reassignment" (or "compassionate reassignment" in the Army) to a duty station closer to home.

See Chapter 10, *Hardship and Dependency*.

Confinement

Imprisonment in the brig or stockade.

Conscientious Objection

"A firm, fixed, and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and belief." Religious training and belief includes "deeply held moral or ethical" beliefs.

See Chapter 8, *Conscientious Objection*.

Constructive Enlistment

A member whose original enlistment was defective or erroneous can be considered to have entered into a "constructive enlistment" if the member:

- "Submitted voluntar[il]ly to military authority;"
- "Met the mental competency and minimum age qualifications...at the time of [enlistment] (that is, [the member was] not insane, intoxicated, or under the age of 17);"
- "Received military pay or allowances;" and
- "Performed military duties".

A constructively enlisted member becomes subject to the Uniform Code of Military Justice and is therefore obligated under the terms of the enlistment agreement.

See Chapter 16, *Erroneous, Defective, and Fraudulent Enlistment*.

Contractually Obligated Member

A member who is serving under enlistment contract or extension.

Court-Martial

Trial in a military court.

Convening Authority

The commanding officer who exercises court-martial convening authority over a member.

See Chapter 5, *Military Justice and GI Rights*.

Court of Appeals for the Armed Forces

The highest court for all branches of the military.

Court of Criminal Appeals

The first level of military appellate courts.

Criminal Investigation Division

The Army office for criminal investigation.

Crystallization of Beliefs

A member of the military whose beliefs "satisfied the requirements for classification as a conscientious objector" at the time he or she entered the military is ineligible for CO status. However, applications based on beliefs "growing out of experiences before entering military service...which did not become fixed until after the person's entry into the service, will be considered."

See Chapter 8, *Conscientious Objection*.

Defective Enlistment Agreements

A defective enlistment agreement exists in the following circumstances:

- "As a result of a material misrepresentation by recruiting personnel, upon which the member reasonably relied, the member was induced to enlist with a commitment for which the member was not qualified;"
- "The member received a written enlistment commitment from recruiting personnel for which the member was qualified, but which cannot be fulfilled by the Military Service;" or
- "The enlistment was involuntary."

See Chapter 16, *Erroneous, Defective, and Fraudulent Enlistment*.

Delayed Enlistment Program

A recruitment program under which the reporting date for a recruit who signs an enlistment contract may be delayed for as much as one year.

See Chapter 4, *The Delayed Enlistment Program*.

Delayed Entry Program

The DEP is referred to as the Delayed Enlistment Program or the Delayed Entry Program.

Delayed Training Program

Recruits enlisting for reserve duty may be placed in the Delayed Training Program rather than the Delayed Enlistment Program.

Deserter (Administrative Classification)

A deserter can be someone facing a charge of desertion. More commonly, it is a term used by the military for administrative purposes only. The DoD requires an absentee to be administratively classified as a deserter when:

- “The facts and circumstances of absence, without regard to the length of absence, indicate that the member may have committed the offense of desertion...” or
- “The member has been absent without leave for 30 consecutive days;” or
- “The member is absent without authority” and “has gone to or remains in a foreign country and, while in the foreign country, has requested, applied for, or accepted any type of asylum or residence permit from that country, or any governmental agency thereof.”

See Chapter 20, *Unauthorized Absence*.

Deserter Information Point

Each Service maintains a deserter information point which serves as a clearinghouse for information on absent members administratively classified as deserters.

See Chapter 20, *Unauthorized Absence*.

Desertion

Under Article 85, UCMJ, a servicemember is guilty of desertion who:

- “without authority goes or remains absent from his [or her] unit, organization or place of duty with intent to remain away therefrom permanently”;

- “quits his [or her] unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service”; or
- “without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he [or she] has not been regularly separated, or enters any foreign armed service except when authorized by the United States.”

See Chapter 20, *Unauthorized Absence*.

Detention of pay

A member's pay may be attached for a specified period of time as a punishment resulting from non-judicial punishment or court-martial.

Diagnostic and Statistical Manual

The Diagnostic and Statistical Manual of Mental Disorders — 4th Edition (DSM-IV) is the psychiatric and medical reference guide of the American Psychiatric Association. The standards described and defined in DSM-IV are accepted by the military.

See Chapter 12, *Other Designated Physical and Mental Conditions*.

Disability Retired Pay

“Regular periodic compensation a member receives who is retired because of disability from active service [which is paid as long as the disability continues].” Disability retired pay is generally given to servicemembers with disability percentage ratings over 30%.

See Chapter 11, *Disability*.

Disability Severance Pay

“The one-time compensation a member receives who is discharged because of disability resulting from active service.” Generally given to servicemembers with a disability percentage rating under 30%.

See Chapter 11, *Disability*.

Discharge

Complete severance from all military status.

Discharge Authority

The discharge authority (or separation authority) is the officer authorized to take final action on an administrative separation. This officer ultimately decides whether to retain the member in the military, separate the member or suspend the separation. The separation authority is usually the officer exercising special court-martial authority over the servicemember.

See Chapter 3, *Understanding the Discharge Process*.

Discharge for the Good of the Service

A discharge in lieu of court-martial is often referred to as a "Discharge for the Good of the Service."

Disciplinary Barracks

A correctional facility in the Army or Air Force.

Dishonorable Discharge

The most punitive discharge a servicemember can receive, this can only be given as part of a sentence following a general court-martial.

DoD Directive

Regulations issued by the Department of Defense which are interpreted by each service in their own regulations.

Dropped From the Rolls

Removing a servicemember's name from the roster of his or her (former) unit.

Dual Processing

Commands may "dual process" a member seeking discharge for a more unfavorable reason for separation. For instance, a member may seek a discharge based on a personality disorder but also be processed for a misconduct discharge. If the less favorable discharge is not successfully contested, a less favorable characterization of service will result.

Entry Level Separation

A discharge given to members in entry level status. Rather than bearing a characterization such as Honorable, General (under Honorable Conditions), or Under Other Than Honorable Conditions, a discharge for entry level performance and conduct is

"uncharacterized." However, some civilian employers may not be impressed by such a discharge.

See Chapter 3, *Understanding the Discharge Process* and Chapter 7, *Entry Level Performance and Conduct*.

Entry Level Status

Active duty servicemembers are in entry level status during the first 180 days of continuous active military service. Members of a reserve component who are not on active duty, and have not completed 180 days of continuous active military service, begin entry level status upon enlistment in the reserves. Entry level status for these members terminates:

- 180 days after beginning training if the member is ordered to active duty for one continuous period of training; or
- 90 days after the beginning of a second period of active duty training if the member is ordered to a training that is split into separate periods of active duty.

See Chapter 7, *Entry Level Performance and Conduct*.

Enuresis

Bedwetting.

Equal Opportunity

The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These activities and programs shall be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons shall be evaluated on individual merit, fitness, and capability, regardless of race, color, sex, national origin, or religion.

See Chapter 6, *Grievances and Filing Complaints*.

Erroneous Enlistment

An enlistment is erroneous when a recruit did not meet minimum enlistment standards at the time of enlistment. These include medical, moral, educational, and testing standards.

See Chapter 16, *Erroneous, Defective, and Fraudulent Enlistment*.

Executive Officer

The officer who is second-in-command of a unit.

Field Grade Officer

An officer with the rank of Major, Captain, or Lieutenant.

Forfeitures

A sentence to forfeiture of all or part of a member's salary for a specified period of time may be made at nonjudicial punishment or by a court-martial.

Fraudulent Enlistment

When a recruit obtained their enlistment through "deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment... might have resulted in rejection," the recruit may be processed for fraudulent enlistment.

See Chapter 16, *Erroneous, Defective, and Fraudulent Enlistment*.

General Court-Martial

The highest level of court-martial which can impose maximum punishments for all offenses.

General Court-Martial Authority

The commanding officer who exercises general court-martial convening authority over a member.

Good of the Service Discharge

A discharge in lieu of court-martial is often referred to as a "Discharge for the Good of the Service."

Habeas Corpus

A petition to a federal court to free an illegally held member of the military.

Homosexual

A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual acts.

See Chapter 9, *Homosexual Conduct*.

Homosexual Act

• "Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires," and

• "Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described [above]."

See Chapter 9, *Homosexual Conduct*.

Homosexual Conduct

A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

See Chapter 9, *Homosexual Conduct*.

Humanitarian Reassignment

If a hardship or dependency is of short duration, the member can apply for "humanitarian reassignment" (or "compassionate reassignment" in the Army) to a duty station closer to home.

See Chapter 10, *Hardship and Dependency*.

Immediate Family

The Army and Navy are the only services to define the term "immediate family members." The term is limited to a: spouse, child, parent, sister, brother, or other person including a stepparent acting *in loco parentis* for a period of five years before the member became 21 years of age. The Army also includes "only living blood relative" and the Navy also includes "any *bona fide* dependent of the service-member."

See Chapter 10, *Hardship and Dependency*.

Individual Ready Reserve

Individual Ready Reservists can be ordered back to active duty but are not assigned to a unit and are not required to participate in drills. The Individual Ready Reserve (IRR) primarily consists of service-members transferred to the IRR at the expiration of their active duty term of service, or as the result of an administrative separation, and have some period of military service obligation remaining.

See Chapter 18, *Mobilization and Involuntary Active Duty*.

Inspector General

An Inspector General (IG) investigates fraud, waste, and abuse, as well as threats to public safety and morale. An IG conducts administrative reviews, inquiries, or investigations to resolve complaints. See Chapter 6, *Grievances and Filing Complaints*.

Instructions

Regulations in the Navy and Air Force.

Involuntary Discharge

A discharge which must be initiated by the command. Members of the military may not apply for these discharges. Examples include entry level performance, other designated physical and mental conditions, unsatisfactory performance, and misconduct.

See Chapter 3, *Understanding the Discharge Process*.

Judge Advocate General

A military service's legal office, encompassing both defense and prosecution counsel.

Junior ROTC

A high school program where students take courses taught by military instructors but incur no obligation to serve in the military.

Mandamus

A petition to a federal court to compel the military to follow the law.

Manual for Courts-Martial

Interprets the Uniform Code of Military Justice and establishes procedures for nonjudicial punishment and court-martial.

Medical Evaluation Board

The Medical Evaluation Board (MEB) "shall document the full clinical information of all medical conditions the servicemember has and state whether each condition is cause for referral into the [disability evaluation system]." However, the MEB "shall not state a conclusion of unfitness because of physical disability" but will refer the case to a Physical Evaluation Board if it does not find the servicemember fit for duty.

See Chapter 11, *Disability*.

Member

A member of the military.

Midshipman

An ROTC or military academy student, male or female, in the Navy or Marine Corps.

See Chapter 19, *ROTC: Disenrollment*.

Military Entrance Processing Station

Where recruits are given their physical examinations and the oath of enlistment is administered.

Military Occupational Specialty

A particular military job, or "specialty," designated by a code of letters and numbers.

Military Service Obligation

Upon enlisting in the armed forces, enlistees are obligated to serve eight years in total, including active and reserve duty.

See Chapter 3, *Understanding the Discharge Process*.

Minority Discharge

Section 505 of Title 10, United States Code, and DoD Directive 1332.14 both prohibit the discharge of persons under the age of 17. Written consent of parents or guardians is required for enlistment of persons aged 17.

See Chapter 16, *Erroneous, Defective, and Involuntary Enlistment*.

Missing Movement

A servicemember "who through neglect or omission misses the movement of a ship, aircraft, or other unit to which he [or she] is required in the course of duty to move" may be charged with missing movement under Article 87, UCMJ.

See Chapter 20, *Unauthorized Absence*.

Mobilization

When all or part of the armed forces "are brought to a state of readiness for war or other emergency operations... It includes the order to active duty components... A mobilization may be designated a Presidential Selected Reserve Call-up, a partial mobilization or a full mobilization."

See Chapter 18, *Mobilization and Involuntary Duty*.

National Guard

Members of the Army National Guard or Air National Guard are considered part of the Army or Air Force Ready Reserves.

Naval Investigation Service

Navy office for criminal investigation.

Naval Military Personnel Manual

Naval manual which regulates most administrative procedures.

Nonjudicial Punishment

Nonjudicial punishment (NJP) is a "disciplinary measure more serious than...administrative corrective measures [such as counseling, reprimands, and administrative withholding of privileges]...but less serious than trial by court-martial" that "provides commanders with an essential and prompt means of maintaining good order and discipline."

See Chapter 5, *Military Justice and GI Rights*.

Obligated Member (ROTC)

An ROTC student ("member") who agrees to a military obligation. There are two categories of such individuals:

- "Cadets and midshipmen who accept scholarship entitlements after the freshman year."
- "Cadets and midshipmen who contract to become members of the advanced training program [also known as the advanced course]."

See Chapter 19, *ROTC: Disenrollment and Separation*.

Office Hours

The Marine Corps term for nonjudicial punishment.

Office of Special Investigations

Air Force office for criminal investigation.

Other Than Honorable

Short for Under Other Than Honorable Conditions, the worst administrative characterization of service.

Personnel Assistance Point

A unit that assists members in transit from one duty station to another.

Personnel Control Facility

An Army unit which processes soldiers administratively classified as deserters.

Physical Disability

Any impairment due to disease or injury, regardless of degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity.

See Chapter 11, *Disability*.

Physical Evaluation Board

The Physical Evaluation Board determines if a member is fit or unfit and, if found unfit, the percentage of disability for the condition.

See Chapter 11, *Disability*.

Probationary Commissioned Officer

A commissioned officer with less than five years of active commissioned service.

See Chapter 3, *Understanding the Discharge Process*.

Professor of Aerospace Studies

The commander of an Air Force ROTC unit.

Professor of Military Science

The commander of an Army ROTC unit.

Professor of Naval Science

The commander of a Navy ROTC unit.

Protected Communication under Whistleblower Protection Act

Any "lawful communication" to a Member of Congress or an Inspector General. In addition, a communication in which a servicemember reports information the member reasonably believes evidences a violation of law or regulation, including sexual harassment or unlawful discrimination, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety.

Such a communication must be made to:

Selected Reserve

The Selected Reserve consists of "units and individuals who participate actively in paid training periods [drills] and serve on paid active duty for training each year."

Selective Conscientious Objector

Selective conscientious objectors are opposed to participation in a particular war, or kind of wars, based on religious, moral, or ethical grounds. Because by definition they are not opposed to participation in war "in any form," selective conscientious objectors do *not* qualify for conscientious objector status under current law.

See Chapter 8, *Conscientious Objection*.

Separation

An umbrella term which includes discharge, release from active duty, release from custody and control of the armed forces, transfer to the Individual Ready Reserve (IRR), and similar changes in active or reserve status.

Separation Authority

The separation authority (or discharge authority) is the officer authorized to take final action on an administrative separation. This officer ultimately decides whether to retain the member in the military, separate the member or suspend the separation. The separation authority is usually the officer exercising special court-martial authority over the servicemember.

See Chapter 3, *Understanding the Discharge Process*.

Service Aggravation

The permanent worsening of a pre-Service medical condition over and above the natural progression of the condition caused by trauma or the nature of Military Service.

See Chapter 11, *Disability*.

Servicemember

A member of the military.

Sexual Harassment

A "form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors,

and other verbal or physical conduct of a sexual nature" when:

- "Submission to such conduct is made either explicitly or implicitly a term or condition of one's job, pay, or career"; or,
- "Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person"; or,
- "Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment."

See Chapter 6, *Grievances and Filing Complaints*.

Sexual Orientation

An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

See Chapter 9, *Homosexual Conduct*.

Soldiers' and Sailors' Civil Relief Act

This Act precludes courts from entering a default judgement against active duty members of the military who are sued by creditors and authorizes courts to appoint attorneys to represent active duty servicemembers who have not answered suits. The Act also affects the running of statutes of limitations in civil cases involving members of the military, fines and penalties against members of the military, rates of interest charged to members of the military, and a host of other matters (life and health insurance, mortgages, installment contracts, leases, and taxes, for example).

See Chapter 10, *Hardship and Dependency*.

Special Court-Martial

The middle level of court-martial, which is restricted in some of the punishments it may sentence.

Staff Judge Advocate

The military attorney who advises the command.

Standby Reserve

Standby Reservists do not belong to a unit, do not take part in training and may only be ordered to active duty in time of war or national emergency when the Secretary of Defense declares too few qualified Ready Reservists available in required cate-

- "A member of Congress, an [Inspector General], or a member of a DoD audit, inspection, investigation, or law enforcement organization."
 - "Any other person or organization (including any person or organization in the chain of command) designated...to receive such communications."
- See Chapter 6, *Grievances and Filing Complaints*.

Provost Marshal

The Navy and Marine Corps term for Inspector General.

Proximate Result of Performing Duty

A permanent disability the result of, arising from, or connected with active duty, annual training, active duty for training, or inactive duty training (IDT), (etc.) to include travel to and from such duty or remaining overnight between successive periods of inactive duty training. Proximate result is a statutory criteria for entitlement to disability compensation ... applicable to Reserve component members who incur or aggravate a disability while performing an ordered period of military duty of 30 days or less.

See Chapter 11, *Disability*.

Ready Reserve

"Organized in units or as individuals," as part of the Selected Reserve and the Individual Ready Reserve (IRR), members of the Ready Reserve may be "ordered to active duty without their consent to augment the active forces."

Reason for Separation

The ground for discharge — such as conscientious objection, hardship, or misconduct.

Redress (under Article 138)

Any lawful action which restores to the member any rights, privileges, property, or status to which the member would have been entitled had the wrong not occurred.

See Chapter 6, *Grievances and Filing Complaints*.

Reprisal under Whistleblower Protection Act

Taking, or threatening to take, an unfavorable personnel action or withholding, or threatening to withhold, favorable personnel action.

See Chapter 6, *Grievances and Filing Complaints*.

Retired Reserve

Retired Reservists do not belong to a unit, do not take part in training and may only be ordered to active duty in time of war or national emergency when the Secretary of Defense declares too few qualified Ready Reservists available in required categories. Servicemembers are placed in the Retired Reserve when they receive retirement pay.

Restriction

A member placed on restriction is not allowed to leave the base, or may be confined to certain areas of the base.

Return to Military Control

The date and hour:

- "An absentee or deserter surrenders to, is delivered to, or is apprehended by or for military authorities;" or
- "A civilian authority holding the absentee or deserter for some reason other than at the request of the military informs the military of his or her availability;" or
- "An absentee or deserter otherwise comes under the control of military personnel."

See Chapter 20, *Unauthorized Absence*.

Screening

All Ready Reservists will be screened "at least annually" to ensure that they:

- meet "wartime standards of mental, moral, professional and physical fitness";
- "possess the military qualifications required in the various ranks, grades, ratings and specialties";
- would not experience an extreme personal or community hardship if immediately called to active duty;
- are otherwise "available immediately for active duty during a mobilization."

Upon mobilization, "all screening activity ceases, and all those remaining in the Ready Reserve shall be considered immediately available for active duty service."

See Chapter 18, *Mobilization and Involuntary Active Duty*.

gories. Members of the Standby Reserve "have been transferred from the Ready Reserve because of temporary hardship, disability or other cogent reasons and who intend to return to the Ready Reserve" and "key employees" in order to "prevent conflicts between emergency manpower needs of civilian activities and the military during mobilization."

Stop Loss

During a mobilization, the President may "suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces..." Members who reach the end of their enlistment can be retained and transfers to the Individual Ready Reserve, Standby Reserve and all administrative discharges halted. During the Gulf War — the only time "stop loss" was invoked — exceptions were granted for conscientious objection, disability, hardship and dependency, and for members whose actions or quality of service warranted separation (e.g., for misconduct).

See Chapter 18, *Mobilization and Involuntary Active Duty*.

Temporarily Attached Duty

Temporary assignment to another unit or base.

Temporary Disability Retired List

When the Physical Evaluation Board finds a disability may be permanent in character, but not stable in degree, and the member otherwise qualifies for disability retirement, the member is placed on the Temporary Disability Retired List (TDRL). The TDRL is a way to further observe unfit members whose disability has not stabilized and for whom the PEB cannot accurately assess the degree of severity, percent of disability or ultimate disposition.

See Chapter 11, *Disability*.

Temporary Duty

Temporary assignment to another unit or base.

Transient Personnel Unit

Navy unit for processing members administratively classified as deserters.

Unauthorized Absence

The Navy and Marine Corps refer to absence without leave as "unauthorized absence."

Uniform Code of Military Justice

A Congressional statute with 139 articles that establishes the unique code of laws for members of the military.

Unlawful Discrimination

Includes discrimination on the basis of color, national origin, race, religion, or sex that is not otherwise authorized by law or regulation.

See Chapter 6, *Grievances and Filing Complaints*.

Unsatisfactory Participation

When members of the Selected Reserve "acquire at least nine unexcused absences from scheduled training within a 12-month period" or members of the Ready Reserve "fail to meet the standards prescribed by the Military [Services] concerned for annual screening, attendance at active duty for training, training advancement, misconduct for military offenses, or performance of duty."

See Chapter 17, *Reservist Unsatisfactory Participation*.

Voluntary Discharge

A discharge which must be initiated by the service-member. Examples include conscientious objection, hardship, and discharge in lieu of court-martial.

See Chapter 3, *Understanding the Discharge Process*.

Whistleblower Protection Act

By Act of Congress, complaints made to a Member of Congress or the DoD Inspector General are "protected communications." Acts of reprisal for making or preparing a protected communication are prohibited.

See Chapter 6, *Grievances and Filing Complaints*.

Wrong (under Article 138)

A "discretionary act or omission by a commanding officer" that "adversely affects" the member personally, and that, for example, is:

- "In violation of law or regulation;"
- "Beyond the legitimate authority of that commanding officer;"
- "Arbitrary, capricious, or an abuse of discretion;"
- or
- "Materially unfair."

See Chapter 6, *Grievances and Filing Complaints*.