

Defense shall, to the maximum extent practicable, use existing organizations, boards, processes, and personnel of the Department of Defense.

“(e) REPORTING.—

“(1) REPORT.—Not later than January 1, 2022, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding the process established under such section 1553a. The report shall include, with respect to considerations under such process since implementation, the following:

“(A) The number of requests considered.

“(B) The number of upgrades to the characterization of a discharge or dismissal granted pursuant to such process, including the most common reasons for such upgrades.

“(C) The number of upgrades to the characterization of a discharge or dismissal declined pursuant to such process, including the most common reasons for such declinations.

“(2) ONLINE PUBLICATION.—On October 1, 2022, and annually thereafter, the Secretary shall publish the information described in paragraph (1) with regards to the immediately preceding fiscal year on a website of the Department of Defense that is accessible by the public.”

#### § 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 by the Physical Disability Board of Review, 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 that, as a result of the request or consent, the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.

(d) AUTHORIZED RECOMMENDATIONS.—The Physical Disability Board of Review may, as a result of its findings under a review under subsection (c), recommend to the Secretary concerned the following (as applicable) with respect to a covered individual:

(1) No recharacterization of the separation of such individual or modification of the disability rating previously assigned such individual.

(2) The recharacterization of the separation of such individual to retirement for disability.

(3) The modification of the disability rating previously assigned such individual by the Physical Evaluation Board concerned, which modified disability rating may not be a reduction of the disability rating previously assigned such individual by that Physical Evaluation Board.

(4) The issuance of a new disability rating for such individual.

(e) CORRECTION OF MILITARY RECORDS.—(1) The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the Physical Disability Board of Review under subsection (d). Any such correction may be made effective as of the effective date of the action taken on the report of the Physical Evaluation Board to which such recommendation relates.

(2) In the case of a member previously separated pursuant to the findings and decision of a Physical Evaluation Board together with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such member would be entitled based on the member's military record as corrected shall be reduced to take into account receipt of such lump-sum or other payment in such manner as the Secretary of Defense considers appropriate.

(3) If the Physical Disability Board of Review makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.

(f) Regulations.—(1) This section shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(2) The regulations under paragraph (1) shall specify reasonable deadlines for the performance of reviews required by this section.

(3) The regulations under paragraph (1) shall specify the effect of a determination or pending determination of a Physical Evaluation Board on considerations by boards for correction of military records under section 1552 of this title.

(Added Pub. L. 110-181, div. A, title XVI, §1643(a)(1), Jan. 28, 2008, 122 Stat. 465.)

#### IMPLEMENTATION

Pub. L. 110-181, div. A, title XVI, §1643(b), Jan. 28, 2008, 122 Stat. 467, provided that: "The Secretary of Defense shall establish the board of review required by section 1554a of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by such section, not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008]."

#### § 1554b. Confidential review of characterization of terms of discharge of members of the armed forces who are victims of sex-related offenses

(a) CONFIDENTIAL REVIEW PROCESS THROUGH BOARDS FOR CORRECTION OF MILITARY RECORDS.—The Secretaries of the military departments shall each establish a confidential process, utilizing boards of the military department concerned established in accordance with this chapter, by which an individual who was the victim of a sex-related offense, or alleges that the individual was the victim of a sex-related offense, during service in the armed forces may challenge the terms or characterization of the discharge or separation of the individual from the armed forces on the grounds that the terms or characterization were adversely affected by the individual being the victim of a sex-related offense.

(b) CONSIDERATION OF INDIVIDUAL EXPERIENCES IN CONNECTION WITH OFFENSES.—In deciding whether to modify the terms or characterization of the discharge or separation from the armed forces of an individual described in subsection (a), the Secretary of the military department concerned shall instruct boards of the military department concerned established in accordance with this chapter—

(1) to give due consideration to the psychological and physical aspects of the individual's experience in connection with the sex-related offense; and

(2) to determine what bearing such experience may have had on the circumstances surrounding the individual's discharge or separation from the armed forces.

(c) PRESERVATION OF CONFIDENTIALITY.—Documents considered and decisions rendered pursuant to the process required by subsection (a) shall not be made available to the public, except with the consent of the individual concerned.

(d) SEX-RELATED OFFENSE DEFINED.—In this section, the term "sex-related offense" means any of the following:

(1) Rape or sexual assault under subsection (a) or (b) of section 920 of this title (article 120 of the Uniform Code of Military Justice).

(2) Forcible sodomy under section 925 of this title (article 125 of the Uniform Code of Military Justice).