

Appendix E

DOD Directive 1332.14 Enlisted Administrative Separations December 21, 1993

References: (a) DoD Directive 1332.14, subject as above, January 28, 1982 (hereby canceled) (b) Section 977 of title 10, United States Code (Denial of Certain Benefits to Persons Who Fail to Complete at Least Two Years of an Original Enlistment) (c) Pub. L. No. 97-66, The Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments Act of 1981", October 17, 1981, (95 Stat. 1035) (d) Sections 801-940 of title 10, United States Code (Uniform Code of Military Justice, Articles 1-140) *(e) through (z), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and updates policy, responsibilities, and procedures governing the administrative separation of enlisted members from the Military Services.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense and the Military Departments (including their Reserve components). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force and the Marine Corps.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. It is DoD policy to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

- a. Judge the suitability of persons to serve in the Armed Forces on the basis of their conduct and their ability to meet required standards of duty performance and discipline;
- b. Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service;
- c. Achieve authorized force levels and grade distributions; and
- d. Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

2. DoD separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

- a. The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the Service, and one's fellow citizens and Service

members to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

b. Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Armed Forces. It is DoD policy to provide Service members with the training, motivation, and professional leadership that inspires the dedicated enlisted member to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

c. The Military Services make a substantial investment in training, time, equipment, and related expenses when persons are enlisted or inducted into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Armed Forces. Reasonable efforts should be made to identify enlisted members who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation before initiation of separation proceedings. Enlisted members who do not demonstrate potential for further military service should be separated to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance that are associated with retention of enlisted members who do not conform to required standards of discipline and performance despite efforts at counseling, retraining, or rehabilitation.

* * *

DEFINITIONS

A. 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.

B. Convening Authority. (1) The Separation Authority or (2) a commanding officer who has been authorized by the Secretary concerned to process the case except for final action and who otherwise has the qualifications to act as a Separation Authority.

* * *

E. 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.

F. Homosexual Act

1. Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires, and
2. Any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subsection F.1., above.

G. 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.

* * *

J. 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.

* * *

O. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

P. Statement that a Member Is a Homosexual or Bisexual or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

* * *

H. Homosexual Conduct

Basis

a. Homosexual conduct is grounds for separation from the Military Services under the terms set forth in paragraph H.1.b., below. 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. A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service under this section unless manifested by homosexual conduct in the manner described in paragraph H.1.b..

b. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member 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:

(a) Such acts are a departure from the member's usual and customary behavior;

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

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

(d) Under the particular circumstances of the case, the member's continued presence in the Armed Forces is consistent with the interest of the Armed Forces in proper discipline, good order, and morale; and

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

(2) The member 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 member 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 a Service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. 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 a member has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

- (a) Whether the member has engaged in homosexual acts;
- (b) The member's credibility;
- (c) Testimony from others about the member's past conduct, character, and credibility;
- (d) The nature and circumstances of the member's statement;
- (e) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

(This list is not exhaustive; any other relevant evidence may also be considered.)

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved)

2. Burden of Proof. See paragraphs H.4.e. and f., below, for guidance as to the burden of proof and when a finding regarding retention is required.

3. Characterization or Description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2. When the sole basis for separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

- a. By using force, coercion, or intimidation;
- b. With a person under 16 years of age;
- c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- d. Openly in public view;
- e. For compensation;

f. Aboard a military vessel or aircraft; or

g. 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.

4. Procedures. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under paragraph H.1.b., above. Factfinding procedures for inquiries into homosexual conduct are in enclosure 4.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.b., above, is supported by the evidence, the Board shall recommend separation unless the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O. of this Part)

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

(1) There is insufficient evidence to support the finding; or

(2) Retention is warranted under the limited circumstances described in paragraph H.1.b., above.

(3) If there has been a waiver of Board proceedings, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.b., above, the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.b. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph. e. The member shall bear the burden of proving throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in subparagraphs H.1.b. (1) and H.1.b. (2) .

f. Findings regarding whether or not retention is warranted under the limited circumstances of paragraph H.1.b. are required if the member clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with this Directive;

(2) Requires that a member be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

(a) The member 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 or terminating military service; and

(b) Separation of the member would not be in the best interest of the Armed Forces.

(3) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(4) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(5) Precludes separation in appropriate circumstances for another reason in this Directive; or

(6) Precludes trial by court-martial in appropriate cases.

* * *

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

A. RESPONSIBILITY

1. Only the member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.
2. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.
3. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.
4. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretaries of the Military Departments concerned (reference (y)).
5. The guidelines in this enclosure do not apply to activities of Defense Criminal Investigative Organizations and other DoD law enforcement organizations, which are governed by DoD Instruction 5505.8 (reference (z)).

* * *

C. BASES FOR CONDUCTING INQUIRIES

1. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.
2. A basis for discharge exists if:
 - a. The member has engaged in a homosexual act.
 - b. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or
 - c. The member has married or attempted to marry a person of the same sex.
3. Credible information does not exist, for example, when:
 - a. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as described, to support that suspicion; or
 - b. The only information is the opinions of others that a member is homosexual; or

c. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation; or

d. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

4. Credible information exists, for example, when:

a. A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or

b. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

c. A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

D. PROCEDURES

1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

2. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

3. Commanders or appointed inquiry officials shall not ask, and members shall not be required to reveal, whether a member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in section C., above) commanders or appointed inquiry officials may ask members if they engaged in such conduct. But the member should first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). Should the member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding, nor does it provide the member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the member, in any proceeding.

4. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

5. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

6. The Service member bears the burden of proving, by a preponderance of the evidence, 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.

E. LEGAL EFFECT

The procedures in this enclosure create no substantive or procedural rights.