

Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled "An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War" (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled "An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty" (55 Stat. 733) [former section 456a of this title].

§ 1216a. Determinations of disability: requirements and limitations on determinations

(a) UTILIZATION OF VA SCHEDULE FOR RATING DISABILITIES IN DETERMINATIONS OF DISABILITY.—(1) In making a determination of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned—

(A) shall, to the extent feasible, utilize the schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of the schedule by the United States Court of Appeals for Veterans Claims; and

(B) except as provided in paragraph (2), may not deviate from the schedule or any such interpretation of the schedule.

(2) In making a determination described in paragraph (1), the Secretary concerned may utilize in lieu of the schedule described in that paragraph such criteria as the Secretary of Defense and the Secretary of Veterans Affairs may jointly prescribe for purposes of this subsection if the utilization of such criteria will result in a determination of a greater percentage of disability than would be otherwise determined through the utilization of the schedule.

(b) CONSIDERATION OF ALL MEDICAL CONDITIONS.—In making a determination of the rating of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned shall take into account all medical conditions, whether individually or collectively, that render the member unfit to perform the duties of the member's office, grade, rank, or rating.

(Added Pub. L. 110-181, div. A, title XVI, §1642(a), Jan. 28, 2008, 122 Stat. 465.)

§ 1217. Academy cadets and midshipmen: applicability of chapter

(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy, but only with respect to physical disabilities incurred after October 28, 2004.

(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and

severance and separation pay to which entitlement is established under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 85-861, §33(a)(7), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 108-375, div. A, title V, §555(b)(1), Oct. 28, 2004, 118 Stat. 1914; Pub. L. 109-364, div. A, title X, §1071(a)(6), Oct. 17, 2006, 120 Stat. 2398.)

HISTORICAL AND REVISION NOTES
1956 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 1217 | [No source]. | [No source]. |

The revised section is inserted to reflect the limited definition of the word "member" in section 102(b) of the Career Compensation Act of 1949 (37 U.S.C. 231(b)).

1958 ACT

Aviation cadets were omitted from chapter 61 because Title IV of the Career Compensation Act of 1949 (formerly 37 U.S.C. 271 et seq.), which was the source law for this chapter, covered only members entitled to basic pay and it was believed that aviation cadets were not so entitled. However, the Comptroller General has ruled that aviation cadets are entitled to basic pay (30 Comp. Gen. 431). Accordingly, aviation cadets were covered by Title IV and should not be excepted from chapter 61.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-364 substituted "October 28, 2004" for "the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005".

2004—Pub. L. 108-375 amended section catchline and text generally. Prior to amendment, text read as follows: "This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy."

1958—Pub. L. 85-861 struck out provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary