

the case may be, having jurisdiction over the armed force from which he is separated” are substituted for the words “the Secretary concerned” for clarity.

In clause (2)(C), the words “regular or reserve” are inserted, since they are the only “permanent” grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words “and a part of a year that is less than six months is disregarded” are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words “for himself or his dependents” are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-181, §1646(a)(1), substituted “the member’s years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c))” for “his years of service, but not more than 12, computed under section 1208 of this title”.

Subsec. (c). Pub. L. 110-181, §1646(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-181, §1646(b), designated existing provisions as par. (1), struck out “However, no deduction may be made from any death compensation to which his dependents become entitled after his death.” at end, and added pars. (2) and (3).

Pub. L. 110-181, §1646(a)(2), redesignated subsec. (c) as (d).

2002—Subsec. (a)(2)(B). Pub. L. 107-296 substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

2001—Subsec. (a)(2)(C), (D). Pub. L. 107-107 struck out “for promotion” after “physical examination”.

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

1980—Subsec. (a). Pub. L. 96-513 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XVI, §1646(d), formerly §1646(c), Jan. 28, 2008, 122 Stat. 472, renumbered §1646(d) by Pub. L. 110-389, title I, §103(a)(1), Oct. 10, 2008, 122 Stat. 4148, provided that: “The amendments made by this section [amending this section and section 1161 of Title 38, Veterans’ Benefits] shall take effect on the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to members of the Armed Forces separated from the Armed Forces under chapter 61 of title 10, United States Code, on or after that date.”

[Amendment by Pub. L. 110-389, §103(a)(1), redesignating section 1646(c) as 1646(d) of Pub. L. 110-181, set out above, effective Jan. 28, 2008, as if included in the Wounded Warrior Act, title XVI of Pub. L. 110-181, to which such amendment relates, see section 103(b) of Pub. L. 110-389, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 38, Veterans’ Benefits.]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §593(b), Dec. 28, 2001, 115 Stat. 1126, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to members separated under section 1203 or 1206 of title 10, United States Code, on or after date of the enactment of this Act [Dec. 28, 2001].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, §511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1213 .....	37:280.	Oct. 12, 1949, ch. 681, §410, 63 Stat. 823.

The words “a person who has received disability severance pay” are substituted for the words “Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay”. The words “any payment \* \* \* for” are substituted for the words “for any monetary obligation provided under any provision \* \* \* on account of”. The words “this section does not prohibit” are substituted for the words “shall not operate to bar”. The words “the payment of money to \* \* \* if the money was due him” are substituted for the words “from receiving or the service concerned from paying any moneys due and payable”. The words “valid”, “processed”, and “pursuant to any provisions of law” are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96-513 substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration”.

1966—Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) 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.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1214 .....	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, §413 (less 1st 17 words), 63 Stat. 825.

The words “including regulations” are omitted as covered by section 1216(a) of this title.

**§ 1214a. Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation**

(a) DISPOSITION.—Except as provided in subsection (c), the Secretary of the military department concerned may not authorize the involuntary administrative separation of a member described in subsection (b), or deny reenlistment of the member, based on a determination that the member is unsuitable for deployment or worldwide assignment based on the same medical condition of the member considered by a Physical Evaluation Board during the evaluation of the member.

(b) COVERED MEMBERS.—A member covered by subsection (a) is any member of the armed forces who has been determined by a Physical Evaluation Board pursuant to a physical evaluation by the board to be fit for duty.

(c) REEVALUATION.—(1) The Secretary of the military department concerned may direct the Physical Evaluation Board to reevaluate any member described in subsection (b) if the Secretary has reason to believe that a medical condition of the member considered by the Physical Evaluation Board during the evaluation of the member described in that subsection renders the member unsuitable for continued military service based on the medical condition.

(2) A member determined pursuant to reevaluation under paragraph (1) to be unfit to perform the duties of the member’s office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

(3) The Secretary of Defense shall be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation or denial of reenlistment based on a determination that the member is unsuitable for continued service due to the same medical condition of the member considered by a Physical Evaluation Board that found the member fit for duty.

(Added Pub. L. 111-383, div. A, title V, §534(a)(1), Jan. 7, 2011, 124 Stat. 4216; amended Pub. L. 112-81, div. A, title V, §527(a)–(c)(1), Dec. 31, 2011, 125 Stat. 1401, 1402.)

## AMENDMENTS

2011—Pub. L. 112-81, §527(c)(1), substituted “Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation” for “Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation” in section catchline.

Subsec. (a). Pub. L. 112-81, §527(a), inserted “, or deny reenlistment of the member,” after “a member described in subsection (b)”.

Subsec. (c)(3). Pub. L. 112-81, §527(b), inserted “or denial of reenlistment” after “to warrant administrative separation”.

## EFFECTIVE DATE

Pub. L. 111-383, div. A, title V, §534(b), Jan. 7, 2011, 124 Stat. 4217, provided that: “The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to members evaluated for fitness for duty by Physical Evaluation Boards on or after that date.”

**§ 1215. Members other than Regulars: applicability of laws**

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1215 .....	37:272(i).	Oct. 12, 1949, ch. 681, §402(i), 63 Stat. 820.

The words “is retired, or to whom retired pay is granted” are substituted for the words “heretofore or hereafter retired or granted retirement pay”. The words “any other member of the armed forces” are substituted for the words “all 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.

**§ 1216. Secretaries: powers, functions, and duties**

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or