

The words “his discharge is” are substituted for the words “said discharge shall \* \* \* be”. The words “the provisions of” are omitted as surplusage. The word “is” is substituted for the words “shall \* \* \* be”. The words “he is” are substituted for the words “they shall be”. The word “before” is substituted for the words “prior to”.

In subsection (c), the words “No \* \* \* may” are substituted for the words “Any \* \* \* shall not”. The word “later” is substituted for the word “subsequent”.

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.”

1986—Subsec. (d). Pub. L. 99-661 added subsec. (d).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title X, §1067, Oct. 23, 1992, 106 Stat. 2506, provided that: “The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99-661, set out as notes under section 802 of this title.

### § 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the

President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

#### HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
804(a) .....	50:554(a).	May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110.
804(b) .....	50:554(b).	
804(c) .....	50:554(c).	
804(d) .....	50:554(d).	

In subsection (a), the word “If” is substituted for the word “When”. The word “commissioned” is inserted before the word “officer”. The word “considered” is substituted for the word “held”.

In subsections (a) and (b), the words “Secretary concerned” are substituted for the words “Secretary of the Department”.

In subsection (c), the word “If” is substituted for the word “Where”. The words “the authority of” are omitted as surplusage. The words “grade and with such rank” are substituted for the words “rank and precedence”, since a person is appointed to a grade, not to a position of precedence, and the word “rank” is the accepted military word denoting the general idea of precedence. The words “the existence of a” are substituted for the word “position” for clarity. The word “receive” is omitted as surplusage.

In subsection (d), the word “If” is substituted for the word “When”. The words “he has no” are substituted for the words “there shall not be a”.

#### DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

### § 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

#### HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
805 .....	50:555.	May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110.

The word “applies” is substituted for the words “shall be applicable”.

### § 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant