

b. Actions on discovery. When it is discovered that a Soldier's enlistment, reenlistment, or extension is erroneous because he or she failed to meet the qualifications for enlistment, reenlistment, or extension (AR 140-111, AR 601-210, AR 601-280, or NGR 600-200), as applicable, the unit commander (CDR, HRC–St. Louis (AHRC-EP-S), for IRR, IMA, or Standby Reserve Soldiers) will initiate action to retain, discharge, or release the Soldier, as appropriate, under the provisions of this paragraph. The unit commander (CDR, HRC–St. Louis (AHRC-EP-S), for IRR, IMA, or Standby Reserve Soldiers) will forward the case through channels to the appropriate separation authority (para 1-10) with the following information:

- (1) Facts relating to and circumstances surrounding the erroneous enlistment or extension.
- (2) The desire of the Soldier regarding retention or discharge.
- (3) A statement by the immediate commander as to the Soldier's conduct, efficiency, and overall value to the Army.
- (4) A specific recommendation for retention or discharge, and the reasons, by each commander in the chain of command.

c. Actions by separation authority. The separation authority will—

(1) Direct retention:

(a) In an exceptionally meritorious case involving a disqualification listed as non-waivable in AR 140-111, AR 601-210 or AR 601-280, when, in the judgment of the separation authority, retention of the Soldier is definitely in the best interest of the Army and retention is otherwise in accordance with law. The following statement will be entered in Item 27 of the Soldier's Personnel Qualification Record (DA Form 2-1): "Discharge action based on erroneous enlistment or extension is waived and retention is authorized by."

(b) In those cases in which the disqualification was waivable or the defect is no longer present and retention is deemed to be in the best interest of the Army and the Soldier. The Soldier's Personnel Qualification Record will be annotated as in (1)(a) above.

(2) Direct separation.

(a) In those cases in which the disqualification was waivable or the defect is no longer present and discharge is requested by the Soldier and deemed to be in the best interest of the Army. (Format 500, AR 600-8-105).

(b) In all cases in which the disqualification was nonwaivable, initiate separation proceedings, except in extremely meritorious cases as described in paragraph c(1)(a) above.

(c) When it has been established that an enlistment is erroneous because it was effected without the voluntary consent of a person who has the capacity to understand the significance of the enlistment (to include persons intoxicated or insane at enlistment) and a constructive enlistment did not arise within the same term of service, issue orders releasing the person from custody and control of the Army by reason of a void enlistment (Format 505, AR 600-8-105). The following entry will be made in Item 27, DA Form 2-1: "Released from custody and control of the Army by virtue of a void enlistment (cite order number and issuing headquarters)." A copy of the orders releasing the individual will be filed as a permanent document in his or her MPRJ and OMPF.

(d) When it has been established that an enlistment is erroneous because the individual is a deserter from another military service, issue orders releasing the person from custody and control of the Army by reason of a void enlistment (Format 505, AR 600-8-105), regardless of any subsequent constructive enlistment.

(e) If before an enlistee's departure from a military entrance processing station, if it is discovered that he or she was erroneously enlisted in a circumstance, set forth in DODD 1332.14, enclosure 3, subparagraph E3.A1.1.5.2, the enlistment will be voided as follows. The military entrance processing station commander will revoke any orders already issued regarding the enlistee's assignment and training and will issue an order assigning the individual to the adjacent RBN. The RBN commander will issue orders releasing the person from custody and control of the Army by reason of a void enlistment (Format 505, AR 600-8-105).

d. Characterization or description of service.

(1) When discharged under paragraph c(2)(a) above, service will be characterized as honorable unless an uncharacterized description of service is required by paragraph 2-11a.

(2) When separated under paragraphs c(2)(b) through (e) above, the separation will be described as a release from custody and control of the Army and service will not be characterized.

e. Procedure

(1) If the command recommends the Soldier be retained in military service, the initiation of separation proceedings is not required if the separation authority approves the recommendation.

(2) If separation processing is initiated, the Notification Procedure (chap 3, sec II) will be used.

f. Separation authority. The authorities cited in paragraph 1-10 may order separation under this paragraph.

7-3. Defective enlistments or reenlistments

a. Basis. A defective enlistment or reenlistment agreement exists in the following circumstances:

(1) As a result of a material misrepresentation by recruiting or retention personnel, upon which the Soldier reasonably relied, and the Soldier was induced to enlist or reenlist with a commitment for which the Soldier was not qualified; or

(2) The Soldier received a written enlistment or reenlistment commitment from recruiting or retention personnel for which the Soldier was qualified, but which cannot be fulfilled by the Army; or

(3) The enlistment or reenlistment was involuntary.

b. Characterization or description. Service will be characterized as honorable, unless an uncharacterized description of service, or an order of release from custody and control of the Army (by reason of void enlistment) is required under chapter 2, section III.

c. Requirements. This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(1) The Soldier did not knowingly participate in creation of the defective enlistment or reenlistment;

(2) The Soldier brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by Soldier;

(3) The Soldier requests separation instead of other authorized corrective action; and

(4) The request otherwise meets such criteria as established by this regulation.

d. Separation authority. The authorities cited in paragraph 1-10 may order separation under this paragraph.

7-4. Fraudulent enlistments or reenlistments

a. Basis. A Soldier may be separated under the guidance set forth in chapter 2, section I, on the basis of procurement of a fraudulent enlistment or reenlistment through any deliberate material misrepresentation, omission, or concealment which, if known at the time of the enlistment or reenlistment might have resulted in rejection. This includes all disqualifying information requiring a waiver. However, the enlistment of a minor with false representation as to age without proper consent will not in itself be considered as fraudulent enlistment.

b. Establishing fraud. The following tests must be applied in each case of suspected fraudulent enlistment or reenlistment to establish that the enlistment or reenlistment was, in fact, fraudulent.

(1) *First test.* Commanders will determine if previously concealed information is in fact disqualifying. This information will be evaluated using the appropriate criteria for enlistment or reenlistment. Any waivable or nonwaivable disqualification concealed, omitted, or misrepresented constitutes fraudulent entry. This includes concealing information with alleged or actual recruiter connivance. If, however, the newly revealed information does not amount to a disqualification from enlistment or reenlistment under the appropriate regulation, then there is no fraudulent enlistment or reenlistment. Hence, the enlistment or reenlistment is valid and separation may not be directed.

(2) *Second test.* Commanders must verify the existence and true nature of the apparently disqualifying information. Verification of the actual offense may reveal that the enlistee was not disqualified and, therefore, is not a fraudulent enlistee. For example, if the Soldier alleged that he or she was convicted of burglary and placed on probation, inquiries must be made whether he or she was actually convicted of burglary. In fact, he or she may have initially been charged with burglary, but it may have been reduced to trespass, which is a minor non traffic offense for enlistment purposes. If it is the only record that the Soldier has, he or she is not disqualified for enlistment or reenlistment. Hence, the enlistment or reenlistment is valid and separation may not be directed. To conduct an inquiry using these tests to establish existence of fraud, a delay of 30 days is considered reasonable.

c. Fraudulent actions. The following represent some, but not all, of the actions which, when verified, substantiate the existence of a fraudulent enlistment or reenlistments.

(1) Concealment of a prior separation from any of the Armed Forces of the United States under conditions barring enlistment or reenlistment in the ARNGUS or USAR.

(2) Concealment of true citizenship status by an alien at the time of enlistment or reenlistment.

(3) Concealment by a Soldier of a conviction by civil court for a criminal offense for which the Soldier was sentenced to imprisonment, probation, or parole, or given a suspended sentence.

(4) Concealment of a record as a juvenile offender.

(5) Concealment of medical defect or disability that would have precluded enlistment or reenlistment in the ARNGUS or USAR for the purpose of fraudulently obtaining veteran's benefits, hospitalization, disability retirement, monetary benefits, or a position to which the person would not otherwise be entitled.

(6) Concealment of absence without leave or desertion from an Armed Force of the United States.

(7) Misrepresentation of intent with regard to legal custody of children. Wherein a Soldier without a spouse at the time of enlistment certified that children were not under his or her legal custody and then following enlistment, custody of the children is regained by court decree, as provided by State law, or as a result of the children resuming residency with the Soldier instead of the legal custodian.

(8) Concealment disqualification. Where a Soldier has procured entry into the ARNGUS or USAR by assuming the identity of another individual, or by concealment of any fact, circumstances, or condition that existed prior to enlistment or reenlistment which would have made the Soldier ineligible.

d. Characterization or description. Characterization of service or description of separation will be in accordance

with chapter 2, section III. If the fraud involves concealment of a prior separation in which service was not characterized as honorable, characterization normally will be Under Other Than Honorable Conditions.

e. Requirements. The Notification Procedure (chap 3, sec II) will be used except as follows:

(1) Characterization of service Under Other Than Honorable Conditions may not be issued unless the Administrative Board Procedure (chap 3, sec III) is used.

(2) When the sole reason for separation is fraudulent entry, suspension of separation (chap 2, sec II) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

(a) A waiver of the fraudulent entry is approved by the proper authority; and

(b) The suspension pertains to reasons for separation other than fraudulent entry.

(3) If the command recommends that the Soldier be retained in the ARNGUS or USAR, the initiation of separation processing is unnecessary in the following circumstances:

(a) The defect is no longer present; or

(b) The defect is waivable and a waiver is obtained from appropriate authority.

(4) If the material misrepresentation includes pre-service and prior-service homosexual conduct (para 10-2), the standards of paragraph 10-3 and procedures of paragraph 10-4 will be applied in processing separation under this section. In such a case the characterization of service or description of separation will be determined under *e* above.

f. Separation authority. The authorities cited in paragraph 1-10 may order separation under this paragraph.

Chapter 8 Entry Level Performance and Conduct

8-1. Basis

a. A Soldier may be separated under this chapter if he or she is notified of the initiation of separation proceedings while in an entry level status (see glossary) when it is determined under the guidance set forth in chapter 2, section I, that the Soldier is unqualified for further military service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment or minor disciplinary infractions.

b. When separation of a Soldier in entry level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the Soldier normally will be separated in accordance with this chapter. Nothing in this chapter prevents separation under another provision of this regulation when such is warranted.

8-2. Counseling and rehabilitation

Separation processing may not be initiated under this chapter until the Soldier has been formally counseled under the requirements prescribed by paragraph 2-4.

8-3. Characterization and description

The service of a Soldier who is separated under this chapter will be uncharacterized.

8-4. Procedures

a. The Notification Procedure (chap 3, sec II) will be used.

b. The MATP policy prescribed by chapter 1, section V, will govern whether the Soldier will be discharged, or transferred to the IRR.

8-5. Separation authority

The authorities cited in paragraph 1-10 may order separation under this paragraph.

Chapter 9 Unsatisfactory Performance

9-1. Basis

A Soldier may be discharged when it is determined under the guidance set forth in chapter 2, section I, the Soldier is unqualified for further military service by reason of unsatisfactory performance.