

#### § 724.111

are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

#### § 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad conduct*. A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable*. A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

#### § 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as having been under other than honorable condition, nor does it serve to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation.

#### 32 CFR Ch. VI (7-1-10 Edition)

#### § 724.113 Application.

In the context of this Manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 must be used for the application.

#### § 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under title 10 U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by the NDRB at the request of the former member, or, if authorized under § 724.113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the NDRB's own motion.

#### § 724.115 Next of kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse; children (whether by current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole or half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death).

#### § 724.116 Counsel/Representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a Federal Court or of the highest court of a State; an accredited