

General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words “or upon a final determination under subsection (b)” are substituted for the words “or upon the determination of a period of five years from the date of temporary disability retirement”, in 37:272(e). The words “at the time of the determination” are substituted for the word “current”, in 37:272(e). The words “and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section” are omitted as covered by sections 1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word “permanently”, before the word “retired”, in 37:272(e).

In subsection (d), 37:272(f) (proviso) is omitted as surplusage.

In subsection (e), the words “and if he has less than 20 years of service computed under section 1208 of this title” are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37:272(e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words “at the time of determination” are substituted for the word “current”.

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words “members in his retired grade traveling in connection with temporary duty” are substituted for the words “the rank, grade, or rating in which retired for temporary duty travel performed”. The words “for travel performed” are omitted as surplusage.

AMENDMENTS

2016—Subsecs. (b), (h). Pub. L. 114-328 substituted “three years” for “five years”.

1989—Subsecs. (c) to (e). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration” wherever appearing.

1985—Subsecs. (b) to (d). Pub. L. 99-145, § 513(a)(2)(A), inserted “and stable” after “permanent nature”.

Subsec. (f). Pub. L. 99-145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted “or rating, the Secretary shall—” for “and rating, the Secretary shall treat him as provided in section 1211 of this title”, added subpars. (A) and (B), and added par. (2).

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title V, § 525(b), Dec. 23, 2016, 130 Stat. 2117, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2017, and shall apply to members of the Armed Forces whose names are placed on the temporary disability retired list on or after that date.”

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary

concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W-1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W-2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the

grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, an approved all-fully-qualified-officers list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Pub. L. 87-651, title I, §107(b), Sept. 7, 1962, 76 Stat. 508; Pub. L. 96-513, title V, §501(17), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99-145, title V, §513(a)(3), Nov. 8, 1985, 99 Stat. 627; Pub. L. 107-107, div. A, title V, §505(c)(4), Dec. 28, 2001, 115 Stat. 1088.)

HISTORICAL AND REVISION NOTES
1956 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 1211(a) | 37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)-(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a). | Oct. 12, 1949, ch. 681, §§405, 406, 407, 63 Stat. 821. |
| 1211(b) | 37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)-(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a). | |
| 1211(c) | 37:276(a)(1) (less 1st 22 words). 37:276(a)(2) (11th through 18th words). 37:276(a)(3) (9th and 10th words). 37:276(b). | |
| 1211(d) | 37:276(a)(1) (8th through 22d words). 37:276(a)(2) (less 1st 18 words). 37:276(a)(3) (less 1st 10 words). | |
| 1211(e) | 37:275(c) (2d sentence). 37:277 (less (a)). | |
| 1211(f) | 37:275(c) (last sentence). | |

In subsections (a) and (b), the words "under section 1210(f) of this title" are substituted for the words "If, as a result of a periodic physical examination", in 37:275(a) and (b), and 276(a), and the words "and who are subsequently found to be physically fit", in 37:277(a). The words "subject to the provisions of section 277 of this title", in 37:275(a), are omitted as surplusage.

In subsections (a)(2)-(6) and (b)(2)-(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37:277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37:275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a)(2) reference to the President, in 37:277(a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a)(5) is substituted for 37:275(b) (proviso) (as applicable to Army and Air Force).

Subsection (a)(6) is inserted, since the words "reserve component" are defined by section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b)(2), the words "by and with the advice and consent of the Senate" are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career

Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words “reserve component” are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words “rank” and “rating” are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2001—Subsec. (e). Pub. L. 107-107 inserted “an approved all-fully-qualified-officers list,” after “a promotion list.”

1985—Subsec. (c). Pub. L. 99-145 inserted “and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,” after “proposed under subsection (a) or (b),” and inserted “and the member shall be discharged” after “as soon as practicable”.

1980—Subsec. (a)(1). Pub. L. 96-513 substituted “active-duty list” for “active list of his regular component”.

1962—Subsec. (d). Pub. L. 87-651 substituted “subsection (b)(1) or (2)” for “subsection (b)(1), (2), or (3)” in cl. (1), and “subsection (b)(4)” for “subsection (b)(5)” in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) 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)), by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of

the military department or the Secretary of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c)(1) The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

(A) Six years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone (as designated by the Secretary of Defense for purposes of this subsection) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

(B) Three years in the case of any other member.

(2) The maximum years of service of a member for purposes of subsection (a)(1) shall be 19 years.

(d)(1) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs.

(2) No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

(3) No deduction may be made under paragraph (1) from any death compensation to which a member’s dependents become entitled after the member’s death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Pub. L. 96-513, title V, §511(43), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 101-189, div. A, title XVI,