

HISTORICAL AND REVISION NOTES

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

Editorial Notes

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 of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.)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.

Statutory Notes and Related Subsidiaries

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 meaning 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.)

Statutory Notes and Related Subsidiaries

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

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Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Executive Documents

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.