

judge customarily lives shall be considered the recall-eligible retired judge's official duty station.

(c) RESIDENCES.—(1) Except as provided in paragraph (2), after appointment and while in active service, each judge of the Court of Appeals for Veterans Claims shall reside within 50 miles of the Washington, D.C., metropolitan area.

(2) Paragraph (1) shall not apply to recall-eligible retired judges of the Court of Appeals for Veterans Claims.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4055; renumbered §7255, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 108-454, title VIII, §801, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 112-260, title III, §302(a)(1), Jan. 10, 2013, 126 Stat. 2425.)

Editorial Notes

AMENDMENTS

2013—Pub. L. 112-260, which directed the general amendment of section 7255 without specifying the Code title to be amended, was executed by amending this section generally, to reflect the probable intent of Congress. Prior to amendment, text read as follows: "The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States."

2004—Pub. L. 108-454 substituted "Washington, D.C., metropolitan area" for "District of Columbia".

1998—Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40 renumbered section 4055 of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-260, title III, §302(c)(1), Jan. 10, 2013, 126 Stat. 2425, provided that: "Subsection (c) of section 7255 [probably means 38 U.S.C. 7255(c)], as added by subsection (a), and the amendment made by subsection (b) [amending section 7253 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 10, 2013]."

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.

FACILITIES FOR COURT OF APPEALS FOR VETERANS CLAIMS

Pub. L. 101-94, title II, §201, Aug. 16, 1989, 103 Stat. 626, as amended by Pub. L. 105-368, title V, §512(c), Nov. 11, 1998, 112 Stat. 3342, provided that:

"(a) SPACE IN THE DISTRICT OF COLUMBIA.—The Administrator of General Services shall provide suitable building space in the District of Columbia for the United States Court of Appeals for Veterans Claims as the Court's principal place of business. The Administrator shall, if necessary, arrange for temporary space for the Court if permanent space is not immediately available for the Court. The Administrator shall place a high priority on the provision of such temporary and permanent space for the Court.

"(b) APPROVAL BY COURT.—Any space to be provided for the Court of Appeals for Veterans Claims under subsection (a) must be acceptable to the Court.

"(c) ADDITIONAL REQUIREMENT.—Any building space provided to the Court under subsection (a) shall be adjacent to additional building space (in an amount acceptable to the Court) that can be made available to the Court in the future if needed for expansion of the facilities of the Court."

Pub. L. 100-687, div. A, title III, §303, Nov. 18, 1988, 102 Stat. 4121, provided for the initial location of the principal office of the Court of Veterans Appeals.

§ 7256. Times and places of sessions

The times and places of sessions of the Court of Appeals for Veterans Claims shall be prescribed by the chief judge.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4056; renumbered §7256, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40 renumbered section 4056 of this title as this section.

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.

§ 7257. Recall of retired judges

(a)(1) A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be recalled for such service, a retired judge must at the time of the judge's retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. Such a notice provided by a retired judge to whom section 7296(c)(1)(B) of this title applies is irrevocable.

(2) For the purposes of this section—

(A) a retired judge is a judge of the Court of Appeals for Veterans Claims who retires from the Court under section 7296 of this title or under chapter 83 or 84 of title 5; and

(B) a recall-eligible retired judge is a retired judge who has provided a notice under paragraph (1).

(b)(1) The chief judge may recall for further service on the Court a recall-eligible retired judge in accordance with this section. Such a recall shall be made upon written certification by the chief judge that substantial service is expected to be performed by the retired judge for such period, not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.

(2) A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge's consent.

(3) If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the status of a recall-eligible judge. This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.

(4) A recall-eligible retired judge who becomes permanently disabled and as a result of that disability is unable to perform further service on the Court shall be removed from the status of a recall-eligible judge. Determination of such a disability shall be made pursuant to section 7253(g) or 7296(g) of this title.

(c) A retired judge who is recalled under this section may exercise all of the judicial powers and duties of the office of a judge in active service.

(d)(1) The pay of a recall-eligible retired judge to whom section 7296(c)(1)(B) of this title applies is the pay specified in that section.

(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 or to whom section 7296(c)(1)(A) of this title applies shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5 or the judge's annuity under section 7296(c)(1)(A) of this title, whichever is applicable.

(e)(1) Except as provided in subsection (d), a judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be considered to be a reemployed annuitant under that chapter.

(2) Nothing in this section affects the right of a judge who retired under chapter 83 or 84 of title 5 to serve as a reemployed annuitant in accordance with the provisions of title 5.

(Added Pub. L. 106-117, title X, §1021(a), Nov. 30, 1999, 113 Stat. 1590; amended Pub. L. 110-389, title VI, §603(a), (b)(3)-(c), Oct. 10, 2008, 122 Stat. 4177, 4178.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-389, §603(b)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: "Such a notice provided by a retired judge is irrevocable."

Subsec. (b)(2). Pub. L. 110-389, §603(a), struck out "or for more than a total of 180 days (or the equivalent) during any calendar year" before period at end.

Subsec. (b)(3). Pub. L. 110-389, §603(c), inserted at end "This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section."

Subsec. (d). Pub. L. 110-389, §603(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(d)(1) The pay of a recall-eligible retired judge who retired under section 7296 of this title is specified in subsection (c) of that section.

"(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5."

SUBCHAPTER II—PROCEDURE

§ 7261. Scope of review

(a) In any action brought under this chapter, the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact adverse to the claimant made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary's application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4115, §4061; amended Pub. L. 101-237, title VI, §602(c), Dec. 18, 1989, 103 Stat.