

CHAPTER 14 FRAUDULENT ENTRY

Section I. GENERAL

14-1. Purpose. This chapter establishes policy and prescribes procedures for the processing of fraudulent entry cases and provides for the administrative disposition of enlisted personnel for misconduct by reason of fraudulent entry into the service.

14-2 Scope. The provisions of this chapter apply equally to persons enlisted, inducted, or ordered to active duty, and to Reserve component personnel participating in active duty for training (ADT) under the Reserve Enlistment Program of 1963 (REP).

14-3 Authority. Commanders exercising general court-martial jurisdiction are authorized to-

a. Convene a board of officers and to approve discharge of an enlisted person for fraudulent entry.

b. Void a fraudulent entry (other than by a minor enlisted member covered by paragraph 7-5) by issuing special orders releasing the individual from Army control by reason of fraudulent entry when such individual is AWOL or in desertion

14-4. Trial by courts-martial. It is not the intent of this chapter to preclude trial by court-martial for violations of Article 83, UCMJ, when such action is in the best interest of the service. If trial by court-martial is not considered appropriate, elimination action will be taken. Inductees will not be tried by court-martial for fraudulent entry.

14-5. Incident of fraudulent entry. Fraudulent entry is the procurement of an enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known, might have resulted in rejection. Any incident which meets the foregoing definition may be cause for discharge for fraudulent entry. Some examples of incidents of fraudulent entry are-

a. *Concealment of prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records. Accordingly, commanders will not request field investigations in order to establish evidence of prior

military service. When additional evidence, such as a statement of service or certificate of service from The Adjutant General is required to establish prior service, an inquiry will be forwarded to the Commanding Officer, US Army Enlisted Personnel Support Center, ATTN: AGPE, Fort Benjamin Harrison, IN 46249, to include the name(s), SSN, and all available information concerning the alleged period of service.

(1) To support an administrative action, a statement of service, as distinguished from a certificate of service., furnished by The Adjutant General is sufficient evidence.

(2) If trial by court-martial is contemplated (para 162, MCM 1969) a certificate of service furnished by The Adjutant General is required

b. *Concealment of true citizenship status.*

(1) When information is received from the Immigration and Naturalization Service that a warrant for the individual's arrest has been issued by immigration officials, or that deportation proceedings are currently pending upon completion of military service, the individual will not be considered for retention.

(2) The nearest office of the Immigration and Naturalization Service will be informed when an individual will be discharged so that arrangements may be made if desired, to take him into custody upon discharge.

(3) A report of the facts, together with a report of action taken, will be submitted to HQDA (DAMI), WASH, DC 20310, through intelligence channels.

c. *Concealment of conviction by civil court.* An individual who concealed his conviction by civil court of a felonious offense normally will not be considered for retention. If information concerning the existence of a civil criminal record is required from the Federal Bureau of Investigation, the contact with the FBI must be made by Headquarters, Department of the Army. Accordingly, the inquiry will be addressed to HQDA (DAAG-PSS-S), WASH, DC 20314. However, specific details of circumstances in a case may be obtained by direct communication with the appropriate civil

law enforcement agency, other than the FBI, by the commander concerned. When information is required from both sources, the inquiries will be dispatched concurrently.

d. Concealment of record as a juvenile offender.

(1) An individual who concealed his adjudication as a juvenile offender for a felonious offense will normally not be considered for retention.

(2) The evidence must clearly show that the individual gave a negative answer to a specific question as to whether he had a record of being a juvenile offender, or denied that civil custody, as a result of such record, existed at time of entry into the service.

e. Concealment of medical defects. Concealment of a medical defect or disability is not considered fraudulent entry within the purview of this chapter, unless it is established that such concealment was for the purpose of obtaining veteran's benefits, hospitalization, disability retirement, or monetary benefits to which the individual was not entitled.

f. Concealment of absence without leave or desertion from prior service.

(1) *From other branches of the US Armed Forces.* When a member of the Army is discovered to be a deserter from another branch of the services, the commanding officer will report the circumstances to HQDA (DAAG-PS-S), WASH DC 20314, and request disposition instructions. After determining if the appropriate service desires custody of the individual, The Adjutant General will direct that the member be-

(a) Released from control of the Army without a discharge certificate or DD Form 214, or

(b) Considered for discharge in accordance with procedures outlined in section II.

(2) *From the US Army.*

(a) If trial is not barred by the statute of limitations (Art. 43, UCMJ), the individual will be dropped from the current service and held to

his first untermiated service. When this action is taken an entry will be made on the DA Form 20 (Enlisted Qualification Record) showing the reason for the drop and the period of service to which held. No discharge certificate will be furnished. Appropriate disposition will be made of the desertion charges for the untermiated period of service

(b) If trial is barred by the statute of limitations, the individual will be discharged from the prior service in accordance with section VH, AR 635-i-206, and considered for discharge from the current service in accordance with procedures outlined in section II. In accomplishing the discharge from a prior period of service, the individual will not be sent to the transfer activity.

(3) *Procedure when DA Form 3835 has been circulated.* When the member was the subject of DA Form 3835 (Notice of Unauthorized Absence from US Army) a report of action taken will be furnished the US Army Deserter Information Point (USADIP) Fort Benjamin Harrison, IN 46249.

(a) Custody reverts to another branch of service.

(b) Released from control of the US Army.

(c) Discharged from the US Army from prior or current service.

g. concealment of other disqualifications. Concealment of any other disqualifications, including assuming the identity of another individual through the use of a birth certificate, discharge certificate, or any other record belonging to another will be considered cause for consideration for discharge under this chapter. Exceptions to this policy are the concealment of minority (see chap. 7) and concealment of true name. However, if true name is concealed for the purpose of concealing a disqualification as outlined in this paragraph, it will be considered fraudulent entry.

Section II. ADMINISTRATIVE PROCEDURES

14-6. Responsibilities. *a.* The unit commander will-

(1) Initiate action to obtain the substantiated evidence as required.

(2) Advise the suspected fraudulent enlistee of his rights

(3) Request a medical evaluation.

b. The officer exercising general court-martial jurisdiction will-

(1) Determine if the incident of fraudulent entry is substantiated.

(2) Insure that the rights of the suspected fraudulent enlistee are protected.

(3) Direct disposition in accordance with paragraph 14-12.

14-7. Medical evaluation. *a.* When a unit commander determines that an individual under military control will be recommended for discharge under this chapter, he will refer the individual to the Army medical treatment facility providing dispensary care for a medical and mental status evaluation. The reason for considering the individual for separation will be furnished the medical treatment facility. The individual will not be referred to a psychiatrist for a psychiatric evaluation except when-

(1) Specifically requested by the individual subject to separation action.

(2) Specifically requested by the commanding officer recommending separation action.

(3) Deemed necessary and appropriate by the medical examiner performing the requested evaluation

(4) Requested by the board considering separation action.

b. In all other cases the physician performing the medical examination will accomplish the mental status evaluation. In the exceptional cases detailed in a above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist. Under no circumstances will medical personnel be used as an investigative agency to determine facts relative to the individual's behavior.

c. In addition to the SF 88 (Report of Medical Examination) and the SF 93 (Report of Medical History), the medical treatment facility will prepare DA Form 3822-R (Report of Mental Status Evaluation), figure 14-2, in duplicate.

d. The medical treatment facility commander will forward the original of the evaluation report to the unit commander. A copy will be filed in the individual's health record.

e. DA Form 3822-R will be reproduced locally on 8 - x 10 1/2 inch paper.

14-8. Disposition through medical channels. If it appears that the individual being considered for elimination does not meet retention medical standards, he will be referred to a medical board, or if there is no board at the examining facility, to the nearest facility having a medical board. The facility commander will furnish a copy of the approved medical board proceedings to the individual's unit commander.

a. When the medical board proceedings indicate that an incapacitating medical condition is the direct or substantially contributing cause of the individual's misconduct, he will be retained under medical jurisdiction for appropriate treatment and disposition in accordance with AR 40-3.

b. When the medical board proceedings indicate that the individual does not meet retention standards and the incapacitating medical condition is not the direct or substantial contributing cause of the individual's misconduct, the unit commander will forward the proceedings to the general court-martial authority, who will determine whether physical disability or administrative processing will be followed. If the member is also eligible for retirement, his case will be referred to HQDA (DAAG-PSS-S), WASH DC 20314, for a decision

14-9. Rights of individuals. The individual will be notified in writing of the basis for the proposed discharge action, its effect, and if being recommended for an undesirable discharge, will be advised of his rights as set forth in paragraph 1-10.

14-10. Suspension of favorable personnel action. When suspension of favorable personnel action under AR 600-31 has been initiated solely because an individual is being considered for elimination under this chapter, and he is to be processed for separation under medical jurisdiction, the individual's unit commander will expedite action to complete the case and remove the suspension action to preclude delay in disposition of the case through medical channels.

14-11. Action by unit commander. *a.* When the evidence to support a deliberate misrepresentation, omission, or concealment of facts which might have resulted in rejection, has been obtained, the unit commander will forward a military letter to the commander exercising general court-martial jurisdiction. The unit commander will inclose a statement by the individual concerning his rights (para 1-10 and fig. 14-1) and include the following:

(1) Name, grade, SSN, age, date and term of enlistment, and prior service.

(2) Statement whether the individual holds Reserve status as a commissioned or warrant officer. If affirmative, show grade and date of appointment.

(3) Conduct and efficiency ratings Include primary MOS evaluation score if available.

(4) Record of trials by court-martial

(5) Record of other disciplinary action, including nonjudicial punishment.

(6) Recommendation for discharge or retention in the event it is determined that fraud entry did occur.

(7) Report of medical evaluation when discharge is recommended.

b. When the character of service rendered by the individual supports the issuance of an honorable or general discharge certificate (para 1-9), the unit commander will forward the letter described in *a* above, except for the individual's statement (fig. 14-1), to the commander exercising general court-martial jurisdiction with the least practicable delay. In these cases the individual need not be afforded the opportunity of a hearing by a board of officers in accordance with paragraph 1-10, unless the general court-martial authority considers that an undesirable discharge is appropriate.

14-12. Action by general court-martial authority prior to board proceedings. Upon receipt of the recommended action, the commander exercising general court-martial jurisdiction will determine whether the fact of fraudulent entry has been completely verified and proven. If further substantiating facts and evidence are required, they will be obtained, or confirmed as unobtainable, and final determination made. If the fraudulent entry is verified, action will be taken to suspend the individual's pay and allowances in accordance with Part One, Chapter 4, DOD Military Pay and Allowances Entitlements Manual. If the fraudulent entry is verified, the general court-martial authority will also take one of the following actions as appropriate :

a. Direct discharge with an honorable or general discharge certificate.

b. Direct discharge with an undesirable discharge certificate provided the individual has waived his rights to present his case before a board of officers (para 1-10).

c. Return the case to the unit commander for compliance with paragraph 1-10.

d. Direct that a board of officer be convened to determine whether the individual should be discharged.

e. Direct retention, provided the individual entered the service with a waivable disqualification as specified in table 2-5, AR 601-210; paragraph 3-9, AR 601-270; or table 2-2, AR 601-280, and the incident of fraudulent entry was for some reason other than concealment of a felony conviction by civil court (para 14-5c) or adjudication as a juvenile offender for a felonious offense (para 14-5d).

f. Forward the proceedings, with recommendations, to HQDA (DAAG-PSS-S), WASH DC 20314 when he believes that exceptional circumstances in a case warrants retention even though the individual entered the service with a non-waivable disqualification, or the incident of fraudulent entry was concealment of a felony conviction by civil court or adjudication as a juvenile offender for a felonious offense.

g. Direct that the fraudulent entry be voided when the individual is in a status of unauthorized absence or desertion. The orders issuing authority will issue special orders releasing the individual from custody and control of the Army (TC 302, AR 310-10).

(1) A copy of the special orders will be forwarded to the individual's last known address.

(2) When the member was the subject of DA Form 3835 (Notice of Unauthorized Absence from US Army) a report of action taken will be furnished the US Army Deserter Information Point (USADIP) Fort Benjamin Harrison, IN 46249.

Section III. BOARD OF OFFICERS

14-13. Composition of board. Boards of officers convened to determine whether an individual should be discharged by reason of fraudulent entry will be comprised of at least three commissioned officers, at least one of whom is serving in the grade of major or higher, and a nonvoting recorder. Care will be exercised to insure that-

a. The board is composed of experienced, unbiased officers of mature judgment who are fully cognizant of applicable regulations and policies pertaining to cases of this nature.

b. If the individual is an enlisted member of the Women's Army Corps, the board will include an officer of the Women's Army Corps.

c. If the individual has a Reserve enlisted status, the membership of the board will include a majority of Reserve officers, if reasonably available. When a Reserve majority is not available, the board will include at least one Reserve component officer.

d. If the individual is an enlisted member who holds Reserve status as a commissioned or warrant officer, the board will be composed of an uneven number of commissioned officers, but not less than three. The officers will be senior in permanent grade to the Reserve grade held by the respondent. One member of the board will be Regular Army. The remainder will be Reserve officers of the Army who are serving on active duty. If the convening authority determines that a Regular Army officer is not available, a Reserve officer serving on active duty may be substituted for the Regular Army officer. If the individual is an enlisted member who is also an ARNGUS officer, at least one member of the board will be an ARNGUS officer, if reasonably available.

e. The board is provided a competent reporter or stenographer.

14-14. Witnesses. The expiration of term of service date or transfer status of each expected witness will be ascertained to insure that essential military witnesses will be available at the board proceedings. No witness will be transferred or separated prior to the beginning of a board hearing except when an enlistment or period of service fixed by law expires; in such cases, an attempt will be made to obtain the individual's consent to retention. If he does not consent, a deposition or affidavit will be obtained, as appropriate.

14-15. Board procedures. a. An individual under military control will be given a minimum of 15 days written notice prior to date of hearing so that he or his counsel may prepare his case. The individual will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board will, upon request of the individual, endeavor to arrange for the presence of any available witness he desires to call. A copy of all affidavits and depositions of witnesses unable to appear in person at the board hearing will be furnished to the individual. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will insure that the reason for acting prior to that

time is fully explained and recorded in the proceedings of the board. Requests for an additional delay, normally not to exceed a total of 30 days after initial notice, will be granted if in the judgment of the convening authority or the president of the board such delay is warranted to insure that the respondent receives a full and fair hearing.

b. The individual may appear in person, with or without counsel, or, in his absence, he may be represented by counsel at all open proceedings of the board. When the individual appears before a board without counsel, the record will show that the president of the board counseled the individual as to type of discharge that he may receive as a result of the board action, the effects of such discharge in later life, and that he may request counsel. The record will reflect the individual's response.

c. The individual may request the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that he is reasonably available and that his testimony can add materially to the case. Military witnesses under the control of the convening authority will be ordered to attend if reasonably available. The attendance of other military witnesses will be requested through command channels. Witnesses not on active duty must appear voluntarily and at no expense to the Government.

d. The individual may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses who are unwilling to appear voluntarily.

e. He may or may not submit to examination by the board. The provisions of Article 31, Uniform Code of Military Justice will apply.

f. The individual and his counsel may question any witness who appears before the board.

g. If the individual holds Reserve status as a commissioned or warrant officer, the board will notify him that the action also involves his Reserve status and could terminate such status.

h. The individual may challenge any voting member of the board for cause only.

i. Failure of the individual to invoke any of the above rights after he has been apprised of same will not have an effect upon the validity of the elimination proceedings.

j. When the board meets in closed session, only voting members will be present.

k. Except as modified herein, the board will conform to the provisions of AR 15-G. As an exception to paragraph 13b, AR 15-6, expert medical and psychiatric testimony may be presented in the form of affidavits. However, if the individual desires to present such evidence, he is entitled to have the witnesses appear in person, if they are reasonably available

l. The proceedings of the board will include a verbatim record of the findings and recommendations (fig. 14-3).

m. When the board is considering a case in which the individual has exercised his right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the individual, or of the type of discharge which had been recommended in his case. When it has come to the attention of the individual or his counsel that facts intended to be excluded by this paragraph are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule of this paragraph **14-16. Recommendations of the board.** The board will recommend that the individual be-

a. Retained in the service; or

b. Discharged. If discharge is recommended, the type of discharge certificate to be issued will be specified. If the individual holds Reserve status as a commissioned or warrant officer, the board will include a recommendation whether such status should be terminated and the type of discharge to be issued.

14-17. Action by convening authority (commander exercising general court-martial jurisdiction) on board proceedings. *a.* The convening authority will not discharge an individual if a board recommends retention, nor will he authorize the issuance of a discharge of a less favorable character than that recommended by the board. When a case has been referred to, and action completed by

a board of officers, the convening authority will take one of the following actions :

(1) When a board recommends that an individual be retained and the convening authority believes that separation is warranted and in the Army's best interest, or the individual entered the service with a nonwaivable disqualification, or the incident of fraudulent entry was concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense, the convening authority will forward the case to HQDA (DAAG-PSS-S), WASH DC 20314, with supporting reasons, for final decision.

(2) Approve a recommendation for discharge and direct issuance of the type of discharge certificate recommended by the board. The convening authority may direct issuance of a superior type certificate, but will not direct issuance of a lesser type certificate.

(3) Approve a recommendation for retention if the member entered the service with a waivable disqualification and the incident of fraudulent entry was not concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense.

(4) Disapprove a recommendation for discharge and direct retention, if the member entered the service with a waivable disqualification and the incident of fraudulent entry was not concealment of a felony conviction by a civil court or adjudication as a juvenile offender for a felonious offense.

b. If, in his review of a case in which separation has been recommended by the board, the convening authority notes a defect in the proceedings, which he deems to be harmless, he will take appropriate final action subject to *a* above. With respect to substantial defects, he may take one of the following actions :

(1) Direct retention.

(2) If the board has failed to make findings or recommendations required by this chapter, return the case to the same board for compliance.

(3) If there is an apparent procedural error or omission in the record of proceedings, which may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

c. Boards may be reconvened or a new board convened only in accordance with the provisions of chapter 1.

d. The convening authority may delegate to his deputy or other officer within his headquarters the authority to approve, disapprove, or make other appropriate disposition of cases, except to direct an undesirable discharge. The *convening* authority is required to personally sign any action directing undesirable discharge of an enlisted member under his command. He may direct other appropriate disposition of the case.

14-18. Disposition of proceedings. a. When discharge of an enlisted person has been accomplished by appropriate authority under this chapter, the complete file of the case will be filed in accordance with AR 640-10.

b. When retention is directed, the retention constitutes a waiver of the fraudulent entry. The following statement will be entered in Item 42, DA Form 20 (Enlisted Qualification Record): "Discharge action based on fraudulent entry is waived and retention authorized on _____ (date)." The original copy of the approval document will be forwarded to the Commanding Officer, US Army Enlisted Personnel Support Center, ATTN: AGPE, Fort Benjamin Harrison, IN 46249, for inclusion in the member's official personnel record.

c. When the convening authority approves a recommendation that an enlisted member be discharged from Reserve status as a commissioned or warrant officer, he will forward a copy of the approved proceedings to the Commanding General, RCPAC, 9700 Page Boulevard, St. Louis, MO 63132, for appropriate action under the provisions of AR 135-175.

d. When an ARNGUS trainee is released from active duty for training under this chapter, a copy of the approved proceedings will be forwarded to the adjutant general of the Stats concerned.

14-19. Type of discharge. An individual discharged under this chapter will be furnished DD Form 256A (Honorable Discharge Certificate), DD Form 257A (General Discharge Certificate), or DD Form 258A (Undesirable Discharge Certificate). In addition to section III, chapter 1, the following factors will be considered in determining the type of discharge certificate to be issued:

a. The character of service will be based on in-service records and activities.

b. False pre-enlistment or pre-induction records will not be used as a basis for characterizing a period of service.

c. The offense of fraudulent enlistment (10 USC 883; Art. 83, UCMJ) occurs when the member accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment as to his qualifications. Thus, upon receipt of pay and allowances, it becomes an in-service activity by the member and may be considered in characterizing his period of service, even though he is not tried for the offense.

d. A fraudulent induction is not an offense under the Uniform Code of Military Justice (see Art. 83, UCMJ; 10 USC 883; U.S. vs. Jenkins, 7 USCMA 261, 22 CMR 51 (1956)). Since a fraudulent induction is accomplished by pre-induction activities on the part of the inductee, it cannot be used as a basis for characterizing a period of service.

14-20. Entries on DD Form 214. a. When an individual is discharged for fraudulent entry, the entry on DD Form 214 will be "Chapter 14, AR 635-200." The separation program number (SPN) will be entered in accordance with appendix A, AR 635-5.

b. When an individual is discharged for desertion, trial barred, the entry on DD Form 214 will be "Section VII, AR 636-206." The separation program number (SPN) will be entered in accordance with appendix A, AR 635-5.

(Date individual and counsel sign statement.)

SUBJECT: Separation Under Chapter 14, AR 635-200

TO: (Discharge Authority)

*1. I have been advised by counsel of the basis for the contemplated action to accomplish my separation for fraudulent entry under chapter 14, AR 635-200.

2. I (request) (waive) consideration of my case by a board of officers.

3. I (request) (waive) personal appearance before a board of officers.

4. Statements in my own behalf (are) (are not) submitted herewith as inclosure _____

5. I (request) (waive) representation by (my appointed counsel) (_____ as military counsel) (civilian counsel at my own expense).

6. I understand that, as a result of issuance of a discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both Federal and State laws; and that I may expect to encounter substantial prejudice in civilian life.

7. I have retained a copy of this statement.

(Signature of Individual.)

(Typed name, social security number and grade.)

Having been advised by me of the basis for this contemplated separation and its effect and the rights available to him, (name of individual) personally made the choices indicated in the foregoing statement.

(Signature of counsel.)

(Typed name, SSN, and grade.)

*In the event the individual declines to consult with counsel prior to waiving his rights, insert as paragraph 1, the following statement: "Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel, or military counsel of my own choice, if he is reasonably available, or civilian counsel at my own expense. I decline the opportunity." If counsel is not a JAG officer, he must indicate whether he is qualified under title 27b (1), UCMJ.

Note. An individual who holds a Reserve status as a commissioned or warrant officer will include in his statement whether a waiver of board hearing does or does not apply to his Reserve status.

Figure 14-1. Individual's statement.