

**Table 4-2**  
**Processing elimination of a probationary officer—Continued**

Step	Work center	Required action
3	PPAA BN S-1 C&S	The initiating official advises the officer that he or she has 30 calendar days to acknowledge in writing, to prepare a written statement or rebuttal, and/ or to elect one of the options stated in step 2 above. Advises the officer of the least favorable discharge and characterization that he or she may receive. An officer separated solely for substandard performance (para 4-2a) will receive an Honorable Discharge. If separated for reason(s) under paragraph 4-2b or 4-22b(homosexual conduct), an officer may receive an Under Other Than Honorable Discharge. If an Honorable or General (Under Honorable Conditions) discharge is recommended, there will be no Board of Inquiry unless directed by the ASA (M&RA).
4	PPAA BN S-1 C&S	The initiating official advises the officer that he or she may consult with the local finance and accounting officer concerning possible entitlement to separation pay.
5	PPAA BN S-1 C&S	The initiating official advises the officer that if he or she requests resignation or discharge in lieu of elimination action, he or she will be separated as stated below. <ul style="list-style-type: none"> <li>a. Not later than 30 calendar days after receipt of notification that request for resignation or discharge was approved (only when separated solely for substandard performance). Release will not be prior to the 30th day without the officer's consent.</li> <li>b. Not later than 14 calendar days or earlier than 5 calendar days after receipt of notification that the request for resignation or discharge was approved when stationed in CONUS.</li> <li>c. For an officer assigned OCONUS (except as stated in a above), he or she will be returned to the CONUS separation TP/TA no later than 21 calendar days after receipt of written notification that the request for resignation or discharge was approved and will be separated no later than 5 calendar after arrival at the CONUS TP/TA.</li> </ul>
6	C&S	The GOSCA personally signs the memorandum.
7	PPAA BN S-1 C&S	The GOSCA furnishes a copy of the notification memorandum directly to CDR, PERSCOM (TAPC-PDT-PM).
8	SLDR	The officer responds with acknowledgement of receipt (fig 2-4). Submits a written statement or rebuttal and/or elects and submits an option at step 2 above to the initiating officer within 30 calendar days. <ul style="list-style-type: none"> <li>a. The statement or rebuttal may be prepared with the assistance of an officer of the JAGC or civilian counsel obtained by the officer at no expense to the Government.</li> <li>b. The statement or rebuttal should contain any pertinent facts bearing on the question of the officer's elimination. Documents submitted must be legible and reproducible. They may be sworn or unsworn.</li> <li>c. Undergo a separation physical examination within 5 duty days if an option is selected.</li> </ul>
9	C&S	The initiating official (CG, PERSCOM, or the GOSCA, as appropriate), on receipt of the officer's statement or rebuttal and/or option selection, does as follows: <ul style="list-style-type: none"> <li>a. Closes the case. (See paras 4-22 and 4-23 for homosexual conduct.) (Prior to closing cases initiated under para 4-18a(3) or (4), CG, PERSCOM, will coordinate with the initiating official.) (The GOSCA may only close a case that he or she initiated.)</li> <li>b. If the officer elects one of the options listed at step 2, forwards the appropriate application and all elimination documents directly and expeditiously to CDR, PERSCOM (TAPC-PDT-PM). Recommends approval or disapproval of the application and includes the point of contact (name and telephone number) and informs the MACOM of this action.</li> <li>c. If the officer declines to elect one of the options, and an Honorable or General Discharge (Under Honorable Conditions) is recommended, forwards the case directly to CDR, PERSCOM (TAPC-PDT-PM). Include the point of contact (name and telephone number) and inform the MACOM of this action.</li> <li>d. If the officer declines to elect one of the options and if an Under Other Than Honorable Discharge is recommended, the elimination action will be processed under the procedures for a non-probationary officer at table 4-1, steps 10 through 19, then return to step 11 below.</li> <li>e. If the case is not closed, determine whether medical board or PEB proceedings are pending or appropriate (para 4-3a).</li> </ul>
10	PPAA (TP/TA)	On receipt of separation instructions, take action to separate the officer. Final release orders and forms cite regulatory authority and SPD as shown in AR 635-5-1.

## Section V

### Task: Process Elimination of an Officer for Homosexual Conduct

#### 4-22. Rules for processing an elimination of an officer for homosexual conduct

a. AR 600-20 contains general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and guidelines for command-directed fact-finding inquiries. AR 195-2 provides guidance on criminal

investigation of sexual misconduct by the U.S. Army Criminal Investigation Command and other DOD Law Enforcement organizations. AR 380-67 offers guidance on personnel security and clearance matters related to homosexual conduct.

*b.* Homosexual conduct is grounds for separation from the Army under the criteria and terms set forth below. Homosexual conduct includes homosexual acts, a statement by an officer that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by an officer that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the officer's sexual orientation but because the statement indicates a likelihood that the officer engages in or will engage in homosexual acts. An officer's sexual orientation is considered a personal and private matter and is not a bar to continued service under this section unless manifested by homosexual conduct in the manner described below. Except as indicated, an officer will be separated if one or more of the following approved findings have been made by the separation authority:

(1) The officer has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are further approved findings that the officer has demonstrated that—

(a) Such acts are a departure from the officer's usual and customary behavior;

(b) Such acts under all the circumstances are unlikely to recur;

(c) Such acts were not accomplished by use of force, coercion, or intimidation;

(d) Under the particular circumstances of the case, the officer's continued presence in the Army is consistent with the interests of the Army in maintaining proper discipline, good order, and morale; and

(e) The officer does not have a propensity or intent to engage in homosexual acts.

(f) In determining whether retention is appropriate, separation boards/authorities must ensure that all of the foregoing limited conditions are met. Additionally, a determination as to whether retention is warranted under the limited circumstances is required if the officer clearly and specifically raises such limited circumstances.

(2) The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there are further approved finding that the officer has demonstrated that he or 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. A statement by an officer that he or she is homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The rebuttable presumption provision will be specifically included in the initiation of the elimination memorandum (fig 5-1). The officer will be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. Propensity means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages or will engage in homosexual acts. In determining whether an officer has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

(a) Whether the officer has engaged in homosexual acts;

(b) The officer's credibility;

(c) Testimony from others about the officer's past conduct, character, and credibility;

(d) The nature and circumstances of the officer's statement;

(e) Any other evidence relevant to whether the officer is likely to engage in homosexual acts (this list is not exhaustive; any other relevant evidence may also be considered).

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

(4) The officer will bear the burden of proving by a preponderance of the evidence throughout the proceedings that retention is warranted under the limited circumstances described in paragraphs (1) and (2) except in cases where the officer's conduct was solely the result of a desire to avoid or terminate military service.

*c.* Separation is not required when a determination is made that—

(1) The officer engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding military service; and

(2) Separation of the officer would not be in the best interest of the Army.

*d.* Subsequent to the original initiation of elimination action, succeeding actions required to dispose of the case will be attended to vigorously. Except for delays required to protect the rights of the the respondent, prompt attention and expeditious handling will be given to elimination cases.

*e.* A nonprobationary officer (and a probationary officer recommended for a discharge of Under Other Than Honorable Conditions) recommended for elimination due to homosexual conduct is entitled to a Board of Inquiry and a Board of Review.

*f.* An officer recommended for elimination due to homosexual conduct will undergo a medical evaluation.

*g.* An officer recommended for elimination due to homosexual conduct will have a psychiatric evaluation when requested by—

- (1) The officer.
- (2) The examining physician.
- (3) The commander that recommended separation.
- (4) The Board of Inquiry.

*h.* The type of discharge an officer receives will reflect the characterization of service. An officer may receive a discharge Under Other Than Honorable Conditions when there is a finding that during the current term of service, the officer attempted, solicited, or committed a homosexual act—

- (1) By using force, coercion, or intimidation.
- (2) With a person under age 16.
- (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, aircraft, or another location subject to military control, which had or was likely to have an adverse impact on discipline, good order, or morale. Because of the close proximity of other members of the Armed Forces under these circumstances, privacy cannot reasonably be expected.

*i.* A board convened to determine whether an officer should be separated for homosexual conduct will follow the procedures authorized in appropriate paragraphs of this regulation except for the following:

(1) If a Board of Inquiry or Review finds that one or more of the circumstances under *b* above is supported by the evidence, the board will recommend elimination as appropriate unless the board finds that retention is required under the limited circumstances described above.

(2) If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation has occurred, the board will recommend retention unless the case involves another basis for separation for which the officer has been duly notified.

(3) The burden of proving that retention is required under the limited circumstances rests with the officer except in cases where the officer's conduct was solely the result of a desire to avoid or terminate military service.

(4) Specific findings regarding the existence of the limited circumstances requiring an officer's retention set forth in *b* above are required to be made by a Board of Inquiry or Review only if—

- (a) The officer specifically presents the limited circumstances; and
- (b) The board relies on such circumstances to justify the officer's retention.

*j.* Upon final approval by the ASA (M&RA) of elimination proceedings against any officer of the active Army, that officer, regardless of component, will be discharged as the result of such proceedings. The office of PERSCOM (TAPC-PDT-PM) will forward separation instructions to the appropriate PSC/MPD.

#### 4-23. Steps for processing an elimination of an officer for homosexual conduct

The required steps for processing an elimination of an officer for homosexual conduct are as shown in table 4-3.

Step	Work center	Required action
1	BN S-1 PPAA	Commander receives information that an officer may require that elimination action be initiated because of homosexual conduct or the officer makes a self-admitted written statement that he or she is homosexual or bisexual.
2	BN S-1 PPAA	The commander inquires thoroughly and comprehensively into the matter and ascertains all the facts.
3	BN S-1 PPAA	The commander initiates an investigation if there is any credible evidence to believe that a basis for elimination exists due to homosexual conduct
4	BN S-1 PPAA	The commander, when the information is sufficient enough to authorize investigation, takes necessary action to protect the security of the command. This includes suspension of the officer's security clearance (if any) and denial of his or her access to classified defense information, until the case is closed.
5	BN S-1 PPAA	The commander initiates a DA Form 268. (See AR 600-8-2.)
6	BN S-1 PPAA	When an investigation is required, AR 195-2 provides guidance on criminal investigations of sexual misconduct by CID and other law enforcement organizations. However, CIDR 195-1 states that CID will not normally investigate allegations of adult private consensual sexual misconduct if that offense is the only offense involved unless referred by a commander or upon approval by CG or Deputy Commander, U.S. Army Criminal Investigation Command (USACIDC).

**Table 4-3**  
**Processing elimination of an officer for homosexual conduct—Continued**

Step	Work center	Required action
7	BN S-1 PPAA	The commander, when the investigation substantiates the allegations— <i>a.</i> Refers the officer for a medical examination and mental status evaluation. <i>b.</i> Refers to AR 380-67 on personal security and clearance matters related to homosexual conduct. Revocation of security will be according to AR 380-67, chapter 8.
8	C&S	A physician conducts a medical evaluation that includes a mental status evaluation SF Form 600 (Health Record-Chronological Record of Medical Care).
9	C&S	A psychiatrist conducts a psychiatric evaluation (when required). Includes in the diagnosis an opinion of whether— <i>a.</i> The officer was able to distinguish right from wrong at the time of the conduct under investigation. <i>b.</i> The officer currently has the mental capacity to understand board and judicial proceedings and participate in his or her own defense. <i>c.</i> The officer is suffering from an incapacitating mental illness and whether the illness was probably the cause of the homosexual conduct.
10	C&S	The medical treatment facility commander forwards the original medical evaluation (including the psychiatric study, if any) to the unit commander and ensures a copy of each report is filed in the officer's health record.
11	BN S-1 PPAA	The commander ensures that all facts indicating homosexual conduct be recorded properly. The file will contain the following: <i>a.</i> Officer's date and place of birth. <i>b.</i> Amount of active service. <i>c.</i> Date and current period of service. <i>d.</i> Statement of witnesses (UCMJ, art 31). <i>e.</i> Medical evaluation reports. <i>f.</i> Officer's statement (in their own behalf if it is desired).
12	BN S-1 PPAA	The commander, if there is not sufficient evidence to make a recommendation for elimination, stops the action.
13	BN S-1 PPAA	The commander, if there is sufficient evidence, forwards the file with recommendation for elimination through command channels to the GOSCA for processing. Intermediate commanders may take one of the following actions: <i>a.</i> Recommend disapproval of recommendation because there is not sufficient evidence that one or more of the circumstances authorizing separation under paragraph 4-22 <i>b</i> has occurred. <i>b.</i> Recommend approval of the commander's recommendation and forward the file to the GOSCA.
14	C&S	The GOSCA may disapprove the recommendation for elimination, close the case and return it to the originator due to insufficient evidence that one or more of the circumstances authorizing separation under paragraph 4-22 <i>b</i> has occurred or may approve the recommendation and notify the officer in writing that elimination action has been initiated and that he or she is required to show cause for retention on active duty. <i>a.</i> When the case is for a probationary officer, follow steps 1 through 10 of table 4-2 and step 15 below. If the officer declines to elect one of the options and if an Under Other Than Honorable Conditions Discharge is recommended, the elimination action will be processed under the actions at table 4-1, steps 1 through 19, and step 15 below. If the ASA (M&RA) directs a Board of Inquiry, the elimination action will be further processed under table 4-1, steps 10 through 19, and then return to step 15 below. <i>b.</i> When the case is for a nonprobationary officer, follow steps 3 through 19 of table 4-1 and then return to step 15 below.
15	PPAA (TP/TA)	On receipt of separation instructions, takes action to separate the officer. Release orders and forms will cite regulatory authority and SPD as shown in AR 635-5-1.

## Section VI

### Task: Process an Option That an Officer Elects While Elimination Action Is Pending

#### 4-24. Rules for processing an option that an officer elects while elimination action is pending

*a.* An officer identified for elimination may, at any time during or prior to the final action in the elimination case, elect one of the following options (as appropriate):

- (1) Submit a resignation in lieu of elimination.
- (2) Request discharge in lieu of elimination (RA officer only).
- (3) Apply for retirement in lieu of elimination if otherwise eligible.

*b.* When an option is elected, elimination proceedings will be suspended pending final action on the option elected by the officer.