



# Department of Defense

## DIRECTIVE

1332.30

NUMBER

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SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," October 15, 1981 (hereby canceled)
  - (b) Title 10, United States Code, Chapter 60 and Sections 618, 630, 654, 827, 831
  - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
  - (d) DoD 5200.2-R, "DoD Personnel Security Program," December 1979, authorized by DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
  - (e) Title 10, United States Code, Sections 801-940, (Uniform Code of Military Justice)

### A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a)
2. Implements Chapter 60 and Section 630 of reference (b) to establish policies, standards, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.
3. Implements Chapter 60 and Section 630 of reference (b) with respect to discharge of regular commissioned officers with less than five years active commissioned service in certain circumstances.

### B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD) and to the Military Departments and covers regular commissioned officers of the Military Services. "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.
2. This Directive does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1

D. POLICY

It is the policy of the Department of Defense:

1. To-promote the readiness-of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

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\* 2. To judge the suitability of persons to serve in the  
\* Armed Forces on the basis of their conduct.

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3. To separate from Military Service those commissioned officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

a. Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

b. Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

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4. Notwithstanding any other provision of this directive, the Secretary of the Military Departments concerned may discharge regular commissioned officers with less than five years active commissioned service from a Military Service when there is a need to reduce the number of officers in that Service to meet budgetary or force size requirements. The provisions of Enclosure 6 apply to the discharge of probationary officers under this authority.

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\* 5. The Assistant Secretary of Defense for Personnel and Readiness, in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition-to civilian life.

## **E. STANDARDS AND PROCEDURES**

Standards and procedures for implementation of these policies are set forth in enclosures 2 through 8.

## **F. RESPONSIBILITIES**

1. The Assistant Secretary of Defense for Personnel and Readiness shall modify or supplement this Directive, as needed.

2. The Secretaries of the Military Departments shall:

a. Prescribe regulations consistent with the policy and procedures contained in this Directive.

b. Address any recommendations for policy changes in this Directive to the ASD (P&R).

## **G. EFFECTIVE DATE AND IMPLEMENTATION**

1. This Directive is effective February 5, 1994.

2. This Directive applies only to administrative separation proceedings initiated on or after February 5, 1994, unless the Secretary of the Service concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. Forward two copies of proposed implementing documents to the ASD(PCR) within 30 days.

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Enclosures - 8

1. Definitions
2. Reasons for Separation
3. Procedures for Nonprobationary Commissioned Officers
4. Composition of Boards
5. Board of Inquiry Procedures
6. Procedures for Certain Probationary Commissioned Officers
7. Character of Discharge
8. Guidelines for Fact-Finding Inquires into Homosexual Conduct

## D E F I N I T I O N

1. Active Commissioned Service. Service on active duty as a commissioned officer in a grade above warrant officer, W-4
2. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.
3. Commissioned Officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, other than a commissioned warrant officer or retired commissioned officer.
4. Convening Authority. The Secretary of the Military Department concerned who may delegate this responsibility as appropriate.
5. Counsel. A lawyer qualified under 10 U.S.C. 827 (b)(1) (reference (b)) or a civilian lawyer retained at the commissioned officer's expense.
6. Drug Abuse. As defined in DoD Directive 1010.4 (reference (C)).
7. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
8. Homosexual Act.
  - a. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
  - b. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (a).
9. Homosexual Conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.
10. Legal Advisor. A judge advocate qualified under 10 U.S.C. 827 (b)(1), (reference (b)), and appointed to assist a Board of Inquiry.
11. Nonprobationary Commissioned Officer. A commissioned officer other than a probationary commissioned officer.

12. Probationary Commissioned Officer. A Commissioned officer with less than 5 years of active commissioned service; however, a regular commissioned officer serving on active duty on September 14, 1981, shall be a probationary commissioned officer for a period of 3 years from the date of his appointment as a regular commissioned officer.

13. Propensity. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

14. Respondent. A commissioned officer required to show cause for retention on active duty.

15. Separation. Discharge, retirement, or resignation.

16. Sexual Orientation. A sexual attraction to individuals of a particular sex.

17. Show - Cause Authority. Any of the following as determined by the Secretary of the Military Department concerned.

a. Commanders exercising General Court Martial (GCM) authority and all general or flag rank officers in command who have a judge advocate or legal adviser available.

b. The Secretary or officers (not below the grade of major general or rear admiral) designated by the Secretaries of the Military Departments to determine, based on a record review, that an officer shall be required to show cause for retention on active duty.

## **REASONS FOR SEPARATION**

### **A. SUBSTANDARD PERFORMANCE OF DUTY**

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when, as compared to other commissioned officers of his or her grade and experience, he or she is found to be substandard in any of the following respects:

1. Performance of duty.
2. Efficiency.
3. Leadership.
4. Lack of response to training in that performance of duties in the officer's assigned speciality is precluded or impaired to the degree of being unsatisfactory.
5. Attitude or character

### **B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION**

A commissioned officer may be separated from the Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

1. Serious or recurring wrongdoing, punishable by military or civilian authorities.
2. Intentional or discreditable mismanagement of personal affairs, including financial affairs.
3. Drug abuse.
4. Intentional neglect of, or failure to perform, assigned duties or complete required training.
5. Conduct resulting in the loss of professional status to such an extent as to impair performance of assigned military duties.
6. Intentional misrepresentation of facts in obtaining an appointment or in official statements or records.

### **C. HOMOSEXUAL CONDUCT**

Homosexual conduct is grounds for separation from the Military Services. Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent

to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to continued service unless manifested by homosexual conduct.

1. A commissioned officer shall be separated under this provision if one or more of the following approved findings is made:

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

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

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

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

(4) Under the particular circumstances of the case, the officer's continued presence in the Armed Forces is consistent with the interests of the Armed Forces in proper discipline, good order, and morale of the Service; and,

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

b. The officer has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a 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 a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the officer engages in homosexual acts or has a propensity or intent to do. The officer shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.)

Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether an officer has successfully rebutted the presumption that he or she engages in or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

(1) whether the officer has engaged in homosexual acts;

(2) the officer's credibility;

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

- (4) the nature and circumstances of the officer's statement;
- (5) 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.

- c. 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).

2. The commissioned officer shall bear the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraphs C.1.a and C.1.b., except in cases where the officer's conduct was solely the result of a desire to avoid or terminate Military Service.

3. Nothing in these regulations requires that an officer be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

- a. 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

- b. Separation of the officer would not be in the best interest of the Armed Forces.

#### **D. RETENTION IS NOT CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY**

Under DoD 5200.2-R (reference (d)), a commissioned officer may be separated from a Military Service when it is determined that the commissioned officer's retention is clearly inconsistent with the interest of national security.

#### **E. MULTIPLE REASONS**

A commissioned officer may be considered for separation under all the reasons set forth in sections A., B., C., and D. above; however, separate findings under each applicable section shall be required as to the reason for separation.

## PROCEDURES FOR NONPROBATIONARY COMMISSIONED OFFICERS

### A. INITIATION OF ACTION

The Secretary of each Military Department shall prescribe procedures for the initiation of separation recommendations.

### B. SHOW-CAUSE AUTHORITY

1. The show-cause authority will determine whether an officer shall be required to show cause for retention on active duty for one or more of the reasons listed in enclosure 2 of this Directive, and as further defined by the Secretary of the Military Department concerned.

2. The show cause authority shall:

- a. Evaluate all information presented concerning the case under consideration.
- b. Determine whether the record is sufficient to require the officer to show cause for retention on active duty.
- c. Under regulations prescribed by the Secretary concerned, close the case if the authority determines that the officer should not be required to show cause for retention on active duty.
- d. Report the matter for referral to a Board of Inquiry if the authority determines that the officer should be required to show cause for retention on active duty. The reasons for making such a determination shall be provided to the officer in writing.
- e. Refer the case to a Board of Inquiry if the record supports a finding of homosexual conduct under enclosure 2 of this Directive.
- f. Consider the initiation of separation action if the record supports a finding of drug abuse under enclosure 2 of this Directive.

3. As provided in 10 U.S.C. 618(b)(2), (reference (b)), the Secretary concerned may require an officer to show cause for retention on active duty based upon the recommendation of a promotion selection board.

### C. BOARD OF INQUIRY

1. Composition. See enclosure 4.
2. Convening. A Board of Inquiry shall be convened under such regulations as may be prescribed by the Secretary of the Military Department concerned.
3. Function. A Board of Inquiry shall give a fair and impartial hearing to a respondent. The Board of Inquiry is an administrative board that shall consider all relevant and material evidence pertaining to the case and shall function under rules and procedures established by the Secretary

of the Military Department concerned. The Board of Inquiry shall make findings of fact and a recommendation as to whether a respondent should be retained on active duty. The board also shall recommend the character of discharge in accordance with regulations prescribed by the Secretary of the Military Department concerned, if it recommends discharge. Its findings must be supported by a preponderance of the evidence. The proceedings and hearing before a Board of Inquiry are intended to give the officer an opportunity to respond to, and rebut, the basis for the contemplated change of status, after having been informed of the contemplated change and the reasons therefore. The hearing shall provide a forum for why the officer concerned thinks the contemplated action should not be taken.

#### 4. Determinations

a. If a Board of Inquiry determines that the respondent's retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2 of this Directive.

b. If a Board of Inquiry determines that the respondent's retention on active duty is not warranted, it shall report the matter to a Board of Review, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent.

### **D. BOARD OF REVIEW**

1. Composition. See enclosure 4.

2. Convening. A Board of Review shall be convened under such regulations prescribed by the Secretary of the Military Department concerned.

3. Function. After a Board of Inquiry had determined a respondent has failed to establish that retention on active duty is warranted, the Board of Review shall review the record for the purpose of examining the grounds for such determinations.

#### 4. Determinations

a. If a Board of Review determines that the respondent has established that retention on active duty is warranted, the case is closed. In the case of homosexual conduct, the board shall make specific findings of the reasons warranting retention in accordance with enclosure 2 of this Directive.

b. If a Board of Review determines that the respondent has failed to establish that retention on active duty is warranted, the Board of Review shall recommend to the Secretary of the Military Department concerned that the respondent should be separated, making specific findings of the reasons retention is not warranted and, if appropriate, stating the character of discharge to be issued to the respondent.

**E. ACTION BY THE SECRETARY OF THE MILITARY DEPARTMENT  
CONCERNED UPON RECOMMENDATION OF THE BOARD OF REVIEW**

If the Board of Review recommends that the respondent not be retained on active duty, the Secretary of the Military Department concerned may direct:

1. Separation.
2. Retention.

The action of the Secretary is final.

**F. RETIREMENT OR DISCHARGE**

1. Retirement. A commissioned officer separated from active duty in accordance with this Directive, if eligible for voluntary retirement under any provisions of law on the date of such separation, shall be retired in the grade and with the retired pay for which eligible if retired under such provision.

2. Discharge. A commissioned officer separated from active duty in accordance with this Directive, if ineligible for retirement under any provision of law on the date of such separation. shall be:

a. Honorably discharged in the grade then held if separated only for substandard performance of duty; or

b. Discharged in the grade then held if separated for misconduct, for moral or professional dereliction, homosexual conduct, or in the interest of national security. The character of discharge shall be determined by the Secretary of the Military Department concerned but in no case shall it be more severe than that recommended by the Board of Inquiry.

**G. APPLICATION FOR RETIREMENT OR DISCHARGE**

At any time before final action in the case, the Secretary of the Military Department concerned may grant a request by the commissioned officer concerned for:

1. Voluntary retirement.
2. Discharge.

The action of the Secretary is final.

## **H. LIMITATIONS**

1. A commissioned officer required to show cause for retention on active duty because of substandard performance of duty and who is retained on active duty by a Board of Inquiry or a Board of Review may not again be required to show cause for retention for the same reasons within the one-year period beginning on the date of the determination to retain.

2. Subject to paragraph H.2.a., below, a commissioned officer required to show cause for retention on active duty because of misconduct, moral or professional dereliction, homosexual conduct, or in the interest of national security, and who is retained on active duty by a Board of Inquiry or a Board of Review may again be required to show cause for retention at any time.

a A commissioned officer may not again be required to show cause for retention on active duty solely because of conduct that was the subject of the, previous proceedings, unless the findings and recommendations of the Board of Inquiry or Board of Review that considered the case are determined to have been the result of fraud or collusion.

## **CHARACTER OF DISCHARGE**

### **A. DISCHARGE FOR SUBSTANDARD PERFORMANCE OF DUTY**

A discharge shall be characterized as "honorable" when substandard performance of duty is the sole basis for the discharge.

### **B. DISCHARGE FOR MISCONDUCT OR FOR MORAL OR PROFESSIONAL DERELICTION OR HOMOSEXUAL CONDUCT OR IN THE INTERESTS OF NATIONAL SECURITY**

A discharge shall be characterized as "Honorable," "General (Under Honorable Conditions)," or "Under Other Than Honorable conditions."

1. Consideration. The character of a discharge shall be predicated on the commissioned officer's behavior and performance of duty while a member of a Military Service. Characterization normally shall be based on a pattern of behavior and duty performance rather than an isolated incident. There are circumstances, however, in which conduct reflected by a single incident may provide the basis for characterization.

#### 2. Exceptions.

a. A discharge shall be characterized as "Honorable" when the grounds for discharge are based solely on preservice activities other than intentional misrepresentation, or omission of facts, in obtaining an appointment or in official statements or records.

b. A discharge shall be characterized as "honorable" or "under Honorable Conditions" when the sole basis for separation is homosexual conduct unless aggravated acts are included in the findings. A separation "Under Other Than Honorable Conditions" may be issued if there is a finding that the officer attempted, solicited, or committed a homosexual act:

- (1) By using force, coercion, or intimidation.
- (2) With a person under 16 years of age.
- (3) With a subordinate in circumstances that violate the customary military superior-subordinate relationship.
- (4) Openly in public view.
- (5) For compensation.
- (6) Aboard a military vessel or aircraft
- (7) In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.