

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.

(d)(1) Notwithstanding any other provision of law and 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 Federal law (other than this title or any other law administered by the Secretary), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(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 13, 1982, 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 any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a)¹ of the Social Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning after October 13, 1982, or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term “benefit” includes a right or privilege, but does not include a refund of a participant’s contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

(Added Pub. L. 97-66, title VI, §604(a)(1), Oct. 17, 1981, 95 Stat. 1035, §3103A; amended Pub. L. 97-306, title IV, §408(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title III, §321(11), Oct. 28, 1986, 100 Stat. 3278; Pub. L. 100-689, title I, §102(b)(3), Nov. 18, 1988, 102 Stat. 4163; Pub. L. 101-510, div. A, title V, §562(a)(4), Nov. 5, 1990, 104 Stat. 1574; renumbered §5303A, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §§4(a)(1), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 103-353, §3, Oct. 13, 1994, 108 Stat. 3169; Pub. L. 103-446, title IX, §908, Nov. 2, 1994, 108 Stat. 4678; Pub. L. 105-368, title X, §1005(b)(15), Nov. 11, 1998, 112 Stat. 3365.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as

¹ See References in Text note below.

amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Section 229(a) of the Act was redesignated section 229 by Pub. L. 108-203, title IV, §420(b)(1)(A), Mar. 2, 2004, 118 Stat. 535. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (d)(2)(B). Pub. L. 105-368, §1005(b)(15)(A), substituted “after October 13, 1982,” for “on or after the date of the enactment of this subsection”.

Subsec. (d)(3)(B)(i). Pub. L. 105-368, §1005(b)(15)(B), substituted “after October 13, 1982,” for “on or after the date of the enactment of this subsection.”.

1994—Subsec. (b)(3)(F). Pub. L. 103-446 inserted “or chapter 37” after “chapter 30” in introductory provisions.

Subsec. (b)(3)(G). Pub. L. 103-353 added subpar. (G).

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

Subsec. (a). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Subsec. (b)(1). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in concluding provisions.

Subsec. (b)(3)(C). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (b)(3)(F)(i). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)(A)(ii)(II)” and “3012(b)(1)(A)(iv)” for “1411(a)(1)(A)(ii)(II)” and “1412(b)(1)(A)(iv)”, respectively.

Subsec. (b)(3)(F)(ii). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)” for “1411(a)(1)” and “3012(b)(1)(A)(ii)” for “1412(b)(1)(A)(ii)”.

Subsec. (b)(3)(F)(iii). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)” for “1411(a)(1)” and “3012(b)(1)(A)(v)” for “1412(b)(1)(A)(v)”.

Subsec. (b)(3)(F)(iv). Pub. L. 102-83, §5(c)(1), substituted “3011(a)(1)(A)(ii)(I)” for “1411(a)(1)(A)(ii)(I)”.

Subsecs. (c)(1), (d)(1). Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1990—Subsec. (b)(3)(F)(iv). Pub. L. 101-510 added cl. (iv).

1988—Subsec. (b)(3)(F). Pub. L. 100-689 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “to benefits under chapter 30 of this title in the case of a person entitled to benefits under such chapter by reason of section 1411(a)(1)(A)(ii)(II) of this title.”

1986—Subsec. (b)(3)(F). Pub. L. 99-576 added subpar. (F).

1982—Subsec. (b)(2)(B). Pub. L. 97-306, §408(a)(1), substituted “after October 16, 1981,” for “on or after the date of the enactment of the Veterans’ Disability Compensation, Housing, and Memorial Benefits Amendments of 1981”.

Subsecs. (d), (e). Pub. L. 97-306, §408(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97-306, §408(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-510 effective Oct. 19, 1984, see section 562(c) of Pub. L. 101-510 set out as a note under section 3011 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-689 effective July 1, 1985, with respect to individuals discharged or released for

medical condition which preexisted service on active duty or in Selected Reserve and which Administrator determines is not service connected, and effective Oct. 1, 1987, with respect to individuals involuntarily discharged or released for convenience of Government as a result of reduction in force, see section 102(c) of Pub. L. 100-689, set out as a note under section 3011 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1981, see section 701(b)(1) of Pub. L. 97-66, set out as an Effective Date of 1981 Amendment note under section 1114 of this title.

DELAYED APPLICATION OF EXCLUSION; ADDITIONAL WAGES CONSIDERED BENEFIT

Section 408(b) of Pub. L. 97-306 provided that:
“(1) Subsection (d) of section 3103A [now 5303A] of title 38, United States Code, as added by subsection (a)(2), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 14, 1982].

“(2) For the purposes of paragraph (1) of this subsection, additional wages deemed to have been paid under section 229(a) of the Social Security Act (42 U.S.C. 429(a)) shall be considered to be a benefit that was received by a person on the date that such person was discharged or released from active duty (as defined in section 101(21) of title 38, United States Code).”

SCOPE OF EXCLUSION

Section 408(d) of Pub. L. 97-306 provided that: “Section 3103A [now 5303A] of title 38, United States Code, as amended by subsection (a), is the law with respect to the matters stated in such section and applies, in accordance with its terms, with respect to benefits under Federal law, regardless of the particular title of the United States Code or other law under which any such benefit is provided or the department, agency, or instrumentality which administers any such benefit.”

APPLICABILITY

Section 604(b) of Pub. L. 97-66 provided that: “Section 5303A [formerly 3103A] of title 38, United States Code, as added by subsection (a), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 17, 1981]. Notwithstanding such section, a person who before such date has received a certificate of eligibility from the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] for benefits under chapter 37 of title 38, United States Code, is eligible for such benefits after such date.”

§ 5304. Prohibition against duplication of benefits

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other person.

(2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

(c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, § 3104; Pub. L. 86-495, § 1, June 8, 1960, 74 Stat. 163; Pub. L. 88-664, § 9, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 91-376, § 6, Aug. 12, 1970, 84 Stat. 790; Pub. L. 95-588, title III, § 304, Nov. 4, 1978, 92 Stat. 2507; Pub. L. 96-385, title V, § 503(a), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 99-576, title VII, § 701(71), Oct. 28, 1986, 100 Stat. 3297; renumbered § 5304 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§ 4(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 108-454, title III, § 308(a), Dec. 10, 2004, 118 Stat. 3614.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454 inserted “as provided in section 1414 of title 10 or” after “Except”.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3104 of this title as this section.

Subsec. (a)(2). Pub. L. 102-83, § 5(c)(1), substituted “1521” and “1541” for “521” and “541”, respectively.

Pub. L. 102-40, § 402(d)(1), substituted “5305” for “3105” in two places.

Subsec. (b)(1). Pub. L. 102-83, § 5(c)(1), substituted “1521(i)” for “521(i)”.

Subsec. (b)(2), (3). Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration”.

1986—Subsec. (a)(1). Pub. L. 99-576, § 701(71)(A), substituted “such person's” for “his”.

Subsec. (b)(1). Pub. L. 99-576, § 701(71)(B)(i), (ii), substituted “surviving spouse” for “widow” and “such person's” for “his”.

Subsec. (b)(3). Pub. L. 99-576, § 701(71)(B)(iii), substituted “such person” for “he or she”.

Subsec. (c). Pub. L. 99-576, § 701(71)(C), substituted “any person's” for “his”, “to such person” for “to any person”, and “such person” for “he”.

1980—Subsec. (a). Pub. L. 96-385 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95-588 inserted “of this subsection and in section 521(i) of this title” after “(2) and (3)”.

1970—Subsec. (b)(1), (3). Pub. L. 91-376 inserted reference to par. (3) in par. (1) and added par. (3).