IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	)	REPLY BRIEF ON BEHALF OF APPELLANT
v.	)	
	)	Crim. App. Dkt. No. 20140372
Private First Class (E-3) [1] **CHRISTOPHER CHRISTENSEN** Appellant	)	USCA Dkt. No. 17-0604/AR

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

CODY CHEEK
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road, Suite 3200
Fort Belvoir, Virginia 22060
703-693-0724
USCAAF Bar Number 36711

CHRISTOPHER COLEMAN
Major, Judge Advocate
Appellate Defense Counsel
USCAAF Bar Number 36567

CHRISTOPHER CARRIER
Lieutenant Colonel, Judge Advocate
Branch Chief,
Defense Appellate Division
USCAAF Number 32172

TIFFANY CHAPMAN
Lieutenant Colonel, Judge Advocate
Deputy Chief,
Defense Appellate Division
USCAAF Number 34472

[1] While this was appellant's rank when he left the Army, he does not concede jurisdiction existed at trial. Instead, for the reasons outlined below, Christopher Christensen was not subject to court-martial jurisdiction.

Issue Presented

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Supreme Court

Court of Appeals for the Armed Forces / Court of Military Appeals

Uniform Code of Military Justice

Other Authorities

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Issue Presented

WHETHER APPELLANT WAS SUBJECT TO COURT-MARTIAL JURISDICTION.

The government seeks to turn *Hart* – a narrowly tailored ruling limited to "the facts of this case" – into a sweeping grant of jurisdiction. 66 M.J. 273, 277 (C.A.A.F. 2008). This Court should reject this argument, as it would allow the government to maintain jurisdiction by secretly "halting" a soldier's pay processing, even if no pay is due. This has terrifying consequences and runs contrary to the overarching interests implicated by the law of personal jurisdiction. *See United States v. Nettles*, 74 M.J. 289, 291 (C.A.A.F. 2015). While such concerns were a "false alarm" in *Hart*, that alarm rang loud and true for appellant.

[1] While this was appellant's rank when he left the Army, he does not concede jurisdiction existed at trial.

Argument

1. The government "adopts" factual inaccuracies and fails to address several contradictory facts and regulations cited in appellant's brief.

In his brief, appellant explained how the lower courts: (1) made findings of fact that are clearly erroneous, (2) adopted errors from earlier rulings, and (3) conflated findings of fact with conclusions of law. (Appellant Br. 50–58). Most notably, appellant highlighted the conflicting evidence – including documents, emails, and testimony – that went wholly unaddressed by the lower courts. In response, the government adopts these erroneous findings and then fails to discuss the material factual omissions highlighted in appellant's brief. (Gov't Br. 2–8).

a. <u>The findings regarding the command and unit's decision-making process are clearly erroneous.</u>

Appellant explained in detail how the lower courts erroneously found that the unit made a series of early decisions to halt his separation, revoke his DD 214, and render a disposition regarding the sexual assault allegations. (Appellant Br. 50–53). The government's limited or non-existent responses are unavailing.

As one example, the *DuBay* judge found, "As of 17 April 2013, the brigade commander or higher had not made a disposition decision as it related to the sexual assault allegations." (JA 737). Appellant described why this finding is clearly erroneous. (Appellant Br. 51–52). On March 12, 2013, COL Crider was briefed on appellant's pending separation for ASAP failure *and* sexual assault allegations,

but he did not express any desire to halt the separation action or pursue a court-martial. (JA 147–51, 312–14). In fact, despite the sexual assault allegations, the entire chain of command was content with the separation action until "late August." (JA 154–59). In response, the government merely adopts the *DuBay* judge's findings, and then completely fails to address this contradictory evidence.

As another example, the trial judge found that LTC Thalacker asked Mr. Kuhar to revoke appellant's DD 214 on June 13, 2013. (JA 308). Appellant explained why this finding is clearly erroneous. (Appellant Br. 52–53). The relevant email thread shows LTC Thalacker asked Mr. Kuhar for similar support to a previous case, which involved repopulating a soldier in the personnel systems. (JA 302–06). Mr. Kuhar could not revoke a DD 214, and he even reminded LTC Thalacker, "PFC Christensen's separation orders and DD 214 need to be revoked." (JA 302–06). However, rather than attempting to explain or defend this finding, the government merely repeats it verbatim. (Gov't Br. 7).[2]

[2] The *DuBay* judge also found "by late April 2013, it became apparent that the local authorities may dispose of Appellant's case at a level that both judge advocates and commanders at Fort Stewart felt was insufficient." (JA 737). This finding is clearly erroneous, as it is flatly contradicted by CPT Carter's email to local prosecutors on May 14, 2013, as well as his email thread with LTC Denius that same day. (JA 572, 317–18). Captain Carter even said his impressions of a plea deal were "[b]ased on my conversation with the prosecutor *today*" (i.e., May 14, 2013). (JA 318) (emphasis added).

Furthermore, like the lower courts, the government does not address the multiple emails demonstrating that the unit took a wait-and-see approach before revoking appellant's separation. (*See* Appellant Br. 44–47, 52). The judge advocates believed they could retain jurisdiction by halting appellant's pay processing, and they advised the command accordingly. This flawed legal advice placed appellant into a state of purgatory, in which the unit would purportedly maintain jurisdiction while not providing appellant with any of the benefits and services he should have received if he was still a soldier. Put another way, the judge advocates proposed an option that did not legally exist.

Remarkably, in September 2013, CPT Smith even advised the command that appellant "should be barred from post after his chapter." (JA 582). This has serious ramifications. If appellant could not visit the installation due to his chapter action from five months earlier, then how was he still an active duty soldier assigned to the unit (and thus subject to court-martial jurisdiction)? The simplest answer is reflected in the unit's actions: they did not believe appellant was still on active duty, which is why COL Crider belatedly signed a memorandum requesting appellant "be recalled to active duty." (JA 584). In appellant's brief, he argued "such a request is a concession that jurisdiction no longer existed." (Appellant Br. 37). The government did not address this argument in its response, nor explain why COL Crider's request is not a concession.

b. The findings over the pay processing timeline are clearly erroneous.[3]

Appellant argued the *DuBay* judge improperly relied on testimony that a confined soldier's pay processing generally takes 45-90 days, instead of applying the specific testimony regarding appellant's case. (Appellant Br. 53–54). In particular, appellant cited Mr. Jeffers' testimony establishing that appellant's pay documents would have been processed prior to CPT Carter's email exchange with LTC Denius. (Appellant Br. 53–54).

Without explanation, the *DuBay* judge found this testimony from Mr. Jeffers was "somewhat speculative." (JA 736). It was not. Instead of trying to defend the findings regarding Mr. Jeffers, the government simply ignored his testimony altogether. This is a substantial omission, particularly due to the heavy reliance the *DuBay* judge placed on this clearly erroneous finding.

c. The findings regarding SPCMCA withholding and a disposition decision are clearly erroneous.

The government also adopted the *DuBay* military judge's erroneous findings that LTC Denius "ratified LTC Thalacker's earlier action" in accordance with a withholding policy, but did not discuss the contradictory evidence cited in appellant's brief. (Gov't Br. 2, 4–5; JA 735).

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[3] As reiterated below, appellant's primary argument is his "final pay or a substantial part of that pay" was "ready for delivery" on his date of discharge. (Appellant Br. 34–35, 40–44). As a secondary argument, appellant is challenging the findings of the *DuBay* military judge related to the processing timeline.

For example, the government did not address the evidence showing every required leader, both rear and forward, was aware that appellant was being separated for ASAP failure. (JA 143–51, 154–59, 312–14). The government similarly failed to discuss the evidence showing COL Crider was briefed on appellant's sexual assault allegations *and* pending chapter. (JA 147–51, 312–14). Nor did the government address the evidence showing that division legal personnel were tracking appellant's status. (JA 533–35, 558–61).

Simply put, the decision of whether to separate appellant for ASAP failure or keep him on active duty based on the sexual assault allegations was a command decision, and the command *made* a decision: it chose to separate him. Any findings to the contrary are clearly erroneous.[4]

d. <u>The rulings conflate findings of fact and conclusions of law.</u>

The government, like the lower courts, mixes up findings of fact and conclusions of law when discussing the process of calculating a soldier's final pay. (Gov't Br. 6–7). In his brief, appellant pointed out the lower court rulings conflate the actions finance personnel take after separation with the requirements to

[4] To the extent there is any ambiguity in the command's intent, it stems from the judge advocates' erroneous advice that the unit could secretly delay appellant's pay processing to maintain jurisdiction while failing to provide him with any benefits. Again, such an option does not exist, especially since appellant's separation action was completed and his DD 214 was delivered. The Brigade Judge Advocate even believed appellant was "barred from post after his chapter." (JA 582).

terminate jurisdiction. (Appellant Br. 56–57). As one example, the *DuBay* judge found the completion of these actions is when final pay is "ready for delivery," which is the statutory language from 10 U.S.C. § 1168(a). (JA 736). This a legal conclusion mislabeled as a finding of fact. Rather than addressing the erroneous stratifications outlined in appellant's brief, the government merely adopted them.

Appellant also noted the *DuBay* judge's findings are contradicted by Army regulations. (Appellant Br. 56–57; *see also* Appellant Br. 34–35). The government, given full opportunity to explain why these regulations are inapt or inapplicable, instead ignores all but one of them. (Gov't Br. 14). In this lone reference, the government baldly asserts – without any supporting evidence – that the collection of appellant's identification card was a "miscommunication and failure to abide by regulation." (Gov't Br. 14). It was neither. The unit's actions both aligned with the regulations cited in appellant's brief and actualized the language from the separation orders stating the "Date of discharge unless changed or rescinded" was "17 April 2013." (JA 539).

In sum, the government cannot adopt erroneous findings and ignore what actually happened in this case. The briefing to COL Crider exists. The emails exist. The trial record exists. This Court should view the government's failure to address this evidence as further indicating the challenged findings are clearly erroneous.

2. Appellant's case represents the alarm that was "false" in *Hart*.

Appellant provided numerous reasons why this case is materially distinct from *Hart*. (*See* Appellant Br. 36–40). In response, the government largely ignores the briefed dissimilarities and instead argues this case is "analogous" to *Hart* for two reasons. (Gov't Br. 10–12). Both arguments are meritless.

First, the government claims "there is no evidence that either local finance or DFAS-Indianapolis acted to deliberately slow down the processing of appellant's final pay." (Gov't Br. 11). This ipse dixit is preposterous. The record soundly establishes this is *exactly* what occurred after LTC Thalacker's initial interference, which he unilaterally conducted without any command authorization.

Mr. Jeffers even testified that the field office told him, "Please do not process it. Close the CMS case. Do not take any action.'" (JA 387). The CMS note says "close case until situation is completed." (JA 556). For his part, CPT Carter specifically recommend the command "continue to hault [sic] Christensen's final pay." (JA 318). Overall, it took more than five months for the unit to revoke appellant's DD 214 and separation orders, but finance personnel did not take any further action in this timeframe. This scenario squarely represents the "false alarm" footnote in *Hart* that explained its holding did not address an intentional delay in the processing of a soldier's separation pay. 66 M.J. at 277 n.5.

To the extent the government is instead arguing that finance personnel did not delay appellant's separation pay before LTC Thalacker "halted" it, this is equally erroneous. (Gov't Br. 11). This is akin to arguing the government did not intentionally delay appellant's pay before it intentionally delayed his pay, so it therefore preserved jurisdiction. Again, this is preposterous, particularly in light of the clear language from *Hart* explaining, "This case does not involve *any* delay in the processing of Hart's separation pay." 66 M.J. at 277, 277 n.5 (emphasis added).

Such an argument also ignores the import and effect of the additional dissimilarities between the cases. (*See* Appellant Br. 36–40). Contrary to *Hart*, appellant's case involved: (1) the command electing to prepare and execute a chapter action for ASAP failure despite being aware of the additional allegations; (2) an attorney usurping command authority in seeking to preserve jurisdiction; (3) the lack of any legal hold or "flag"; (4) the unit legal office preparing the chapter packet; (5) the unit waiting five months before revoking the DD 214 and separation orders; (6) the unit failing to return appellant to military control for nearly eight months; and (7) the existence of a known and calculated debt on appellant's April 2013 LES. These meaningful differences cannot be waved away by the inherently flawed argument that appellant's separation pay was not delayed before it was delayed.

The government next argues this case is analogous to *Hart* because the lower courts "correctly found that only two of the six steps necessary to complete appellant's final accounting of pay were completed before his early separation was halted . . . . Therefore, appellant's final pay was not ready for delivery." (Gov't Br. 12). Appellant has three responses.

First, this argument conflates the difference between a finding of fact and conclusion of law. The *DuBay* judge's "finding" that the completion of these steps is when final pay is "ready for delivery" is a legal conclusion mislabeled as a finding of fact. (JA 736). In a later section, appellant will further explain why this finding is incongruent with the full language of 10 U.S.C. § 1168(a).

Second, this argument fails to account for the Army regulations and DFAS guidance to the contrary. As appellant pointed out in his brief, the DFAS website explains for members of the Army, "*Post separation* pay audits are conducted regularly and may identify residual payments that are due to the member. If this occurs, DFAS (or in limited instances, the member's servicing finance officer) will pay the residual payments via paper check to the address that the service member provided during separation processing."[5] (Appellant Br. 43) (emphasis added). The government did not address or distinguish this guidance.

[5] Defense Finance and Accounting Service (DFAS), "*Frequently Asked Questions*: *When will I get my final pay?*" (November 7, 2013) https://www.dfas.mil/militarymembers/faqs.html (last visited April 8, 2018)

Third, the government's argument fails to account for the intentional delay in the processing of appellant's pay. Even assuming these steps were required for appellant's debt to be "ready for delivery" (and they were not), the government cannot secretly freeze a soldier's pay processing and then cite this stasis as a basis for jurisdiction. The unit seemingly realized this very point, as CPT Smith recommended "wait[ing] to take jurisdiction from the civilians" because "[CPT Schwab] has read through the case law" and "[t]here is a good chance we would lose a challenge on our jurisdiction over Christensen." (JA 583).

In sum, contrary to the government's argument, appellant's case is not "analogous" to *Hart*. Instead, appellant's case was foreseen by the "false alarm" footnote in *Hart* explaining that its holding did not address an intentional delay in the processing of a soldier's separation pay. This is that case.

3. The five-month delay in revoking appellant's DD 214 and separation orders is not "immaterial."

In its brief, the government states it "would have been prudent for appellant's command to revoke his DD 214 and separation orders sooner than September 30, 2013," but claims this five-month delay is "immaterial" for purposes of jurisdiction under § 1168(a). (Gov't Br. 11, n.3). It is no such thing, especially since the statute's "guidance" is "not binding" when it goes "against reason or policy." *United States v. Nettles*, 74 M.J. 289, 291 (C.A.A.F. 2015).

This Court should emphatically reject the government's contention that such a delay is "immaterial" when a unit secretly and intentionally halts a soldier's pay to purportedly preserve jurisdiction and then fails to revoke the DD 214 and separation orders despite repeated and clear guidance from numerous finance personnel. (JA 567, 697–98, 702).

While the government asserts this delay was "likely" based on the unit redeploying (Gov't Br. 11, n.3), this again ignores the numerous emails and communications to the contrary. (*See* Appellant Br. 44–47). It also ignores the fact that LTC Thalacker believed a soldier remains indefinitely under UCMJ jurisdiction if his final pay is never completed, and his stated reason for not seeking to revoke the DD 214: "I had not made a decision that [appellant] was going to be brought back into the military at that point." (JA 36–37, 41).

4. Due to appellant's debt, the plain language of 10 U.S.C. § 1168(a) was satisfied in this case.

Appellant argued that the plain language of § 1168 was satisfied because of the known and calculated debt from his April 2013 LES. (Appellant Br. 41). Appellant also noted the *DuBay* judge found appellant "owed a debt to the Army" in April 2013, and the Army Court added that appellant "had no final pay coming to him." (JA 3, 736). Therefore, based on findings supported by the record, appellant's non-existent "final pay" was "ready for delivery" in April 2013. As such, the plain language of § 1168 was satisfied.

In response, the government argues § 1168 is an "explicit command" from Congress and all financial calculations must be completed to satisfy this "process," even when a soldier owes a debt. (Gov't Br. 12–15). The government's "process" argument fails to address the calculated debt on appellant's April 2013 LES, asks this Court to insert superfluous language into § 1168, ignores the legislative history of § 1168, and runs headlong into the constitutional avoidance doctrine.

First, instead of addressing appellant's contention that the calculated debt on his April 2013 LES satisfies the plain language of § 1168, the government seeks to redefine this language as a "process" required by Congress. (Gov't Br. 12–13). The government, quoting from *United States v. King*, 27 M.J. 327, 329 (C.M.A 1989), claims the final pay portion of § 1168 "is not a judicially construed concept, but 'an explicit command set forth by Congress in 10 U.S.C. § 1168.'" (Gov't Br. 12–13). The Government did not, however, quote the explanation, in the exact same paragraph, that the *King* court read the statutes "as *generally* requiring that three elements be satisfied to accomplish an early discharge." 27 M.J. at 329 (emphasis added). This explanation is consistent with the clear language in *Hart* and *Nettles* that § 1168 is "guidance." 66 M.J. at 275; 74 M.J. at 290–91.

Second, the government quotes the *DuBay* judge in asserting final pay "is a process in which 'critical calculations, reconciliation, and authorizations of final pay pursuant to DFAS regulations' are done to compute accurate payment of

debts." (Gov't Br. 13).[6] This argument is flawed because, if the entire "process" must be completed for the statutory language to be satisfied (even in cases with debts), it would render portions of the statute surplusage. For example, if the entire process must be completed, there is no way for only a "substantial part" of the "final pay" to be "ready for delivery," which is the language of the statute.

Ultimately, the argument that § 1168 is an "explicit command" that requires a completed "process" reads words into the statute and creates a result that would render as surplusage words that are already there. This Court should reject this argument. *See United States v. Sager*, 76 M.J. 158, 161–62 (C.A.A.F. 2017) (describing and applying the canon against surplusage in analyzing Article 120(d), UCMJ).

Third, the government's "process" argument is inconsistent with the statute for other reasons. For example, the government claims appellant's debt was "immaterial" because "final pay is a process . . . it is not simply a final paycheck." (Gov't Br. 13). This ignores the broader context of the statutory language and its historical and legislative underpinnings.

[6] While this court did discuss "critical calculations" in *Hart*, it did so after accepting the military judge's findings of fact because neither party contested the military judge's findings on appeal. *Hart*, 66 M.J. at 276–77. Appellant has repeatedly and vigorously contested the relevant findings in this case.

The relevant language from § 1168 was first passed into law as part of the Servicemen's Readjustment Act of 1944, the G.I. Bill, so that a servicemember or "his next of kin" would have his "final pay" or a "substantial portion" of his final pay "ready for delivery" before discharge. Pub. L. No. 346, § 104, 58 Stat. 284, 285 (1944).[7]

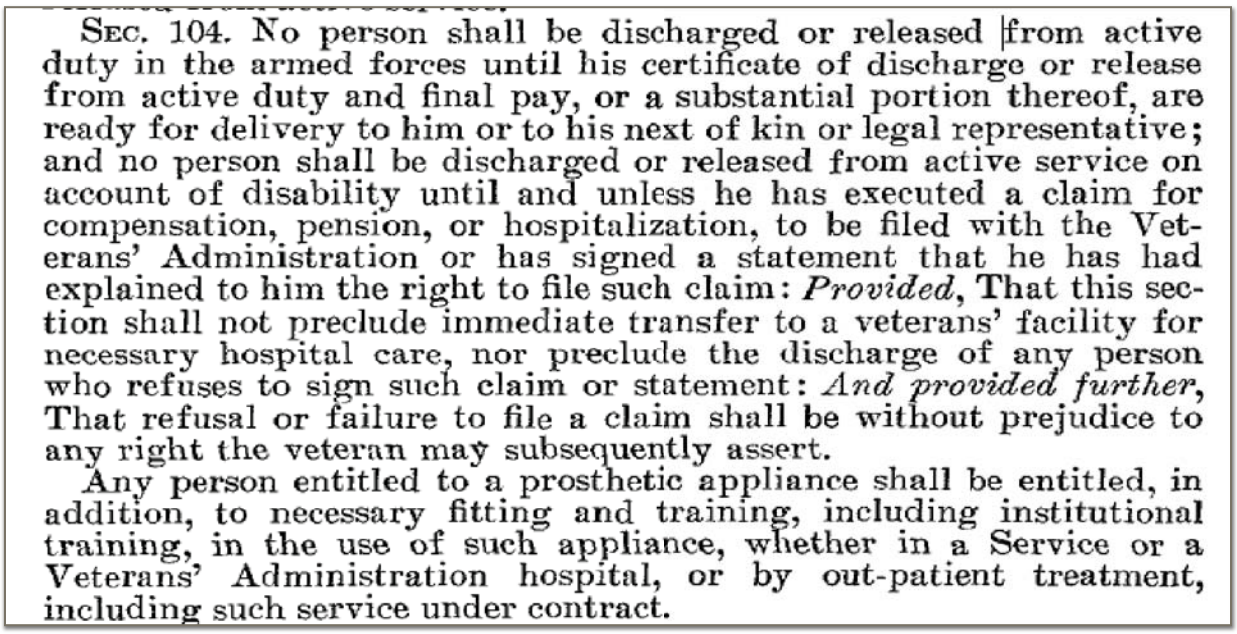
Critically, the congressional record, legislative reports, and the presidential signing statement for the G.I. Bill do not discuss court-martial jurisdiction in this context. *See, e.g.*, 90 Cong. Rec. 4444 (1944) (statement of Rep. Bennett discussing the G.I. Bill's "Other Benefits"); H.R. Rep No. 78-1418, p. 5–6 (1944); S. Rep. 78-755, p. 4 (1944); H.R. Rep No. 78-1624 (1944); Franklin D. Roosevelt, *Presidential Statement on Signing the G.I. Bill* (June 22, 1944).

The G.I. Bill did, however, allow for discharge to be satisfied by delivery of a substantial portion of final pay to next of kin, a strong indication that § 1168 was not designed to extend court-martial jurisdiction until final completion of a process, especially in cases involving a debt.

[7] This language from the G.I. Bill was codified in Title 38 of the U.S. Code, which covered "Pensions, Bonuses, and Veterans Relief." 38 U.S.C. § 693 (1946). The relevant section (§ 693d) was titled "Discharge of members from armed services; final pay; execution of claim for compensation, pension, or hospitalization; prosthetic appliances." This language was then moved to 10 U.S.C. § 1218 under the title "Explanation of rights before discharge." Pub. L. No. 85-56, 71 Stat. 83, 160 (1957). In 1962, this language was moved again to 10 U.S.C. § 1168 and given its current title. Pub. L. No. 87-651, 76 Stat. 506, 508 (1962).

Not surprisingly, the G.I. Bill's enactment did not result in any change to the personal jurisdiction sections in the manuals for courts-martial. The language in the 1943 and 1949 manuals is identical: jurisdiction "ceases on discharge or other separation from such service."[8] Manual for Courts-Martial, United States, Chapter IV, [MCM] ¶ 10 (1928 corrected to April 20, 1943), and Chapter IV ¶ 10 (1949).

Plain and simple, this language from the G.I. Bill was meant to codify benefits, not to impose by "explicit command" a "process" that extended the window for court-martial jurisdiction even if no such benefits were being issued. The section of the law that became § 1168 uses similar "no person shall be discharged . . . until" language for final pay *and* the execution of a VA claim:



SEC. 104. No person shall be discharged or released from active duty in the armed forces until his certificate of discharge or release from active duty and final pay, or a substantial portion thereof, are ready for delivery to him or to his next of kin or legal representative; and no person shall be discharged or released from active service on account of disability until and unless he has executed a claim for compensation, pension, or hospitalization, to be filed with the Veterans' Administration or has signed a statement that he has had explained to him the right to file such claim: *Provided*, That this section shall not preclude immediate transfer to a veterans' facility for necessary hospital care, nor preclude the discharge of any person who refuses to sign such claim or statement: *And provided further*, That refusal or failure to file a claim shall be without prejudice to any right the veteran may subsequently assert.

Any person entitled to a prosthetic appliance shall be entitled, in addition, to necessary fitting and training, including institutional training, in the use of such appliance, whether in a Service or a Veterans' Administration hospital, or by out-patient treatment, including such service under contract.

Pub. L. No. 346, § 104, 58 Stat. 284, 285 (1944).

[8] These manuals can be found at: https://www.loc.gov/rr/frd/Military_Law/CM-manuals.html (last checked April 8, 2018). The listed exceptions are inapplicable.

If, as the government posits, it can court-martial a person in appellant's position, then it could similarly court-martial a person discharged on account of disability because the soldier had not filed a VA claim or signed a statement that he had been briefed on his right to file a claim. Such an absurd result illustrates why § 1168 is not an "explicit command" of "process" for cases involving debts.[9]

Finally, any ambiguity as to the meaning of § 1168 should be resolved in light of the constitutional avoidance doctrine. *See Harris v. United States*, 536 U.S. 545, 555 (2002); *see also Clark v. Martinez*, 543 U.S. 371, 380–81 (2005). Under this doctrine, when "a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *Harris*, 536 U.S. at 555 (citation omitted).

"[T]he Supreme Court of the United States and this Court have recognized the sensitivity of constitutional and statutory concerns relating to court-martial jurisdiction over civilians." *Smith v. Vanderbush*, 47 M.J. 56, 59 (C.A.A.F. 1997) (citations omitted). "Within constitutional parameters, the power to exercise court-martial jurisdiction is a matter governed by statute." *Id*. "With certain narrow exceptions . . . , a court-martial does not have jurisdiction to try civilians, including

[9] Similar language over filing VA claims remains in 10 U.S.C. § 1218, but has never been asserted by the government or any court as affecting jurisdiction.

former servicemembers." *Id*. This Court has also cited "the admonition of the Supreme Court . . . that jurisdiction over former servicemembers calls for exercise of '*the least possible power adequate to the end proposed*.'" *Id*. at 61 (quoting *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 23 (1955)) (emphasis added).

In light of these concerns, this Court should reject a broad interpretation of § 1168 in cases involving debts. A statute designed to ensure soldiers will receive final pay should not function as a continuing basis for jurisdiction when a soldier will not actually receive any pay. Under such circumstances, this Court should fulfill its "duty to adopt" the narrower construction. *Harris*, 536 U.S. at 555.

5. Reason and policy dictate § 1168(a) is not binding in this case.

a. Reason and policy dictate § 1168 is not binding in cases involving debts.

In his brief, appellant argued the § 1168 framework should not be employed because of appellant's debt. (Appellant Br. 41–44). In response, the government attempts to distinguish *Nettles* as a reservist case, argues § 1168 should still apply because appellant's debt was a result of his civilian arrest, and then hypothesizes that failing to apply § 1168 "would incentivize going AWOL." (Gov't Br. 15–19). As outlined below, each of these arguments is meritless.

First, the government argues that since *Nettles* involved a reservist and appellant was on active duty, this court should still apply the § 1168 framework. (Gov't Br. 15). This misses the point. While reserve status was relevant to the

specific facts of *Nettles*, its logic was not limited to reservists. Instead, this Court explained, "The overarching interest implicated by the law of personal jurisdiction, and especially discharge jurisprudence, is the need — of both servicemember and service — to know with certainty and finality what the person's military status is and when that status changes." 74 M.J. at 291. This "weighty" interest applies to *all* servicemembers, not just those in the reserve component. *Id*.

Second, the government argues that because appellant's no-pay status was caused by his civilian confinement, this court should still employ § 1168. (Gov't Br. 15–16). Again, this misses the point. Appellant's primary argument is that appellant did not receive – nor was he entitled to receive – any pay *or benefits* for nearly eight months. (Appellant Br. 41–44). To this extent, appellant cited the language from *United States v. Keels* explaining, "Section 1168 ensures that a member will not be separated from the service, thereby depriving the member and the member's family of pay and benefits such as medical care, until both the formal discharge certificate and a substantial part of any pay due are ready for delivery." 48 M.J. 431, 432 (C.A.A.F. 1998). (Appellant Br. 41–42).

This logic does not apply to scenarios in which a soldier owes money, was required to surrender the identification card demonstrating his eligibility for medical care, believed he was out of the military, was not visited by any member of his unit, and was never informed of any alleged change in status. Indeed, the

unit's Brigade Judge Advocate expressed his belief the unit was not responsible for his medical care as late as December 2, 2013: "[T]he continuing rehab is not going to work, the Army would have to pay for it and currently he is paying." (JA 704; *see also* Appellant Br. 3–22, 41–44).[10]

In response, the government joins the lower courts in failing to address *Keels* and ignoring the broader context of appellant's argument. Instead, the government simply compares appellant to other soldiers in non-pay statuses and argues the debt was his own fault. (Gov't Br. 16–18). However, even this limited response is incorrect.

Appellant's debt was known and calculated on his April 2013 LES, so the origin of his debt is unimportant for purposes of jurisdiction under § 1168. While the government also cites *United States v. King*, 42 M.J. 79, 80 (C.A.A.F. 1999), it is readily distinguishable, as "[King's] final accounting of pay was not resolved due to [his] own misconduct in fraudulently attempting to obtain separation pay to which he was not entitled." Appellant did no such thing. Furthermore, in *King*,

[10] This raises further questions over appellant's status. The command knew: (1) the unit would have to visit appellant "if he is still on our books," and (2) that appellant was currently in inpatient care. (JA 582). The unit also knew that soldiers on Active Duty are entitled to such care at no expense. (JA 704). However, despite this knowledge, the unit *never* visited appellant and continued allowing him to pay for his own medical care until forcibly returning him to Fort Stewart in handcuffs and shackles. This is yet further evidence the command erroneously thought they could have it both ways while waiting for the civilian prosecutors to make a decision.

the Court said it "cannot determine the validity of appellant's discharge certificate on the sparse record before us," and he did not complete the "clearing process." 42 M.J. at 79. In this case, appellant received his DD 214, completed the clearing process, and did not commit any misconduct during the separation process. *King* is wholly inapplicable to this case.

Finally, the government's argument that failing to employ the § 1168 framework will "incentivize going AWOL" is baseless. (Gov't Br. 18). In this case, appellant completed his command-initiated separation and received his DD 214. As such, the government's argument assumes that soldiers will preemptively go AWOL to accrue a debt that would not impel their separation without completing the other steps. Such conduct would be inherently illogical, and it is certainly not "foreseeable" that failing to apply § 1168 in cases involving debts will lead to an "irrational" or "undesirable" result. (Gov't Br. 18–19).

b. <u>Based on the unit's actions, reason and policy dictate 10 U.S.C. § 1168(a) is not binding in this case.</u>

This Court should find that reason and policy dictate that § 1168(a) is not binding in this case, as the unit took the "false alarm" in *Hart* and sought to use it as a basis for jurisdiction. Appellant's brief extensively detailed the unit's efforts and intentions: they wanted to "wait" to see what "the civilians" would do, without telling appellant of any alleged change in status. (Appellant Br. 3–22, 44–47).

In response, the government "agrees" the Army cannot extend court-martial jurisdiction indefinitely by simply not calculating a soldier's final pay, but then claims that is not what happened in this case. (Gov't Br. 16–17). However, in doing so, the government completely fails to address the contradictory evidence cited in appellant's brief and instead makes a single argument related to appellant's ETS date. (Appellant Br. 3–22, 44–47). This argument is meritless.

First, while irrelevant for the reasons outlined below, the government's assertion that "when LTC [Thalacker] directed the Fort Stewart finance office to stop the processing of appellant's pay on April 25, 2013, appellant was not due to ETS until January 9, 2015" is inaccurate. (Gov't Br. 3, 17). Instead, after repopulating appellant in the personnel systems on June 18, 2013, Mr. Kuhar explained, "[W]e *adjusted* his ETS to 9 Jan 2015." (JA 40, 303) (emphasis added).

Second, appellant's service ended on April 17, 2013. Appellant's discharge orders clearly stated, "Date of discharge unless changed or rescinded: 17 April 2013." (JA 539). The authority for these orders was "AR 635-200." (JA 539). The DD 214 similarly reflects a separation date of "2013 04 17" and acknowledged appellant "has not completed first full term of service." (JA 171). Therefore, appellant's service ended before LTC Thalacker's actions.

Finally, the government's related argument that "[h]alting the finance office's final pay computation simply canceled the command's decision to early

discharge appellant" is incorrect. (Gov't Br. 17). An attorney cannot cancel a command-directed, executed, and delivered discharge by telling finance personnel to halt pay computations. *See generally* Army Regulation (AR) 635-8, Separation Processing and Documents, paras. 5-5(j) and 8-1(b) (February 10, 2014); AR 635-5, Separation Documents, para. 2-4(e) (September 15, 2000) (current regulation and regulation in effect at time of trial) (Appendix).

Furthermore, the "halting" did not cancel the decision to separate appellant. Among other items, this is illustrated by emails written five months after LTC Thalacker's actions, stating: (1) appellant should be "barred from post after his chapter,"[11] and (2) expressing knowledge that if appellant was on the books, the unit should conduct visits (that they never conducted). (JA 582, 428–30, 438–39).

The government, directly confronted with numerous examples of the unit's wait-and-see approach, ignores these facts, and only responds with a broad and baseless assertion unsupported by the law or facts. This Court should find exactly what the unit already knew as early as September 2013: "Our ability to bring [appellant] back in and court-martial him is not as strong as we were led to believe" and "the case law . . . [is] not that helpful for our situation." (JA 583). The Army did not have jurisdiction over Christopher Christensen.

[11] "Members of the armed forces are not normally debarred. Service members being involuntarily separated may, in conjunction with their discharge, be debarred for good cause." The Military Commander and the Law, p. 254 (13th ed. 2016).

Conclusion

WHEREFORE, appellant respectfully requests this Honorable Court vacate the judgment of the Army Court, set aside the findings and sentence, and dismiss this case.

CODY CHEEK
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road, Suite 3200
Fort Belvoir, Virginia 22060
703-693-0724
USCAAF Bar Number 36711

For CHRISTOPHER COLEMAN
Major, Judge Advocate
Appellate Defense Counsel
USCAAF Bar Number 36567

CHRISTOPHER D. CARRIER
Lieutenant Colonel, Judge Advocate
Branch Chief,
Defense Appellate Division
USCAAF Bar Number 32172

TIFFANY CHAPMAN
Lieutenant Colonel, Judge Advocate
Deputy Chief,
Defense Appellate Division
USCAAF Bar Number 34472

CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 24(c) because it contains 5,706 words.

2. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

Cody Cheek

CODY CHEEK
Captain, Judge Advocate Appellate
Defense Counsel
Defense Appellate Division
US Army Legal Services Agency
9275 Gunston Road, Suite 3200
Fort Belvoir, Virginia 22060
703-693-0724
USCAAF Bar Number 36711

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Christensen*, Crim. App. Dkt. No. 20140372, USCA Dkt. No. 17-0604/AR, was delivered to the Court and Government Appellate Division on April 12, 2018.

CODY CHEEK
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
703-693-0724

APPENDIX

Army Regulation 635–8

Personnel Separations

Separation Processing and Documents

Headquarters
Department of the Army
Washington, DC
10 February 2014

UNCLASSIFIED

SUMMARY

AR 635–8
Separation Processing and Documents

This new regulation, dated 10 February 2014--

- Consolidates the policies, principles of support and standards of service previously prescribed and published in AR 635-5, Separation Documents; AR 635-10, Processing Personnel for Separation; and DA Pam 600-8-11, Military Personnel Office Separation Processing Procedures regarding processing personnel for separation (throughout).

- Reflects changes in Army business policies (throughout).

and DD Forms 215. Authentication authority will not be delegated below the minimum grade qualifications listed below:

(1) Any commissioned officer or warrant officer.

(2) Any enlisted Soldier E–7 or above.

(3) Any transition center contractor employees.

(4) Civilian Government employees in the grade of general schedule 07 or above.

b. The appointed officials will also have the responsibility to—

(1) Control and issue blank DD Forms 214 and DD Forms 215 (where appropriate).

(2) Ensure all forms are secured after duty hours.

(3) Ensure all blank DD Forms 214 and DD Forms 215 are closely monitored during duty hours and blank DD Forms 214 and DD Forms 215 are never provided to unauthorized personnel.

(4) Ensure all obsolete (including blank, partially completed, reproduced, and signed DD Forms 214 and DD Forms 215) are destroyed in a manner that prevents their future use. Do not dispose of DD Forms 214 and DD Forms 215 in trash receptacles.

(5) Ensure DD Forms 214 and DD Forms 215 given or used as teaching tools have been labeled "Teaching Aide."

(6) Immediately notify the transition center human resources supervisor when it is suspected that a DD Form 214 or DD Form 215 is fraudulent, a blank DD Form 214 or DD Form 215 has been stolen, or that an unauthorized individual has possession of a blank DD Form 214 or DD Form 215.

5–4. Source documents

a. When separation is ordered, the separation approval documents must be present for transition processing to occur. Source documents, as listed in subparagraph b below, must be present in a Soldier's record in order to complete the DD Form 214. If approval documentation is not present in a Soldier's record, action will be coordinated with the necessary activity (personnel service division, Assistant Chief of Staff for Personnel, adjutant general, or chain of command) for proper source documents.

b. Use the following documents when preparing a DD Form 214:

(1) Servicemember's record brief (computer generated).

(2) Separation approval documents, if applicable.

(3) Separation order.

(4) Any other document authorized for filing in the AMHRR.

5–5. Policy concerning the DD Form 214

a. The DD Form 214 will be prepared in accordance with paragraph 5–6 below. No deviation is authorized.

b. TRANSPROC is the system of record for creating separation orders, DD Form 214WS, DD Form 214, DD Form 214C (Certificate of Release or Discharge from Active Duty (Continuation sheet)), and DD Form 215 for the RA.

c. DD Form 214WS is an unauthenticated working document disposed of when the DD Form 214 is finalized in a manner that prevents their future use.

d. DD Form 214 is an important record of service that must be prepared accurately and completely.

e. DD Form 214 is often used by civilian personnel and abbreviations should be avoided, if possible.

f. Cite the authority for a Soldier's transfer or discharge by referring to the appropriate Army regulation, followed by the appropriate separation program designator (SPD) code on copies 2, 4, 7, and 8 only. Do not use a narrative description to identify the reason for transfer or separation on copy 1.

g. The information on all copies of the DD Form 214 must be legible. Each block must have an entry; when data is not applicable, enter "NA," "NONE," or hyphens, as appropriate.

h. When additional space is required for block 18, prepare a continuation sheet (DD Form 214C). The DD Form 214C will—

(1) Be titled "Certificate of release or discharge from active duty (Continuation Sheet)."

(2) Include information from blocks 1 through 3 and the blocks being continued.

(3) Be electronically signed and dated by the Soldier and/or the authenticating official.

(4) Be attached to each copy of the DD Form 214.

i. If required information is missing, enter "See block 18" in the incomplete block. However, missing information will not delay the separation. In block 18 enter "DD Form 214/215 will be issued to provide missing information." The transition center will then—

(1) Exhaust all data sources (to include contacting the Soldier's unit) to obtain the missing information without delaying the separation.

(2) Advise the Soldier that a DD Form 215 or another DD Form 214 will be issued when the missing information becomes available and that no action is required by the Soldier.

(3) Optionally issue a DD Form 215 on or prior to the actual separation date.

(4) Continue efforts to obtain the missing information after the Soldier's separation. If after 30 days the missing information is not obtained, notify the custodian of the Soldier's records so he or she may continue efforts to obtain the missing data.

(5) Following the Soldier's separation date, furnish obtained missing data (and include a copy of the DD Form 214) by memorandum to the custodian of the Soldier's records for preparation of a DD Form 214 or DD Form 215, as appropriate.

j. When a DD Form 214 has been prepared and distributed, and subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's AMHRR.

k. DD Form 215 will be issued by the appropriate activity listed in paragraph 8–1. However, in unusual circumstances HRC may direct a transition center to reissue DD Form 214 and void the original issue.

l. Soldiers must be informed that although the DD Form 214 is prepared and signed, it is not effective until 2400 hours on the separation date. The Soldier's active duty status is not terminated until the DD Form 214 becomes effective.

m. For a Soldier released from active duty due to a void or voided enlistment, the following exceptions will apply:

(1) Block 9: Command To Which Transferred: Enter "NA."

(2) Block 12c: Net Active Service This Period: Enter double digit zeros in the year, month, and day blocks.

(3) Block 18: Remarks: Enter "Time served is not creditable for promotion or longevity."

(4) Block 23: Type of Separation: Enter "Release from the custody and control of the Army."

(5) Block 24: Character of Service: Enter "Uncharacterized".

5–6. Rules for completing the DD Form 214

This paragraph provides detailed instructions for data required in each block of the DD Form 214.

a. Block 1: Name. Compare original enlistment contract or appointment order and review official record for possible name changes. If a name change has occurred list other names of record in block 18.

b. Block 2: Department, Component, and Branch. Department entry will be "ARMY." Authorized entries for component are "RA," "ARNGUS," or "USAR"; for USMA cadets, enter "Army-USMA–Cadet." Branch codes do not apply to enlisted personnel.

c. Block 3: Social Security Number. Verify accuracy by reviewing initial enlistment contract and/or application for appointment. If the Soldier has had more than one social security number, list the other social security number of record in block 18.

d. Block 4: Grade, Rate, or Rank. Verify that active duty grade or rank and pay grade are accurate at time of separation.

e. Block 5: Date of Birth. Verify data accuracy by reviewing original enlistment contract and/or application for appointment.

f. Block 6: Reserve Obligation Termination Date. This is the completion date of the statutory MSO incurred by a Soldier on initial enlistment or appointment in the Armed Forces. The law (10 USC 651) requires a Soldier with no previous military service who enlisted or was appointed on or after 1 June 1984 to serve a period of 8 years. The MSO starts on the date of initial enlistment or appointment in the RA, ARNG, or USAR to include the Delayed Entry Program (DEP). DEP time is creditable in computing this date (see block 18 for additional requirements). For a Soldier discharged, dismissed, released from the custody and control of the Army or dropped from the Army rolls, or with an expired MSO, enter "0000 00 00". Soldiers within 90 days of their MSO termination date at separation are considered to have completed their MSO.

g. Block 7: Place of Entry into Active Duty and Home of Record.

(1) *Block 7a: Place of Entry into Active Duty.* A Soldier's initial enlistment contract or order to active duty is the source document for this data. Enter the city and state where the Soldier entered active duty.

(a) RA enlisted Soldiers normally enter active duty at the military entrance processing station.

(b) Officers enter active duty in accordance with their initial order to active duty. Normally, this is a temporary duty location for attendance at the Basic Officer Leader Course or other temporary duty location (for example, in support of Reserve Officers' Training Corps (ROTC) Summer Camp or Gold Bar Recruiting duties).

(c) USMA graduates enter active duty at the Accessions Detachment, West Point, NY.

(d) Soldiers who previously changed their status or component while serving on active duty, that installation where the change was made becomes the place entered active duty for this period of service. (For example, an enlisted Soldier is discharged at Fort Rucker, AL to continue on active duty as a warrant officer. Upon completion of his warrant officer active duty, his DD Form 214 would list Fort Rucker, AL as his place of entry for this period of service.)

(e) ARNG and USAR Soldiers, the active duty order for this period of service will list where the Soldier enters

h. Copy 8. File copy for transition center. This copy, along with a copy of the Soldier's separation packet, becomes the transition center administrative file, which is designated as a 6-month file (maintained for 1 year).

7–3. The separation packet

For the Soldier's AMHRR, use a formal letter of transmittal that lists the enclosed documents forwarded as part of the separation packet. Some of the documents listed below will not be applicable to all Soldiers' separations. Documents will be Web up-loaded in the order listed below:

a. DD Form 214, copy 2, only if not transferred to iPERMS via interface agreement.

b. Separation orders with any amendments or endorsements, only if not transferred to iPERMS via interface agreement.

c. For demobilizing Soldiers, mobilization orders and any amendments or endorsements.

d. DD Form 2648 (Test) (Preseparation Counseling Checklist for Active Component, Active Guard Reserve, Active Reserve, Full time support, and Reserve Program Administrator Service Members), only if not transferred to iPERMS via interface agreement.

e. DD Form 2648–1 (Test) (Transition Assistance Program (TAP) Checklist for Deactivating/Demobilizing National Guard and Reserve Service Members), only if not transferred to iPERMS via interface agreement.

f. DA Form 759 (Individual Flight Record and Flight Certificate - Army).

g. DD Form 4 series (Enlistment/Reenlistment Document – Armed Forces of the United States), if enlisting in USAR or ARNG.

h. Early separation approval documents, if applicable. The approval endorsement should be the first page and include the Soldier's name and effective date of separation.

i. For Soldiers authorized separation pay, include copies of agreement to serve in the Ready Reserve.

Chapter 8
DD Form 214 Alteration and Correction

8–1. Rules for alterations and corrections

a. When errors are detected prior to digital signature of the authenticating authority, the transition center will make corrections to any affected separation documents.

b. After the DD Form 214 is authenticated and distribution of the DD Form 214 has been made, the issuing transition center may correct the error by issuing DD Form 215 up to the Soldier's actual separation date. After the Soldier's separation date the DD Form 214 will be corrected by forwarding a memorandum to the appropriate location below requesting that a new DD Form 214 or DD Form 215, as applicable, be issued.

(1) Officers currently RA or USAR (TPU, IMA, IRR, or Retired Reserve): Commander, U.S. Army Human Resources Command (AHRC–OPL–P), Department 290, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5209 or email unencrypted inquiries at usarmy.knox.hrc.opmd-ldd-pabt@mail.mil.

(2) Enlisted Soldiers currently RA or USAR (TPU, IMA, IRR, or Retired Reserve): Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5102.

(a) Branches of air defense artillery, armor, aviation, field artillery, infantry, public affairs, and special operations forces: Commander, U.S. Army Human Resources Command (AHRC–EPA–X), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5102 or email unencrypted inquiries at usarmy.knox.hrc.mbx.epmd-mdf-pag@mail.mil.

(b) Branches of military intelligence, signal corps, chaplain, engineer, military policy: Commander, U.S. Army Human Resources Command (AHRC–EPB–X), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5102 or email unencrypted inquiries at usarmy.knox.hrc.mbx.epmd-osed-pab@mail.mil.

(c) Branches of ordnance, quartermaster, and transportation corps: Commander, U.S. Army Human Resources Command (AHRC–EPC–X), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5102 or email unencrypted inquiries at usarmy.knox.hrc.mbx.epmd-fsd-pab@mail.mil.

(3) Corrections to only add or delete awards or decorations, block 13 of DD Form 214: Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Department 480 Fort Knox, KY 40122–5102 or email unencrypted inquiries at usarmy.knox.hrc.mbx.tagd-awards@mail.mil.

(4) Corrections to only reentry codes: Commander, U.S. Army Human Resources Command (AHRC–EPF–R), 1600 Spearhead Division Avenue, Department 365, Fort Knox, KY 40122–5102 or email unencrypted inquiries at usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil

(5) All other Soldiers including discharged or retired Soldiers without Reserve status: Commander, U.S. Army Human Resources Command, Human Resources Service Center (AHRC–PDR–V), 1600 Spearhead Division Avenue, Department 420, Fort Knox, KY 40122–5402 or email unencrypted inquiries at askhrc.army@us.army.mil.

(6) ARNG Soldiers not on active duty: Appropriate State Adjutant General mailing addresses are listed in appendix C.

c. On direction of the Army Board of Correction of Military Records or Army Discharge Review Board, or in other instances when appropriate, the following are authorized to issue or reissue DD Forms 214 and DD Forms 215:

(1) CG, HRC.

(2) Chief, NGB.

(3) ARNG State Adjutant General.

(4) Deputy Assistant Secretary of the Army, Army Review Boards Agency.

8–2. Rules for reissuing DD Form 214

a. Once a DD Form 214 has been issued, transition centers do not reissue except for the following reasons:

(1) When directed by appellate authority, executive order, or by the Secretary of the Army.

(2) When it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215.

(3) Activities listed in paragraph 8–1*b* and *c* may reissue DD Form 214 when circumstances listed in paragraph 8–4 apply.

b. When a DD Form 214 is administratively reissued, enter that fact and the date of such action on the DD Form 214, block 18, unless the authority directing reissuance specifies otherwise.

c. Do not issue DD Form 214 to replace copies or DD Forms 214 lost by the Soldier. If no DD Form 214 is available, issue a statement of service or transcript of military record.

8–3. When to prepare the DD Form 215

a. Prepare a DD Form 215 in response to a request for a Soldier or veteran to correct a previously issued Army DD Form 214. Requests should contain a copy of the DD Form 214 in question and source documents that substantiate the request to change the DD Form 214. Such source documents may include a final decision from the Army Board of Correction of Military Records or Army Discharge Review Board directing the change.

b. Only activities specified in paragraph 8–1*b* and *c* are authorized to issue a DD Form 215 after the Soldier's separation from active duty.

8–4. Special instructions concerning the preparation of DD Form 215

a. Do not issue a DD Form 215 when more than one page will be required to complete the correction. Administratively issue a new DD Form 214.

b. Do not issue a DD Form 215 when two DD Forms 215 have already been issued for the same DD Form 214. Administratively issue a new DD Form 214.

c. Do not issue a DD Form 215 to correct block 24 (Character of Service). Issue a new DD Form 214.

d. Do not use punctuation on a DD Form 215 unless the entry is monetary, part of a unit name, or to complete an address with a nine-digit zip code.

e. Data for items 1, 2, 3, and 4 of the DD Form 215 must be transcribed exactly as it appears on the DD Form 214 being corrected, even if the data contains typographical errors. Item 3 will reflect both the social security number and service number if both are shown on the DD Form 214 being corrected.

f. In some cases, certain items being corrected only appear on certain copies of the DD Form 215. If items 25, 26, 27 are being corrected, the entry will only appear on copies 2, 4, 7, and 8 of the DD Form 215. Items 23, 24, 28, 29, and 30 should appear on all copies except copy 1 of the DD Form 215. In cases where there are no corrections that should appear on copy 1, enter the phrase "NOTHING FOLLOWS" on copy 1.

g. Item 5 on the DD Form 215 being issued is taken from block 12b on the DD Form 214 being corrected. Enter the date in day, abbreviated month, and year format (for example 15 Jul 1979).

h. Item 5 is used to correct items 1 through 30 of a DD Form 214. Enter the block number being corrected in the left column. Enter the corrected information in the right section beginning with "ADD" or "DELETE," as appropriate.

i. If a second request is received to correct a block that was previously corrected, void the first DD Form 215 by typing on the last line of the new DD Form 215 "VOID PREVIOUSLY ISSUED DD FORM 215 (DATE OF FIRST DD FORM 215)." If the request is to correct a previously issued DD Form 215 and an additional item is being corrected, issue a new DD Form 215 without voiding the first DD Form 215.

j. For item 6 enter the same state the veteran requested on block 20 of the DD form 214 being corrected or as directed by the veteran.

k. For item 6a if the DD Form 214 is the August 2008 or later version and the veteran directed that a copy of copy 3 be provided to the VA central office, then mark "Yes."

l. After the last entry enter "//NOTHING FOLLOWS//."

8–5. Requirements by agency maintaining records

Copies of a Soldier's DD Forms 214 may be obtained from the following sources, as applicable:

Army Regulation 635–5

Personnel Separations

Separation Documents

Headquarters
Department of the Army
Washington, DC
15 September 2000

UNCLASSIFIED

place to complete the DD Form 214WS. If approval documentation is not present in a soldier's records, action will be coordinated with the necessary activity (personnel service division, Assistant Chief of Staff for Personnel/Adjutant General or chain of command) for proper source documents.

b. Use the following documents when preparing a DD Form 214WS (Worksheet):

(1) Enlisted record brief (ERB) (computer generated).

(2) DA Form 4037 (Officer Record Brief) (ORB) (computer generated).

(3) Separation approval authority documentation, if applicable.

(4) Separation order.

(5) Any other document authorized for filing in the Official Military Personnel File.

2–4. Completing the DD Form 214

a. The information on all eight copies of the form must be legible. Each block of the form must have an entry; when data is not applicable, enter "NA," "NONE" or hyphens, as appropriate. Avoid abbreviations whenever possible, since the form is often used by civilian organizations.

b. Entries in blocks 11, 13, 14, and 18 will begin directly under the block number, flush with the left border, separated by two slash marks "//." Following the last entry, after the slash marks, add the phrase "nothing follows." When additional space is required for entries in these blocks, add the phrase "Cont'd in Block 18" after the last slash mark; then continue entering the data in block 18. Also include the phrase "Cont'd from block 13" (or appropriate block) before the entry.

c. When additional space is required for block 18, prepare a continuation sheet on bond paper. The continuation sheet will —

(1) Be titled "DD Form 214 continuation."

(2) Include information from blocks 1 through 4b and the blocks being continued.

(3) Be signed and dated by the soldier and the authenticating official.

(4) Be attached to each copy of the DD Form 214.

d. If required information is missing, enter "See Block 18" in the incomplete block. (However, missing information does not delay the separation.) In block 18, enter "DD Form 215 will be issued to provide missing information."The TC will then—

(1) Exhaust all data sources (to include contacting the soldier's unit) to obtain the missing information without delaying the separation.

(2) Advise the soldier that a DD Form 215 will be issued when the missing information becomes available and that no action is required by the soldier.

(3) Continue efforts to obtain the missing information after a soldier's separation. (As a minimum, include contacting the soldier's last unit for the missing data.) However, if after 30 days the missing information is not obtained, notify the custodian of the soldier's records (and include a copy of the DD Form 214), so they may continue efforts to obtain the data.

(4) Furnish obtained missing data (and include a copy of the DD Form 214) by memorandum to the custodian of the soldier's records.

e. When a DD Form 214 has been prepared and distributed, and is subsequently determined that it was prepared in error (for example, should not have been prepared at all), the responsible TC will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared form, advise them of the error and request the voided DD Form 214 be destroyed by burning or shredding.

f. The TCs are not routinely authorized to reissue DD Forms 214 or issue DD Forms 215. However, in unusual circumstances, CG, PERSCOM may direct a TC to reissue DD Form 214 and void the original issue.

g. For a soldier released from active duty due to void or voided enlistment, the following exceptions will apply:

(1) Block 9 (command to which transferred): Enter "NA."

(2) Block 12c (Net Active Service this period): Enter double digit zeros in the year, month, and day blocks.

(3) Block 18 (Remarks): Enter "Time served is not creditable for promotion or longevity."

(4) Block 23 (Type of Separation): Enter "Release from custody and control of the Army."

(5) Block 24 (Character of Service): Enter hyphens.

h. The following provides detailed instructions and source document(s) for completing each block of the DD Form 214.

(1) NAME. Enter in all capitals, include "SR," "JR" or "II," if appropriate. Compare ERB/ORB to contract for possible name change.

(2) COMPONENT. Enter in all capitals. Compare ERB/ORB to contract, and enter: for officers and enlisted soldiers "RA," "ARNGUS," or "USAR;" for USMA cadets, "Army-USMA- Cadet."

(3) SSN. Verify accuracy with ERB/ORB.

(4) GRADE, RATE or RANK. Enter active duty grade or rank and pay grade at time of separation from ERB/ORB.

MSO
military service obligation

ORB
officer record brief

QMP
Qualitative Management Program

RA
Regular Army

RE
Reentry

SQI
special qualification identifier

TC
transition center

TDY
temporary duty

TTAD
temporary tour of active duty

USC
United States Code

VEAP
Veterans Educational Assistance Program

Section II
Terms

Active duty for training
Includes initial active duty for training (IADT).

Basic training
Initial entry training which provides non prior service soldiers instructions in basic skills common to all soldiers. BT precedes advanced individual training (AIT).

Character of service at separation
A determination reflecting a soldier's military behavior and performance of duty during a specific period of service. The three administrative characters are: Honorable, General (Under Honorable Conditions), and Under Other Than Honorable Conditions. The service of soldiers in entry level status is normally described as uncharacterized. Punitive discharge under the Uniform Code of Military Justice is characterized as Bad Conduct or Dishonorable.

Contingency operation
Military operation designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call to or order to, or retention on, active duty of member of the uniformed services under title 10, sections 688, 12301(a), 12302, 12304, 12305, or 12406, or title 10, chapter 15, and any other provision of law during a war or during a national emergency declared by the President or Congress.

Contractually obligated soldier
A soldier who is serving under enlistment contract or extension (has completed statutory MSO, or has not acquired one).