

Public Law 95-126
95th Congress

An Act

Oct. 8, 1977

[S. 1307]

To deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

Veterans'
benefits.
Entitlement,
denial to certain
veterans with
upgraded
discharges.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 3103 of title 38, United States Code, is amended by—

(1) inserting "or on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable unless such person demonstrates to the satisfaction of the Administrator that there are compelling circumstances to warrant such prolonged unauthorized absence," after "deserter," in subsection (a), and by inserting a comma and "notwithstanding any action subsequent to the date of such discharge by a board established pursuant to section 1553 of title 10" before the period at the end of such subsection; and

(2) adding at the end of such section the following new subsection:

Review.

"(e) (1) Notwithstanding any other provision of law, (A) no benefits under laws administered by the Veterans' Administration shall be provided, as a result of a change in or new issuance of a discharge under section 1553 of title 10, except upon a case-by-case review by the board of review concerned, subject to review by the Secretary concerned, under such section, of all the evidence and factors in each case under published uniform standards (which shall be historically consistent with criteria for determining honorable service and shall not include any criterion for automatically granting or denying such change or issuance) and procedures generally applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions; and (B) any such person shall be afforded an opportunity to apply for such review under such section 1553 for a period of time terminating not less than one year after the date on which such uniform standards and procedures are promulgated and published.

10 USC 1553.

Application.

"(2) Notwithstanding any other provision of law—

Benefits
entitlement,
limitation.
Review.

"(A) no person discharged or released from active military, naval, or air service under other than honorable conditions who has been awarded a general or honorable discharge under revised standards for the review of discharges, (i) as implemented by the President's directive of January 19, 1977, initiating further action with respect to the President's Proclamation 4313 of September 16, 1974, (ii) as implemented on or after April 5, 1977, under the Department of Defense's special discharge review program, or (iii) as implemented subsequent to April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than

50 USC app.
462 note.

honorable conditions, shall be entitled to benefits under laws administered by the Veterans' Administration except upon a determination, based on a case-by-case review, under standards (meeting the requirements of paragraph (1) of this subsection) applied by the board of review concerned under section 1553 of title 10, subject to review by the Secretary concerned, that such person would be awarded an upgraded discharge under such standards; and

10 USC 1553.

“(B) such determination shall be made by such board (i) on an expedited basis after notification by the Veterans' Administration to the Secretary concerned that such person has received, is in receipt of, or has applied for such benefits or after a written request is made by such person or such determination, (ii) on its own initiative within one year after the date of enactment of this paragraph in any case where a general or honorable discharge has been awarded on or prior to the date of enactment of this paragraph under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph, or (iii) on its own initiative at the time a general or honorable discharge is so awarded in any case where a general or honorable discharge is awarded after such enactment date.

Expedited determination.

If such board makes a preliminary determination that such person would not have been awarded an upgraded discharge under standards meeting the requirements of paragraph (1) of this subsection, such person shall be entitled to an appearance before the board, as provided for in section 1553(c) of title 10, prior to a final determination on such question and shall be given written notice by the board of such preliminary determination and of his or her right to such appearance. The Administrator shall, as soon as administratively feasible, notify the appropriate board of review of the receipt of benefits under laws administered by the Veterans' Administration, or of the application for such benefits, by any person awarded an upgraded discharge under revised standards referred to in clause (A) (i), (ii), or (iii) of this paragraph with respect to whom a favorable determination has not been made under this paragraph.”

Appearance before board. Notice.

Board of review, notification.

(b)(1) The Secretary of Defense shall fully inform each person awarded a general or honorable discharge under revised standards for the review of discharges referred to in section 3103(e)(2)(A) (i), (ii), or (iii) of title 38, United States Code, as added by subsection (a)(2) of this section, of his or her right to obtain an expedited determination under section 3103(e)(2)(B)(i) of such title and of the implications of the provisions of this Act for each such person.

Information, notification. 38 USC 3103 note.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall inform each person who applies to a board of review under section 1553 of title 10, United States Code, and who appears to have been discharged under circumstances which might constitute a bar to benefits under section 3103(a) of title 38, United States Code, (A) that such person might possibly be administratively found to be entitled to benefits under laws administered by the Veterans' Administration only through the action of a board for the correction of military records under section 1552 of such title 10 or the action of the Administrator of Veterans' Affairs under section 3103 of such title 38, and (B) of the procedures for making application to such section 1552 board for such purpose and to the Administrator of Veterans' Affairs for such purpose (including the right to proceed concurrently under such sections 3103, 1552, and 1553).

SEC. 2. Notwithstanding any other provision of law, the Administrator of Veterans' Affairs shall provide the type of health care and

Health care and benefits. 38 USC 3103 note.

38 USC 601
et seq.

38 USC 3103.

"Discharge
or release."

38 USC
3103 note.

Effective dates.
38 USC 3103
note.

related benefits authorized to be provided under chapter 17 of title 38, United States Code, for any disability incurred or aggravated during active military, naval, or air service in line of duty by a person other than a person barred from receiving benefits by section 3103(a) of such title, but shall not provide such health care and related benefits pursuant to this section for any disability incurred or aggravated during a period of service from which such person was discharged by reason of a bad conduct discharge.

SEC. 3. Paragraph (18) of section 101 of title 38, United States Code, is amended to read as follows:

"(18) The term 'discharge or release' includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable."

SEC. 4. In promulgating, or making any revisions of or amendments to, regulations governing the standards and procedures by which the Veterans' Administration determines whether a person was discharged or released from active military, naval, or air service under conditions other than dishonorable, the Administrator of Veterans' Affairs shall, in keeping with the spirit and intent of this Act, not promulgate any such regulations or revise or amend any such regulations for the purpose of, or having the effect of, (1) providing any unique or special advantage to veterans awarded general or honorable discharges under revised standards for the review of discharges described in section 3103(e)(2)(A)(i), (ii), or (iii) of title 38, United States Code, as added by section 1(a)(2) of this Act, or (2) otherwise making any special distinction between such veterans and other veterans.

SEC. 5. This Act shall become effective on the date of its enactment, except that—

(1) section 2 shall become effective on October 1, 1977, or on such enactment date, whichever is later; and

(2) the amendments made by section 1(a) shall apply retroactively to deny benefits under laws administered by the Veterans' Administration, except that, notwithstanding any other provision of law—

(A) with respect to any person who, on such enactment date is receiving benefits under laws administered by the Veterans' Administration, (i) such benefits shall not be terminated under paragraph (2) of section 3103(e) of title 38, United States Code, as added by section 1(a)(2) of this Act, until (I) the day on which a final determination not favorable to the person concerned is made on an expedited basis under paragraph (2) of such section 3103(e), (II) the day following the expiration of ninety days after a preliminary determination not favorable to such person is made under such paragraph, or (III) the day following the expiration of one hundred and eighty days after such enactment date, whichever day is the earliest, and (ii) the United States shall not make any claim to recover the value of any benefits provided to such person prior to such earliest day;

(B) with respect to any person awarded a general or honorable discharge under revised standards for the review of discharges referred to in clause (A)(i), (ii), or (iii) of such

paragraph who has been provided any such benefits prior to such enactment date, the United States shall not make any claim to recover the value of any benefits so provided; and

(C) the amendments made by clause (1) of section 1(a) shall apply (i) retroactively only to persons awarded general or honorable discharges under such revised standards and to persons who, prior to the date of enactment of this Act, had not attained general eligibility for such benefits by virtue of (I) a change in or new issuance of a discharge under section 1553 of title 10, United States Code, or (II) any other provision of law, and (ii) prospectively (on and after such enactment date) to all other persons.

Approved October 8, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-580 accompanying H.R. 8698 (Comm. on Veterans' Affairs).

SENATE REPORT No. 95-305 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Sept. 8, considered and passed Senate.

Sept. 12, considered and passed House, amended, in lieu of H.R. 8698.

Sept. 22, Senate agreed to House amendments with an amendment.

Sept. 23, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, VOL. 13, NO. 42:

Oct. 8, Presidential statement.