

WHAT YOU SHOULD KNOW ABOUT
CHAPTER 9, AR 635-200
Alcohol or Other Drug Abuse Rehabilitation Failure

1. **WHAT IS THE BASIS FOR A CHAPTER 9?**

a. A soldier may be subject to a Chapter 9 discharge when he or she is enrolled in the Army Substance Abuse Program (ASAP), and the commander determines that further rehabilitation efforts are not practical. A soldier enrolled in ASAP may be separated if he or she is unable to or refuses to participate in, cooperate with, or successfully complete the program, and: (1) there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical; or (2) long term rehabilitation is necessary and the soldier is transferred to a civilian facility for treatment (Para 9-2a).

b. The *unit* commander makes the determination that further rehabilitation efforts are not practical in consultation with the rehabilitation team. The soldier must have completed the active phase of the rehabilitation program. To approve the separation, the battalion commander must determine that the required rehabilitation efforts are not practical, and that the member's potential for fully effective service is substantially reduced by alcohol/drug use (para 9-5b).

c. Be aware that just because a soldier is enrolled in ASAP, the commander is not *required* to use Chapter 9 if there is another basis for separation available. For example, if a soldier enrolled in ASAP also has demonstrated a pattern of misconduct or committed a serious offense, the commander may initiate separation under Chapter 14 (Para 9-2b).

2. **PROCEDURE**: The unit commander forwards the chapter packet containing all relevant matters (including any documents submitted by the soldier) to the battalion commander, who makes his or her recommendation and forwards it to the brigade commander. The brigade commander decides whether the soldier should be separated and the characterization of service. All records of this action, including the reason for separation, are confidential by operation of Federal Law. Those in the civilian community, such as potential employers, will only know the characterization of service (honorable or general under honorable conditions).

3. **WHAT ARE YOUR RIGHTS?**

a. You have a right to consult with an attorney within a reasonable time (not less than three duty days). Your chain of command should ensure that you go to the TDS office to consult with a military defense attorney, at no cost to you. You may also consult a civilian attorney at your own expense.

b. You have the right to submit statements. These may be statements you write, or statements others write on your behalf.

c. You have the right to copies of the documents that your commander forwards in support of the separation action.

d. You can waive the above rights in writing. Failure to respond (not signing the memorandum informing you of your rights) within seven duty days from the date you see an attorney means you give up all of your rights.

4. **CHARACTERIZATION OF SERVICE**: Soldiers separated under Chapter 9 may receive either an honorable discharge or a general under honorable conditions discharge.

a. **HONORABLE**: This is a separation with honor. An honorable discharge is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. **GENERAL**: This is a discharge under honorable conditions. It is issued to a soldier whose military record is satisfactory, but not sufficiently meritorious to warrant an honorable discharge. This is usually appropriate for soldiers who have received nonjudicial punishment (Article 15s) for minor offenses.

5. **EFFECT OF DIFFERENT KINDS OF DISCHARGES**: A general discharge, unlike an honorable discharge, may create hardship for the soldier in the civilian community. A general discharge tells potential employers that you had problems while you were in the military. A general discharge may also affect your eligibility for certain benefits. You may discuss the possible effects of a general discharge with your attorney, as well as refer to the handout available at TDS.

6. **UPGRADING THE DISCHARGE**: Your discharge will NOT be automatically upgraded after six months or any other period of time. There are two possible ways to apply for an upgrade when you leave the service:

a. Army Discharge Review Board (AR 15-180).

b. Army Board for Correction of Military Records (AR 15-185). The ABCMR considers applications to upgrade a discharge based on "error or injustice". You must file within 3 years, although the board may grant a waiver in the interests of justice.

c. You can get a "Self-Help Guide to Discharge Upgrading" from the TDS office, or find the necessary information at <http://arba.army.pentagon.mil/adrb.htm>.

d. Prior to leaving the Army, you should try to obtain statements from your past and present military supervisors, subordinates, or peers regarding your good duty performance,

initiative, attitude, and other positive attributes. You can submit these statements to support your application and increase the likelihood of receiving the upgrade.

e. Other agencies empowered to upgrade a discharge include the Judge Advocate General, the Secretary of the Army, and the Army Clemency Board. You may also seek an Exemplary Rehabilitation Certificate from the U.S. Department of Labor, ATTN: METR, MANPOWER ADMINISTRATION, Washington, D.C. under certain circumstances.

f. Use your local Veteran's Administration (VA) office to assist in upgrading your discharge. Your local VA office can also inform you of your VA benefits eligibility.

7. **TIMING OF SEPARATION**. You will be separated as soon as possible. NOTE: *any* misconduct committed after the discharge is approved, but before separation takes place can still be punished by an Article 15, Summary Court-Martial, Special Court-Martial, or General Court-Martial. Keep in mind that you can be kept past your ETS for a court-martial. Your chain of command may also withdraw the Chapter 9 separation and attempt to separate you under a different chapter, such as Chapter 14 for misconduct or Chapter 13 for unsatisfactory performance.

8. **WAYS TO FIGHT THE DISCHARGE**:

a. Statements: You may write and submit a statement to the separation authority explaining why you should not be discharged or why you should receive an honorable discharge. You can also include statements from your supervisors and co-workers. When writing your statement, you should carefully read the separation packet and respond to any negative items. Finally, keep copies of all statements you submit.

b. Personal Appearance: You could request a personal interview with the separation authority (normally the brigade commander). He or she does not have to grant you an interview.

c. Hearing before an Administrative Separation Board: If you have six or more years of total active and reserve military service, you are entitled to a hearing before a separation board. The board usually consists of three officers, or two officers and one noncommissioned officer. You have the right to be represented by a military defense attorney at no cost to you, or by a civilian attorney at your own expense. The board decides if there is a factual basis for separation, if separation is proper under the circumstances, and whether you should receive a general or honorable discharge.

9. **QUESTIONS**: If you have questions on these matters, or need any other assistance, you should speak with a defense attorney. AR 635-200 and all Army regulations can be viewed on-line at www.usapa.army.mil. Go to "official publications" and click to pull down the menu. The post library or education centers should also have hard copies of Army regulations for reference.

