

when making the separation determination. The Secretary of the military department shall review the case to determine whether the retention recommendation of the board is clearly contrary to the substantial weight of the evidence in the record and whether the officer's conduct discredits the Service, adversely affects good order and discipline, and adversely affects the officer's performance of duty.

(C) Exercise of authority to separate an officer under this section shall be reserved for unusual cases where such action is essential to the interests of justice, discipline, and proper administration of the service.

(2) Authority to direct administrative separation after a board of inquiry's recommendation to retain an officer may only be delegated to a civilian official within a military department appointed by the President, by and with the advice and consent of the Senate. The least favorable characterization in such cases will be general (under honorable conditions).

(3) 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.

(4)(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; Pub. L. 118-159, div. A, title V, § 508, Dec. 23, 2024, 138 Stat. 1871.)

Editorial Notes

AMENDMENTS

2024—Subsec. (d)(1). Pub. L. 118-159, § 508(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "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."

Subsec. (d)(2) to (4). Pub. L. 118-159, § 508(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

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".

Statutory Notes and Related Subsidiaries

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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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;