



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAY 17 2022

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Update to Department of Defense Discharge Appeal Review Board Procedures

Pursuant to section 523 of the National Defense Authorization Act for Fiscal Year 2020, codified in part in 10 U.S.C. § 1553a, I direct the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to update the DoD Discharge Appeal Review Board (DARB) process mandated by section 1553a in accordance with this memorandum.

This memorandum amends and clarifies the delegation of authorities within Deputy Secretary of Defense Memorandum, "Department of Defense Implementation of Section 523 of the National Defense Authorization Act for Fiscal Year 2020," January 29, 2021 (attached), which remains in effect, to the extent provisions in it are not superseded by this memorandum, until the USD(P&R) publishes further guidance. Specifically, this memorandum clarifies to whom the Secretaries of the Military Departments may delegate authority regarding the section 1553a process. The USD(P&R) will incorporate the policy in this memorandum and the memorandum of January 29, 2021 into an appropriate DoD issuance.

Section 1553a directs the establishment of a final review process for requests by Service members (or their legal representatives) for an upgrade in the characterization of a discharge or dismissal. Accordingly, the January 29, 2021 memorandum, as supplemented by this memorandum, creates the required process, named the DoD DARB, to conduct such reviews.

The Secretary of the Air Force (SECAF), under the oversight of the USD(P&R), remains the lead agent for the Department with responsibility for the formation, operation, and management of the review process required by section 1553a. As the lead agent, the SECAF is delegated the authority of the Secretary of Defense pursuant to section 1553a to make recommendations in individual final review requests concerning Service members from any Military Department. Unless delegated, as discussed below, all DARB recommendations will be provided to the SECAF for action. If the DARB recommends relief or partial relief, the SECAF may approve or reject that recommendation; if approved, it will be forwarded to the Secretary of the Military Department concerned for final action. If the recommendation is rejected, that is the final action. If the DARB recommends denial of relief, the SECAF may approve or reject that recommendation. If approved, that is the final action, and if rejected, a recommendation will be forwarded to the Secretary of the Military Department concerned for final action.

The SECAF may delegate the authority to make such recommendations in writing and only to a presidentially appointed, Senate-confirmed (PAS) official in the Office of the SECAF; further delegation is not authorized. The DARB will operate within the Office of the SECAF and will consider all individual applications properly brought before it, consistent with guidance issued by the USD(P&R).



OSD004123-22/CMD005274-22

As noted above, all recommendations of an upgrade to the characterization of a discharge or dismissal made through the DARB process shall be transmitted to the Secretary of the Military Department concerned for consideration and action as appropriate. The Secretary of the Military Department concerned may delegate this responsibility in writing and only to another PAS official; further delegation is not authorized.

The policies and procedures outlined in this memorandum are effective as of the date of this memorandum.

A handwritten signature in black ink, appearing to read "Robert H. Hines". The signature is written in a cursive style with a large, stylized initial "R".

Attachment:
As stated



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 29 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP

SUBJECT: Department of Defense Implementation of Section 523 of the National Defense Authorization Act for Fiscal Year 2020

Pursuant to section 523 of the National Defense Authorization Act for FY 2020, codified in part in 10 U.S.C. § 1553a, I direct the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to establish the process detailed in section 1553a, ensure its implementation, and, to the maximum extent possible, use existing DoD organizations, boards, processes, and personnel for this process.

Section 1553a directs the establishment of a final review process for requests by a Service member or former Service member (or if the Service member or former Service member is deceased, the surviving spouse, primary next of kin, or legal representative of the Service member or former Service member) for an upgrade in the characterization of a discharge or dismissal.

I designate the Secretary of the Air Force, under the oversight of the USD(P&R), as the lead agent for the Department with responsibility for the formation, operation, and management of the review process required by 10 U.S.C. § 1553a. As the lead agent, the Secretary of the Air Force is delegated the authority of the Secretary of Defense pursuant to 10 U.S.C. § 1553a to make recommendations in individual final review requests concerning Service members from any of the Military Departments. The Secretary of the Air Force may delegate the authority to make such recommendations in writing and only to a civilian official in the Office of the Secretary of the Air Force who was appointed by the President of the United States with the advice and consent of the Senate. The USD(P&R), as the cognizant Principal Staff Assistant with oversight of this process, shall supervise the Secretary of the Air Force, as appropriate, regarding the operation of the section 1553a review process, hereinafter the DoD Discharge Appeal Review Board (DARB).

The DARB will operate within the Office of the Secretary of the Air Force and will consider all individual applications properly brought before it as outlined in the attachment to this memorandum.

All recommendations of an upgrade to the characterization of a discharge or dismissal made through the DARB process shall be transmitted to the Secretary of the Military Department concerned, and their action upon such recommendations shall be the final action with no further review or appeal under this process. A determination by the DARB that an upgrade to the characterization of a discharge or dismissal is not warranted shall be the final action, with no further review or appeal under this process.



OSD000360-21/CMD000676-21

The policy and procedures outlined in this memorandum and the attachment are effective as of January 15, 2021, and will be incorporated into an appropriate DoD issuance. For more information, my point of contact is Christa Specht, Director, Office of Legal Policy, at christa.a.specht.civ@mail.mil.

A handwritten signature in blue ink, appearing to read "Paul Z. M. A.", is positioned in the upper right quadrant of the page.

Attachment:
As stated

PROCEDURES

1. Discharge Appeal Review Board (DARB).

a. Consists of administrative support staff and Board members. Except for the DARB President appointed by Under Secretary of Defense for Personnel and Readiness, Board members are appointed by the Director of the Air Force Review Board Agency.

b. Will conduct a final review of a request for an upgrade in the characterization of discharge or dismissal for a Petitioner:

(1) With a discharge characterized as less than Honorable or a dismissal;

(2) Who has exhausted all available administrative remedies including the appropriate Military Department's Discharge Review Board and Board for Correction of Military Records/Board for Correction of Naval Records (BCMR/BCNR); and,

(a) Petitioner denied an upgrade of discharge characterization or dismissal by a BCMR/BCNR. Note: If a Petitioner has new information, in order to exhaust administrative remedies and qualify for DARB review, the Petitioner must first seek reconsideration from the appropriate Military Department's BCMR/BCNR. (New information is defined as material not previously presented to, or considered by, the appropriate Military Department's BCMR/BCNR.); or

(b) Petitioner request for an upgrade in discharge characterization or dismissal by a BCMR/BCNR partially granted. For example, Petitioner requested an upgrade to an Honorable discharge but received a General, Under Honorable Conditions discharge characterization.

(3) With a date of separation on or after December 20, 2019.

c. Establishes a panel consisting of at least three Board members to consider each request; one panel member serves as the Board Chair. The panel's determinations and recommendations constitute the actions of the Board.

d. Only members of the Board and Board staff are present during deliberations. However, the Board Chair may permit observers for training purposes or for purposes otherwise in furtherance of the functions of the Board.

e. A panel majority vote constitutes the action of the Board.

f. The DARB's review will be limited to the existing BCMR/BCNR case file records related to the matter for which the Petitioner is requesting an upgrade in discharge characterization or dismissal. The Petitioner will not be permitted to provide additional evidence not previously considered by the BCMR/BCNR. The DARB will conduct a *de novo* review.

g. Actions taken by the DARB.

(1) If the DARB recommends approving a change to a discharge characterization or dismissal, the DARB will provide a brief rationale for the recommendation to the Secretary of the Military Department concerned. The Secretary of the Military Department concerned retains the final authority to approve or reject any DARB recommendation to upgrade a discharge characterization or dismissal. This includes DARB recommendations for only partial relief such as a recommendation to upgrade a discharge but not to the level requested by the Petitioner (e.g., the Petitioner has a Bad Conduct Discharge and requests an Honorable discharge characterization but the DARB only recommends an upgrade to an Under Other Than Honorable Conditions discharge).

(2) If the DARB denies a request to upgrade a discharge characterization or dismissal, the denial is signed by the DARB President or DARB Deputy Director and forwarded to both the Petitioner and the Secretary of the Military Department concerned or their representative. This will be the final action with no further review or appeal under this process.

2. DARB Intake.

a. The DARB intake staff will conduct a thorough review of applications to ensure the Petitioner meets the requirements specified in paragraphs 1.b. and 3 of this memorandum for requesting relief from the DARB. Petitioners who do not meet eligibility criteria will be notified by the DARB and the case will be administratively closed.

(1) Intake staff will refer complete and valid requests to the DARB for action.

(2) Intake staff will return incomplete requests directly to the Petitioner without action and administratively close the request without referral to the DARB.

3. Petitioner.

a. Must have exhausted all available administrative remedies before applying to the DARB.

b. Must be a member or former member of the Armed Forces (or if the member or former member is deceased, the surviving spouse, primary next of kin, or legal representative of the member or former member) whose request for an upgrade to the characterization or a discharge or dismissal was not granted by the BCMR/BCNR concerned.

c. Must submit request electronically to: <https://afriba-portal.cce.af.mil>. Petitioners should complete all requested fields of portal to include, at a minimum:

(1) The name under which the member served;

(2) The Petitioner's (if Petitioner is not the member) or member's social security number; and

(3) The specific BCMR/BCNR case number for DARB review.

d. Must submit their request for review in a timely manner.

(1) For requests with a discharge or dismissal dated on or after December 20, 2019, through December 31, 2020, applications for relief must be submitted on or before January 1, 2022, or 365 calendar days of receipt of the BCMR/BCNR decision, whichever is later. A request filed later is untimely and may be denied by the DARB on that basis.

(2) For requests with a discharge or dismissal date on or after January 1, 2021, requests for relief must be submitted within 365 calendar days of the date of receipt of the BCMR/BCNR decision. Requests filed more than 365 calendar days after the date of the respective BCMR/BCNR decision is untimely and may be denied by the DARB on that basis.

4. Secretary of the Military Department concerned.

a. May delegate, in writing, the authority to take action on DARB recommendations no lower than:

(1) For the Department of the Army and the Department of the Air Force (including the Air Force and the Space Force), to the Director of their respective Review Boards Agencies;

(2) For the Department of the Navy (including the Marine Corps), to the Assistant Secretary of the Navy for Manpower and Reserve Affairs.

b. Will approve or disapprove a DARB recommendation for an upgrade in discharge characterization or dismissal.

(1) If a DARB recommendation for an upgrade in discharge characterization or dismissal is approved, any change will be effective as of the date of the original separation action and must be promulgated and distributed directly to Petitioner.

(2) If a DARB recommendation for an upgrade in discharge characterization or dismissal is disapproved, the Secretary of the Military Department concerned will provide a brief rationale for that decision to the Petitioner. In order to disapprove a DARB recommendation, the Secretary of the Military Department concerned must find the DARB abused its discretion.

5. Implementation timeline and reporting requirements.

a. DARB will be implemented no later than January 15, 2021.

b. A report will be provided to the Secretary of Defense no later than January 1, 2022, and will include:

- (1) The number of requests considered;
- (2) The number of upgrades to the characterization of a discharge or dismissal granted to include the most common reasons for such upgrade; and,
- (3) The number of upgrades to the characterization of a discharge or dismissal declined to include the most common reasons for such declinations.

c. On October 1, 2022, and annually, thereafter, a report covering the preceding fiscal year will be published with the above information on a publically accessible DoD website.