

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107-107, § 513(b), struck out “, if the place is outside reasonable commuting distance from the member’s residence” before semicolon at end.

Par. (5). Pub. L. 107-107, § 1048(c)(6), substituted “October 5, 1999,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000.”.

1999—Par. (2). Pub. L. 106-65, § 578(i)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty while—

“(A) performing active duty or inactive-duty training;

“(B) traveling directly to or from the place at which such duty is performed; or

“(C) while 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;”.

Par. (5). Pub. L. 106-65, § 653(c), inserted “, in the case of a disability incurred before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,” after “determination, and”.

1997—Pub. L. 105-85, § 513(d)(2), amended section catchline generally, inserting “or on inactive-duty training” after “30 days or less”.

Pars. (2) to (5). Pub. L. 105-85, § 513(c)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1992—Par. (4). Pub. L. 102-484 inserted before period at end “or of traveling directly to or from the place at which such duty is performed”.

1989—Par. (4). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1986—Pub. L. 99-661 struck out “; disability from injury” after “30 days or less” in section catchline and “resulting from an injury” after “because of physical disability” in provisions preceding par. (1).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective with respect to disabilities incurred on or after Nov. 14, 1986, with any benefits or services payable by reason of applicability of that amendment during period beginning Nov. 14, 1986, and ending Oct. 23, 1992, subject to availability of appropriations, see section 516(b) of Pub. L. 102-484, set out as a note under section 1204 of this title.

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.

§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing

(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member re-

leased from active duty because of a failure to meet—

(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected.

(Added Pub. L. 108-375, div. A, title V, § 521(a), Oct. 28, 2004, 118 Stat. 1887.)

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1207	37:278.	Oct. 12, 1949, ch. 681, § 408, 63 Stat. 823.

The words “Each member * * * who” are substituted for the words “When a member * * * such member”. The words “is determined to have” are omitted as surplusage.

§ 1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions

(a) In the case of a member described in subsection (b) who would be covered by section 1201, 1202, or 1203 of this title but for the fact that the member’s disability is determined to have been incurred before the member became entitled to basic pay in the member’s current period of active duty, the disability shall be deemed to have been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty.

(b) A member described in subsection (a) is a member with at least eight years of active service.

(Added Pub. L. 106-65, div. A, title VI, § 653(a)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 89-718, §8, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, §§501(16), 511(42), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 99-661, div. A, title XIII, §1343(a)(6), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-26, §7(j)(3), Apr. 21, 1987, 101 Stat. 283; Pub. L. 104-106, div. A, title XV, §1501(c)(13), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1208(a)	37:282 (less clauses (2) and (3), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, §412 (less clause (3), less applicability to persons referred to in §411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208(b)	37:282 (clause (2), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words “shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater” are substituted for the words “shall be interpreted to mean”.

In subsection (a)(1), the words “he is considered to have” are substituted for the words “such member, former member, or person has or is deemed to have pursuant to law”.

In subsection (a)(2)(A), the words “his active service” are substituted for the words “while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in—other provisions of law” because of the definitions of “active service” and “active duty” in sections 101(24) and 101(22) of this title.

In subsection (a)(2)(C), the references to 10:22-23, 24-26, and 30-36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The

reference to 32:70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10:23a is omitted as executed. The references to 10:38 and 32:66 and 172-175 are omitted as covered by the words “active service”. The references to 32:144-147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37:282, is inserted, since section 92 of the National Defense Act, as amended (32:62) is referred to in section 412 of the Career Compensation Act of 1949 (37:282).

In subsection (b), the words “any other member” are substituted for the words “members of the reserve components”, since the words “reserve components” are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)) to include members appointed, enlisted, or inducted without component.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “section 12733” for “section 1333”.

1987—Subsec. (a). Pub. L. 100-26 substituted “paragraph (1)” and “paragraph (2)” for “clause (1)” and “clause (2)”, respectively, in introductory provisions, and “paragraph (2)” for “clause 2(B) of this subsection” in second sentence.

1986—Subsec. (a)(2)(A). Pub. L. 99-661 struck out “after February 2, 1901” after “a reserve nurse”.

1980—Subsec. (a). Pub. L. 96-513 substituted “separation, discharge, or retirement for length of service” for “separation or mandatory elimination from the active list” in par. (1), substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration” in par. (2)(B), and, in provisions following par. (2)(C), substituted “as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and” for “as a member of the Environmental Science Services Administration includes service as a member”.

1966—Subsec. (a). Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey” in clause (2)(B) and inserted provision that, for purposes of clause (2)(B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, 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 1980 AMENDMENT

Amendment by section 501(16) of Pub. L. 96-513 effective Sept. 15, 1981, and amendment by section 511(42) of Pub. L. 96-513 effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Act Aug. 10, 1956, ch. 1041, §39, 70A Stat. 635, provided that: “In addition to service with which he may be

credited under section 1208(a)(2) of title 10, United States Code [subsec. (a)(2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

- “(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;
- “(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;
- “(3) an Army field clerk; and
- “(4) a field clerk, Army Quartermaster Corps.”

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a)(2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 12732 of this title, and who would be qualified for retirement under this chapter but for the fact that his 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, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 12735 of this title and, if otherwise eligible, to receive retired pay under section 12739 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 101-189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104-106, div. A, title XV, §1501(c)(14), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1209	37:272(g).	Oct. 12, 1949, ch. 681, §402(g), 63 Stat. 820.

The words “Notwithstanding the foregoing provisions of this section”, “satisfactory Federal”, and “and receiving disability severance pay” are omitted as surplusage. The words “at the time of the determination” are substituted for the word “current”. The word “otherwise” is substituted for the words “in all other respects”.

AMENDMENTS

1996—Pub. L. 104-106 substituted “section 12732” for “section 1332”, “section 12735” for “section 1335”, and “section 12739” for “chapter 71”.

1989—Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, 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.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine

whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member’s name was placed on that list. If, at the time of that determination, the physical disability for which the member’s name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member’s physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member’s physical disability is of a permanent nature and stable and 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 if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member’s physical 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 if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—