

months after the date the Secretary receives the completed application.

(b) **REMEDIES DEEMED EXHAUSTED.**—Ten months after a complete application for correction of military records is received by the Board for Correction of Military Records of the Coast Guard, administrative remedies are deemed to have been exhausted, and—

(1) if the Board has rendered a recommended decision, its recommendation shall be final agency action and not subject to further review or approval within the department in which the Coast Guard is operating; or

(2) if the Board has not rendered a recommended decision, agency action is deemed to have been unreasonably delayed or withheld and the applicant is entitled to—

(A) an order under section 706(1) of title 5, directing final action be taken within 30 days from the date the order is entered; and

(B) from amounts appropriated to the department in which the Coast Guard is operating, the costs of obtaining the order, including a reasonable attorney's fee.

(Added Pub. L. 104-324, title II, §209(a), Oct. 19, 1996, 110 Stat. 3914.)

PRIOR PROVISIONS

A prior section 425, act Aug. 4, 1949, ch. 393, 63 Stat. 525, related to retiring boards, prior to repeal by act Aug. 3, 1950, ch. 536, §36, 64 Stat. 408. See section 1216 of Title 10, Armed Forces.

EFFECTIVE DATE

Pub. L. 104-324, §209(d), Oct. 19, 1996, 110 Stat. 3914, provided that: "This section [enacting this section and provisions set out as a note below] shall be effective on and after June 12, 1990."

SPECIAL RIGHT OF APPLICATIONS AFTER DEADLINE FOR COMPLETION OF BOARD ACTION

Pub. L. 104-324, §209(c), Oct. 19, 1996, 110 Stat. 3914, provided that: "This section [enacting this section and provisions set out as a note above] applies to any applicant who had an application filed with or pending before the Board or the Secretary of the department in which the Coast Guard is operating on or after June 12, 1990, who files with the Board for Correction of Military Records of the Coast Guard an application for relief under the amendment made by subsection (a) [enacting this section]. If a recommended decision was modified or reversed on review with final agency action occurring after expiration of the 10-month deadline under that amendment, an applicant who so requests shall have the order in the final decision vacated and receive the relief granted in the recommended decision if the Coast Guard has the legal authority to grant such relief. The recommended decision shall otherwise have no effect as precedent."

§ 426. Emergency leave retention authority

(a) **IN GENERAL.**—A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation.

(b) **DEFINITIONS.**—In this section:

(1) **SPILL OF NATIONAL SIGNIFICANCE.**—The term "spill of national significance" means a

discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

(2) **DISCHARGE.**—The term "discharge" has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

(Added Pub. L. 111-281, title II, §207(a), Oct. 15, 2010, 124 Stat. 2912.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Pub. L. 111-281, title II, §207(c), Oct. 15, 2010, 124 Stat. 2912, provided that: "The amendments made by this section [enacting this section] shall be deemed to have been enacted on April 19, 2010."

§ 427. Prohibition of certain involuntary administrative separations

(a) **IN GENERAL.**—Except as provided in subsection (b), the Secretary may not authorize the involuntary administrative separation of a covered individual based on a determination that the covered individual is unsuitable for deployment or other assignment due to a medical condition of the covered individual considered by a Physical Evaluation Board during an evaluation of the covered individual that resulted in the covered individual being determined to be fit for duty.

(b) **REEVALUATION.**—

(1) **IN GENERAL.**—The Secretary may require a Physical Evaluation Board to reevaluate any covered individual if the Secretary determines there is reason to believe that a medical condition of the covered individual considered by a Physical Evaluation Board during an evaluation of the covered individual renders the covered individual unsuitable for continued duty.

(2) **RETIREMENTS AND SEPARATIONS.**—A covered individual who is determined, based on a reevaluation under paragraph (1), to be unfit to perform the duties of the covered individual's office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

(c) **COVERED INDIVIDUAL DEFINED.**—In this section, the term "covered individual" means any member of the Coast Guard who has been determined by a Physical Evaluation Board, pursuant to a physical evaluation by that board, to be fit for duty.

(Added Pub. L. 112-213, title II, §209(a), Dec. 20, 2012, 126 Stat. 1549.)

SPECIAL PROVISIONS

[§ 431. Repealed. Pub. L. 99-640, § 10(a)(6)(A), Nov. 10, 1986, 100 Stat. 3549]

Section, acts Aug. 4, 1949, ch. 393, 63 Stat. 526; Aug. 3, 1950, ch. 536, §24, 64 Stat. 407, related to personnel of former Life Saving Service.

SAVINGS PROVISION

Pub. L. 99-640, §10(a)(6)(A), Nov. 10, 1986, 100 Stat. 3549, provided in part that the repeal of sections 431,