

38 USC 106: Certain service deemed to be active service

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From Title 38-VETERANS' BENEFITS

PART I-GENERAL PROVISIONS

CHAPTER 1-GENERAL

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§106. Certain service deemed to be active service

(a)(1) Service as a member of the Women's Army Auxiliary Corps for ninety days or more by any woman who before October 1, 1943, was honorably discharged for disability incurred or aggravated in line of duty which rendered her physically unfit to perform further service in the Women's Army Auxiliary Corps or the Women's Army Corps shall be considered active duty for the purposes of all laws administered by the Secretary.

(2) Any person entitled to compensation or pension by reason of this subsection and to employees' compensation based upon the same service under subchapter I of chapter 81 of title 5 must elect which benefit she will receive.

(b) Any person-

(1) who has applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance into such service; or

(2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of the person's local draft board and before rejection; or

(3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and

who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for the purposes of chapters 11, 13, 19, 21, 31, and 39 of this title, and for purposes of determining service-connection of a disability under chapter 17 of this title, be considered to have been on active duty and to have incurred such disability in the active military, naval, or air service.

(c) For the purposes of this title, an individual discharged or released from a period of active duty shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for that individual to proceed to that individual's home by the most direct route, and in any event that individual shall be deemed to have continued on active duty until midnight of the date of such discharge or release.

(d)(1) For the purposes of this title, any individual-

(A) who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(B) who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training, as the case may be;

shall be deemed to have been on active duty for training or inactive duty training, as the case may be, at the time such injury or covered disease was incurred.

(2) In determining whether or not such individual was so authorized or required to perform such duty, and whether or not such individual was disabled or died from injury or covered disease so incurred, the Secretary shall take into account the hour on which such individual began so to proceed or to return; the hour on which such individual was scheduled to arrive for, or on which such individual ceased to perform, such duty; the method of travel employed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death.

(3) Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this subsection, the burden of proof shall be on the claimant.

(4) For purposes of this subsection, the term "covered disease" means any of the following:

(A) Acute myocardial infarction.

(B) A cardiac arrest.

(C) A cerebrovascular accident.

(e) Each person who has incurred a disability as a result of an injury or disease described in subsection (b) shall be entitled to the same rights, privileges, and benefits under title 5 as a preference eligible described in section 2108(3)

(C) of title 5.

(f) Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001, shall be considered active duty for purposes of all laws administered by the Secretary.

(Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1110 ; Pub. L. 87–102, §1, July 21, 1961, 75 Stat. 219 ; Pub. L. 88–616, Oct. 2, 1964, 78 Stat. 994 ; Pub. L. 89–311, §5, Oct. 31, 1965, 79 Stat. 1156 ; Pub. L. 97–295, §4(3), Oct. 12, 1982, 96 Stat. 1305 ; Pub. L. 99–576, title VII, §701(5), Oct. 28, 1986, 100 Stat. 3291 ; Pub. L. 102–83, §4(a)(1), (b)(1), (2) (E), Aug. 6, 1991, 105 Stat. 403–405 ; Pub. L. 106–259, title VIII, §8147(a), Aug. 9, 2000, 114 Stat. 705 ; Pub. L. 106–419, title III, §301(b), Nov. 1, 2000, 114 Stat. 1852 .)

REFERENCES IN TEXT

Section 8147 of the Department of Defense Appropriations Act, 2001, referred to in subsec. (f), is section 8147 of Pub. L. 106–259, which amended this section and enacted provisions set out as a note below.

AMENDMENTS

2000-Subsec. (d). Pub. L. 106–419 designated first sentence as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and inserted "or covered disease" after "injury" in subpar. (B) and in concluding provisions, designated second sentence as par. (2) and inserted "or covered disease" after "injury", designated third sentence as par. (3), and added par. (4).

Subsec. (f). Pub. L. 106–259 added subsec. (f).

1991-Subsec. (a)(1). Pub. L. 102–83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

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

1986-Subsec. (b)(2). Pub. L. 99–576, §701(5)(A), substituted "the person's" for "his".

Subsec. (c). Pub. L. 99–576, §701(5)(B), substituted "required for that individual" for "required for him", "proceed to that individual's home" for "proceed to his home", and "in any event that individual" for "in any event he".

Subsec. (d). Pub. L. 99–576, §701(5)(C), struck out "by him" after "injury incurred" in cl. (2), and in closing provisions, substituted "such individual was disabled" for "he was disabled", "on which such individual began" for "on which he began", "such individual was scheduled" for "he was scheduled", "such individual ceased" for "he ceased", and "the itinerary" for "his itinerary".

1982-Subsec. (a)(2). Pub. L. 97–295, §4(3)(A), substituted "subchapter I of chapter 81 of title 5" for "the Federal Employees' Compensation Act".

Subsec. (e). Pub. L. 97–295, §4(3)(B), substituted "title 5 as a preference eligible described in section 2108(3)(C) of title 5" for "the Act of June 27, 1944, (58 Stat. 387–391), as a person described in section 2(1) of such Act".

1965-Subsec. (e). Pub. L. 89–311 added subsec. (e).

1964-Subsec. (d)(2). Pub. L. 88–616 struck out "after December 31, 1956," after "injury incurred".

1961-Subsec. (c). Pub. L. 87–102 extended provisions for benefits based on limited periods immediately following discharge from active duty after December 31, 1956 to veterans discharged before such date.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–102, §2, July 21, 1961, 75 Stat. 219 , provided that: "No monetary benefits shall accrue by reason of the amendments made by this Act [amending this section] for any period prior to the date of enactment [July 21, 1961]."

SERVICE IN ALASKA TERRITORIAL GUARD

Pub. L. 106–259, title VIII, §8147(b), (c), Aug. 9, 2000, 114 Stat. 705 , provided that:

"(b) DISCHARGE.—(1) The Secretary of Defense shall issue to each individual who served as a member of the Alaska Territorial Guard during World War II a discharge from such service under honorable conditions if the Secretary determines that the nature and duration of the service of the individual so warrants.

"(2) A discharge under paragraph (1) shall designate the date of discharge. The date of discharge shall be the date, as determined by the Secretary, of the termination of service of the individual concerned as described in that paragraph.

"(c) PROHIBITION ON RETROACTIVE BENEFITS.—No benefits shall be paid to any individual for any period before the date of the enactment of this Act [Aug. 9, 2000] by reason of the enactment of this section [amending this section and enacting this note]."

WOMEN'S AIR FORCES SERVICE PILOTS

Pub. L. 95-202, title IV, §401, Nov. 23, 1977, 91 Stat. 1449 , as amended by Pub. L. 96-466, title VIII, §801(m)(3), Oct. 17, 1980, 94 Stat. 2217 ; Pub. L. 98-94, title XII, §1263(a), Sept. 24, 1983, 97 Stat. 703 ; Pub. L. 102-83, §6(b), Aug. 6, 1991, 105 Stat. 407 , provided that:

"(a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II), or the service of any person in any other similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, shall be considered active duty for the purposes of all laws administered by the Secretary of Veterans Affairs if the Secretary of Defense, pursuant to regulations which the Secretary shall prescribe-

"(A) after a full review of the historical records and all other available evidence pertaining to the service of any such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group constituted active military service, and

"(B) in the case of any such group with respect to which such Secretary has made an affirmative determination that the service of such group constituted active military service, issues to each member of such group a discharge from such service under honorable conditions where the nature and duration of the service of such member so warrants.

Discharges issued pursuant to the provisions of the first sentence of this paragraph shall designate as the date of discharge that date, as determined by the Secretary of Defense, on which such service by the person concerned was terminated.

"(2) In making a determination under clause (A) of paragraph (1) of this subsection with respect to any group described in such paragraph, the Secretary of Defense may take into consideration the extent to which-

"(A) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,

"(B) the members of such group were subject to military justice, discipline, and control,

"(C) the members of such group were permitted to resign,

"(D) the members of such group were susceptible to assignment for duty in a combat zone, and

"(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

"(b)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title [Nov. 23, 1977] as a result of the enactment of subsection (a) of this section.

"(2) The provisions of section 106(a)(2) of title 38, United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Secretary of Veterans Affairs, as a result of implementation of the provisions of subsection (a) of this section.

"(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person's service."

[Section 1263(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [enacting subsec. (c) set out above] shall apply to all persons issued discharges under honorable conditions pursuant to section 401 of the GI Bill Improvements Act of 1977 [Pub. L. 95-202, set out above] whether such discharges are awarded before, on, or after the date of the enactment of this Act [Sept. 24, 1983]."]

[Amendment of subsec. (a)(1)(B), set out above, by Pub. L. 96-466, effective Oct. 1, 1980, see section 802(h) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 3452 of this title.]