

LIMITATION ON APPLICABILITY

Pub. L. 109-163, div. A, title VI, §643(b), Jan. 6, 2006, 119 Stat. 3310, which provided that, during the period beginning on Jan. 6, 2006, and ending on Dec. 31, 2008, members eligible for separation and for voluntary separation pay and benefits under this section would be limited to officers who had met the eligibility requirements of this section, but had not completed more than 12 years of active service as of the date of separation, was repealed by Pub. L. 109-364, div. A, title VI, §623(a)(3), Oct. 17, 2006, 120 Stat. 2256.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) **REGULAR MEMBERS.**—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) **RESERVE MEMBERS IN ACTIVE STATUS.**—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102-484, div. A, title V, §541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103-160, div. A, title V, §562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104-106, div. A, title XV, §1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “section 12732” for “section 1332” wherever appearing.

1993—Subsec. (b). Pub. L. 103-160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 562(b) of Pub. L. 103-160 provided that: “Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.”

§ 1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation

(a) **MEDICAL EXAMINATION REQUIRED.**—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operation during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury or who otherwise reasonably alleges, based on the service of the member while deployed, the influence of such a condition, receives a medical examination to evaluate a diagnosis of post-traumatic stress disorder or traumatic brain injury.

(2) A member covered by paragraph (1) shall not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

(3) In a case involving post-traumatic stress disorder, the medical examination shall be performed by a clinical psychologist or psychiatrist. In cases involving traumatic brain injury, the medical examination may be performed by a physician, clinical psychologist, psychiatrist, or other health care professional, as appropriate.

(b) **PURPOSE OF MEDICAL EXAMINATION.**—The medical examination required by subsection (a) shall assess whether the effects of post-traumatic stress disorder or traumatic brain injury constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable.

(c) **INAPPLICABILITY TO PROCEEDINGS UNDER UNIFORM CODE OF MILITARY JUSTICE.**—The medi-

cal examination and procedures required by this section do not apply to courts-martial or other proceedings conducted pursuant to the Uniform Code of Military Justice.

(Added Pub. L. 111-84, div. A, title V, §512(a)(1), Oct. 28, 2009, 123 Stat. 2280.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (c), is classified to chapter 47 (§801 et seq.) of this title.

PRIOR PROVISIONS

A prior section 1177, added Pub. L. 103-337, div. A, title V, §560(a)(1), Oct. 5, 1994, 108 Stat. 2777; amended Pub. L. 104-106, div. A, title V, §567(a)(1), title XV, §1503(a)(12), Feb. 10, 1996, 110 Stat. 328, 511, related to mandatory discharge or retirement of members infected with HIV-1 virus, prior to repeal by Pub. L. 104-134, title II, §2707(a)(1), Apr. 26, 1996, 110 Stat. 1321-330.

§ 1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program

The Secretary of each military department shall establish a system for tracking, recording, and reporting separations of members of the armed forces under the Secretary's jurisdiction that result from procedures initiated as a result of a refusal to participate in the anthrax vaccine immunization program.

(Added Pub. L. 106-398, §1 [[div. A], title VII, §751(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-193; amended Pub. L. 111-383, div. A, title VII, §721, Jan. 7, 2011, 124 Stat. 4251.)

AMENDMENTS

2011—Pub. L. 111-383 struck out subsec. (a) designation and heading before “The Secretary” and struck out subsec. (b). Text of subsec. (b) read as follows: “The Secretary of Defense shall consolidate the information recorded under the system described in subsection (a) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives not later than April 1 of each year a report on such information. Each such report shall include a description of—

“(1) the number of members separated, categorized by military department, grade, and active-duty or reserve status; and

“(2) any other information determined appropriate by the Secretary.”

COMPTROLLER GENERAL REPORT

Pub. L. 106-398, §1 [[div. A], title VII, §751(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-194, directed the Comptroller General, not later than Apr. 1, 2002, to submit to committees of Congress a report on the effect of the Department of Defense anthrax vaccine immunization program on the recruitment and retention of active duty and reserve military personnel and civilian personnel of the Department of Defense.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.

Sec.
[1183. Repealed.]
1184. Removal of officer: action by Secretary upon recommendation of board of inquiry.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

AMENDMENTS

1998—Pub. L. 105-261, div. A, title V, §503(c)(2), Oct. 17, 1998, 112 Stat. 2004, struck out item 1183 “Boards of review” and substituted “inquiry” for “review” in item 1184.

1984—Pub. L. 98-525, title V, §524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted “Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons” for “Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons” in item 1181.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98-525, title V, §524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98-525 substituted “Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons” for “Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons” in section catchline.

Subsecs. (a), (b). Pub. L. 98-525 amended subsecs. (a) and (b) generally, substituting “Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record” for “Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record”.