

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;

(3) subject to subsection (c), 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.

(c) The Secretary concerned may determine that, in exceptional circumstances, the appearance of an officer before the proceedings of a board of inquiry may be via means other than in person.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 118-159, div. A, title V, §509(a), Dec. 23, 2024, 138 Stat. 1872.)

Editorial Notes

AMENDMENTS

2024—Subsec. (a)(3). Pub. L. 118-159, §509(a)(1), substituted “subject to subsection (c), shall be” for “shall be”.

Subsec. (c). Pub. L. 118-159, §509(a)(2), added subsec. (c).

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.

§ 1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 101-510, div. A, title V, §501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

Editorial Notes

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-510 substituted “section 1174(a)(2)” for “section 1174(b)”.

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.

§ 1187. Officers eligible to serve on boards

(a) IN GENERAL.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) RETIRED OFFICERS.—If qualified officers are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 106-65, div. A, title V, §504(a), Oct. 5, 1999, 113 Stat. 590; Pub. L. 110-417, [div. A], title V, §505, Oct. 14, 2008, 122 Stat. 4434.)