

tion in a case arising under clause (1) of section 321 of this title and at any time after the date of the determination in a case arising under clause (2) of that section, an officer may again be required to show cause for retention.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188; amended Pub. L. 97-295, §2(10), Oct. 12, 1982, 96 Stat. 1302.)

AMENDMENTS

1982—Subsec. (c). Pub. L. 97-295 inserted “of this title” after “section 321”.

§ 324. Composition of boards

(a) A board convened under section 321, 322, or 323 of this title shall consist of at least three officers of the grade of commander or above, all of whom are serving in a grade senior to the grade of any officer considered by the board.

(b) No person may be a member of more than one board convened under section 321, 322, or 323 of this title to consider the same officer.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188.)

§ 325. Rights and procedures

Each officer under consideration for removal under section 322 of this title shall be—

(1) notified in writing at least thirty days before the hearing of the case by a board of inquiry of the reasons for which the officer is being required to show cause for retention;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to the case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security. In any case where any records are withheld under this clause, the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 188.)

§ 326. Removal of officer from active duty; action by Secretary

The Secretary may remove an officer from active duty if his removal is recommended by a board of review under section 323 of this title. The Secretary's action in such a case is final and conclusive.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189.)

§ 327. Officers considered for removal; retirement or discharge; separation benefits

(a) At any time during proceedings under section 322 or 323 of this title, and before the removal of an officer, the Secretary may grant a request—

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

(2) for discharge with separation benefits under section 286(c) of this title.

(b) Each officer removed from active duty under section 326 of this title shall—

(1) if on the date of removal the officer is eligible for voluntary retirement under any law, be retired in the grade for which he would be eligible if retired at his request; or

(2) if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged with separation benefits under section 286(c) of this title, unless under regulations promulgated by the Secretary the condition under which the officer is discharged does not warrant an honorable discharge.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189; amended Pub. L. 97-295, §2(10), Oct. 12, 1982, 96 Stat. 1302; Pub. L. 99-348, title II, §205(b)(6), July 1, 1986, 100 Stat. 700; Pub. L. 105-383, title II, §201(c), Nov. 13, 1998, 112 Stat. 3414; Pub. L. 107-295, title IV, §416(a)(5), Nov. 25, 2002, 116 Stat. 2122.)

AMENDMENTS

2002—Pub. L. 107-295, §416(a)(5)(A), substituted “separation” for “severance” in section catchline.

Subsec. (a)(2). Pub. L. 107-295, §416(a)(5)(B), added par. (2) and struck out former par. (2) which read as follows: “for honorable discharge with severance benefits under subsection (b) in those cases arising under clause (1) of section 321 of this title; or”.

Subsec. (a)(3). Pub. L. 107-295, §416(a)(5)(C), struck out par. (3) which read as follows: “for discharge with severance benefits under subsection (b) in those cases arising under clause (2) of section 321 of this title.”

Subsec. (b)(2). Pub. L. 107-295, §416(a)(5)(D), added par. (2) and struck out former par. (2) which read as follows: “if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month's basic pay of that grade, in those cases arising under clause (1) of section 321 of this title; or”.

Subsec. (b)(3). Pub. L. 107-295, §416(a)(5)(E), struck out par. (3) which read as follows: “if on that date the officer is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month's basic pay of that grade, in those cases arising under clause (2) of section 321 of this title, unless the Secretary determines that the conditions under which the officer is discharged or separated do not warrant payment of that amount of severance pay.”

1998—Subsec. (b)(3). Pub. L. 105-383 inserted before period at end “, unless the Secretary determines that the conditions under which the officer is discharged or separated do not warrant payment of that amount of severance pay”.

1986—Subsec. (b)(1). Pub. L. 99-348 struck out “, and with the pay” after “in the grade”.

1982—Pub. L. 97-295 inserted “of this title” after “section 322 or 323” and “section 321” wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-295 effective 4 years after Nov. 25, 2002, see section 416(c) of Pub. L. 107-295, set out as a note under section 286 of this title.

F. MISCELLANEOUS PROVISIONS

§ 331. Recall to active duty during war or national emergency

In time of war or national emergency, the Secretary may order any regular officer on the retired list to active duty.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189.)

DELEGATION OF AUTHORITY

For delegation of authority under this section, as invoked by section 2 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, to Secretary of Homeland Security when Coast Guard is not serving as part of Navy, see section 5 of Ex. Ord. No. 13223, set out as a note under section 12302 of Title 10, Armed Forces.

§ 332. Recall to active duty with consent of officer

(a) Any regular officer on the retired list may, with that officer's consent, be assigned to such duties as that officer may be able to perform.

(b) The number of retired officers on active duty in the grade of lieutenant commander, commander, or captain shall not exceed 2 percent of the authorized number of officers on active duty in each such grade. However, this limitation does not apply to retired officers of these grades recalled to serve as members of courts, boards, panels, surveys, or special projects for periods not to exceed one year.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189; amended Pub. L. 89-444, §1(18), June 9, 1966, 80 Stat. 196; Pub. L. 91-278, §1(9), June 12, 1970, 84 Stat. 305; Pub. L. 102-241, §14, Dec. 19, 1991, 105 Stat. 2213.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-241, §14(b), substituted “that officer’s” for “his” and “that officer” for “he”.

Subsec. (b). Pub. L. 102-241, §14(a), substituted “2” for “1”.

1970—Subsec. (a). Pub. L. 91-278 struck out prohibition against recall to duty in time of peace of any officer on retired list who reached age of sixty-two years.

1966—Subsec. (b). Pub. L. 89-444 provided that the percentage limitation on the number of retired officers on active duty in the grade of lieutenant commander, commander, or captain should not apply to retired officers of those grades recalled to serve as members of courts, boards, panels, surveys, or special projects for periods not to exceed one year.

§ 333. Relief of retired officer promoted while on active duty

Any regular officer on the retired list recalled to active duty who during such active duty is advanced to a higher grade under an appointment shall, upon relief from active duty, if his performance of duty under such appointment has been satisfactory, be advanced on the retired list to the highest grade held while on such active duty.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 189.)

§ 334. Grade on retirement

(a) Any commissioned officer, other than a commissioned warrant officer, who is retired under any provision of this title, shall be retired

from active service with the highest grade held by him for not less than six months while on active duty in which, as determined by the Secretary, his performance of duty was satisfactory.

(b) Any warrant officer who is retired under any provision of section 580, 1263, 1293, or 1305 of title 10, shall be retired from active service with the highest commissioned grade above chief warrant officer, W-4, held by him for not less than six months on active duty in which, as determined by the Secretary, his performance of duty was satisfactory.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 190; amended Pub. L. 89-444, §1(19), June 9, 1966, 80 Stat. 196; Pub. L. 99-348, title II, §205(b)(7), July 1, 1986, 100 Stat. 700; Pub. L. 102-190, div. A, title XI, §1125(b)(2), Dec. 5, 1991, 105 Stat. 1505; Pub. L. 103-337, div. A, title V, §541(f)(3), Oct. 5, 1994, 108 Stat. 2766.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-337 substituted “section 580,” for “section 564 of title 10 (as in effect on the day before the effective date of the Warrant Officer Management Act) or”.

1991—Subsec. (b). Pub. L. 102-190 substituted “section 564 of title 10 (as in effect on the day before the effective date of the Warrant Officer Management Act) or 1263, 1293, or 1305 of title 10” for “section 564, 1263, 1293, or 1305 of title 10”.

1986—Subsec. (a). Pub. L. 99-348, §205(b)(7)(A), struck out “, with retired pay of the grade with which retired” after “satisfactory”.

Subsec. (b). Pub. L. 99-348, §205(b)(7), struck out “, with retired pay of the grade with which retired” after “satisfactory” and struck out provision that when the rate of pay of such highest grade is less than the pay of the warrant grade with which the officer would otherwise be retired under section 1371 of title 10, the retired pay was to be based on the higher rate of pay.

1966—Pub. L. 89-444 substituted “Grade on retirement” for “Retirement in cases where higher grade has been held” in section catchline.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103-337, set out as a note under section 571 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of Title 10, Armed Forces.

§ 335. Physical fitness of officers

The Secretary shall prescribe regulations under which the physical fitness of officers to perform their duties shall be periodically determined.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 190.)

§ 336. United States Coast Guard Band; composition; director

(a) The United States Coast Guard Band shall be composed of a director and other personnel in such numbers and grades as the Secretary determines to be necessary.

(b) The Secretary may designate as the director any individual determined by the Secretary