

be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 87-649, §6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 96-513, title I, §109(b)(2), Dec. 12, 1980, 94 Stat. 2870; Pub. L. 102-190, div. A, title XI, §1131(5), Dec. 5, 1991, 105 Stat. 1506.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1166(a) .....	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§2(d) (as applicable to §15), 14(e) (as applicable to §15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b) .....	10:600(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words "he shall be separated" are substituted for the words "his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated" and "his appointment shall be terminated". The words "at least three" are substituted for the words "more than three" for clarity.

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to be retired or separated under this section" are substituted for the words "retirement \* \* \* would otherwise be required". The words "determination of his" are inserted for clarity. The words "which is required", "possible", "proper", and "a period of" are omitted as surplusage.

#### REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-190 substituted "section 576" for "section 560".

1980—Subsec. (a). Pub. L. 96-513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87-649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

#### § 1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added Pub. L. 104-106, div. A, title V, §563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 104-201, div. A, title X, §1074(a)(6), Sept. 23, 1996, 110 Stat. 2659.)

#### PRIOR PROVISIONS

A prior section 1167, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87-509, §4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87-649, §6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers, prior to repeal by Pub. L. 96-513, title I, §109(b)(3), title VII, §701, Dec. 12, 1980, 94 Stat. 2870, 2955, effective Sept. 15, 1981.

#### AMENDMENTS

1996—Pub. L. 104-201 substituted "member has served" for "person has served".

#### § 1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

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

(Added Pub. L. 87-651, title I, §106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101-189, div.

A, title XVI, § 1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

#### HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

#### AMENDMENTS

1989—Subsec. (b). Pub. L. 101-189 substituted “facility of the Department of Veterans Affairs” for “Veterans’ Administration facility”.

#### MODIFICATION OF CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214)

Pub. L. 110-181, div. A, title V, § 596, Jan. 28, 2008, 122 Stat. 139, provided that: “The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall modify the Certificate of Release or Discharge from Active Duty (DD Form 214) in order to permit a member of the Armed Forces, upon discharge or release from active duty in the Armed Forces, to elect that the DD-214 issued with regard to the member be forwarded to the following:

- “(1) The Central Office of the Department of Veterans Affairs in the District of Columbia.
- “(2) The appropriate office of the Department of Veterans Affairs for the State or other locality in which the member will first reside after such discharge or release.”

#### § 1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

- (1) as prescribed by the Secretary concerned;
- (2) by sentence of a general or special court martial; or
- (3) as otherwise provided by law.

(Added Pub. L. 90-235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

#### § 1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member’s enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

- (1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and
- (2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90-235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

#### § 1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within one year before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90-235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757; amended Pub. L. 112-81, div. A, title V, § 525, Dec. 31, 2011, 125 Stat. 1401.)

#### AMENDMENTS

2011—Pub. L. 112-81 substituted “within one year” for “within three months”.

#### EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

#### § 1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90-235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

#### § 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93-64, title I, § 102, July 9, 1973, 87 Stat. 147.)

#### EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93-64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

#### § 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not en-