

Changes to Administrative Separation Policy

- Implements SecDef policy regarding administrative separation for homosexual conduct with changes to DODD 1332.14, “Enlisted Administrative Separations” and DoDD 1332.30, “Separations of Regular Officers.”
- Provides revised standards and procedures for separation of servicemembers for homosexual conduct effective February 5, 1994.
- Amends the policy paragraph of the directive and the introductory language in paragraph H of enclosure 3 in DoDD 1332.14 to emphasize that it is DoD policy to judge the suitability of persons to serve in the armed forces on the basis of their conduct and to provide that homosexual conduct, not homosexual orientation, is the basis for separation. To maintain consistency among officer and enlisted directives, this paragraph is added to DoDD 1332.30.
- Defines homosexual conduct as including homosexual acts, statements by the servicemember that demonstrate a propensity or intent to engage in homosexual acts, and homosexual marriages or attempted marriages.
- Replaces the previous terminology of “desires to engage in” homosexual acts with “a propensity to engage in” homosexual acts. Makes clear the distinction between status and conduct. Makes clear that a servicemember who has stated that he or she is a homosexual has the opportunity to prove that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.
- Adds a new enclosure on the proper use of fact-finding inquiries, as a practical guide for the commander.

Department of Defense
DIRECTIVE

NUMBER 1332.14

Subject: Enlisted Administrative Separations

References: (a) DoD Directive 1332.14, subject as above, December 29, 1976
(canceled on October 1, 1982; see section F., below)
(b) through (y), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and establishes policies, standards, and procedures governing the administrative separation of enlisted members from the Military Services.

B. APPLICABILITY AND SCOPE

The provisions of this Directive apply to 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, Navy, Air Force and Marine Corps.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. It is the policy of the Department of Defense 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.
 - b. Ensure that the Military Services are served by individuals capable of meeting required standards of duty performance and discipline;
 - c. Maintain standards of performance and conduct through characterization of service in a system that emphasized the importance of honorable service;
 - d. Achieve authorized force levels and grade distributions; and
 - e. Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

...which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a

Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

2. The Assistant Secretary of Defense for Personnel and Readiness may modify or supplement the enclosures to this Directive, and may delegate the authority to establish reporting requirements for the reasons for separation (Part 1, enclosure 3) to a Deputy Assistant Secretary.

F. EFFECTIVE DATE AND IMPLEMENTATION.

1. This Directive is effective February 5, 1994.

2. This Directive applies only to administrative separation proceedings initiated on or after February 5, 1994 unless the Secretary of the Service concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. Forward two copies of proposed implementing documents to the ASD(P&R) within 30 days.

Enclosures - 4

1. References
2. Definitions
3. Standards and procedures
4. Guidelines for Fact-Finding Inquiries into Homosexual Conduct

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.

C. Discharge. Complete severance from all military status gained by the enlistment or induction concerned.

D. Entry Level Status. Upon enlistment, a member qualifies for entry level status during (1) the first 180 days of continuous active military service or (2) the first 180 days of continuous active service after a service break of more than 92 days of active service. A member of a reserve component who is not on active duty or who is serving under a Call or order to active duty for 180 days or less begins entry level status upon enlistment in a reserve component. Entry level status for such a member of a Reserve Component terminates as follows: (a) 180 days after beginning training if the member is ordered to active duty for training for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of active duty training if the member is Ordered, to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the member's status is determined by the date of notification as to the initiation of separation proceedings.

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 subparagraph (1).

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.

H. Member. An enlisted member of a Military Service.

...(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 homosexual acts or has a propensity or intent to do so. The Service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so. 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 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. Fact-finding 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 0. 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., 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 Bib, 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, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in paragraph H.1.b. except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

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 the provisions of 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 manied or attempted to many 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 set forth in this Directive; or

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

I. Drug Abuse Rehabilitation Failure...

Department of Defense
DIRECTIVE

NUMBER 1332.30

SUBJECT: Separation of Regular Commissioned Officers

- References:
- (a) DOD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," October 15, 1981 (hereby canceled)
 - (b) Title 10, United States Code, Chapter 60 and Sections 618, 630, 654, 827, 831
 - (c) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
 - (d) DOD 5200.2-R, "DoD Personnel Security Program," December 1979, authorized by DoD Directive 5200.2, "DoD Personnel Security Program," December 20, 1979
 - (e) Title 10, United States Code, Sections 80197940, (Uniform Code of Military Justice)

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a)
2. Implements Chapter 60 and Section 630 of reference (b) to establish policies, standards, and procedures governing the administrative separation of commissioned officers for substandard performance of duty, for an act or acts of misconduct or moral or professional dereliction, or in the interest of national security.
3. Implements Chapter 60 and Section 630 of reference (b) with respect to discharge of regular commissioned officers with less than five years active commissioned service in certain circumstances.

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD) and to the Military Departments and covers regular commissioned officers of the Military Services. The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.
2. This Directive does not apply to commissioned warrant officers and retired commissioned officers of the Military Services.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

It is the policy of the Department of Defense:

1. To promote the readiness of the Military Services by maintaining high standards of conduct and performance. An individual is permitted to serve as a commissioned officer in the Military Services because of the special trust and confidence the President and the nation have placed in his or her patriotism, valor, fidelity, and competence. Commissioned officers are expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times.

2. To judge the suitability of persons to serve in the Armed Forces on the basis of their conduct.

3. To separate from Military Service those commissioned officers who will not or cannot exercise the responsibility, fidelity, integrity, or competence required of them to:

a. Ensure that the Military Services meet rigorous and necessary standards of duty, performance, and discipline.

b. Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable Military Service.

4. Notwithstanding any other provision of this directive, the Secretary of the Military Departments concerned may discharge regular commissioned officers with less than five years active commissioned service from a Military Service when there is a need to reduce the number of officers in that Service to meet budgetary or force size requirements. The provisions of Enclosure 6 apply to the discharge of probationary officers under this authority.

5. The Assistant Secretary of Defense for Personnel and Readiness, in coordination with the Secretaries of the Military Departments, shall ensure that officers separated under this Directive are fully informed of assistance available from the Department of Defense to assist them in the transition to civilian life.

E. STANDARDS AND PROCEDURES

Standards and procedures for implementation of these policies are set forth in enclosures 2 through 8.

F. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Personnel and Readiness shall modify or supplement this Directive, as needed.

2. The Secretaries of the Military Department shall:

a. Prescribe regulations consistent with the policy and procedures contained in this Directive.

b. Address any recommendations for policy changes in this Directive to the ASD(P&R).

G. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective February 5, 1994.

2. This Directive applies only to administrative separation proceedings initiated on or after February 5, 1994, unless the Secretary of the Service concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. Forward two copies of proposed implementing documents to the ASD(P&R) within 30 days.