



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge
Advocate

Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs



BARS TO CONTINUED SERVICE

Consider these questions and answers to help you determine your rights in response to a Bar to Continued Service.

Q: WHAT IS A BAR TO CONTINUED SERVICE?

A: A bar to continued service is the administrative tool commanders use to deny reenlistment to Soldiers they believe may be substandard. Army Regulation (AR) 601-280 sets forth policies and procedures for the Army's retention and re-enlistment program. The regulation provides that only Soldiers of "high moral character, personal competence, and demonstrated adaptability to the requirements of the professional Soldier's moral code will be authorized continued service." Accordingly, the regulation authorizes bars for Soldiers whose immediate separation is not warranted, but whose continued service is not in the best interest of the Army. Honorable service (the absence of misconduct) does not prevent a bar to continued service.

Q: WHAT ARE THE CRITERIA FOR IMPOSING A BAR TO CONTINUED SERVICE?

A: There are three criteria justifying initiation of a Bar to Continued Service. In accordance with AR 601-280, bars are appropriate for Soldiers who are; 1) untrainable; 2) unsuitable; or 3) unable to enact a family care plan. "Untrainable" simply means the Soldier has, despite repeated attempts, failed to meet minimum professional standards. Inability to perform basic tasks associated with their MOS, repeated failure of the Army Physical Fitness Test, or repeated failure to qualify with an assigned weapon are all examples of untrainability. "Unsuitability" differs in that the focus is more on attitude and motivation. The suitability focuses on whether the Soldier presents proper military bearing and whether the Soldier refuses, or is otherwise unable, to adapt to the military lifestyle. Questionable off-duty conduct not amounting to misconduct may justify a bar on this ground. Finally, single Soldiers with dependent family members, or dual military couples with dependents, either of whom are unable to craft an acceptable family care plan, will be subject to a bar. Soldiers who the command believe fall below the standard may also be subject to a bar upon entering their primary zone eligibility for certain promotions.

Q: WHAT ARE THE PROCEDURES FOR INITIATING A BAR TO CONTINUED SERVICE?

A: Any commander in a Soldier's chain of command may initiate a local bar. Normally, the Soldier's company-level commander initiates the action because that commander is most likely to have direct contact with the Soldier and be most aware of the Soldier's successes and shortcomings. A bar is initiated using DA Form 4126-R. Once the bar is initiated, the commander will present it to the Soldier. The Soldier then has 7 days to submit a rebuttal statement. If the commander determines the bar is still warranted, it will be forwarded up the chain of command for approval or disapproval. For Soldiers with less than 10 years of active federal service, the first commander in the rank of lieutenant colonel (usually the battalion-level commander) will approve, or disapprove, the bar. For Soldiers with 10 or more years of active federal service, the approval authority is the first general officer in the Soldier's chain of command or the commander with authority to convene a general court-martial over the Soldier. Any of these higher-level commanders may disapprove the proposed bar. An approved bar is placed in the Soldier's local personnel file. The commander must review the approved bar at the end of 3 months, if not before, and decide whether the bar should remain in place. Usually, the company-level commander will review the bar and make a recommendation to the commander who approved it. Once approved, only the approving commander or a higher commander may remove the bar. If the bar remains, the bar will again be reviewed at the end of another 3 months. If at that time the bar is not lifted, the command must initiate involuntary separation proceedings.

Q: CAN I APPEAL A DECISION TO APPROVE A BAR TO CONTINUED SERVICE AGAINST ME?

A: Yes. Soldiers may appeal approved bars. Separation proceedings will be halted pending final action on the appeal. For Soldiers with less than 10 years active federal service, the appeal authority is the first general officer in the Soldier's chain of command or the commander exercising general court-martial jurisdiction over the Soldier. For Soldiers with 10 or more years of active federal service, the appeal authority is the commanding general, Personnel Command (PERSCOM). Appeals should rebut the allegation(s) of untrainability, unsuitability, or absence of a family

care plan. The appeal should focus on presenting the picture of a Soldier who is motivated, hard working, and otherwise committed to being a professional Soldier. It is critical to show that the Soldier wants to stay in the Army and that it is in the best interests of the Army to have the Soldier stay. Professionalism and commitment to excellence are the standard. The Soldier's appeal should focus on what the Soldier has done to excel and to overcome the alleged deficiencies that prompted the bar.

Q: WHAT SHOULD I DO IF I AM INFORMED OF THE INITIATION OF A BAR TO CONTINUED SERVICE?

A: Contact the Legal Assistance Division to arrange an attorney consultation. You can receive help not only with preparing an initial rebuttal but also, in the event a bar is approved, with preparing an appeal.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at 719-526-5572/5573 or come by the office (building 6222) Monday-Friday from 9 a.m. to 4 p.m. Appointments are made on the last duty day of every week, you can call or walk-in to schedule an appointment.

MOUNTAIN POST LEGAL BRIEF is one of a series of informative handouts from the Fort Carson Legal Assistance Division containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Legal Assistance Division at 719-526-5572.
