



U.S. Department of Labor
Veterans' Employment & Training Service



VETS USERRA FACT SHEET #3: Frequently Asked Questions – Separations from Uniformed Service, Characterizations of Service, and Effects on Rights and Benefits under USERRA

The Veterans' Employment and Training Service (VETS) interprets and provides guidance on the Uniformed Services Employment and Reemployment Rights Act (USERRA) and investigates complaints filed under this law. The following frequently asked questions provide general information concerning separations from uniformed service, the characterization of such service, and their potential effects on USERRA rights and benefits.

1. What does “uniformed services” mean under USERRA?

- The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the Commissioned Corps of the Public Health Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and any other category of persons designated by the President in time of war or national emergency. Thus, under USERRA, the term “uniformed services” includes the military services (i.e., the Armed Forces, the Army National Guard, and the Air National Guard) as well as the Commissioned Corps of Public Health Services. As detailed below, the military services and the Commissioned Corps of Public Health Services have some differences in how they define and categorize separations from service. 38 U.S.C. § 4303.

2. What does it mean to be “separated” or “released” from the uniformed service?

- Separation from the military services (i.e., the Armed Forces, the Army National Guard, and the Air National Guard) is a term that encompasses discharge, release from active duty, release from custody and control of the military services, transfer to the Individual Ready Reserve, and similar changes in active or reserve status. Separation may occur at the expiration of a definite term of service, or when a service member elects, or is required, to leave military service, including for medical, administrative, disciplinary, or punitive reasons. A discharge includes dismissal and separation or release from active or inactive military status, and actions that accomplish a complete severance of all military status. The term discharge also includes the assignment of a reason for such discharge and characterization of service. 38 U.S.C. § 4303; 32 C.F.R. § 70.3(d); DoD Instruction (DoDI) 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020 at 56.

- For officers of the Commissioned Corps of the Public Health Service, Department of Health and Human Services (HHS), the term separation is used when an officer departs from active duty service. This includes voluntary or involuntary resignation or release from the service with termination of commission, placement in non-active status, or retirement. HHS Commissioned Corps Instruction (CCI) 387.01, Separation of Commissioned Officer, April 11, 2018, at 3.

3. What characterizations of service can uniformed service members receive on discharge?

- The Department of Defense (DoD) authorizes six characterizations of service for military service members to receive on discharge: (1) Honorable; (2) Under Honorable Conditions (General); (3) Under Other than Honorable Conditions; (4) Bad Conduct; (5) Dishonorable, and (6) Uncharacterized. DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14.
- The service of officers of the Commissioned Corps of the Public Health Service may be characterized at separation in one of six ways: (1) Honorable; (2) Honorable with the notation “for the Good of the Service;” (3) Under Honorable Conditions; (4) Under Other Than Honorable Conditions; (5) Dismissed; and (6) Dropped from the Roll. HHS Commissioned Corps Directive (CCD) 111.02, Disciplinary Action, July 16, 2020, at 5, 11-12; HHS CCD 123.01, Involuntary Separation, July 6, 2020, at 7; HHS CCI 387.01, Separation of Commissioned Officer, April 11, 2018, at 5.

4. How are military service discharges documented?

- Military service discharges are documented on either a DD Form 214, Certificate of Release or Discharge from Active Duty, also known as a DD-214, or an NGB Form 22, Report of Separation and Record of Service, as known as an NGB-22.
- Every service member who is being separated from the Armed Forces (i.e., the Army, Navy, Air Force, Marine Corps, and Coast Guard) receives a completed DD-214, containing relevant data regarding the service member’s character of service and the circumstances of termination at the time of transfer, release, discharge, or when the service member changes status or component while on active duty. The DD-214 serves as an authoritative source of personnel information for administrative purposes, for making enlistment or reenlistment eligibility determinations, and for administration of State and Federal laws applicable to personnel who have been discharged, released, or transferred to a reserve component while on active duty. 5 U.S.C. § 2101(2); DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 2-3, 10.
- Every service member of the Army National Guard and the Air National Guard who is being separated or released from the custody and control of the military receives a completed NGB-22, unless the service member is being discharged for the purpose of immediate reenlistment, executes an interstate transfer, or dies. National Guard Regulation 600-200, Enlisted Personnel Management, July 31, 2009, at 39.

5. Where can you find a military service member's characterization of service?

- On both the DD-214 and NGB-22, the military service member's characterization of service will be noted in Block 24, Character of Service, at the bottom of the form, except on the Member-1 copy of the DD-214, which does not include Block 24. DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14, 18-26; National Guard Regulation 600-200, Enlisted Personnel Management, July 31, 2009, at 75.

6. How are separations from the Public Health Service documented?

- Upon separation from active duty, each officer of the Commissioned Corps of the Public Health Service is issued a PHS-1867 Statement of Service – Verification of Status of Commissioned Officers of the U.S. Public Health Service documenting all service performed by the officer with the Public Health Service. Commissioned Corps Personnel Management Pamphlet No. 58, A Supervisor's Guide to the Commissioned Personnel System 1999, May 21, 1999, at 64, 96.

7. Who determines the characterization of service?

- The branch of service in which the service member performs the tour of duty determines the characterization of service. 20 C.F.R. § 1002.136.

8. Does USERRA require any particular type of discharge for entitlement to rights and benefits?

- USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, they will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharges. 38 U.S.C. § 4304; 20 C.F.R. § 1002.134.

9. What types of characterizations of service or discharges are disqualifying under USERRA?

- A person's entitlement to the rights and benefits of USERRA are terminated if the person is: (1) separated from uniformed service with a dishonorable or bad conduct discharge; (2) separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service; (3) a commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or, (4) a commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution. 10 U.S.C. § 1161(a)-(b); 38 U.S.C. § 4304; 20 C.F.R. § 1002.135.

10. When can an employer ask for discharge documentation?

- There is no prohibition against an employer asking a prospective employee about their military status if it has a non-discriminatory business interest in doing so. It is important to note,

however, that some States may prohibit employers from asking a service member or veteran during the application or hiring process about the type of discharge they received. Employers should check applicable State laws and may wish to consult with legal counsel prior to requesting discharge information from prospective employees. *See generally* 38 U.S.C. § 4311(a); 20 C.F.R. §§ 1002.18, 1002.40.

- If a service member employee is absent from their civilian employment for a period of more than 30 days and submits an application for reemployment, the employer can request that the service member submit documentation to establish that; (1) the reemployment application was timely; (2) the employee has not exceeded the five-year limit on the duration of service, less any exceptions; and (3) the employee's separation or dismissal from service was not disqualifying. 20 C.F.R. § 1002.121.

11. What if the discharge documentation for a service member employee is not available?

- The employer is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The service member employee is not liable for administrative delays in the issuance of military documentation. If the employee is reemployed after an absence from civilian employment for more than 90 days, the employer may require that they submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the employee is not entitled to reemployment, the employer may terminate the employment and any rights or benefits that the employee may have been granted, as appropriate. 20 C.F.R. § 1002.122.

12. What is a Dishonorable Discharge?

- A dishonorable discharge is a punitive separation that applies only to military enlisted persons and warrant officers who are not commissioned and may only be adjudged by a general court-martial. A dishonorable discharge should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized in civilian jurisdictions as felonies, or of offenses of a military nature requiring severe punishment. The Commissioned Corps of Public Health Services does not use dishonorable discharge to characterize separations. 38 U.S.C. § 4304(1); Rules of Courts-Martial (R.C.M.) 1003(b)(8)(B).

13. What is a Bad Conduct Discharge?

- A bad-conduct discharge is a punitive discharge that applies only to military enlisted persons and may be adjudged by a general court-martial and by a special court-martial empowered to adjudge a bad-conduct discharge. A bad-conduct discharge is less severe than a dishonorable discharge and is designed as a punishment for bad-conduct rather than as a punishment for serious offenses of either a civilian or military nature. It is also appropriate for an enlisted person who has been convicted repeatedly of minor offenses and whose punitive separation appears to be necessary. The Commissioned Corps of Public Health Services does not use bad

conduct discharge to characterize separations. Separation from one of the uniformed services with a bad conduct discharge terminates a person's entitlement to USERRA rights and benefits by reason of such service. 38 U.S.C. § 4304(1); R.C.M. 1003(b)(8)(C).

14. What is a separation Under Other than Honorable Conditions?

- A separation under other than honorable (OTH) conditions, also known as an OTH discharge, is an administrative separation based on a pattern of behavior, or one or more acts or omissions, that constitutes a significant departure from the conduct expected of service members. The OTH characterization applies to both the military service and the Commissioned Corps of Public Health Services. An OTH characterization is only authorized if a service member has been afforded the opportunity to request an administrative board action, except when separation is requested, as permitted, by military service members in lieu of trial by court-martial. Separation from one of the uniformed services under other than honorable (OTH) conditions terminates a person's entitlement to USERRA rights and benefits by reason of such service. 38 U.S.C. § 4304(2); DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020 at 30-32; DoDI 1332.30, Separation of Regular and Reserve Commissioned Officers, November 25, 2013, at 22; HHS CCD 111.02, Disciplinary Action, June 18, 2018, at 11-12.

15. What is a Dismissal?

- Dismissal is a punitive discharge for military commissioned officers. A dismissal may be adjudged for any offense of which a commissioned officer has been found guilty, regardless of the maximum punishment. Commissioned officers may only be dismissed from any Armed Force by sentence of a general court-martial, commutation of a sentence of a general-court martial, or by order of the President in time of war. Separation from one of the uniformed services by dismissal under 10 U.S.C. § 1161(a) terminates a person's entitlement to USERRA right and benefits by reason of such service. 5 U.S.C. § 2101(2); 10 U.S.C. § 1161(a); 38 U.S.C. § 4304(3); R.C.M. 1003(b)(8)(A).

16. What does it mean to Drop from the Rolls?

- Drop from the rolls is a separation for military commissioned officers. The President or the Secretary of Defense, or in the case of a commissioned officer of the Coast Guard, the Secretary of the department in which the Coast Guard is operating when it is not operating in the Navy, may drop from the rolls of any Armed Force any commissioned officer (1) who has been absent without authority for at least three months; (2) who may be separated by reason of a court-martial sentence to more than six months confinement after the sentence becomes final and the person has served in confinement for six months; or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final. Separation from one of the uniformed services by being dropped from the rolls pursuant to 10 U.S.C. § 1161(b) terminates a person's entitlement to USERRA rights and benefits

by reason of such service. 5 U.S.C. § 2101(2); 10 U.S.C. § 1161(b); 10 U.S.C. § 1167; 38 U.S.C. § 4304(4).

- Drop from the rolls is also a type of release that may be used to separate military enlisted members who are away without official leave for 30 days or more and reported as a deserter, or enlisted members who are confined by civilian authorities for at least six months. For enlisted members, dropping from the rolls results in an uncharacterized discharge, which still entitles the recipient, who is otherwise eligible, to all rights and benefits under USERRA. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 30, 33-35, 56.
- Drop from the rolls is also a type of separation for officers of the Commissioned Corps of the Public Health Service. The commission of such an officer may be terminated if the officer is absent without leave for 30 consecutive calendar days, or 90 or more nonconsecutive calendar days, and the termination will be characterized as dropped from the roll. However, unlike military commissioned officers, the entitlement to USERRA rights and benefits of an officer of the Commissioned Corps of the Public Health Service, who is otherwise eligible, does not terminate upon the dropping of such person from the rolls. 38 U.S.C. § 4304(4); HHS CCD 123.01, Involuntary Separation, September 7, 2018, at 2, 6.

17. What is an Honorable Discharge?

- An Honorable discharge is a separation from the service with honor, and is appropriate when the quality of the service generally has met the standards of acceptable conduct and performance of duty, or is otherwise so meritorious that any other characterization would be clearly inappropriate. It is the highest character of service that a service member may receive, and entitles the recipient, who is otherwise eligible, to all rights and benefits under USERRA. Both the military service and the Commissioned Corps of the Public Health Service use honorable discharge to characterize separations. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating 5, Effective June 12, 2020, at 30; DoDI 1332.30, Separation of Regular and Reserve Commissioned Officers, November 25, 2013, at 19; DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14; HHS CCD 111.02, Disciplinary Action, June 18, 2018, at 11.

18. What is an Honorable Discharge with the notation “for the Good of the Service?”

- An officer of the Commissioned Corps of the Public Health Service who has been found guilty of one or more criminal offenses by a civil authority, tribal authority, or military tribunal or administrative board, and has been sentenced to confinement for a period in excess of 30 days in a military, Federal, Tribal, or State penitentiary or correctional institution, with or without suspension or probation, may be separated with an Honorable discharge with the notation “for the good of the service.” The military services do not use the notation “for the Good of the

Service” to characterize separations. An Honorable discharge with the notation “for the good of the service” still entitles the recipient, who is otherwise eligible, to all rights and benefits under USERRA. 38 U.S.C. § 4304; HHS CCD 111.02, Disciplinary Action, June 16, 2020, at 5-6.

19. What is an Under Honorable Conditions (General) Discharge?

- An under honorable conditions (general) discharge, also known as a general (under honorable conditions) discharge, is a separation from service under honorable conditions. It is appropriate when the service member’s service has been honest and faithful, and when the positive aspects of their conduct or performance of duty outweigh the negative aspects of such conduct or performance. It is a lesser character of service than an Honorable discharge, but still entitles the recipient, who is otherwise eligible, to all rights and benefits under USERRA. Both the military services and the Commissioned Corps of the Public Health Service use under honorable conditions to characterize separations. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 31; DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 13-14; HHS CCD 111.02, Disciplinary Action, June 18, 2018, at 11.

20. What is an Uncharacterized Discharge?

- When a characterization of service or other description of separation is not authorized or warranted, administrative separations of military enlisted persons may be uncharacterized. Uncharacterized discharges of military enlisted persons result under the following circumstances: (1) entry-level separation; (2) void enlistment or induction; or (3) dropping from the rolls. The Commissioned Corps of Public Health Services does not use uncharacterized discharge to characterize separations. An uncharacterized discharge, regardless of the reason, still entitles the recipient, who is otherwise eligible, to all rights and benefits under USERRA. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 33-35; DoDI 1336.01, Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), August 20, 2009, Incorporating Change 3, Effective January 23, 2019, at 14.

21. What is an Entry-Level Separation?

- An entry-level separation is a separation initiated while a military enlisted member is in entry-level status, and results in an uncharacterized discharge, except in the following circumstances: (1) when an OTH characterization is authorized under the reason for separation and is warranted by the circumstances of the case; (2) the Secretary concerned, on a case-by-case basis, determines that a characterization of service as Honorable is clearly warranted by the presence of unusual military duty; or (3) an entry-level separation of a reserve component service member for cause authorizes a discharge under honorable conditions, under other than honorable conditions, or drop from the rolls. An entry-level separation of a military enlisted member that results in an uncharacterized discharge still entitles the recipient, who is otherwise

eligible, to all rights and benefits under USERRA. Entry-level separations do not apply to the Commissioned Corps of Public Health Services. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 33-34, 56.

22. When is a military service member in Entry-Level Status?

- For the purposes of characterization of service or description of separation, the military service member's status is determined by the date of notification as to the initiation of separation proceedings. Upon enlistment, a military service member qualifies for entry-level status during the following: (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 reserve component (i.e., National Guard or Reserve) service member 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 reserve component service member terminates on the following: (1) 180 days after beginning training if the service member is ordered to active duty for training for one continuous period of 180 days or more; or (2) 90 days after beginning of the second period of active duty training if the service member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020 at 56.

23. What is a Void Enlistment or Induction?

- An enlistment is void if: (1) it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the military service, including enlistment of a person who is intoxicated or insane at the time of enlistment; (2) the person is under 17 years of age; or (3) the person is a deserter from another military service. Under void enlistments or inductions, an enlisted service member will not receive a discharge, characterization of service at separation, or an entry-level separation, except when a constructive enlistment arises. If characterization or an entry-level separation is not required, or if the enlistment was void by reason of desertion from another military service, the separation will be described as an order of release from custody or control of the military services. A void enlistment or induction does not apply to the Commissioned Corps of Public Health Services. A void enlistment or induction of a military enlisted member that results in a separation that is uncharacterized, or described as an order of release from custody or control of the military services, is not automatically disqualifying, and may entitle the recipient, who is otherwise eligible, to all rights and benefits under USERRA. 38 U.S.C. § 4304; DoDI 1332.14, Enlisted Administrative Separations, January 27, 2014, Incorporating Change 5, Effective June 12, 2020, at 34-35.

24. If a service member employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will USERRA rights and benefits be restored?

- Yes, a military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the service member employee otherwise meets USERRA's eligibility criteria. 38 U.S.C. § 4304; 20 C.F.R. § 1002.137.

25. In a reemployment situation, if a service member employee receives a retroactive upgrade in the characterization of service, will that entitle them to claim back wages and benefits lost as of the date of separation from service?

- No, a retroactive upgrade allows the service member employee to obtain reinstatement with the former employer, provided the employee otherwise meets USERRA's eligibility criteria. Back pay and other benefits, such as pension plan credits attributable to the time period between discharge and the retroactive upgrade, are not required to be restored by the employer in this situation. 38 U.S.C. § 4304; 20 C.F.R. § 1002.138.

Where to Obtain Additional Information:

For additional information, visit our Veterans' Employment & Training Service USERRA Website: <http://www.dol.gov/vets/programs/userra> and/or call our toll-free information and helpline, available 8:00am to 8:00pm (Eastern Time), at 1-866-4-USA-DOL (1-866-487-2365).

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