

## TRAINING OF MEMBERS OF BOARDS

Pub. L. 114-328, div. A, title V, § 534(c), Dec. 23, 2016, 130 Stat. 2122, as amended by Pub. L. 115-91, div. A, title V, § 523(a), Dec. 12, 2017, 131 Stat. 1381, provided that:

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], each Secretary concerned shall develop and implement a comprehensive training curriculum for members of boards for the correction of military records under the jurisdiction of such Secretary in the duties of such boards under section 1552 of title 10, United States Code. The curriculum shall address all areas of administrative law applicable to the duties of such boards. This curriculum shall also address the proper handling of claims in which a sex-related offense is alleged to have contributed to the original characterization of the discharge or release of the claimant, including guidelines for the consideration of evidence substantiating such allegations in accordance with the requirements of section 1554b(b) of title 10, United States Code, as added by section 522 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115-91].

“(2) UNIFORM CURRICULA.—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the curricula developed and implemented pursuant to this subsection are, to the extent practicable, uniform.

“(3) TRAINING.—

“(A) IN GENERAL.—Each member of a board for the correction of military records shall undergo retraining (consistent with the curriculum developed and implemented pursuant to this subsection) regarding the duties of boards for the correction of military records under section 1552 of title 10, United States Code, at least once every five years during the member’s tenure on the board.

“(B) CURRENT MEMBERS.—Each member of a board for the correction of military records as of the date of the implementation of the curriculum required by paragraph (1) (in this paragraph referred to as the ‘curriculum implementation date’) shall undergo training described in subparagraph (A) not later than 90 days after the curriculum implementation date.

“(C) NEW MEMBERS.—Each individual who becomes a member of a board for the correction of military records after the curriculum implementation date shall undergo training described in subparagraph (A) by not later than 90 days after the date on which such individual becomes a member of the board.

“(4) REPORTS.—Not later than 18 months after the date of the enactment of this Act [Dec. 23, 2016], each Secretary concerned shall submit to Congress a report setting forth the following:

“(A) A description and assessment of the progress made by such Secretary in implementing training requirements for members of boards for the correction of military records under the jurisdiction of such Secretary.

“(B) A detailed description of the training curriculum required of such Secretary by paragraph (1).

“(C) A description and assessment of any impediments to the implementation of training requirements for members of boards for the correction of military records under the jurisdiction of such Secretary.

“(5) SECRETARY CONCERNED DEFINED.—In this subsection, the term ‘Secretary concerned’ means a ‘Secretary concerned’ as that term is used in section 1552 of title 10, United States Code.”

## BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101-225, title II, § 212, Dec. 12, 1989, 103 Stat. 1914, provided that: “Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

“(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete appli-

cation for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

“(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.”

## § 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(d)(1) In the case of a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury as a consequence of that deployment, a board established under this section to review the former member’s discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable).

(2) In the case of a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale or as justification for priority consideration, the Secretary concerned shall expedite a final decision and shall accord such cases sufficient priority to achieve an expedited resolution. In determining the priority of cases, the Secretary concerned shall weigh the medical

and humanitarian circumstances of all cases and accord higher priority to cases not involving post-traumatic stress disorder or traumatic brain injury only when the individual cases are considered more compelling.

(3)(A) In addition to the requirements of paragraphs (1) and (2), in the case of a former member described in subparagraph (B), the Board shall—

(i) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the former member; and

(ii) review the case with liberal consideration to the former member that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the member's discharge or dismissal.

(B) A former member described in this subparagraph is a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(e) In the case of a former member of the armed forces (other than a former member covered by subsection (d)) who was diagnosed while serving in the armed forces as experiencing a mental health disorder, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders.

(f) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of motions or requests for review considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or part, to the original characterization of the discharge or dismissal of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or contingency operation, catalogued by each war or contingency operation.

(3) The number of discharges or dismissals corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or dismissal of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding

the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(Added Pub. L. 85-857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87-651, title I, §110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98-209, §11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101-189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111-84, div. A, title V, §512(b), Oct. 28, 2009, 123 Stat. 2281; Pub. L. 113-291, div. A, title V, §521(b), Dec. 19, 2014, 128 Stat. 3360; Pub. L. 114-328, div. A, title V, §§533(b), 535, Dec. 23, 2016, 130 Stat. 2121, 2123; Pub. L. 115-91, div. A, title V, §§520(b), 521(b), (c)(2), title X, §1081(a)(28), Dec. 12, 2017, 131 Stat. 1379, 1380, 1595.)

#### HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

#### REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, §1, 64 Stat. 107, which was classified to chapter 22 (§551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, the first section of which enacted this title.

#### AMENDMENTS

2017—Subsec. (d)(3)(A)(ii). Pub. L. 115-91, §520(b), substituted “discharge or dismissal or to the original characterization of the member's discharge or dismissal” for “discharge of a lesser characterization”.

Subsec. (f). Pub. L. 115-91, §1081(a)(28), substituted “calendar” for “calender” wherever appearing.

Subsec. (f)(2). Pub. L. 115-91, §521(c)(2), substituted “former member” for “claimant”.

Subsec. (f)(4). Pub. L. 115-91, §521(b), added par. (4).

2016—Subsec. (d)(3). Pub. L. 114-328, §535, added par. (3).

Subsec. (f). Pub. L. 114-328, §533(b), added subsec. (f).

2014—Subsec. (d)(1). Pub. L. 113-291, §521(b)(1), substituted “clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable)” for “physician, clinical psychologist, or psychiatrist” before period at end.

Subsec. (e). Pub. L. 113-291, §521(b)(2), added subsec. (e).

2009—Subsec. (d). Pub. L. 111-84 added subsec. (d).

1989—Subsecs. (a), (c). Pub. L. 101-189 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans' Affairs”.

1983—Subsec. (a). Pub. L. 98-209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

1962—Pub. L. 87-651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

## EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

## CONFIDENTIAL REVIEW OF CHARACTERIZATION OF TERMS OF DISCHARGE OF MEMBERS OF THE ARMED FORCES WHO ARE VICTIMS OF SEXUAL OFFENSES

Pub. L. 113-291, div. A, title V, §547, Dec. 19, 2014, 128 Stat. 3375, which related to review process for correction of military records, consideration of individual experiences in connection with offenses, and preservation of confidentiality, was repealed by Pub. L. 115-91, div. A, title V, §522(a)(3), Dec. 12, 2017, 131 Stat. 1380. See section 1554b of this title.

**§ 1554. Review of retirement or separation without pay for physical disability**

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of a member or former member of the uniformed services retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in the member's case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85-857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended Pub. L. 87-651, title I, §110(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 101-189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111-383, div. A, title V, §533(a), Jan. 7, 2011, 124 Stat. 4216.)

## HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

## AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383 substituted “a member or former member of the uniformed services” for “an officer” and “the member's case” for “his case”.

1989—Subsec. (c). Pub. L. 101-189 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans' Affairs”.

1962—Pub. L. 87-651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

## EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

## TRANSFER OF FUNCTIONS

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

**§ 1554a. Review of separation with disability rating of 20 percent disabled or less**

(a) IN GENERAL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense a board of review to review the disability determinations of covered individuals by Physical Evaluation Boards. The board shall be known as the “Physical Disability Board of Review”.

(2) The Physical Disability Board of Review shall consist of not less than three members appointed by the Secretary.

(b) COVERED INDIVIDUALS.—For purposes of this section, covered individuals are members and former members of the armed forces who, during the period beginning on September 11, 2001, and ending on December 31, 2009—

(1) are separated from the armed forces due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and

(2) are found to be not eligible for retirement.

(c) REVIEW.—(1) Upon the request of a covered individual, or a surviving spouse, next of kin, or legal representative of a covered individual, the Physical Disability Board of Review shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual. Subject to paragraph (3), upon its own motion, the Physical Disability Board of Review may review the findings and decisions of the Physical Evaluation Board with respect to a covered individual.

(2) The review by the Physical Disability Board of Review under paragraph (1) shall be based on the records of the armed force concerned and such other evidence as may be presented to the Physical Disability Board of Review. A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Secretary of Defense.

(3) If the Physical Disability Board of Review proposes to review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual, the Physical Disability Board of Review shall notify the covered individual, or a surviving spouse, next of kin, or legal representative of the covered individual, of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

(4) With respect to any review by the Physical Disability Board of Review of the findings and decisions of the Physical Evaluation Board with respect to a covered individual, whether initiated at the request of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual or initiated