

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99-661, set out as a note under section 1074a of this title.

§ 1205. Members on active duty for 30 days or less; temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99-145, title V, §513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99-661, div. A, title VI, §604(d)(2)[(B)], Nov. 14, 1986, 100 Stat. 3876.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1205	37:272(c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37:272(c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1986—Pub. L. 99-661 struck out “; disability from injury” after “30 days or less” in section catchline.

1985—Pub. L. 99-145 inserted “and stable” after “determined to be of a permanent nature”.

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§ 1206. Members on active duty for 30 days or less or on inactive-duty training; separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

- (1) the member has less than 20 years of service computed under section 1208 of this title;
- (2) the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(A) while—

- (i) performing active duty or inactive-duty training;
- (ii) traveling directly to or from the place at which such duty is performed; or
- (iii) remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence; or

(B) while the member—

- (i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;
- (ii) was traveling to or from the place at which the member was to so serve; or
- (iii) remained overnight at or in the vicinity of that place immediately before so serving;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a disability incurred before October 5, 1999, was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99-661, div. A, title VI, §604(d)(1), (3), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101-189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102-484, div. A, title V, §516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 105-85, div. A, title V, §513(c)(2), (d)(2), Nov. 18, 1997, 111 Stat. 1731; Pub. L. 106-65, div. A, title V, §578(i)(4), title VI, §653(c), Oct. 5, 1999, 113 Stat. 629, 667; Pub. L. 107-107, div. A, title V, §513(b), title X, §1048(c)(6), Dec. 28, 2001, 115 Stat. 1093, 1226.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1206	37:272(c) (last proviso).	Oct. 12, 1949, ch. 681, § 402(c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37:272(c) (last proviso), the provisions of 37:272(c) (less clause (5), and less 1st proviso), and 272(f) (as applicable to 272(c)), also contained in section 1204 of this title, are repeated. The words “the member may be separated” are substituted for the words “the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability”.

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.