WHAT YOU SHOULD KNOW ABOUT
CHAPTER 13, AR 635-200:
Separation for Unsatisfactory Performance

1. **WHAT IS THE BASIS FOR A CHAPTER 13?**

   a. This discharge may be given to a soldier when it is clearly established that:

      (1) The soldier's performance to date has been unsatisfactory, and the soldier will not develop enough to participate in further training and become a satisfactory soldier; and

      (2) The circumstances are so serious that retention would have an adverse impact on good order and morale; and

      (3) The soldier will be a disruptive influence; and

      (4) The circumstances which form the basis for the chapter action are likely to continue or recur; and

      (5) It is unlikely the soldier has either the ability to perform effectively in the future or the potential for advancement or leadership.

   b. Chapters 1-3 also apply to Chapter 13 and to all separation actions under AR 635-200.

2. **WHAT MUST THE COMMANDER DO BEFORE THEY CAN INITIATE A CHAPTER 13?**

   a. The soldier must be formally counseled in writing at least once prior to initiation of the chapter action. The counseling must include: the counseling; the fact that separation action may be initiated if the behavior continues, the type of discharge that could result from the possible separation action and the effect of each. The soldier should be given a reasonable time to correct his deficiencies (Para 1-18b, AR 635-200).

   b. The soldier must be transferred once with at least two months of duty in each unit, between battalion size and larger units. The separation authority can waive this transfer requirement if further duty by the soldier would cause disciplinary problems or if the member is resisting rehabilitative efforts (see Para. 1-16(c), AR 635-200).
c. The soldier must be given a proper medical examination and mental status evaluation.

d. Commanders are required to initiate separation for soldiers that fail the APFT twice in a row under AR 635-200, Para. 13-2(e). This requirement does not mean that separation must be completed after initiation.

e. Commanders should review a soldier’s situation and make decisions about retention, discharge or characterization of service on a case-by-case basis. Paragraphs 1-15, 1-16, 1-17 and 1-18 of AR 635-200 outline considerations for commanders when dealing with soldiers and separations.

3. **PROCEDURE**: The unit commander forwards the chapter packet containing all relevant matters, including any statements from you and documents you submitted, to the Battalion Commander, who makes his recommendation and forwards it to the Brigade Commander who makes the final decision as to whether you should be separated and the type of discharge you should receive. All records of this separation action, including the reason for separation, are confidential by operation of Federal Law. The only thing, which will be known by prospective employers, etc. is the type of discharge which you received (i.e., Honorable, etc.).

4. **WHAT ARE YOUR RIGHTS?**

   a. You have a right to consult with an attorney~ within a reasonable time (not less than three duty days) or civilian counsel at your own expenses (your command should make a TDS appointment for you or allow you to come to our office.

   b. You have the right to submit statements in your own behalf.

   c. You have the right to obtain copies of documents which your commander will forward in support of the separation recommendation.

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

   e. You have the right to an administrative discharge board if you are considered for discharge with an Under Other Than Honorable Conditions (OTH) characterization of service or if you have over 6 years of service in the military. If you are a soldier that has over 6 years in service you are entitled to have an administrative separation board hear your case regardless of the command recommendation as to characterization of service. (for example: the command is recommending an honorable discharge but you want to stay. If you have over 6 years you can request a board to hear your case and argue for retention). An attorney from TDS will be detailed to represent any soldier at a board, or the soldier can hire a civilian attorney, or represent himself or herself.
5. **TYPE OF DISCHARGE**: Soldiers separated under this program will generally be given either an honorable discharge or a general under honorable conditions discharge (Para. 13-10, AR 635-200).

   a. **HONORABLE**: This is a separation with honor. An honorable discharge will be given for proper military behavior and proficient performance of duty. If the soldier has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should receive an honorable discharge. If there are infractions of discipline, the seriousness and frequency will be evaluated. When there is a doubt, it should be resolved in favor of an honorable discharge. An honorable discharge is required if the government introduces limited use evidence (see Para. 3-8 (a) and (g), AR 635-200).

   b. **GENERAL**: This is a discharge under honorable conditions, soldier whose record and performance is satisfactory. This is usually given to someone who had non-judicial punishments (Article 15s), but not for serious infractions. When this type of discharge is given, the commander must state the specific basis for it.

   c. **UNDER OTHER THAN HONORABLE CONDITIONS**: This is a discharge issued ordinarily for misconduct, fraudulent entry, security reasons, or for the good of the service. This discharge carries considerable stigma and deprives the soldier of substantially all veteran’s benefits accrued during the enlistment period. This type of discharge is usually not given under Chapter 13.

6. **EFFECT OF DIFFERENT KINDS OF DISCHARGES**: A General discharge and Under Other Than Honorable Conditions discharge, unlike an Honorable discharge, may create problems for the individual in finding a civilian job. A general discharge tells individuals that you had problems while you were in the military. You may discuss the possible effects of a General discharge or Under Other Than Honorable Conditions discharge with your attorney, as well as refer to the handout available at TDS.

7. **UPGRADING THE DISCHARGE**: Your discharge will NOT be automatically upgraded after a period of time. There are two possible ways to get the discharge upgraded when you leave the service.


   b. Army Board for Correction of Military Records (AR 15-185): Considers applications to upgrade a discharge issued by a General Court-Martial or a discharge based on “error or injustice”. Filing must be within 3 years, although a waiver may be made in the interests of justice.

   c. You may obtain a “Self-Help Guide to Discharge Upgrading” from your local TDS office. You may also obtain the necessary information at: [http://arba.army.pentagon.mil/adrb.htm](http://arba.army.pentagon.mil/adrb.htm).

   d. Prior to leaving the Army, you should try to obtain statements from military personnel regarding your good duty performance, initiative, attitude, and other appropriate statements.
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 VA office to assist in upgrading your discharge. Your local VA office can also inform you of your VA benefits eligibility.

8. **TIMING OF SEPARATION.** You will be separated as soon as possible. NOTE: ANY misconduct committed after the discharge is approved, but before separation can still be prosecuted.

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

   a. Statements: You 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. You should also carefully read the elimination packet and respond to the negative items in the packet. Finally, keep copies of all of your statements.

   b. Personal Appearance: You could request a personal interview with the separation authority under their open door policy. This authority does not have to grant you an interview but usually will do so.

10. **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 online at [www.usapa.army.mil](http://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.