

2008]) from a person who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so.”

Pub. L. 110-252, title I, §1303(b), June 30, 2008, 122 Stat. 2327, provided that: “In any case where all or any part of an indebtedness of a covered individual, as described in section 5302A(a) of title 38, United States Code, as added by subsection (a)(1), was collected after September 11, 2001, and before the date of the enactment of this Act [June 30, 2008], and the Secretary of Veterans Affairs determines that such indebtedness would have been terminated had such section been in effect at such time, the Secretary may refund the amount so collected if the Secretary determines that the individual is equitably entitled to such refund.”

§ 5303. Certain bars to benefits

(a) The discharge or dismissal by reason of the sentence of a general court-martial of any person from the Armed Forces, or the discharge of any such person on the ground that such person was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Secretary that there are compelling circumstances to warrant such prolonged unauthorized absence, or of an officer by the acceptance of such officer's resignation for the good of the service, or (except as provided in subsection (c)) the discharge of any individual during a period of hostilities as an alien, shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed, notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10.

(b) Notwithstanding subsection (a), if it is established to the satisfaction of the Secretary that, at the time of the commission of an offense leading to a person's court-martial, discharge, or resignation, that person was insane, such person shall not be precluded from benefits under laws administered by the Secretary based upon the period of service from which such person was separated.

(c) Subsection (a) shall not apply to any alien whose service was honest and faithful, and who was not discharged on the individual's own application or solicitation as an alien. No individual shall be considered as having been discharged on the individual's own application or solicitation as an alien in the absence of affirmative evidence establishing that the individual was so discharged.

(d) This section shall not apply to any war-risk insurance, Government (converted) or National Service Life Insurance policy.

(e)(1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Secretary shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned,

under such section, of all the evidence and factors in each case under published uniform standards (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions; and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

(2) Notwithstanding any other provision of law—

(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions, shall be entitled to benefits under laws administered by the Secretary except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

(B) such determination shall be made by such board (i) on an expedited basis after notification by the Department to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative before October 9, 1978, in any case where a general or honorable discharge has been awarded before October 9, 1977, under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after October 8, 1977.

If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of the right to such appearance. The Secretary shall, as soon as adminis-

tratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Secretary, or of the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A)(i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3103; Pub. L. 86-113, July 28, 1959, 73 Stat. 262; Pub. L. 95-126, §1(a), Oct. 8, 1977, 91 Stat. 1106; Pub. L. 97-295, §4(75), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title VII, §701(70), Oct. 28, 1986, 100 Stat. 3296; renumbered §5303, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

REFERENCES IN TEXT

President's Proclamation 4313 of September 16, 1974, referred to in subsec. (e)(2)(A), is set out as a note under section 462 of Title 50, Appendix, War and National Defense.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3103 of this title as this section.

Subsecs. (a), (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (e)(1). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (e)(2). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in last sentence.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in subpar. (B).

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in subpar. (A) and last sentence.

1986—Subsec. (a). Pub. L. 99-576, §701(70)(A), substituted "such person" for "he" after "on the ground that" and "such officer's" for "his" before "resignation".

Subsec. (b). Pub. L. 99-576, §701(70)(B), substituted "a person's" for "his", "that person" for "any person", and "such person" for "he" before "was separated".

Subsec. (c). Pub. L. 99-576, §701(70)(C), substituted "the individual's" for "his" in two places, and "the individual" for "he".

Subsec. (e)(2). Pub. L. 99-576, §701(70)(D), substituted "the" for "his or her" before "right to such appearance" at end of second sentence.

1982—Subsec. (e)(2)(B). Pub. L. 97-295 substituted "before October 9, 1978," for "within one year after the date of enactment of this paragraph", "before October 9, 1977," for "on or prior to the date of enactment of this paragraph", and "October 8, 1977" for "such enactment date".

1977—Subsec. (a). Pub. L. 95-126, §1(a)(1), inserted provisions barring a person in the Armed Forces from being a recipient of benefits when discharged on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence and barred benefits notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of Title 10.

Subsec. (e). Pub. L. 95-126, §1(a)(2), added subsec. (e).

1959—Subsec. (c). Pub. L. 86-113 required affirmative evidence to establish that alien was discharged on his own application or solicitation.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95-126 provided that: "This Act [amending this section and section 101 of this title and enacting provisions set out below] shall become effective on the date of its enactment [Oct. 8, 1977], except that—

"(1) section 2 [set out below] shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

"(2) the amendments made by section 1(a) [amending this section] shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law—

"(A) with respect to any person who, on such enactment date [Oct. 8, 1977] is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) [now 5303(e)] of title 38, United States Code, as added by section 1(a)(2) of this Act, until (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e) [now 5303(e)], (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

"(B) with respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A) (i), (ii), or (iii) of such paragraph who has been provided any such benefits prior to such enactment date [Oct. 8, 1977], the United States shall not make any claim to recover the value of any benefits so provided; and

"(C) the amendments made by clause (1) of section 1(a) [amending this section] shall apply (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act [Oct. 8, 1977], had not attained general eligibility for such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons."

EXPEDITED DETERMINATIONS AFTER INFORMATION AND NOTIFICATION TO PERSONS AWARDED GENERAL OR HONORABLE DISCHARGES; PROCEDURES FOR APPLICATION TO TITLE 10 §1552 BOARD AND TO SECRETARY OF VETERANS AFFAIRS

Pub. L. 95-126, §1(b), Oct. 8, 1977, 91 Stat. 1107, as amended by Pub. L. 100-527, §10(1), (2), Oct. 25, 1988, 102 Stat. 2640, 2641; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, provided that:

"(1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 5303(e)(2)(A)(i), (ii), or (iii) [formerly 3103(e)(2)(A)(i), (ii), or (iii)] of title 38, United States Code, as added by subsection (a)(2) of this section, of his or her right to obtain an expedited determination under section 5303(e)(2)(B)(i) [formerly 3103(e)(2)(B)(i)] of such title and of the implications of the provisions of this Act [amending this section and section 101(18) of this title and enacting provisions set out as notes under this section] for each such person.

"(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who ap-

plies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 5303(a) [formerly 3103(a)] of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Department of Veterans Affairs only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Secretary of Veterans Affairs under section 5303 [formerly 3103] of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Secretary of Veterans Affairs for such purpose (including the right to proceed concurrently under such sections 5303 [formerly 3103], 1552, and 1553)."

HEALTH CARE AND BENEFITS FOR DISABILITY DURING ACTIVE SERVICE IN LINE OF DUTY, EXCEPT WHEN BARRED UNDER SUBSEC. (a) OR BY BAD CONDUCT DISCHARGE

Pub. L. 95-126, § 2, Oct. 8, 1977, 91 Stat. 1107, as amended by Pub. L. 100-527, § 10(1), Oct. 25, 1988, 102 Stat. 2640; Pub. L. 102-40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239, provided that: "Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall provide the type of health care and related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 5303(a) [formerly 3103(a)] of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge."

REGULATIONS RESPECTING STANDARDS AND PROCEDURES FOR DETERMINATION OF SEPARATION FROM ACTIVE SERVICE UNDER CONDITIONS OTHER THAN DISHONORABLE FREE OF UNIQUE OR SPECIAL ADVANTAGES OR SPECIAL DISTINCTIONS BETWEEN VETERANS

Pub. L. 95-126, § 4, Oct. 8, 1977, 91 Stat. 1108, as amended by Pub. L. 100-527, § 10(1), (2), Oct. 25, 1988, 102 Stat. 2640; Pub. L. 102-40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239, provided that: "In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Department of Veterans Affairs determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Secretary of Veterans Affairs shall, in keeping with the spirit and intent of this Act [amending this section and section 101(18) of this title and enacting provisions set out as notes under this section], not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 5303(e)(2)(A)(i), (ii), or (iii) [formerly 3103(e)(2)(A)(i), (ii), or (iii)] of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans."

§ 5303A. Minimum active-duty service requirement

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Secretary that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph

(2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

- (A) 24 months of continuous active duty, or
- (B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection applies—

- (A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and
- (B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

- (A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;
- (B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;
- (C) to a person who has a disability that the Secretary has determined to be compensable under chapter 11 of this title;
- (D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;
- (E) to benefits under chapter 19 of this title;
- (F) to benefits under chapter 30 or chapter 37 of this title by reason of—

- (i) a discharge or release from active duty for the convenience of the Government, as described in sections 3011(a)(1)(A)(ii)(II) and 3012(b)(1)(A)(iv) of this title;

- (ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Secretary determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(ii) of this title;

- (iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 3011(a)(1) of this title and in section 3012(b)(1)(A)(v) of this title; or

- (iv) a discharge or release from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as described in section 3011(a)(1)(A)(ii)(I) of this title; or

- (G) to benefits under chapter 43 of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Secretary.

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.