

such leave at any time following the officer's receipt of the report of the board of inquiry, including the board's recommendation for removal from active duty, and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by the Secretary concerned on the officer's case is completed or may be terminated at any earlier time.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 105-261, div. A, title V, §503(b)(1), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106-398, §1 [[div. A], title X, §1087(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292; Pub. L. 107-314, div. A, title V, §506(a), Dec. 2, 2002, 116 Stat. 2534.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-314 designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (c). Pub. L. 106-398 made technical correction to directory language of Pub. L. 105-261, §503(b)(1). See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105-261, §503(b)(1), as amended by Pub. L. 106-398, substituted "recommend to the Secretary concerned that the officer not be retained on active duty" for "send the record of its proceedings to a board of review convened under section 1183 of this title".

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(2)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, as enacted.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as

an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 1183. Repealed. Pub. L. 105-261, div. A, title V, § 503(a), Oct. 17, 1998, 112 Stat. 2003]

Section, added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2873, related to convening and determinations of boards of review.

§ 1184. Removal of officer: action by Secretary upon recommendation of board of inquiry

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of inquiry convened under section 1182 of this title.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 105-261, div. A, title V, §503(b)(2), (c)(1), Oct. 17, 1998, 112 Stat. 2003.)

AMENDMENTS

1998—Pub. L. 105-261 substituted "inquiry" for "review" in section catchline and "board of inquiry convened under section 1182 of this title" for "board of review convened under section 1183 of this title" in text.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2874.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.