

Pub. L. 102-40, § 402(d)(1), substituted "7102(a)(2)(A)(ii)" for "4002(a)(2)(A)(ii)".

Subsec. (d)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (d)(3)(B). Pub. L. 102-40, § 402(d)(1), substituted "7103(d)" for "4003(d)".

1988—Subsec. (a). Pub. L. 100-687, § 202(b), inserted "and" after "Vice Chairman," substituted "necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have" for "necessary, and", and inserted provisions which required that Board have sufficient personnel to conduct hearings and consider and dispose of appeals.

Subsec. (b). Pub. L. 100-687, § 201(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Members of the Board (including the Chairman and Vice Chairman) shall be appointed by the Administrator with the approval of the President."

Subsec. (d). Pub. L. 100-687, § 208, added subsec. (d).

Subsec. (e). Pub. L. 100-687, § 209, added subsec. (e).

1984—Subsec. (a). Pub. L. 98-223, § 208(a), (c), substituted "65" for "fifty" and struck out "associate" before "members".

Subsec. (c). Pub. L. 98-223, § 208(b), added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 201(a) of Pub. L. 100-687 effective Feb. 1, 1989, amendment by section 202(b) of Pub. L. 100-687 effective Jan. 1, 1989, and amendment by sections 208 and 209 of Pub. L. 100-687 effective Nov. 18, 1988, see section 401(b)-(d) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

ONE-TIME REPORTING REQUIREMENTS

Pub. L. 116-137, § 2(c)(2), Apr. 10, 2020, 134 Stat. 617, provided that: "The first report required to be submitted under section 7101(d) of title 38, United States Code, shall include the following information with respect to hearings scheduled under subparagraph (C) of paragraph (2) of subsection (c) of section 7101 [probably should be "7107"] of such title, as added by subsection (a):

"(A) An outline of the outreach the Secretary of Veterans Affairs plans to conduct to inform veterans, families of veterans, survivors of veterans, veterans service organizations, military service organizations, congressional caseworkers, advocates for veterans, and such other stakeholders as the Secretary considers appropriate about hearings scheduled under such subparagraph, including—

"(i) a description of the resources required to conduct such outreach;

"(ii) a timeline for conducting such outreach; and

"(iii) information related to the advantages and potential technological challenges of conducting hearings under such subparagraph.

"(B) A description of any modifications to the information technology systems of the Veterans Benefits Administration and the Board of Veterans' Appeals required to carry out hearings under such subparagraph, including cost estimates and a timeline for making such modifications.

"(C) A detailed description of the intra-agency partnership between the Board of Veterans' Appeals and the telehealth program of the Veterans Health Administration as the Board conducts hearings under such subparagraph, including best practices, a risk assessment overview, risk mitigation efforts, and a

plan for ongoing collaboration and information sharing."

BOARD OF VETERANS' APPEALS

Pub. L. 100-687, div. A, title II, § 201(c), (d), Nov. 18, 1988, 102 Stat. 4109, 4110, provided that:

"(c) TRANSITION TO NEW BOARD.—(1) Appointments of members of the Board of Veterans' Appeals under subsection (b)(2) of section 4001 [now 7101] of title 38, United States Code (as amended by subsection (a)), may not be made until a Chairman is appointed under subsection (b)(1) of that section.

"(2) An individual who is serving as a member of the Board on the date of the enactment of this Act [Nov. 18, 1988] may continue to serve as a member until the earlier of—

"(A) the date on which the individual's successor (as designated by the Administrator) is appointed under subsection (b)(2) of that section, or

"(B) the end of the 180-day period beginning on the day after the date on which the Chairman is appointed under subsection (b)(1) of such section.

"(d) INITIAL TERMS OF OFFICE.—Notwithstanding the second sentence of section 4001(b)(2) [now 7101(b)(2)] of title 38, United States Code (as amended by subsection (a)), specifying the term for which members of the Board of Veterans' Appeals shall be appointed, of the members first appointed under that section—

"(A) 22 shall be appointed for a term of three years;

"(B) 22 shall be appointed for a term of six years;

and

"(C) 22 shall be appointed for a term of nine years, as determined by the Administrator [now Secretary] at the time of the initial appointments."

§ 7101A. Members of Board: appointment; pay; performance review

(a)(1) The members of the Board of Veterans' Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

(2) Each member of the Board shall be a member in good standing of the bar of a State.

(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

(c)(1)(A) The Chairman shall establish a panel to review the performance of members of the Board. The panel shall be comprised of the Chairman and two other members of the Board (other than the Vice Chairman). The Chairman shall periodically rotate membership on the panel so as to ensure that each member of the Board (other than the Vice Chairman) serves as a member of the panel for and within a reasonable period.

(B) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the performance review panel shall determine, with respect to each member of the Board (other than the Chairman or a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

(2) If the determination of the performance review panel in any case is that the member's job

performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the Chairman shall recertify the member's appointment as a member of the Board.

(3) If the determination of the performance review panel in any case is that the member's job performance does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall, based upon the individual circumstances, either—

(A) grant the member a conditional recertification; or

(B) recommend to the Secretary that the member be noncertified.

(4) In the case of a member of the Board who is granted a conditional recertification under paragraph (3)(A) or (5)(A), the performance review panel shall review the member's job performance record and make a further determination under paragraph (1) concerning that member not later than one year after the date of the conditional recertification. If the determination of the performance review panel at that time is that the member's job performance as a member of the Board still does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall recommend to the Secretary that the member be noncertified.

(5) In a case in which the Chairman recommends to the Secretary under paragraph (3) or (4) that a member be noncertified, the Secretary, after considering the recommendation of the Chairman, may either—

(A) grant the member a conditional recertification; or

(B) determine that the member should be noncertified.

(d)(1) If the Secretary, based upon the recommendation of the Chairman, determines that a member of the Board should be noncertified, that member's appointment as a member of the Board shall be terminated and that member shall be removed from the Board.

(2)(A) Upon removal from the Board under paragraph (1) of a member of the Board who before appointment to the Board served as an attorney in the civil service, the Secretary shall appoint that member to an attorney position at the Board, if the removed member so requests. If the removed member served in an attorney position at the Board immediately before appointment to the Board, appointment to an attorney position under this paragraph shall be in the grade and step held by the removed member immediately before such appointment to the Board.

(B) The Secretary is not required to make an appointment to an attorney position under this paragraph if the Secretary determines that the member of the Board removed under paragraph (1) is not qualified for the position.

(e)(1) A member of the Board (other than the Chairman or a member of the Senior Executive Service) may be removed as a member of the Board by reason of job performance only as provided in subsections (c) and (d). Such a member may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than the Chairman or a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.

(Added Pub. L. 103-446, title II, §201(a)(1), Nov. 2, 1994, 108 Stat. 4655; amended Pub. L. 105-368, title X, §1002, Nov. 11, 1998, 112 Stat. 3363.)

Editorial Notes

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368, §1002(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2). Pub. L. 105-368, §1002(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon removal from the Board under paragraph (1), a member of the Board (other than the Chairman) who was a career or career-conditional employee in the civil service before commencement of service as a member of the Board shall revert to the civil service grade and series held by the member immediately before the appointment of the member to the Board."

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 103-446, title II, §201(c), Nov. 2, 1994, 108 Stat. 4657, provided that: "Section 7101A(b) of title 38, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning after December 31, 1994."

SAVE PAY PROVISION

Pub. L. 103-446, title II, §201(b), Nov. 2, 1994, 108 Stat. 4656, provided that: "The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act [Nov. 2, 1994] may not be reduced by reason of the amendments made by this section [enacting this section and amending section 7101 of this title] to a rate below the rate payable to such individual on the day before such date."

DEADLINE FOR ESTABLISHMENT OF PERFORMANCE EVALUATION CRITERIA FOR BOARD MEMBERS

Pub. L. 103-446, title II, §202, Nov. 2, 1994, 108 Stat. 4657, provided that:

"(a) DEADLINE.—The job performance standards required to be established by section 7101A(f) of title 38, United States Code, as added by section 201(a), shall be established not later than 90 days after the date of the enactment of this Act [Nov. 2, 1994].

"(b) SUBMISSION TO CONGRESSIONAL COMMITTEES.—Not later than the date on which the standards referred to

in subsection (a) take effect, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report describing the standards established by the Chairman of the Board of Veterans' Appeals."

§ 7102. Assignment of members of Board

(a) A proceeding instituted before the Board may be assigned to an individual member of the Board or to a panel of not less than three members of the Board. A member or panel assigned a proceeding shall make a determination thereon, including any motion filed in connection therewith. The member or panel, as the case may be, shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the final disposition of the proceeding by the member or panel.

(b) A proceeding may not be assigned to the Chairman as an individual member. The Chairman may participate in a proceeding assigned to a panel or in a reconsideration assigned to a panel of members.

(c)(1) The Secretary shall ensure that there is offered to each member of the Board an annual training on military sexual trauma and proceedings that concern a claim for compensation based on military sexual trauma experienced by a veteran.

(2) A proceeding that concerns a claim specified in paragraph (1) may not be assigned to an individual member of the Board or to a panel of members unless the individual member, or each member of the panel, as the case may be, has completed the annual training most recently offered to that member pursuant to such paragraph.

(3) In this subsection, the term "military sexual trauma" has the meaning given that term in section 1166(c) of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1241, § 4002; Pub. L. 98-223, title II, § 208(c), (d), Mar. 2, 1984, 98 Stat. 44; renumbered § 7102 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 103-271, § 6(a), July 1, 1994, 108 Stat. 741; Pub. L. 117-300, § 1(a), Dec. 27, 2022, 136 Stat. 4379.)

Editorial Notes

AMENDMENTS

2022—Subsec. (c). Pub. L. 117-300 added subsec. (c).

1994—Pub. L. 103-271 amended section generally, substituting present provisions for provisions authorizing Chairman to divide Board into sections of three members and to assign proceedings thereto, and provisions relating to assignment where section is composed of fewer than three members, limiting annual period of service, prohibiting more than one member to be a temporary or acting member, and relating to hearing docket and report of determination.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4002 of this title as this section.

Subsec. (a)(2)(A)(ii). Pub. L. 102-83 substituted "Department" for "Veterans' Administration".

Subsec. (a)(3). Pub. L. 102-40, § 402(d)(1), substituted "7101(c)" for "4001(c)".

1984—Subsec. (a)(1). Pub. L. 98-223, § 208(d)(1), designated provision authorizing the Chairman from time to time to divide the Board into sections of three members, assign members to the Board thereto, and designated the chief thereof, as par. (1).

Subsec. (a)(2). Pub. L. 98-223, § 208(d)(2), designated provision relating to authority of the Chairman in the case where a section is composed of fewer than three members as a result of absence, vacancy, or inability of a member to serve as subpar. (A), and in subpar. (A) as so designated, inserted provision authorizing the Chairman to designate an employee of the Veterans' Administration to serve as an acting member of the Board on such section for a period of not to exceed 90 days, and added subpar. (B).

Subsec. (a)(3). Pub. L. 98-223, § 208(d)(2), added par. (3).

Subsec. (b). Pub. L. 98-223, § 208(d)(3), designated provision relating to the maintenance of a hearing docket and the holding of formal recorded hearings upon which a final determination will be made as subsec. (b).

Pub. L. 98-223, § 208(c), struck out "associate" before "member" in two places.

Subsec. (c). Pub. L. 98-223, § 208(d)(4), designated provision relating to the section making a determination on any proceeding or motion in connection therewith assigned to the section by the Board and making a report on such determination, which report constitutes its final disposition of the proceeding, as subsec. (c).

Statutory Notes and Related Subsidiaries

FIRST TRAINING

Pub. L. 117-300, § 1(b), Dec. 27, 2022, 136 Stat. 4379, provided that: "The Secretary of Veterans Affairs shall ensure that each member of the Board of Veterans' Appeals is offered the first annual training under section 7102(c) of title 38, United States Code, as amended by subsection (a), by not later than 180 days after the date of the enactment of this Act [Dec. 27, 2022]."

APPLICABILITY OF LIMITATION UNDER SUBSECTION (c)(2)

Pub. L. 117-300, § 1(c), Dec. 27, 2022, 136 Stat. 4379, provided that: "The limitation under section 7102(c)(2) of title 38, United States Code, as added by subsection (a), shall apply with respect to the assignment of proceedings on or after the date that is 180 days after the date of the enactment of this Act [Dec. 27, 2022]."

§ 7103. Reconsideration; correction of obvious errors

(a) The decision of the Board determining a matter under section 7102 of this title is final unless the Chairman orders reconsideration of the decision in accordance with subsection (b). Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) Upon the order of the Chairman for reconsideration of the decision in a case, the case shall be referred—

(A) in the case of a matter originally decided by a single member of the Board, to a panel of not less than three members of the Board; or

(B) in the case of a matter originally decided by a panel of members of the Board, to an enlarged panel of the Board.

(2) A panel referred to in paragraph (1) may not include the member, or any member of the panel, that made the decision subject to reconsideration.

(3) A panel reconsidering a case under this subsection shall render its decision after reviewing the entire record before the Board. The decision of the panel shall be made by a majority vote of the members of the panel. The decision of the panel shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.