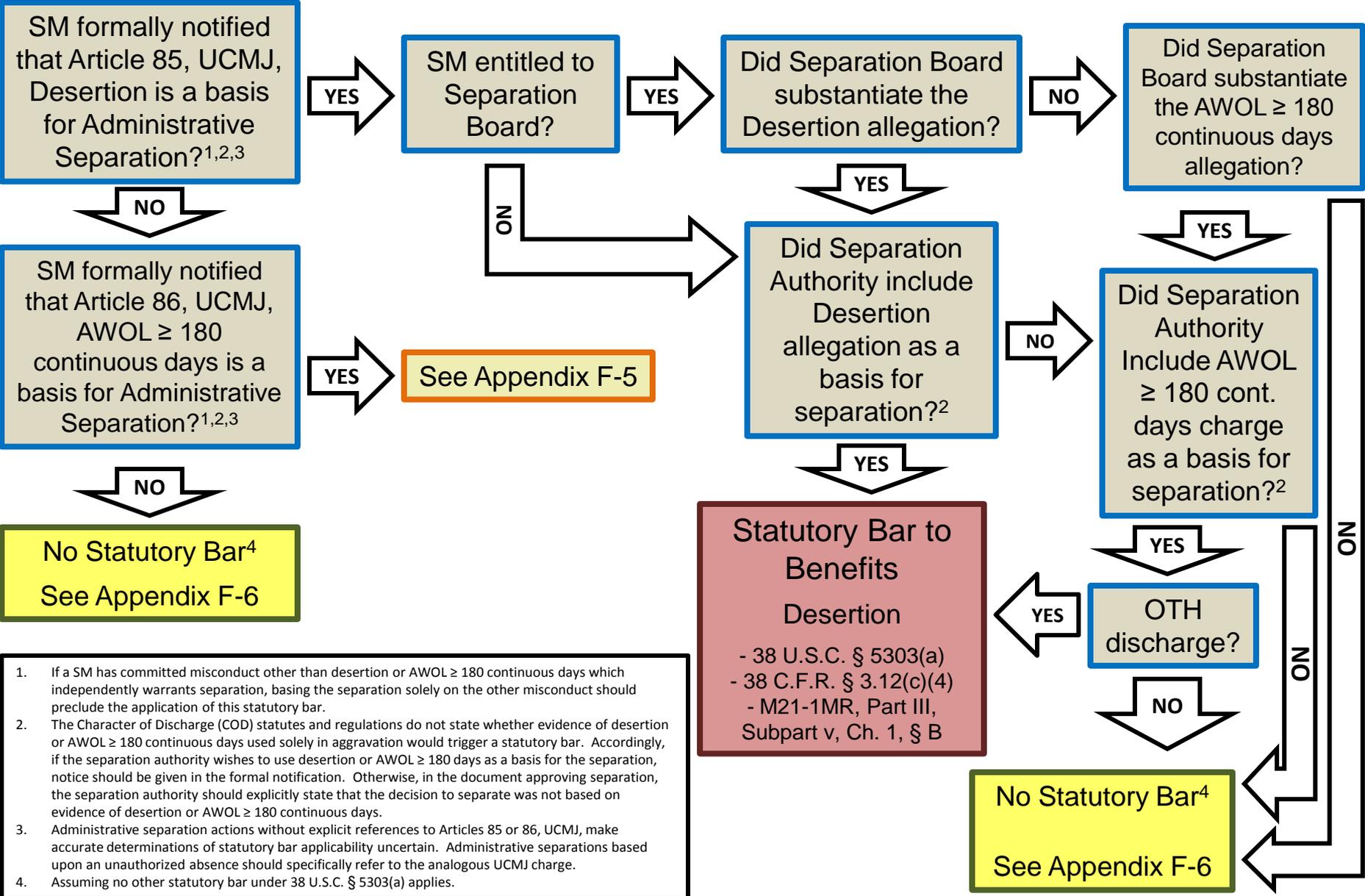


Administrative Separation Cases Involving Desertion



1. If a SM has committed misconduct other than desertion or AWOL ≥ 180 continuous days which independently warrants separation, basing the separation solely on the other misconduct should preclude the application of this statutory bar.
2. The Character of Discharge (COD) statutes and regulations do not state whether evidence of desertion or AWOL ≥ 180 continuous days used solely in aggravation would trigger a statutory bar. Accordingly, if the separation authority wishes to use desertion or AWOL ≥ 180 days as a basis for the separation, notice should be given in the formal notification. Otherwise, in the document approving separation, the separation authority should explicitly state that the decision to separate was not based on evidence of desertion or AWOL ≥ 180 continuous days.
3. Administrative separation actions without explicit references to Articles 85 or 86, UCMJ, make accurate determinations of statutory bar applicability uncertain. Administrative separations based upon an unauthorized absence should specifically refer to the analogous UCMJ charge.
4. Assuming no other statutory bar under 38 U.S.C. § 5303(a) applies.

**Statutory Bar to Benefits
Desertion**

- 38 U.S.C. § 5303(a)
- 38 C.F.R. § 3.12(c)(4)
- M21-1MR, Part III, Subpart v, Ch. 1, § B

**No Statutory Bar⁴
See Appendix F-6**