

d. Convene a board of officers as prescribed in chapter 2, section II, to determine whether the soldier should be separated for misconduct.

e. When the board hearing has been properly waived, direct separation of the soldier for misconduct.

f. When the board hearing has been properly waived, approve separation of the soldier for misconduct and suspend execution of the separation. (See para 1–18.)

g. Direct that the case be processed through medical channels, if appropriate.

(1) Such disposition is required if the soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct, and action under the UCMJ is not initiated. A copy of the signed decision by the GCMCA will be included with the records.

(2) Authority to determine that a case will be referred for disability processing instead of other administrative processing will not be delegated.

Chapter 15

Discharge for Homosexual Conduct

Section I

Policy

15–1. General Policy

AR 600–20 contains general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and commander guidelines for fact-finding inquiries. AR 195–2 provides guidance on criminal investigation of sexual misconduct. AR 380–67 offers guidance on personal security and clearance matters related to homosexual conduct.

15–2. Discharge policy

a. Homosexual conduct is grounds for separation from the Army under the criteria set forth in paragraph 15–3. This includes preservice, prior service, or current service homosexual conduct.

(1) The term homosexual conduct includes homosexual acts, statement(s) that demonstrate a propensity or intent to engage in homosexual acts, or homosexual marriage or attempted marriage.

(2) A statement that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the soldier's sexual orientation, but because the statement indicates a likelihood that the soldier engages in, or will engage in, homosexual acts.

(3) A soldier's sexual orientation is considered a personal and private matter and is not a bar to continued service unless manifested by homosexual conduct as described in paragraph 15–3.

b. The foregoing does not preclude—

(1) Retention of the soldier in the Army when it is determined that the purpose of the soldier's homosexual conduct is to avoid or terminate military service.

(2) Trial by court-martial in appropriate cases.

(3) Conviction by court-martial in appropriate cases. Conviction by court-martial that did not impose a punitive discharge does not prevent initiation of administrative discharge proceedings under this chapter.

(4) Separation, in appropriate circumstances, for another reason specified in this regulation.

(5) Retention of the soldier for a limited period of time in the interest of national security when discharge under this chapter has been approved. In such cases, the separation authority will submit a request for retention, with full particulars and rationale, to Headquarters, Department of the Army (TAPC-PDT-S), 200 Stovall St., Alexandria, VA 22332–0478. Retention approved under this paragraph does not constitute suspension of separation as described in paragraph 1–20.

15–3. Criteria for discharge

Except as indicated, a soldier will be discharged if one or more of the following findings has been made and is approved by the separation authority:

a. The soldier has engaged in, attempted to engage in, or solicited another person to engage in, a homosexual act or acts unless there are further approved findings that—

(1) Such acts are a departure from the soldier's usual and customary behavior.

(2) Such acts under all the circumstances are unlikely to recur.

(3) Such acts are not accomplished by the use of force, coercion, or intimidation.

(4) Under the particular circumstances of the case, the soldier's continued presence in the Army is consistent with the interest of the Army in maintaining proper discipline, good order, and morale.

(5) The soldier does not have a propensity or intent to engage in homosexual acts. In determining whether retention

is appropriate, separation boards/authorities must ensure that all of the above limited conditions are met. Additionally, a determination as to whether retention is warranted under the limited circumstances is required if the soldier clearly and specifically raises such limited circumstances. However, the soldier bears the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances.

b. The soldier has made a statement that he/she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the soldier has demonstrated that he/she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(1) A statement by the soldier that he/she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the soldier engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(2) The soldier will be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that demonstrates he/she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. The soldier bears the burden of rebutting the presumption. In determining whether a soldier has successfully rebutted the presumption, some or all of the following may be considered:

(*a*) Whether the soldier has engaged in homosexual acts.

(*b*) The soldier's credibility.

(*c*) Testimony from others about the soldier's past conduct, character, and credibility.

(*d*) The nature and circumstances of the soldier's statement.

(*e*) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

c. The soldier has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

15-4. Characterization or description of service

a. When the sole basis for separation is homosexual conduct, a discharge under other honorable conditions may be issued only if such characterization is warranted in accordance with chapter 3, section II and if there is a finding during the current term of service that the soldier attempted, solicited, or committed a homosexual act—

(1) By using force, coercion, or intimidation.

(2) With a person under 16 years of age.

(3) With a subordinate in circumstances that violate customary military superior-subordinate relationships.

(4) Openly in public view.

(5) For compensation.

(6) Aboard a military vessel or aircraft.

(7) In another location subject to military control under aggravating conditions noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

b. In all other cases, the type of discharge will reflect the character of the soldier's service. (See chap 3, sec II.)

15-5. Separation authority

a. Commanders specified in paragraph 1-19 are authorized to order discharge for homosexual conduct.

b. HQDA approval is required before soldiers who have completed 18 or more years of active Federal service may be discharged. See paragraph 1-19*f*.

Section II

Procedures

15-6. Action by unit or immediate commander

a. If the unit/immediate commander, or another commander in the soldier's chain of command, receives credible information that there is a basis for discharge for homosexual conduct, the commander will cause a fact-finding inquiry to be conducted in accordance with AR 600-20. Suspension of favorable personnel actions will be initiated per AR 600-8-2.

b. If the unit/immediate commander determines, based on the fact-finding inquiry, that a basis for discharge exists, he/she will—

(1) Submit a report, in memorandum format (see fig 2-5), through any intermediate commander(s), to the separation authority.

(2) Take action required by the administrative board procedure. (See chap 2, sec II.) In the case of a soldier who has made a statement that he/she is a homosexual or bisexual, or words to that effect, the memorandum for notification of discharge (see fig 2-3) will specifically advise the soldier of the rebuttable presumption provisions of paragraph 15-3*b*.

(3) Ensure that a medical examination and mental status evaluation are conducted as prescribed by paragraph 1-32.

15-7. Action by intermediate commanders

Intermediate commanders will take one of the following actions:

- a.* Disapprove the unit/immediate commander's recommendation when there is insufficient evidence of one or more of the circumstances for which discharge is authorized. (See para 15-3.)
- b.* Approve the unit/immediate commander's recommendation and forward it to the separation authority with a recommendation for characterization or description of service. (See para 2-4d(4).)

15-8. Action by separation authority

On receipt of a recommendation for discharge for homosexual conduct, the separation authority may take one of the following actions:

- a.* Disapprove the recommendation when there is insufficient evidence of one or more of the circumstances for which discharge is authorized. (See para 15-3.)
- b.* Disapprove the recommendation for discharge for homosexual conduct and take other appropriate action, under this regulation, to determine whether the soldier should be separated for another reason for which he/she has been duly notified.
- c.* Convene an administrative separation board, as prescribed in chapter 2, section II, to determine whether the soldier should be discharged for homosexual conduct.
- d.* When the soldier has waived the right to a hearing by an administrative separation board—
 - (1) Direct retention of the soldier if the separation authority determines there is insufficient evidence to support discharge for homosexual conduct, unless there is another basis for separation for which the soldier has been duly notified.
 - (2) Direct discharge of the soldier if the separation authority determines that one or more of the circumstances for which discharge is authorized (see para 15-3) has occurred, unless retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).
- e.* Process the case through medical channels when the conditions of paragraph 1-33 have been met.

15-9. Administrative separation board

The board will follow the procedures outlined in chapter 2, section II, except as follows:

- a.* The board will make no inquiry or finding concerning sexual orientation.
- b.* If the board finds that the evidence supports one or more of the circumstances authorizing discharge under paragraph 15-3, it will recommend discharge unless it finds that retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).
- c.* If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing discharge (see para 15-3) has occurred, it will recommend retention unless the case involves another basis for separation for which the soldier has been duly notified.

15-10. Separation authority action after board hearings

The separation authority will follow the procedures specified in paragraph 2-5. Exceptions are as follows:

- a.* If the board recommends retention, one of the following procedures will apply:
 - (1) Approve the findings and direct retention.
 - (2) Forward the case to Headquarters, Department of the Army (TAPC-PDT-P), 200 Stovall Street, Alexandria, VA 22332-0478, when the board has recommended retention and the separation authority believes discharge is warranted and in the Army's best interest. HQDA may authorize separation per paragraph 5-3.
 - (3) Return the case to the board for compliance with this regulation if findings required by paragraph 15-3 have not been made.
- b.* If the board recommends discharge, one of the following procedures will apply:
 - (1) Approve the findings and direct discharge.
 - (2) Disapprove the findings on the basis that there is insufficient evidence to support the findings.
 - (3) Disapprove the findings on the basis that retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

Chapter 16

Selected Changes In Service Obligations

16-1. Order to active duty as a commissioned or warrant officer

- a.* Soldiers may be discharged for the purpose of—
 - (1) Being ordered to active duty as a commissioned or warrant officer in any branch of the Armed Forces.