

§ 724.202

the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Secretary of the Naval Council of Review Boards. SECNAVINST 5420.135 series states the organization, mission, duties and responsibilities of the Secretary of the Naval Council of Review Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and the Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09b26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 09b26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission Statement:

To administer and supervise assigned boards and councils.

[75 FR 747, Jan. 6, 2010]

§ 724.202 Statutory/Directive Authority.

The NDRB, in its conduct of discharge review, shall be guided by the applicable statutes, regulations, and manuals and directives of the Department of the Navy, and other written public expressions of policy by competent authority:

(a) 10 U.S.C. 1553, Review of discharge or dismissal:

(1) "The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his/her department upon its own motion or upon the request of the former member or, if he/she is dead, his/her surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal."

(2) A board established under this section may, subject to review by the Secretary concerned, change a dis-

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charge or dismissal, or issue a new discharge, to reflect its findings.

(3) A review by the board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative or an organization recognized by the Administrator of Veterans' Affairs under title 38 U.S.C. 3401 *et seq.*"

(b) *Pub. L. 95-126*. See appendix D.

(c) *32 CFR part 70*. This provides for uniform standards and procedures for review of discharges from the military services of the Department of Defense. The provisions of *32 CFR part 70* are incorporated in this Manual.

(d) *The Secretary of Defense memorandum dated August 13, 1971 and April 28, 1972 (NOTAL)*. These directed a review for recharacterization of (1) administrative discharges under other than honorable conditions issued solely on the basis of personal use of drugs or possession of drugs for the purpose of such use, and (2) punitive discharges and dismissals issued solely for conviction of personal use of drugs and possession for the purpose of such use for those discharges executed as a result of a case completed or in process on or before July 7, 1971. (See appendix B).

(e) *32 CFR part 41*. This prescribes policy, standards and procedures which govern the administrative separation of enlisted persons from the Armed Forces.

§ 724.203 Broad objectives of naval discharge review.

Naval discharge review shall have as its broad objectives:

(a) The furtherance of good order and discipline.

(b) The correction of injustice or inequity in the discharge issued.

(c) The correction of administrative or clerical errors.

§ 724.204 Eligibility for naval discharge review.

Any former member of the Naval Service, eligible for review under reference (a) or surviving spouse, next of

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kin or legal representative, shall upon submission of an application be afforded a review of the member's discharge from the Naval Service as provided in §§ 724.205 and 724.206. Discharge review may also be initiated on the motion of the NDRB (See § 724.220).

§ 724.205 Authority for review of naval discharges; jurisdictional limitations.

(a) The Board shall have no authority to:

- (1) Review a discharge or dismissal resulting from a general court-martial;
 - (2) Alter the judgment of a court-martial, except the discharge or dismissal awarded may be changed for purposes of clemency;
 - (3) Revoke any discharge or dismissal;
 - (4) Reinstate a person in the naval service;
 - (5) Recall a former member to active duty;
 - (6) Change a reenlistment code;
 - (7) Make recommendations for reenlistment to permit entry in the naval service or any other branch of the Armed Forces;
 - (8) Cancel or void enlistment contracts; or
 - (9) Change the reason for discharge from or to a physical disability
- (b) Review of naval discharges shall not be undertaken in instances where the elapsed time between the date of discharge and the date of receipt of application for review exceeds fifteen years.

§ 724.206 Jurisdictional determinations.

The determination as to whether the NDRB has jurisdiction in any case shall be predicated on the policy stated in § 724.205. Decisions shall be made by administrative action without referral to the NDRB. Normally, they shall be made by the Executive Secretary of the NDRB, or they may be referred to the President, NDRB.

§ 724.207 Disposition of applications for discharge review.

One of three dispositions will be made of an application for review of a discharge:

(a) The application may be rejected for reason of:

- (1) Absence of jurisdiction;
- (2) Previous review on the same evidence; or
- (b) The application may be withdrawn by the applicant; or
- (c) The application may be accepted and the discharge reviewed by the NDRB, resulting in,
 - (1) Change to the discharge, or
 - (2) No change.

§ 724.208 Implementation of NDRB decisions.

The Commandant of the Marine Corps and the Chief of Naval Operations are responsible for implementing Naval Discharge Review Board decisions within their respective services. The Commandant of the Marine Corps shall be notified of decisions in each discharge review case and shall implement the decisions within the Marine Corps. The Commander, Naval Military Personnel Command, acting for the Chief of Naval Operations and Chief of Naval Personnel, shall be notified of decisions in each discharge review case and shall implement the decisions within the Navy.

§ 724.209 Evidence supporting applications.

In the absence of law, evidence or policy to the contrary, naval discharges shall be considered just, equitable and proper as issued. When hearings are scheduled, applicants must be prepared to present their case at the scheduled time. In the absence of any other evidence, naval discharge review shall be undertaken by examination of available service and health records of the applicant. Normally, the responsibility for presenting evidence from outside available service and health records shall rest with the applicant. Applications in which elements of relevant information are obviously omitted will be returned for completion and resubmission.

§ 724.210 Review action in instances of unavailable records.

(a) In the event that Department of the Navy personnel or health records associated with a requested review of