



DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
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SECNAVCORB POLICY LETTER 2008-6

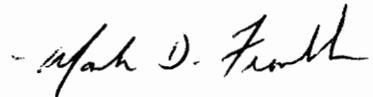
From: Director, Secretary of the Navy Council of Review Boards

Subj: IMPLEMENTATION OF FY 2009 NDAA CHANGES

Ref: (a) 2009 NDAA (Sec. 1061)

Encl: (1) 10 U.S.C. 1201
(2) 10 U.S.C. 1203

1. Reference (a) revised §§1201 and 1203 of Chapter 61, Title 10. Enclosures (1) and (2) reflect those changes (in bold). Adherence to these revisions is required effective 14 October 2008.


MARK D. FRANKLIN

Copy to:
PEB
CORB Counsel
Senior Medical Officer
NLSO NC

-CITE-

10 USC Sec. 1201

01/03/2007

-EXPCITE-

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART II - PERSONNEL

CHAPTER 61 - RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

-HEAD-

Sec. 1201. Regulars and members on active duty for more than 30
days: retirement

-STATUTE-

(a) Retirement. - Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) Required Determinations of Disability. - Determinations referred to in subsection (a) are determinations by the Secretary that -

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred

during a period of unauthorized absence; and

(3) either -

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either -

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service).

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) Eligible Members. - This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as

determined by the Secretary concerned.

-SOURCE-

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Pub. L. 85-861, Sec. 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-651, title I, Sec. 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95-377, Sec. 3(1), Sept. 19, 1978, 92 Stat. 719; Pub. L. 96-343, Sec. 10(c)(1), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96-513, title I, Sec. 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 99-145, title V, Sec. 513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103-337, div. A, title XVI, Sec. 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title V, Sec. 572(a), Sept. 23, 1996, 110 Stat. 2533.)

-MISC1-

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1201	37:272(a) (less clause (5), and less 2d proviso).	Oct. 12, 1949, ch. 681, Sec. 402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to Sec. 402(c) and (e)), 63 Stat. 816, 817, 820.

-CITE-

10 USC Sec. 1203

01/03/2007

-EXPCITE-

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART II - PERSONNEL

CHAPTER 61 - RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

-HEAD-

Sec. 1203. Regulars and members on active duty for more than 30
days: separation

-STATUTE-

(a) Separation. - Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member's armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) Required Determinations of Disability. - Determinations referred to in subsection (a) are determinations by the Secretary that -

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's

intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either -

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, **the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);**

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this

title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

-SOURCE-

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85-861, Sec. 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-651, title I, Sec. 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95-377, Sec. 3(2), (3), Sept. 19, 1978, 92 Stat. 719, 720; Pub. L. 96-343, Sec. 10(c)(2), (3), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96-513, title I, Sec. 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 101-189, div. A, title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103-337, div. A, title XVI, Sec. 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title V, Sec. 572(c), Sept. 23, 1996, 110 Stat. 2533.)

-MISC1-

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1203	37:272(a) (2d proviso).	Oct. 12, 1949, ch. 681, Sec. 402(a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.
	37:272(b) (2d and last	