

amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 8374. Treatment of fractions of years of service in computing retired pay and separation pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and separation pay on discharge under this chapter, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 415, §6404; Pub. L. 96-513, title V, §503(50), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 98-94, title IX, §923(c)(4), Sept. 24, 1983, 97 Stat. 643; renumbered §8374, Pub. L. 115-232, div. A, title VIII, §807(b)(16), Aug. 13, 2018, 132 Stat. 1836.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6404	34 U.S.C. 410c(a) (1st proviso).	Feb. 21, 1946, ch. 34, §7 (a) (1st proviso), 60 Stat. 27; Aug. 7, 1947, ch. 512, §432(a), 61 Stat. 881.
	34 U.S.C. 410j(g) (1st proviso).	Aug. 7, 1947, ch. 512, §312(g) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410d (1st proviso).	Feb. 21, 1946, ch. 34, §9 (1st proviso), 60 Stat. 28; Aug. 7, 1947, ch. 512, §432(b), 61 Stat. 881.
	34 U.S.C. 410j(h) (1st proviso).	Aug. 7, 1947, ch. 512, §312(h) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410r(h).	June 12, 1948, ch. 449, §207(h), 62 Stat. 366.
	34 U.S.C. 410r(j) (proviso).	June 12, 1948, ch. 449, §207(j) (proviso), 62 Stat. 366.
	34 U.S.C. 43g(g).	Apr. 16, 1947, ch. 38, §207(h), 61 Stat. 50; redesignated (g), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882; May 16, 1950, ch. 186, §3(j), 64 Stat. 162.
	34 U.S.C. 625h(a).	June 12, 1948, ch. 449, §213(a), 62 Stat. 369.

The words “and a part of a year that is less than six months is disregarded” are added for clarity. The legislative history of the Career Compensation Act of 1949, which contains a provision identical to those codified in this section, indicates that all of these provisions are construed as requiring a fractional year of less than six months to be disregarded (hearing before the Committee on Armed Services of the Senate on H.R. 5007, 81st Cong., 1st sess., p. 313, July 6, 1949).

Editorial Notes

PRIOR PROVISIONS

A prior section 8374, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528, provided that promotion of reserve commissioned officers be effective upon Federal recognition in next higher grade of Air National Guard, prior to repeal by Pub. L. 103-337, div. A, title XVI, §1629(c)(1), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996. See section 14308(f) of this title.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 6404 of this title as this section.

1983—Pub. L. 98-94 substituted “each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded” for “a part of a year that is six

months or more is counted as a whole year and a part of a year that is less than six months is disregarded”.

1980—Pub. L. 96-513 substituted “separation pay” for “severance pay” in section catchline and substituted “separation pay” for “lump-sum payments” in text.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 8375. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal

(a) No officer who holds the grade of warrant officer, W-1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W-1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416, §6408; renumbered §8375, Pub. L. 115-232, div. A, title VIII, §807(b)(16), Aug. 13, 2018, 132 Stat. 1836.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6408	50 U.S.C. 739 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps).	May 5, 1950, ch. 169, §10 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps), 64 Stat. 146.

This section reflects the opinion of the Judge Advocate General of the Navy (JAG:I:2:ERS:cmr, dtd. 13 April 1954) that 50 U.S.C. 739 applies to warrant officers (now warrant officers, W-1), of the Navy and the Marine Corps. The Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of the former warrant officer (as distinguished from commissioned warrant officer) grades. 50 U.S.C. 739, as applicable to officers above the grade of warrant officer, W-1, is codified in §1161 of this title.

In subsection (a) the words “by sentence of a general court-martial, or in commutation thereof” are omitted since the separation from the service of a warrant officer, W-1, by sentence of court-martial is effected by dishonorable discharge.

In subsection (b) the words “from his place of duty” are omitted as surplusage. The words “at least” are substituted for the words “or more”. The words “by a

court other than a court-martial or other military court” are substituted for the words “by the civil authorities”.

Editorial Notes

PRIOR PROVISIONS

Prior sections 8375 to 8378 were repealed by Pub. L. 103-337, div. A, title XVI, §1629(c)(1), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

Section 8375, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528; amended Pub. L. 86-559, §1(59), June 30, 1960, 74 Stat. 277; Pub. L. 96-513, title V, §514(3), Dec. 12, 1980, 94 Stat. 2935, related to transfer or discharge of officers promoted to reserve grade of brigadier general or major general ceasing to occupy those positions. See section 14314(a), (c) of this title.

Section 8376, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528; amended Pub. L. 86-559, §1(60), June 30, 1960, 74 Stat. 277, related to promotion of commissioned officers of Air Force Reserve or Air National Guard of United States to higher reserve grades after temporary appointments. See section 14301 et seq. of this title.

Section 8377, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1529; amended Pub. L. 86-559, §1(61), June 30, 1960, 74 Stat. 277, related to effect of removal of reserve commissioned officer from recommended promotion list by President. See section 14301 et seq. of this title.

Section 8378, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

A prior section 8379, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530, provided that appointing commissioned officers of Air National Guard was function of governors, prior to repeal by Pub. L. 103-337, div. A, title XVI, §1636(c), Oct. 5, 1994, 108 Stat. 2968, effective Feb. 10, 1996.

Prior sections 8380 and 8381 were repealed by Pub. L. 103-337, div. A, title XVI, §1629(c)(1), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996.

Section 8380, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530; amended Pub. L. 86-559, §1(62), June 30, 1960, 74 Stat. 277; Pub. L. 98-94, title X, §1015(b)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99-145, title V, §521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100-180, div. A, title V, §502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, §503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102-484, div. A, title V, §519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103-160, div. A, title V, §514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104-106, div. A, title V, §511(b), title XV, §1501(c)(31), Feb. 10, 1996, 110 Stat. 298, 500, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 8381, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1531; amended Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer, discharge, or withdrawal of Federal recognition of reserve officers ceasing to occupy position of adjutant general or assistant adjutant general. See section 14314(b), (c) of this title.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 6408 of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

CHAPTER 845—RECALL TO ACTIVE DUTY

Sec.
8383. Retired members: grade.

Sec.
8384. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.
8385. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.
8386. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 845, consisting of sections 8571 to 8583, related to rank and command within the Air Force, prior to renumbering as chapter 925 of this title.

AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §807(e)(2)(A), (f)(1), Aug. 13, 2018, 132 Stat. 1837, 1838, redesignated chapter 575 of this title as this chapter and items 6483 to 6486 as 8383 to 8386, respectively.

1984—Pub. L. 98-525, title V, §533(f)(2), Oct. 19, 1984, 98 Stat. 2528, struck out item 6482 “Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.”

1980—Pub. L. 96-513, title V, §503(51), Dec. 12, 1980, 94 Stat. 2915, struck out items 6481 “Retired officers of the Regular Navy and Regular Marine Corps: authority to recall”, 6487 “Retired rear admirals: retired pay after two years of active duty”, and 6488 “Wartime appointments or promotions: retention of grade upon release from active duty”.

§ 8383. Retired members: grade

An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417, §6483; Pub. L. 85-422, §6(5), May 20, 1958, 72 Stat. 129; Pub. L. 88-132, §5(m), Oct. 2, 1963, 77 Stat. 215; Pub. L. 90-623, §2(10), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96-513, title III, §363, Dec. 12, 1980, 94 Stat. 2903; renumbered §8383, Pub. L. 115-232, div. A, title VIII, §807(b)(17), Aug. 13, 2018, 132 Stat. 1836.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6483	34 U.S.C. 410n (1st proviso).	Aug. 7, 1947, ch. 512, §412(a) (1st proviso), 61 Stat. 874; Oct. 12, 1949, ch. 681, §522(a), 63 Stat. 835.
	50 U.S.C. 1052(c) (2d sentence).	July 9, 1952, ch. 608, §413(c) (2d sentence), 66 Stat. 500.

Subsection (a) states the general rule that a retired officer, when recalled to active duty, shall be recalled in the grade he holds on the retired list. The rule is derived, not from a specific provision of law, but from the fact that special legislative authority is required to recall a retired officer in any other grade.

The desirability of including a positive statement of the rule is pointed up by the legislative history of the Act of February 21, 1946, ch. 34, §8(a), 60 Stat. 28, amending the Act of July 24, 1941, ch. 320, §10(d), 55 Stat. 605 (34 U.S.C. 350i(d)). The 1946 amendment states the rule, but only as to a limited class of retired personnel, namely persons temporarily appointed or pro-