

CHAPTER 4

ADMINISTRATIVE SEPARATION

OFFICER and ENLISTED

4-1. Applicability. This chapter applies to all officer and enlisted personnel of the Indiana Guard Reserve, and governs their administrative separation. The masculine form when used in this chapter represents both the masculine and the feminine genders, unless otherwise indicated.

4-2. Purpose.

a. No person has an inherent right to a commission or enlistment and continued service in the IGR. Such service is a privilege that may be terminated when such action is warranted by proper authority and determined to be in the best interests of the IGR. It is the policy of the IGR to require its officer and enlisted personnel to maintain high standards of conduct and performance.

b. Officer & Enlisted Commitments.

(1). (Officer): By virtue of his commission in the IGR an officer enters into a commitment. That commitment is broadly stated in the oath of office, which states in part, that the officer voluntarily enters the obligation to support and defend the Constitution of the United States and the Constitution of the State of Indiana, obey the orders of the Governor of the State of Indiana according to the law and military regulations, including but not limited to, the Uniform Code of Military Justice, and to well and faithfully discharge the duties of his or her commission.

(2). (Enlisted): By virtue of his enlistment in the IGR an enlisted member enters into a commitment. That commitment is broadly stated in the oath of enlistment, which states in part, that his voluntary enlistment is for a period of time under those considerations prescribed by law unless sooner discharged by proper authority, and that he will bear true faith and allegiance to the Constitution of the United States and to the orders of their duly authorized superiors according to law and regulations, including but not limited to, the Uniform Code of Military Justice.

c. The IGR cannot retain officer and enlisted personnel who fail to maintain high standards of professional and personal conduct, or to maintain the standards of performance expected of an officer or enlisted member of like grade and experience. Prompt identification and disposition of these officer and enlisted personnel is essential. The governor and legislature of the State of Indiana has recognized that fact by enacting statutory authority to provide for the identification and administrative separation of such officer and enlisted personnel.

d. This chapter is designed to implement the provisions of the Indiana Military Code regarding separation of officer and enlisted personnel.

4-3. Authority. Although the Indiana Guard Reserve is separate and distinct from the Indiana National Guard, the rules and regulations governing the Indiana Guard Reserve concerning appointment, enlistment, administration, equipment, maintenance, training, and discipline are, where the Governor considers it practicable and desirable, to conform to applicable law governing and pertaining to the National Guard and the rules and regulations promulgated under those laws and under such regulations as the Secretary of Defense of the United States may prescribe for organization, standard of training, instruction, and discipline, including but not limited to, the Uniform Code of Military Justice.

4-4. References and Applicability:

- a. Indiana Code 10-2-3-4 (Officer)
- b. Indiana Code 10-2-3-5 (Officer)
- c. Indiana Code 10-2-3-6 (Officer)
- d. Indiana Code 10-2-3-7 (Officer)
- e. Indiana Code 10-2-3-8 (Enlisted)
- f. Indiana Code 10-2-3-9 (Enlisted)
- g. Indiana Code 10-2-3-10 (Officer & Enlisted)
- h. Indiana Code 10-2-3-12 (Officer)
- i. Indiana Code 10-2-5-1 (Officer & Enlisted)
- j. Indiana Code 10-2-5-9 (Officer)
- k. Indiana Code 10-2-5-10 (Officer)
- L. Indiana Code 10-2-5-13 (Officer)
- m. Indiana Code 10-2-8-1 (Officer & Enlisted)
- n. Indiana Code 10-2-8-2 (Officer & Enlisted)
- o. Indiana Code 10-2-8-9 (Officer)
- p. Indiana Code 10-2-8-10 (Officer)
- q. Indiana Code 10-2-8-12 (Officer)

r. IMDR 27-4, State Officer Efficiency Board (Officer)

s. AR 135-178, Separation of Enlisted Personnel (Enlisted)

4-5. Scope.

a. Indiana Code Sections 10-2-3-5, 10-2-3-6, 10-2-3-10, 10-2-5-13, and 10-2-8-2 provide for the administrative separation of officer personnel, and Indiana Code Sections 10-2-3-9, 10-2-3-10, and 10-2-8-2 provide for the administrative separation of enlisted personnel. Separation from the IGR may be given in the following cases:

(1). For physical and/or mental conditions which would seriously affect ability to perform duty.

(2). For dependency or undue hardship.

(3). For unsatisfactory performance.

(4). For unsatisfactory attendance.

(5). For misconduct.

(6). For alcohol and/or drug abuse.

(7). For defective or fraudulent entry or enlistment.

(8). For conviction of a felony.

b. Recommendation that a member be administratively separated from the IGR may be made by a commanding officer as to any member in his command. Such a recommendation will be submitted through command channels to the Commanding General IGR and will clearly and specifically state any and all grounds for an administrative discharge.

c. Commanders at all stages of the proceedings under this chapter should take steps to insure that:

(1). Appropriate and reasonable inquiry or investigation has been accomplished prior to forwarding a recommendation under this chapter.

(2). All facts bearing upon the issue are properly and fully developed, substantiated, and documented. Intermediate commanders will forward such documentation with their own recommendations through the chain of command.

4-6. Administrative Separation Board.

a. The Indiana Code Sections stated in paragraph 4-5a further provide for the convening of an administrative separation board, if appropriate. The convening authority is the Commanding General IGR. The approving authority of the recommendations of the administrative separation board is the Commanding General IGR. The reviewing and confirming authority is The Adjutant General Joint Forces Headquarters Indiana.

b. If the Commanding General IGR determines that the respondent's commanding officer has not provided sufficient justification to support an administrative discharge under this regulation, the respondent's commanding officer will be so informed that sufficient justification will be provided or that no further action will be taken to administratively discharge the respondent.

c. If the Commanding General IGR determines that a respondents commanding officer has provided justification which if true would be sufficient justification under this regulation to merit and proceed with an administrative discharge, he will take certain actions with respect to the respondent member, one of which is to allow respondent to elect to show cause for retention before an administrative separation board. If respondent so elects, the Commanding General IGR will convene an administrative separation board.

d. The purpose of an administrative separation board is to make findings of fact based on a preponderance of the evidence concerning the allegations submitted to support an administrative discharge, and based on those findings whether the respondent is to be retained in the service, or if he is to be discharged from the service. If the recommendation is that respondent is to be discharged, a further recommendation should be made as to the character of the discharge. The burden of proof rests with the respondent to show by a preponderance of the evidence that he should not be discharged from the IGR, and that he should be retained.

e. The phrase "preponderance of the evidence" means as follows: that evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not, that it is more credible and convincing to the mind.

f. Convening of Administrative Separation Board:

(1). Officer. An administrative separation board convened to determine whether an officer should be separated under the provisions of this chapter will consist of three (3) commissioned officers, at least one of whom is in the grade of brigadier general.

(2). **Enlisted.** An administrative separation board convened to determine whether a soldier should be separated under the provisions of this chapter will consist of three (3) Commissioned, Warrant, or Noncommissioned officers, at least one of who is in the grade of Major or higher and the majority will be Commissioned or Warrant Officers. Enlisted personnel appointed to the board will be in the grade of E-7 or above and will be senior to the respondent soldier.

(3). **Non-Voting Members.** The convening authority will appoint a non-voting legal advisor. The legal advisor is a neutral party, and is not an advocate. The legal advisor will be an officer member of the Office of the Staff Judge Advocate and a licensed attorney. The convening authority will appoint a non-voting recorder. The recorder is an advocate, and will represent the position advocating administrative discharge of the respondent. The recorder is not required to be a member of the Office of the Staff Judge Advocate and need not be an attorney.

g. The administrative separation board will be composed of three voting members, with the ranking member being the president of the board; a non-voting recorder; and a non-voting legal advisor. Voting board members will deliberate in private and voting by board members will be by written secret ballot with at least a majority of the voting members concurring in the determination(s), finding(s), and recommendation(s) for disposition of the case. A member of the board who is empowered to vote may not abstain from voting. If a voting member of the board does not believe the proceedings have been conducted fairly or that the case against the respondent has not been proved by a preponderance of the evidence, then he must vote to retain the respondent. Additionally, if a voting member believes the board proceedings have not been conducted fairly, he must advise the convening authority of his belief, stating his reasons.

4-7. President of the Administrative Separation Board.

a. The ranking member of the board will be the president of the administrative separation board.

b. The duties of the president of the board are:

(1). To preside over the proceedings and to manage the conduct of them.

(2). To ensure that he and the other voting members of the board understand the allegations, facts, positions advocated by the respondent and his counsel, if any, and the recorder, and the applicable policies and regulations in the case before them.

(3). To ensure that the case before the board proceeds without undue delay to a conclusion.

(4). To inform the respondent along with his counsel, if any, and the convening authority in writing of the determination, findings, and recommendations of the board. Such action must be taken not later than twenty four (24) hours after the board has made its decision. This duty is considered accomplished upon the deposit of such notification in the U.S. Mail.

4-8. Recorder.

a. The convening authority will appoint a recorder to the administrative separation board. The recorder is an advocate for the position that the respondent should not be retained in the service and presents the case advocating that position to the voting member of the board. Although the recorder is one of the persons appointed to the board, he is not entitled to vote and takes no part whatsoever in the private deliberations and voting of the three voting members of the board other than during open board proceedings.

b. The duties of the recorder are:

(1). To make necessary preparations for the orderly and adequate presentation of the case advocating the position that respondent should not be retained in the IGR.

(2). In accordance with the direction of the president of the board to present the case advocating the discharge of the respondent and to answer questions from the voting members of the board during open board proceedings.

(3). To decide what witnesses, if any, to call to support the case advocating the discharge of respondent, to examine those witnesses he has called to the board proceedings, to cross-examine those witnesses, if any, called by the respondent or his counsel, to submit a list of witnesses he intends to call and a list of the exhibits he intends to submit into evidence at the board proceedings at least thirty (30) days before such proceedings to both the respondent or his counsel and to the legal advisor.

(4). To attend any pre-board conferences called by the president of the board or by the legal advisor.

(5). To attend any conferences called by the president of the board or by the legal advisor during board proceedings.

c. The recorder does not have to be from the Office of the Staff Judge Advocate and does not have to be an attorney. The recorder must be of higher rank than the respondent.

4-9. Legal Advisor.

a. The legal advisor will rule on all matters of procedure and evidence before or during the board proceeding. The legal advisor will also rule on any challenge to a member of the board. A challenge may be made for cause only. The legal advisor may not be challenged, however, the conduct and/or legal propriety of the decisions of the legal advisor during board proceedings may be raised by a respondent along with justification in an appeal to the approving authority or to the reviewing and confirming authority, and may be a reason for either authority to choose not to accept the recommendations of the board, to modify them, or to order a new board to be convened in the case.

b. The legal advisor will be a member of the Office of the Staff Judge Advocate and will be an attorney.

4-10. Convening Authority.

a. The convening authority will reasonably insure the following:

(1). The board is composed of experienced officers of mature judgment.

(2). The board is composed of impartial members who are cognizant of applicable regulations and policies pertaining to the case for which the board is convened.

(3). That female and minority group members are afforded an opportunity to serve on boards. However, the mere failure to appoint a female or minority group member to a board does not, standing alone, provide a basis for challenging the proceedings.

(4). Enlisted personnel are not appointed to serve on a board when a discharge under other than honorable conditions could result.

(5). The officer initiating the action under this chapter or any intervening Officer, Warrant Officer, or Noncommissioned Officer who has direct knowledge of the case or any Officer, Warrant Officer, or Noncommissioned Officer who is to be called as a witness in the case may not be a member of the board.

b. A commanding officer who has decided to initiate administrative discharge action of an officer or enlisted in his or her command under this chapter will so notify the Commanding General IGR, who is the convening authority. This notification will be in writing and will briefly state the circumstances and will specifically state the justification supporting administrative discharge under this chapter.

c. Upon notification by the respondent's commander, that action is being taken to separate the member under this chapter, and the convening authority has determined that the circumstances and justification(s) stated in the notification are, if true, sufficient to warrant discharge of the member, the convening authority will take the following actions:

(1). He will notify the respondent that his commanding officer has initiated administrative discharge action against him under this chapter.

(2). He will attach a copy of the notification sent to the convening authority by the respondent's commander.

(3). He will inform the respondent that he must respond in writing to the convening authority within twenty (20) days from the date of the notification to respondent stating whether respondent elects one of the following:

(a). Respondent chooses to submit his resignation from the IGR in lieu of administrative discharge proceedings, or

(b). Respondent chooses to apply for retirement, if applicable, from the IGR in lieu of administrative discharge proceedings, or

(c). Respondent contests the administrative discharge action and requests that an administrative separation board be convened to determine whether respondent is to be discharged or is to be retained, and to determine the character of discharge, if applicable.

(4). He will inform the respondent of the character of discharge he will receive if respondent chooses to resign or apply for retirement, if applicable, from the IGR in lieu of further administrative discharge proceedings.

(5). He will inform respondent of the following rights if an administrative separation board is convened:

(a). Respondent is advised of his rights under Article 31, UCMJ, and that he does not have to testify before the board, and further, that if respondent so chooses not to testify that the board may not use that choice in any way whatsoever against respondent.

(b). Respondent may appear before the board with or without counsel. If respondent so requests, an officer member of the IGR who is an attorney will be appointed to represent him at no cost to respondent. Additionally, respondent may at his own expense choose to be represented by civilian counsel or to have civilian counsel as co-counsel.

(c). Respondent may arrange for the presence of any witness whose testimony he believes is pertinent to the case, or respondent may request the board to invite witnesses to

appear before it. The board does not have authority to authorize payment of any fee to a witness or any expense incurred by a witness called either by the respondent, recorder, or the board. If the witness is a member of the IGR, that person may be ordered to appear by the board. The board has no authority to compel a non-member of the IGR to appear before it.

(d). Respondent may personally, through his counsel, or both, question any witness brought before the board.

(e). Respondent may submit depositions, sworn or un-sworn statements, certificates, affidavits, or other documentary or recorded evidence for consideration by the board. Respondent may submit a statement controverting the circumstances and justification for his administrative discharge. If respondent makes such a statement, it may be sworn or un-sworn, may be recorded, in writing, or oral, or any combination thereof. If respondent makes an un-sworn statement he will not be subject to examination by the board. Respondent may choose to submit a sworn statement or to personally testify before the board. If respondent chooses to make a sworn statement or to testify before the board, he will be subject to being placed under oath and will be subject to examination by the board, including the recorder. Formal rules of evidence will not be applied strictly. The legal advisor, however, may exclude irrelevant or unduly repetitious evidence.

4-11. Approving Authority.

a. When the administrative separation board has completed its deliberations it will have made the following decisions:

- (1). Made a determination of the circumstances of the case.
- (2). Made findings on whether or not the determination made concerning the circumstances of the case constitutes justification for discharge of the respondent.
- (3). Made recommendations as to whether or not the respondent should be discharged or retained, and, if applicable, the character of discharge.

b. Once the administrative separation board has made its decisions, the convening authority automatically becomes the approving authority. The Commanding General IGR is both the convening authority and the approving authority.

c. The president of the board will notify the respondent and the approving authority in writing of the determination, finding, and recommendation of the board. This action will be taken not later than twenty four (24) hours after the board has made those decisions. This duty is considered accomplished upon the deposit of such notification in the U.S. Mail.

d. The Commanding General IGR for Officer action and approving authority for Enlisted action will review the determination, finding, and recommendation of the board. The approving authority may contact the president of the board to discuss any of its decisions.

e. Approving authority action (Officer):

(1). The approving authority may decide to accept all, part, or none of the recommendations of the board. If the board has recommended that respondent be retained the approving authority may choose not to concur with that recommendation, and may recommend to the reviewing and confirming authority that the respondent be administratively discharged. The approving authority in writing must justify such a recommendation. The approving authority may accept a recommendation of the board that a respondent be retained, but the approving authority may recommend other disciplinary action against the respondent, including, but not limited to, reduction in rank, letter of reprimand, freeze in promotion for a period of time, or involuntary transfer. The approving authority must justify any such disciplinary recommendations in writing, and the respondent officer may request that such disciplinary recommendations be reviewed and confirmed by The Adjutant General. If the approving authority accepts all of the recommendations of the board, he need only state that in writing. If the approving authority decides to accept part or none of the recommendations of the board, he must state that and his reasons for doing so in writing. The approving authority will notify the respondent and the president of the administrative separation board of his decision within ten (10) days from the date of the notification from the board to the approving authority of its decisions. This duty is considered accomplished upon the deposit of such notification in the U.S. Mail.

(2). If the board has recommended that the respondent be retained and the approving authority concurs and has no recommended changes or modifications to the recommendations of the board, the approving authority need only notify the respondent officer and the president of the board in accordance with paragraph 4-11 e (1) of this chapter, and no review or confirmation is required by The Adjutant General of the Joint Forces Headquarters Indiana.

(3). If the board has recommended that the respondent be discharged and has recommended the character of discharge, and the approving authority has approved those recommendations, the approving authority will further notify the respondent that the decisions of the board and the approving authority will be automatically reviewed and will have to be confirmed by The Adjutant General of the Joint Forces Headquarters Indiana before actions to implement administrative discharge are undertaken. The respondent will further be notified that he may submit a written statement and may submit supporting documentation to the reviewing authority through the Commanding General IGR. The respondent will also be notified that any such written statement and supporting documentation must be forwarded to the approving authority no later than ten (10) days from the date of the notification from the approving authority to the respondent.

(4). The Commanding General IGR, the approving authority, will forward to The Adjutant General of the Joint Forces Headquarters Indiana, the reviewing and confirming authority, fifteen (15) days from the date of the notification of the decision of the approving authority to the respondent from the approving authority the following: a copy of the recommendations of the board; a copy of the decision of the approving authority; any statement and supporting documentation, if any, from the respondent sent to the approving authority for submission to the reviewing and confirming authority; and any statement which the approving authority may wish to make concerning his recommendation or the statement from the respondent, along with supporting documentation, if any.

f. Approving authority action (Enlisted):

(1). The approving authority may decide to accept all, part, or none of the recommendations of the board. If the approving authority accepts all of the recommendations of the board, he need only state that in writing. If the approving authority decides to accept part or none of the recommendations of the board, he must state that and his reasons for doing so in writing. The approving authority will notify the respondent and the president of the board of his decision within ten (10) days from the date of the board made its decisions. This duty is considered accomplished upon the deposit of such notification in the U.S. Mail.

(2). If the board recommended that the respondent be discharged and has recommended the character of discharge, and the approving authority has approved those recommendations, the approving authority will further notify the respondent that he has ten (10) days from the date of the notification to request in writing to the Commanding General IGR that The Adjutant General of the Joint Forces Headquarters Indiana review the decision of the approving authority. The respondent may submit a written statement with supporting documentation to the reviewing authority. This written statement and any attachments will accompany his request for review. The request for review and written statement with attachments, if any, of the respondent will be forwarded by the approving authority with cover letter and appropriate attachments to the reviewing authority no later than ten (10) days after receipt of the request for review.

(3). If the respondent does not request review by The Adjutant General of the Joint Forces Headquarters Indiana, no further action by approving authority is required other than directing the Chief of Personnel to implement the approved recommendations of the board and approving authority.

4-12. Reviewing Authority.

a. (Officer):

(1). The Adjutant General of the Joint Forces Headquarters Indiana is both the reviewing and confirming authority of the recommendations by the board and the approving authority for the administrative discharge and the character of discharge of an officer from the IGR.

(2). Because an officer is commissioned in the IGR by The Adjutant General of the Joint Forces Headquarters Indiana, acting for the Governor of the State of Indiana, the commission of an officer may be vacated and the officer administratively discharged from the IGR only by review and confirmation of The Adjutant General. Such a review and confirmation is automatic, and the respondent does not need to request that such a review take place. If a respondent who has been recommended for discharge by a board and the Commanding General IGR wishes to submit a statement and supporting documentation to the reviewing and confirming authority, he must follow the procedures set forth in paragraph 4-11 e (3) of this Chapter.

(3). The Adjutant General of the Joint Forces Headquarters Indiana will notify the Commanding General IGR of his decision. When so notified, the approving authority will notify the respondent and the president of the board of the decision of The Adjutant General not later than three (3) days from the receipt of the decision by the approving authority, and will further, take appropriate action to implement that decision.

b. (Enlisted):

(1). The Adjutant General of the Joint Forces Headquarters Indiana is the reviewing authority of a recommendation for the administrative discharge and the character of discharge of a soldier from the IGR. The respondent only initiates such review.

(2). The Adjutant General of the Joint Forces Headquarters Indiana will notify the Commanding General IGR of his review decision. The Commanding General IGR will notify the respondent of that review decision not later than three (3) days from receipt of the review decision, and will further, take appropriate action to implement that review decision.

4-13. Waiver by Respondent.

a. (Officer). If the respondent does not comply in a timely manner with the time limitations set forth in this chapter, he she will waive those procedural rights that would have been afforded had respondent responded in a timely manner. A respondent may therefore waive the procedural rights to the convening of an administrative separation board, and to the submission of a statement to the reviewing and confirming authority, The Adjutant General, concerning his administrative discharge.

b. **(Enlisted)**. If the respondent does not comply in a timely manner with the time limitations set forth in this chapter, he will waive those procedural rights that would have been afforded had respondent responded in a timely manner. A respondent may therefore waive the procedural rights to the convening of a board and to a review of the recommendations of the board and the approving authority.

c. If a respondent fails to respond in a timely manner and thereby waives any procedural right which otherwise would have been afforded him, the convening/approving authority may proceed under this chapter based on the evidence already provided.

4-14. Jurisdiction Presumed. The jurisdiction of the administrative separation board and the command authorities established by this chapter and other statutory and regulatory authorities shall be presumed, and the burden of proof shall rest on any person seeking to oust such board or authority of jurisdiction in any action or proceedings.

4-15. Applicability of Military Laws and Regulations. The general principle and spirit of the military laws and regulations for the government of the armed forces of the United States, when not in conflict with the provisions of the Indiana Military code or the Constitution of the State of Indiana shall be the guide for implementing this chapter.

4-16. Authority to Administer Oaths. An officer has authority to administer oaths when necessary under this chapter.

4-17. Mailing Address. Officers and enlisted members of the IGR are required to provide current and correct mailing addresses in their military records. The mailing of notifications or other documents required by this chapter will be deemed completed upon depositing it in the United States Mail with sufficient first class postage affixed using the most recent address available in the military record. Nothing in this paragraph prevents the usage of certificates of mailing, certified or registered mailings.

4-18. Character of Discharge. Under this chapter a discharge may be characterized as either "Honorable" or "General."