

military records under the jurisdiction of such Secretary.

“(5) SECRETARY CONCERNED DEFINED.—In this subsection, the term ‘Secretary concerned’ means a ‘Secretary concerned’ as that term is used in section 1552 of title 10, United States Code.”

BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101-225, title II, §212, Dec. 12, 1989, 103 Stat. 1914, provided that: “Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

“(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

“(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.”

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of not fewer than three members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b)(1) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(2) If a board established under this section does not grant a request for an upgrade to the characterization of a discharge or dismissal, that declination may be considered under section 1552 or section 1553a of this title, as applicable.

(c) A review by a board established under this section shall be based on 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.

(d)(1)(A) In the case of a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or

psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury as a consequence of that deployment, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable).

(B) In the case of a former member described in paragraph (3)(B) who claims that the former member's post-traumatic stress disorder or traumatic brain injury as described in that paragraph is based in whole or in part on sexual trauma, intimate partner violence, or spousal abuse, a board established under this section to review the former member's discharge or dismissal shall seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with post-traumatic stress disorder or traumatic brain injury or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(2) In the case of a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale or as justification for priority consideration, the Secretary concerned shall expedite a final decision and shall accord such cases sufficient priority to achieve an expedited resolution. In determining the priority of cases, the Secretary concerned shall weigh the medical and humanitarian circumstances of all cases and accord higher priority to cases not involving post-traumatic stress disorder or traumatic brain injury only when the individual cases are considered more compelling.

(3)(A) In addition to the requirements of paragraphs (1) and (2), in the case of a former member described in subparagraph (B), the Board shall—

(i) review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the former member; and

(ii) review the case with liberal consideration to the former member that post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the member's discharge or dismissal.

(B) A former member described in this subparagraph is a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale, or as justification for priority consideration, whose post-traumatic stress disorder or traumatic brain injury is related to combat or military sexual trauma, as determined by the Secretary concerned.

(e) In the case of a former member of the armed forces (other than a former member covered by subsection (d)) who was diagnosed while

serving in the armed forces as experiencing a mental health disorder, a board established under this section to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders.

(f) Each board established under this section shall make available to the public each calendar quarter, on an Internet website of the military department concerned or the Department of Homeland Security, as applicable, that is available to the public the following:

(1) The number of motions or requests for review considered by such board during the calendar quarter preceding the calendar quarter in which such information is made available, including cases in which a mental health condition of the former member, including post-traumatic stress disorder or traumatic brain injury, is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or dismissal of the former member.

(2) The number of claims submitted during the calendar quarter preceding the calendar quarter in which such information is made available that relate to service by a former member during a war or contingency operation, catalogued by each war or contingency operation.

(3) The number of discharges or dismissals corrected pursuant to the consideration described in paragraph (1) to upgrade the characterization of discharge or dismissal of former members.

(4) The number and disposition of claims decided during the calendar quarter preceding the calendar quarter in which such information is made available in which sexual assault is alleged to have contributed, whether in whole or in part, to the original characterization of the discharge or release of the former member.

(Added Pub. L. 85-857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87-651, title I, §110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98-209, §11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101-189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111-84, div. A, title V, §512(b), Oct. 28, 2009, 123 Stat. 2281; Pub. L. 113-291, div. A, title V, §521(b), Dec. 19, 2014, 128 Stat. 3360; Pub. L. 114-328, div. A, title V, §§533(b), 535, Dec. 23, 2016, 130 Stat. 2121, 2123; Pub. L. 115-91, div. A, title V, §§520(b), 521(b), (c)(2), title X, §1081(a)(28), Dec. 12, 2017, 131 Stat. 1379, 1380, 1595; Pub. L. 116-92, div. A, title V, §§521(b), 522, 523(b)(2)(B), Dec. 20, 2019, 133 Stat. 1353, 1354; Pub. L. 116-283, div. A, title X, §1081(a)(28), Jan. 1, 2021, 134 Stat. 3872.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, §1, 64 Stat. 107, which was classified to chapter 22 (§551 et seq.) of Title 50, War and National

Defense, and was repealed and reenacted as chapter 47 (§801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

2021—Subsec. (d)(1)(B). Pub. L. 116-283 substituted “is based” for “in based”.

2019—Subsec. (a). Pub. L. 116-92, §522, substituted “not fewer than three” for “five”.

Subsec. (b). Pub. L. 116-92, §523(b)(2)(B), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(1). Pub. L. 116-92, §521(b), designated existing provisions as subpar. (A) and added subpar. (B).

2017—Subsec. (d)(3)(A)(ii). Pub. L. 115-91, §520(b), substituted “discharge or dismissal or to the original characterization of the member's discharge or dismissal” for “discharge of a lesser characterization”.

Subsec. (f). Pub. L. 115-91, §1081(a)(28), substituted “calendar” for “calender” wherever appearing.

Subsec. (f)(2). Pub. L. 115-91, §521(c)(2), substituted “former member” for “claimant”.

Subsec. (f)(4). Pub. L. 115-91, §521(b), added par. (4).

2016—Subsec. (d)(3). Pub. L. 114-328, §535, added par. (3).

Subsec. (f). Pub. L. 114-328, §533(b), added subsec. (f).

2014—Subsec. (d)(1). Pub. L. 113-291, §521(b)(1), substituted “clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post traumatic stress disorder or traumatic brain injury (as applicable)” for “physician, clinical psychologist, or psychiatrist” before period at end.

Subsec. (e). Pub. L. 113-291, §521(b)(2), added subsec. (e).

2009—Subsec. (d). Pub. L. 111-84 added subsec. (d).

1989—Subsecs. (a), (c). Pub. L. 101-189 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans' Affairs”.

1983—Subsec. (a). Pub. L. 98-209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

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.

DISCHARGE REVIEW BOARDS

Pub. L. 116-92, div. A, title V, §525(b), Dec. 20, 2019, 133 Stat. 1356, provided that:

“(1) IN GENERAL.—Each Secretary concerned shall develop and provide training for members of discharge review boards under section 1553 of title 10, United States Code, that are under the jurisdiction of such Secretary on each of the following:

“(A) Sexual trauma.

“(B) Intimate partner violence.

“(C) Spousal abuse.

“(D) The various responses of individuals to trauma.

“(2) UNIFORMITY OF TRAINING.—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the training developed and provided pursuant to this subsection is, to the extent practicable, uniform.

“(3) SECRETARY CONCERNED DEFINED.—In this subsection, the term ‘Secretary concerned’ has the mean-

ing given that term in section 101(a)(9) of title 10, United States Code.”

CONFIDENTIAL REVIEW OF CHARACTERIZATION OF TERMS OF DISCHARGE OF MEMBERS OF THE ARMED FORCES WHO ARE VICTIMS OF SEXUAL OFFENSES

Pub. L. 113–291, div. A, title V, § 547, Dec. 19, 2014, 128 Stat. 3375, which related to review process for correction of military records, consideration of individual experiences in connection with offenses, and preservation of confidentiality, was repealed by Pub. L. 115–91, div. A, title V, § 522(a)(3), Dec. 12, 2017, 131 Stat. 1380. See section 1554b of this title.

§ 1553a. Review of a request for upgrade of discharge or dismissal

(a) **ESTABLISHMENT.**—The Secretary of Defense shall establish a process by which to conduct a final review of a request for an upgrade in the characterization of a discharge or dismissal.

(b) **CONSIDERATION; RECOMMENDATION.**—(1) Upon the request of a petitioner, the Secretary of Defense shall review the findings and decisions of the boards established under sections 1552 and 1553 of this title regarding the final review of a request for an upgrade in the characterization of a discharge or dismissal.

(2) The Secretary of Defense may recommend that the Secretary of the military department concerned upgrade the characterization of the discharge or dismissal of the petitioner if the Secretary of Defense determines that such recommendation is appropriate after review under paragraph (1).

(c) **DEFINITIONS.**—In this section:

(1) The term “final review of a request for an upgrade in the characterization of a discharge or dismissal” means a request by a petitioner for an upgrade to the characterization of a discharge or dismissal—

(A) that was not granted under sections 1552 and 1553 of this title; and

(B) regarding which the Secretary of Defense determines the petitioner has exhausted all remedies available to the petitioner under sections 1552 and 1553 of this title.

(2) The term “petitioner” means a member or former member of the armed forces (or if the member or former member is dead, the surviving spouse, next of kin, or legal representative of the member or former member) whose request for an upgrade to the characterization of a discharge or dismissal was not granted under sections 1552 and 1553 of this title.

(Added Pub. L. 116–92, div. A, title V, § 523(a), Dec. 20, 2019, 133 Stat. 1354.)

IMPLEMENTATION AND REPORTING

Pub. L. 116–92, div. A, title V, § 523(c)–(e), Dec. 20, 2019, 133 Stat. 1355, provided that:

“(c) **DEADLINE.**—The Secretary of Defense shall implement section 1553a of such title [title 10, United States Code], as added by subsection (a), not later than January 1, 2021.

“(d) **RESOURCES.**—In establishing and implementing the process under such section 1553a, the Secretary of 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”.