Department of Veterans Affairs

§ 3.12a Minimum active-duty service requirement.

(a) Definitions. (1) The term minimum period of active duty means, for the purposes of this section, the shorter of the following periods:

(i) Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the Department of Veterans Affairs benefit entitlement (e.g., see §3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served.

(ii) The full period for which a person was called or ordered to active duty.

(2) The term benefit includes a right or privilege but does not include a refund of a participant’s contributions under 38 U.S.C. Ch. 32.

(b) Effect on Department of Veterans Affairs benefits. Except as provided in paragraph (d) of this section, a person

require characterization of service by the military department concerned. In such cases conditions of discharge will be determined by the VA as follows:

(1) Entry level separation. Uncharacterized administrative separations of this type shall be considered under conditions other than dishonorable.

(2) Void enlistment or induction. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation, with reference to the provisions of §3.14 of this part, to determine whether separation was under conditions other than dishonorable.

(3) Dropped from the rolls. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation to determine whether separation was under conditions other than dishonorable.

(Authority: 38 U.S.C. 501)


§ 3.13 Discharge to change status.

(a) A discharge to accept appointment as a commissioned or warrant officer, or to change from a Reserve or Regular commission to accept a commission in the other component, or to reenlist is a conditional discharge if it was issued during one of the following periods:

(1) World War I; prior to November 11, 1918. As to reenlistments, this subparagraph applies only to Army and National Guard. No involuntary extension or other restrictions existed on Navy enlistments.

(2) World War II, the Korean conflict or the Vietnam era; prior to the date the person was eligible for discharge under the point or length of service system, or under any other criteria in effect.

(3) Peacetime service; prior to the date the person was eligible for an unconditional discharge.

(b) Except as provided in paragraph (c) of this section, the entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of such period of active service except that, for death pension purposes, §3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

(c) Despite the fact that no unconditional discharge may have been issued, a person shall be considered to have been unconditionally discharged or released from active military, naval or air service when the following conditions are met:

(1) The person served in the active military, naval or air service for the period of time the person was obligated by the Department of Veterans Affairs based on a period of active duty, the person’s dependents or survivors are also barred from receiving benefits based on the same period of active duty.

(2) Exceptions. Paragraph (e)(1) of this section does not apply to benefits under chapters 19 and 37 of title 38, United States Code. (38 U.S.C. 5303A)

[47 FR 24549, June 7, 1982]

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