privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1215	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words ''is retired, or to whom retired pay is granted'' are substituted for the words ''heretofore or hereafter retired or granted retirement pay''. The words ''any other member of the armed forces'' are substituted for the words ''all members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 94–225, § 2(a), Mar. 4, 1976, 90 Stat. 202; Pub. L. 96–513, title V, § 511(45), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–525, title XIV, § 1405(25), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(7), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 104–106, div. A, title IX, § 903(f)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1216(a)	37:283 (1st 17 words).	Oct. 12, 1949, ch. 681, §§ 413 (1st 17 words), 414, 63 Stat. 824, 825.
1216(b)	37:284(a).	
1216(c)	37:284 (less (a)).	

In subsection (b), the words ''of any member for reappointment, reenlistment'' are inserted for clarity, since they are implied in the words ''reentry into active service''.

In subsections (b) and (c), the words ''under this chapter'' are inserted for clarity.

In subsection (c), the words ''as prescribed by the President'' are substituted for the words ''under regulations promulgated by the President''.

Editorial Notes

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106, § 903(a), (f)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'', was repealed by Pub. L. 104–201.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (d). Pub. L. 99–661 substituted ''who is a general officer or flag officer or is a medical officer'' for ''who is in pay grade O–7 or higher or is a Medical Corps officer or medical officer of the Air Force'' in provisions preceding par. (1).

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (d)'' in provisions preceding par. (1).

1980—Subsec. (d). Pub. L. 96–513 substituted ''Affairs'' for ''and Environment''.

1976—Subsec. (b). Pub. L. 94–225, § 2(a)(1), substituted ''Except as provided in subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsec. (d). Pub. L. 94–225, § 2(a)(2), added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–225, § 2(b), Mar. 4, 1976, 90 Stat. 202, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act [Mar. 4, 1976] by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.''

APPLICABILITY OF SUBSECTION (d)

Subsec. (d) of this section inapplicable with respect to flag officers of the Coast Guard during any period in which the Coast Guard is not operating as a service in the Navy, see section 2157 of Title 14, Coast Guard.

Executive Documents

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND REEXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F.R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Ex. Ord. No. 11733, July 30, 1973, 38 F.R. 20431 provided:

By virtue of and pursuant to the authority vested in me by section 414(b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

SECTION 1. The terms ''uniformed services'' and ''Secretary'' as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101(3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

SEC. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

SEC. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

SEC. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided*, that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

SEC. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided*, that all the duties, powers, and functions incident to hospitalization for such members or former members who elect to receive hospitalization in uniformed services facilities shall, subject to the availability of space and facilities and the capabilities of the medical and dental staff, be vested in the Secretary concerned: *And provided further*, that for the purpose of this order, the term ''chronic disease'' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey), Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

SEC. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey) under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled ''An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War'' (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled ''An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty'' (55 Stat. 733) [former section 456a of this title].

§ 1216a. Determinations of disability: requirements and limitations on determinations

(a) UTILIZATION OF VA SCHEDULE FOR RATING DISABILITIES IN DETERMINATIONS OF DISABILITY.—(1) In making a determination of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned—

(A) shall, to the extent feasible, utilize the schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of the schedule by the United States Court of Appeals for Veterans Claims; and

(B) except as provided in paragraph (2), may not deviate from the schedule or any such interpretation of the schedule.

(2) In making a determination described in paragraph (1), the Secretary concerned may utilize in lieu of the schedule described in that paragraph such criteria as the Secretary of Defense and the Secretary of Veterans Affairs may jointly prescribe for purposes of this subsection if the utilization of such criteria will result in a determination of a greater percentage of dis-