



TRIAL DEFENSE SERVICE

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WHAT YOU SHOULD KNOW ABOUT CHAPTER 7, AR 635-200 DEFECTIVE ENLISTMENTS/RE-ENLISTMENTS AND EXTENSIONS AND FRAUDULENT ENLISTMENT

Note: This handout only provides basic information and is not intended to serve as a substitute for personal consultation with an attorney.

I. Basis for Chapter Elimination: Chapter 7 provides authority for the separation of Soldiers due to minority (underage), erroneous enlistment, induction or extension of enlistment, defective enlistment agreements, and fraudulent entry. Examples of conduct which might warrant Chapter 7 separation include Soldiers who enlist when they are 16 years old, Soldiers who conceal a criminal background or a medical defect which would disqualify them from service, Soldiers who misrepresent the legal custody of children, and Soldiers who enlisted for a particular option but who are now not eligible for that enlistment option.

II. Command Requirements before Separation: Depending on the basis for the separation, the commander must establish that the information which triggers the Chapter 7 action (such as a medical condition) is true and that it disqualifies the Soldier from service. For fraudulent enlistments, the commander must also show that the Soldier deliberately misrepresented or withheld the information.

III. Soldiers Rights: Soldiers have the right to consult with a TDS attorney, or with private counsel at no expense to the government, and to submit matters for the separation authority to consider before the separation authority makes a final decision regarding separation. Additionally, Soldiers with at least 6 years of service are entitled to an Administrative Separation Board. All Soldiers pending Chapter 7 separation should consult with an attorney before making any decisions concerning the Chapter 7 separation.

IV: Separation Authority: The separation authority is normally the Special Court-Martial Convening Authority, who is typically the first Colonel in the chain of command. However, if an Other Than Honorable (OTH) discharge is recommended, the separation authority is normally the General Court-Martial Convening Authority, who is typically the Commanding General.

V. Description of Defect and Characterization of Service:

Underage Enlistments:

Active Army Soldiers will be released from the custody and control of the Army for void enlistment if, upon receipt of satisfactory proof of date of birth, it is shown that he/she was

less than 17 years of age at the time of enlistment and that he/she had not yet attained that age.

These Soldiers will receive an order of release from custody and control of the Army. A Soldier will be released from custody and control of the Army for minority upon application of his/her parents or guardian made within 90 days after the Soldier's enlistment, unless charged with a serious offense committed after attaining the age of 17 years of age, if –

- (1) There is satisfactory evidence that the Soldier is under 18 years of age.
- (2) The Soldier enlisted without the written consent of his/her parents or guardian. Soldiers separated due to minority will be given an entry level uncharacterized discharge. Soldiers separated due to erroneous enlistments or reenlistments and defective or unfulfilled enlistment or reenlistment will receive an honorable discharge unless in an entry level status (which means they have 180 days active duty service or less). Soldiers in an entry level status will receive an uncharacterized discharge. (See paragraph 7-4 and 7-5, AR 635-200, for more details)

Erroneous Enlistments, Reenlistments, Induction or Extensions:

An enlistment, induction or extension of enlistment is erroneous if all the following apply: (1) It would not have occurred had the relevant facts been known by the Government or had appropriate directives been followed; (2) It was not the result of fraudulent conduct on the part of the Soldier; and (3) The defect is unchanged in material respects. Soldiers separated under this paragraph will be awarded an honorable character of service or order of release from custody and control of the Army unless an uncharacterized description of service is required. (See paragraph 7-15, AR 635-200, for more details)

Defective or Unfulfilled Enlistments or Reenlistments:

A defective enlistment agreement exists when the Soldier is eligible for enlistment in the Army but does not meet the prerequisites for the option for which enlisted. Soldiers separated under this paragraph will be awarded an honorable character of service unless an entry-level separation is required. (See paragraph 7-16, AR 635-200, for more details)

Fraudulent Entry:

Fraudulent entry is the procurement of an enlistment, re-enlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. A Soldier discharged under the provisions of this chapter will be furnished a DD Form 256A or assigned a character of service of under other than honorable conditions. If in entry-level status, service will be described as uncharacterized, as appropriate. Soldiers separated for fraudulent entry may receive an honorable, general, OTH, or uncharacterized discharge (if eligible) (see paragraph 7-23, AR 635-200).

VI. Separation Pay. Separation pay is not authorized.