

(UNCLASSIFIED)

## INFORMATION PAPER

JALS-OSC

1 November 2023

SUBJECT: Soldier Misconduct and Effect on Army Benefits and VA Benefits

1. Purpose: To describe the effect of Soldier misconduct as it relates to Soldiers in the Integrated Disability Evaluation System (IDES).
2. References:
  - AR 635-40, Physical Evaluations for Retention, Retirement, or Separation
  - AR 635-200, Active Duty Enlisted Administrative Separations
  - AR 600-8-24, Officer Transfers and Discharges
3. The attorneys with the Office of Soldiers' Counsel (OSC) DO NOT represent Soldiers before administrative separation boards or at Courts Martial. Soldiers in the IDES process who are accused of misconduct are strongly encouraged to engage the services of Trial Defense Services (TDS) as soon as possible.
4. Except for administrative separations under AR 635-200, chapter 7 (Defective Enlistments, Reenlistments, and Extensions); AR 635-200, chapter 10 (Discharge in Lieu of Trial by Court-Martial); and AR 635-200, chapter 14 (Separation for Misconduct); processing under the Disability Evaluation System (DES) takes precedence over administrative separation processing, regardless of when the medical determination is made (either before, during, or after the initiation of separation).
5. Soldiers in IDES who are administratively separated under AR 635-200, chapters 7, 10, and 14 will forfeit any Army benefits he or she might have received through the IDES process (either severance or retirement). Department of Veterans Affairs (VA) benefits upon separation are determined by the VA.
6. A Soldier can be referred to IDES and complete the MEB portion of the process anytime there is either a CID/MP investigation or a Court Martial for misconduct that could result in a Dishonorable Discharge, Bad Conduct Discharge, or Dismissal. The Soldier cannot start the PEB process until the investigation is complete and no charges are filed, the charges are dismissed, the Court Martial is complete with no discharge, the case is referred to Special Court Martial, or an officer submits a Resignation in Lieu of Court Martial (RILO).

7. Sometimes when an enlisted Soldier is facing serious misconduct the Soldier will submit a Chapter 10 (discharge in lieu of Court Martial). If accepted by the General Court Martial Convening Authority (GCMCA), the MEB/PEB process will stop, and the Soldier will be administratively separated. This is similar to a Resignation in Lieu of Court Martial (RILO) for officers.

8. Enlisted separations under AR 635-40, chapter 14 are the most common form of dual processing.

a. Once both the MEB process is complete and administrative separation action is complete, both actions are compiled and sent to that Soldier's GCMCA. The GCMCA determines if the Soldier's packet continues to the PEB for determination of fitness and forwarding to the VA for ratings.

b. If the GCMCA decides notwithstanding the Soldier's medical conditions the Chapter action should continue, the Soldier will exit the Army through the Administrative Separation Process. The Soldier will forfeit whatever Army benefit he or she would have derived through the IDES process because of their misconduct.

(1) The enlisted standard under AR 635-200 the GCMCA considers is whether the medical condition causing that Soldier's separation from the Army was a direct or substantial contributing cause of misconduct OR if other circumstances warrant disability processing.

c. If the GCMCA decides notwithstanding the Soldier's misconduct the IDES process should continue, the Soldier will continue to the PEB phase of IDES and receive his or her VA rating. As long as there is no further misconduct, the Soldier will separate the Army through the IDES Process and will receive whatever Army benefits (either severance or retirement) to which he or she is entitled.

d. AR 635-200, Chapters 7, 10, and 14 are the only chapter actions which pose a negative effect on a Soldier in IDES. For example, Soldiers in IDES who are being considered for separation under Chapter 9 - Separation for a Substance Use Disorder; Chapter 11 – Entry Level Performance and Conduct; Chapter 12 – Retirement for Length of Service; Chapter 13 – Unsatisfactory Performance; or Chapter 18 - Failure to Meet Body Composition Standards, will continue to be processed through IDES and will not be administratively separated.

9. Officer Separations under AR 600-8-24.

a. Officers pending separation under AR 600-8-24 will process through the MEB phase, the PEB phase, and receive his or her VA ratings prior to the separation decision.

b. The GCMCA makes a recommendation to Headquarters, Department of the Army (HQDA) to either continue with the IDES process or separate the officer administratively. SECARMY (or his or her designee) makes the final determination regarding retention to complete IDES or separate without Army benefits.

10. VA Benefits: Soldiers who are dual processing are strongly encouraged to speak to a VA representative about their VA benefits upon separation from the Army. Veterans Affairs benefits are based upon the Soldier's characterization of discharge.

a. The Army's characterization of discharge is binding on the VA when a Soldier receives an honorable discharge, or a general discharge under honorable conditions.

b. A Soldier receiving an Other than Honorable (OTH) characterization of discharge will likely receive medical care for their service-connected injuries and illness. However, with an OTH discharge, your eligibility for these benefits depends on a character of discharge determination made at your regional VA office.

c. A Soldier may lose his or her VA educational benefits with a General, Under Honorable Conditions or Other Than Honorable Discharge. However, any previous period of service completed with an Honorable Discharge will allow the Soldier to qualify for various benefits to include disability pension and educational benefits regardless of how the last term of service ended.

11. This Information Paper is provided as a service to Soldiers in the IDES process and is intended as general information only. A Soldiers' Counsel is available to provide specific legal advice to Soldiers involved in the IDES process. Contact your local Office of Soldiers' Counsel for more information. If you don't know how to reach your local OSC office, please contact your PEBLO.

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