

the records of cases of officers recommended by boards of inquiry for removal.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on active duty, his case is closed. However, at any time after one year from the date of the determination in a case arising under clause (1) of section 2158 of this title and at any time after the date of the determination in a case arising under clause (2) of that section, an officer may again be required to show cause for retention.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188, §323; amended Pub. L. 97-295, §2(10), Oct. 12, 1982, 96 Stat. 1302; renumbered §2160 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

AMENDMENTS

2018—Pub. L. 115-282, §112(b), renumbered section 323 of this title as this section.

Subsec. (c). Pub. L. 115-282, §123(b)(2), substituted “section 2158” for “section 321”.

1982—Subsec. (c). Pub. L. 97-295 inserted “of this title” after “section 321”.

§ 2161. Composition of boards

(a) A board convened under section 2158, 2159, or 2160 of this title shall consist of at least three officers of the grade of commander or above, all of whom are serving in a grade senior to the grade of any officer considered by the board.

(b) No person may be a member of more than one board convened under section 2158, 2159, or 2160 of this title to consider the same officer.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188, §324; renumbered §2161 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

AMENDMENTS

2018—Pub. L. 115-282, §123(b)(2), substituted “section 2158, 2159, or 2160” for “section 321, 322, or 323” in subsecs. (a) and (b).

Pub. L. 115-282, §112(b), renumbered section 324 of this title as this section.

§ 2162. Rights and procedures

Each officer under consideration for removal under section 2159 of this title shall be—

(1) notified in writing at least thirty days before the hearing of the case by a board of inquiry of the reasons for which the officer is being required to show cause for retention;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to the case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security. In any case where any

records are withheld under this clause, the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188, §325; renumbered §2162 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

AMENDMENTS

2018—Pub. L. 115-282, §123(b)(2), substituted “section 2159” for “section 322” in introductory provisions.

Pub. L. 115-282, §112(b), renumbered section 325 of this title as this section.

§ 2163. Removal of officer from active duty; action by Secretary

The Secretary may remove an officer from active duty if his removal is recommended by a board of review under section 2160 of this title. The Secretary’s action in such a case is final and conclusive.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189, §326; renumbered §2163 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

AMENDMENTS

2018—Pub. L. 115-282, §123(b)(2), substituted “section 2160” for “section 323”.

Pub. L. 115-282, §112(b), renumbered section 326 of this title as this section.

§ 2164. Officers considered for removal; retirement or discharge; separation benefits

(a) At any time during proceedings under section 2159 or 2160 of this title, and before the removal of an officer, the Secretary may grant a request—

(1) for voluntary retirement, if the officer is otherwise qualified therefor; or

(2) for discharge with separation benefits under section 2146(c) of this title.

(b) Each officer removed from active duty under section 2163 of this title shall—

(1) if on the date of removal the officer is eligible for voluntary retirement under any law, be retired in the grade for which he would be eligible if retired at his request; or

(2) if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged with separation benefits under section 2146(c) of this title, unless under regulations promulgated by the Secretary the condition under which the officer is discharged does not warrant an honorable discharge.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189, §327; amended Pub. L. 97-295, §2(10), Oct. 12, 1982, 96 Stat. 1302; Pub. L. 99-348, title II, §205(b)(6), July 1, 1986, 100 Stat. 700; Pub. L. 105-383, title II, §201(c), Nov. 13, 1998, 112 Stat. 3414; Pub. L. 107-295, title IV, §416(a)(5), Nov. 25, 2002, 116 Stat. 2122; renumbered §2164 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

AMENDMENTS

2018—Pub. L. 115-282, §112(b), renumbered section 327 of this title as this section.