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*** ARCHIVE MATERIAL ***

*** THIS SECTION IS CURRENT THROUGH THE 102ND CONGRESS, 2ND SESSION ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 59. SEPARATION

10 USCS § 1162 (1992)

§ 1162. Reserves; discharge

(a) Subject to other provisions of this title [10 USCS §§ 101 et seq.], reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

HISTORY: (Aug. 10, 1956, ch 1041, § 1, 70A Stat. 89; Sept. 2, 1958, P.L. 85-861, § 1(27), 72 Stat. 1450.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

PRIOR LAW AND REVISION:

1956 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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1162	50:991.	July 9, 1952, ch. 608; Sec. 248, 66 Stat. 495.
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The word "title" is substituted for word "chapter", since the provisions of this title relating to Reserves are based on the Armed Forces Reserve Act of 1952. The word "chapter" was substituted by the editors of the United States Code for the word "Act", in section 248 of the source statute (the Armed Forces Reserve Act of 1952). The words "may be discharged" are substituted for the words "the discharge of . . . shall be effected". The words "may be discharged under regulations prescribed" are substituted for the words "the discharge of . . . shall be in accordance with regulations promulgated".

1958 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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1162(b)	50:961(h) (less last sentence)	Aug. 9, 1955, ch. 665, Sec. 2(g) (less last sentence), 69 Stat. 599.
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The words "a Reserve" are substituted for the words "any person who, while a member of a reserve component". The words "his reserve enlistment or appointment" are substituted for the words "the reserve component of which he is a member" since, under sections 510 and 591 of this title, enlistments and appointments are made as Reserves rather than

in a particular reserve component.

AMENDMENTS:

1958. Act Sept. 2, 1958 designated the existing provisions as subsec. (a), and added subsec. (b).

OTHER PROVISIONS:

Guard and reserve transition initiatives. Act Oct. 23, 1992, P.L. 102-484, Div D, Title XLIV, Subtitle B, 106 Stat. 2712, provides:

"Sec. 4411. Force reduction transition period defined

"In this subtitle, the term 'force reduction transition period' means the period beginning on October 1, 1991, and ending on September 30, 1995.

"Sec. 4412. Member of Selected Reserve defined.

"In this subtitle, the term 'member of the Selected Reserve' means—

"(1) a member of a unit in the Selected Reserve of the Ready Reserve; and

"(2) a Reserve designated pursuant to section 268(b) of title 10, United States Code, who is assigned to an authorized position the performance of the duties of which qualify the member for basic pay or compensation for inactive-duty training or both.

"Sec. 4413. Restriction on reserve force reduction.

"(a) In general. During the force reduction transition period, a member of the Selected Reserve may not be involuntarily discharged from a reserve component of the Armed Forces, or involuntarily transferred from the Selected Reserve, before the Secretary of Defense has prescribed and implemented regulations that govern the treatment of members of the Selected Reserve assigned to such units and members of the Selected Reserve that are being subjected to such actions and a copy of such regulations has been transmitted to the Committees on Armed Services of the Senate and House of Representatives.

"(b) Savings provision. Subsection (a) shall not apply to actions completed before the date of the enactment of this Act.

"Sec. 4414. Transition plan requirements.

"(a) Purpose of plan. The purpose of the regulations referred to in section 4413 shall be to ensure that the members of the Selected Reserve are treated with fairness, with respect for their service to their country, and with attention to the adverse personal consequences of Selected Reserve unit inactivations, involuntary discharges of such members from the reserve components of the Armed Forces, and involuntary transfers of such members from the Selected Reserve.

"(b) Scope of plan. The regulations shall include—

"(1) such provisions as are necessary to implement the provisions of this subtitle and the amendments made by this subtitle; and

"(2) such other policies and procedures for the recruitment of personnel for service in the Selected Reserve of the Ready Reserve, and for the reassignment, retraining, separation, and retirement of members of the Selected Reserve, as are appropriate for satisfying the needs of the Selected Reserve together with the purpose set out in subsection (a).

"(c) Minimum requirements for plan. The regulations shall include the following:

"(1) The giving of a priority for enrollment in, or reassignment to, Selected Reserve units not being inactivated to—

"(A) personnel being separated from active-duty or full-time National Guard duty; and

"(B) members of the Selected Reserve whose units are inactivated.

"(2) The giving of a priority to such personnel for transfer among the reserve components of the Armed Forces in order to facilitate reassignment to such units.

"(3) A requirement that the Secretaries of the military departments take diligent actions to ensure that members of the reserve components of the Armed Forces are informed in easily understandable terms of the rights and benefits conferred upon such personnel by this subtitle, by the amendments made by this subtitle, and by such regulations.

"(4) Such other protections, preferences, and benefits as the Secretary of Defense considers appropriate.

"(d) Uniform applicability. The regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps.

"Sec. 4415. Inapplicability to certain discharges and transfers.

"The protections, preferences, and benefits provided for in regulations prescribed in accordance with this subtitle do not apply with respect to a member of the Selected Reserve who is discharged from a reserve component of the Armed Forces or is transferred from the Selected Reserve to another category of the Ready Reserve, to the Standby Reserve, or to the Retired Reserve—

"(1) at the request of the member unless such request was made and approved under a provision of this subtitle or section 1331a of title 10, United States Code (as added by section 4417);

"(2) because the member no longer meets the qualifications for membership in the Selected Reserve set forth in any

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provision of law as in effect on the day before the date of the enactment of this Act;

"(3) under adverse conditions, as characterized by the Secretary of the military department concerned; or

"(4) if the member—

"(A) is immediately eligible for retired pay based on military service under any provision of law;

"(B) is serving as a military technician, as defined in section 8401(30) of title 5, United States Code, and would be immediately eligible for an unreduced annuity under the provisions of subchapter III of chapter 83 of such title [5 USCS §§ 8331 et seq.], relating to the Civil Service Retirement and Disability System, or the provisions of chapter 84 of such title [5 USCS §§ 8401 et seq.], relating to the Federal Employees' Retirement System; or

"(C) is eligible for separation pay under section 1174 of title 10, United States Code.

Sec. 4416. Force reduction period retirements.

"(a) Temporary special authority for elimination of officers from active status.(1) During the force reduction transition period, the Secretary of the Army and the Secretary of the Air Force may, whenever the Secretary determines that such action is necessary, convene a board to recommend an appropriate number of officers in the reserve components of the Army or the Air Force, as the case may be, who (A) have met the age and service requirements specified in section 1331 of title 10, United States Code, for entitlement to retired pay for nonregular service except for not being at least 60 years of age, or (B) are immediately eligible for retired pay based on military service under any provision of law, for elimination from an active status.

"(2) An officer who is to be eliminated from an active status under this section, shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if the officer requests it, shall be so transferred. If the officer is not transferred to the Retired Reserve, the officer shall, in the discretion of the Secretary concerned, be transferred to the appropriate inactive status list or be discharged.

"(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may not be eliminated from an active status under this section without the consent of the Governor or other appropriate authority of the State or territory, Puerto Rico, or the District of Columbia, whichever is concerned.

"(b) Temporary special authority. During the period referred to in subsection (c), the Secretary concerned may grant a member of the Selected Reserve under the age of 60 years the annual payments provided for under this section if—

"(1) as of October 1, 1991, that member has completed at least 20 years of service computed under section 1332 of title 10, United States Code, or after that date and before October 1, 1995, such member completes 20 years of service computed under that section;

"(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) of title 10, United States Code; and

"(3) the member applies for transfer to the Retired Reserve—

"(A) in the case of a member who has not received the notice required by section 1331(d) of that title before the date of the enactment of this Act, within one year after receiving such notice; and

"(B) in the case of a member who received such a notice before the date of the enactment of this Act, within one year after that date.

"(c) Period of applicability. The period referred to in subsection (b) is, with respect to a member of the Selected Reserve, the force reduction transition period, the period provided under paragraph (3) of that subsection for the member to submit an application, and the period necessary for taking action on that application.

"(d) Annual payment period. An annual payment granted to a member under this section shall be paid for 5 years, except that if the member attains 60 years of age during the 5-year period the entitlement to the annual payment shall terminate on the member's 60th birthday.

"(e) Computation of annual payment.(1) The annual payment for a member shall be equal to the amount determined by multiplying the product of 12 and the applicable percent under paragraph (2) by the monthly basic pay to which the member would be entitled if the member were serving on active duty as of the date the member is transferred to the Retired Reserve.

"(2)(A) Subject to subparagraph (B) the percent applicable to a member for purposes of paragraph (1) is 5 percent plus 0.5 percent for each full year of service, computed under section 1332 of title 10, United States Code, that a member has completed in excess of 20 years before transfer to the Retired Reserve.

"(B) The maximum percent applicable under this paragraph is 10 percent.

"(f) Applicability subject to needs of the service.(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary concerned may limit the applicability of this section to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service,

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or the number of members who possess certain military skills or are serving in designated competitive categories.

"(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

"(g) Nonduplication of benefits. A member transferred to the Retired Reserve under the authority of section 1331a of title 10, United States Code (as added by section 4417), may not be paid annual payments under this section.

"(h) Funding. To the extent provided in appropriations Acts, payments under this section in a fiscal year shall be made out of amounts available to the Department of Defense for that fiscal year for the pay of reserve component personnel.

"Sec. 4417. Retirement with 15 years of service.

"(a) Authority. Chapter 67 of title 10, United States Code, is amended by inserting after section 1331 the following new section:

" '§ 1331a. Temporary special retirement qualification authority

" '(a) Retirement with at least 15 years of service. For the purposes of section 1331 of this title, the Secretary of a military department may—

" '(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

" '(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 1332 of this title; or

" '(B) after that date and before October 1, 1995, completes 15 years of service computed under that section; and

" '(2) upon the request of the member submitted to the Secretary within one year after the date of the notification referred to in paragraph (1), transfer the member to the Retired Reserve.

" '(b) Period of authority. The period referred to in subsection (a)(1) is the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1993 [enacted Oct. 23, 1992] and ending on October 1, 1995.

" '(c) Applicability subject to needs of the service.(1) The Secretary of the military department concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

" '(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 [this note].

" '(d) Exclusion. This section does not apply to persons referred to in section 1331(c) of this title.

" '(e) Regulations. The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense.'

"(b) Clerical amendment. The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1331 the following new item:

" '1331a. Temporary special retirement qualification authority.'

"Sec. 4418. Separation pay.

"(a) Eligibility. Subject to section 4415, a member of the Selected Reserve who, after completing at least 6 years of service computed under section 1332 of title 10, United States Code, and before completing 15 years of service computed under that section, is involuntarily discharged from a reserve component of the Armed Forces or is involuntarily transferred from the Selected Reserve is entitled to separation pay.

"(b) Amount of separation pay.(1) The amount of separation pay which may be paid to a person under this section is 15 percent of the product of—

"(A) the years of service credited to that person under section 1333 of title 10, United States Code; and

"(B) 62 times the daily equivalent of the monthly basic pay to which the person would have been entitled had the person been serving on active duty at the time of the person's discharge or transfer.

"(2) In the case of a person who receives separation pay under this section and who later receives basic pay, compensation for inactive duty training, or retired pay under any provision of law, such basic pay, compensation, or retired pay, as the case may be, shall be reduced by 75 percent until the total amount withheld through such reduction equals the total amount of the separation pay received by that person under this section.

"(c) Relationship to other service-related pay. Subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section.

"(d) Regulations. The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

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"Sec. 4419. Waiver of continued service requirement for certain reservists for Montgomery GI Bill benefits.

"(a) Chapter 106. Section 2133(b)(1) of title 10, United States Code, is amended to read as follows:

" '(b)(1) In the case of a person—" '(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter [10 USCS §§ 2131 et seq.]; or

" '(B) who, on or after the date on which such person became entitled to educational assistance under this chapter [10 USCS §§ 2131 et seq.] ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1995, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 268(b) of this title, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.'.

"(b) Chapter 30. Section 3012(b)(1)(B) of title 38, United States Code, is amended—

"(1) by striking out 'or' at the end of clause (i);

"(2) by striking out the period at the end of clause (ii) and inserting in lieu thereof '; or'; and

"(3) by adding after clause (ii) the following:

" '(iii) who, before completing the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1995, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 268(b) of title 10.'.

"Sec. 4420. Commissary and exchange privileges.

"The Secretary of Defense shall prescribe regulations to authorize a person who involuntarily ceases to be a member of the Selected Reserve during the force reduction transition period to continue to use commissary and exchange stores in the same manner as a member of the Selected Reserve for a period of two years beginning on the later of—

"(1) the date on which that person ceases to be a member of the Selected Reserve; or

"(2) the date of the enactment of this Act.

"Sec. 4421. Applicability and termination of benefits.

"(a) Applicability subject to needs of the service.(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may limit the applicability of a benefit provided under sections 4418 through 4420 to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

"(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

"(b) Inapplicability to certain separations and reassignments. Sections 4418 through 4420 do not apply with respect to personnel who cease to be members of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned.

"(c) Termination of benefits. The eligibility of a member of a reserve component of the Armed Forces (after having involuntarily ceased to be a member of the Selected Reserve) to receive benefits and privileges under sections 4418 through 4420 terminates upon the involuntary separation of such member from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned.

"Sec. 4422. Readjustment benefits for certain voluntarily separated members of the reserve components.

"(a) Special separation benefits. Section 1174a of title 10, United States Code, is amended—

"(1) in subsection (b)(1), by inserting 'or full-time National Guard duty' after 'active duty';

"(2) in subsection (c)(2), by inserting 'or full-time National Guard duty or any combination of active duty and full-time National Guard duty' after 'active duty';

"(3) in subsection (c)(3), by inserting after 'or full-time National Guard duty or any combination of active duty and full-time National Guard duty' after 'active duty';

"(4) in subsection (c)(4), by inserting 'or full-time National Guard duty or any combination of active duty and full-time National Guard duty' after 'active duty', and by inserting 'and' after the semicolon at the end; and

"(5) in subsection (c), by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

"(b) Voluntary separation incentive. Section 1175 of title 10, United States Code, is amended—

"(1) in subsection (b)(1), by inserting 'or full-time National Guard duty or any combination of active duty and full-time National Guard duty' after 'active duty';

"(2) in subsection (b)(2), by inserting 'or full-time National Guard duty or any combination of active duty and full-time

National Guard duty' after 'active duty'; and

"(3) in subsection (b), by striking out paragraph (3) and redesignating paragraph (4) as paragraph (3).".

NOTES:

CODE OF FEDERAL REGULATIONS

Enlisted administrative separations, 32 CFR Part 41.

CROSS REFERENCES

Physical examination, 10 USCS § 1004.

RESEARCH GUIDE

AM JUR:

54 Am Jur 2d, Military, and Civil Defense §§ 178, 183.

ANNOTATIONS:

Judicial review of military action with respect to type of discharge given member of Armed Forces. 92 ALR Fed 333.

INTERPRETIVE NOTES AND DECISIONS

1. Discretion of military
2. Property right in employment
3. Requirements for initiating discharge process
4. Right to trial or hearing upon discharge
5. Permissible grounds for discharge
6. Statement of reasons
7. Role and power of court

1. Discretion of military

Determination whether it is practicable and equitable under facts and circumstances of case to discharge conscientious objector, once enlisted or legally inducted into armed forces, is ultimately vested by statute, directive and regulation within discretion of military itself. *United States ex rel. O'Hare v Eichstaedt* (1967, ND Cal) 285 F Supp 476.

2. Property right in employment

Since 10 USCS § 1162 explicitly provides that reserve commissioned officer has no vested right to continue in employment of United States Armed Forces, officer in question had no property right in continued employment with Air Force. *Sims v Fox* (1974, CA5 Ga) 505 F2d 857, cert den 421 US 1011, 44 L Ed 2d 678, 95 S Ct 2415.

Since reservists may be discharged at pleasure of President, they do not have property right in their commissions. *Carter v United States* (1975) 206 Ct Cl 61, 509 F2d 1150, reh den 207 Ct Cl 316, 518 F2d 1199, cert den 423 US 1076, 47 L Ed 2d 86, 96 S Ct 861, reh den 424 US 950, 47 L Ed 2d 356, 96 S Ct 1423, and later proceeding 209 Ct Cl 790.

Reservist can show no constitutionally protected property right to continued service where regulations prescribe that Army reservist may be discharged at any time; neither can reservist claim deprivation of due process liberty interest where discharge was honorable and there was no public disclosure of reasons for discharge. *Ben Shalom v Secretary of Army* (1980, ED Wis) 489 F Supp 964, 22 BNA FEP Cas 1396.

Reserve commissioned officer dropped from rolls pursuant to Army rule after being convicted in federal court of criminal offense and sentenced to federal correctional institution, was not denied due process, since officer had no property interest in continued military status, neither did nondisciplinary administrative action of dropping officer from rolls, with no stigma attached, deprive him of liberty interest, neither was his life endangered by removal from rolls. *Helmich v Nibert* (1982, DC Md) 543 F Supp 725, affd without op (CA4 Md) 696 F2d 990.

3. Requirements for initiating discharge process

Letter of army reservist sent to appropriate army authorities adverting to crisis in conscience and requesting requisite forms to apply for discharge falls far short of formal application army regulations require in order to initiate discharge process. *Earls v Resor* (1971, CA2 NY) 451 F2d 1126.

4. Right to trial or hearing upon discharge

Regular air force officer is entitled to "fair and impartial" hearing on separation under 10 USCS § 8792, but there is no similar provision for reserve officers in 10 USCS §§ 1162, 1163; however, Air Force Regulation 36-2, applying to both regular and reserve officers, guarantees "fair and impartial" hearing and United States Court of Appeals has jurisdiction of action seeking declaration that discharge of reserve officer was illegal because hearing guaranteed by regulations was denied. *Denton v Secretary of Air Force* (1973, CA9 Cal) 483 F2d 21, cert den 414 US 1146, 39 L Ed 2d 102, 94 S Ct 900.

Air force action in discharging reserve commissioned officer on ground of sexual deviancy without pre-discharge hearing does not violate officer's due process guarantees. *Sims v Fox* (1974, CA5 Ga) 505 F2d 857, cert den 421 US 1011, 44 L Ed 2d 678, 95 S Ct 2415.

Due process was not violated where reserve air force officer was honorably discharged from service after he expressed to his superiors apprehensions concerning flying in combat and requested assignment to ground duties notwithstanding fact that under applicable regulations such officer did not receive hearing in person, and that his burden of proof was to establish, against charges made, that he should be retained in service. *Ampleman v Schlesinger* (1976, CA8 Mo) 534 F2d 825.

Plaintiff, Reserve officer honorably discharged by Army for academic deficiencies, was not denied due process where Army gave plaintiff notice, adversary-type hearing, appointed counsel, and opportunity to question witnesses, respond to evidence, and to present evidence, character witnesses and extenuating circumstances. *Woodard v Marsh* (1981, CA5 Tex) 658 F2d 989, cert den 455 US 1022, 72 L Ed 2d 141, 102 S Ct 1721 and (disagreed with on other grounds *Rucker v Secretary of Army* (CA11 Ala) 702 F2d 966).

A probationary officer had no right to a court-martial or Board of Inquiry after being informed that he was being dismissed from the service with a discharge under other than honorable conditions because of homosexual activities. *Courtney v Secretary of Air Force* (1967, CD Cal) 267 F Supp 305.

ANNOTATIONS:

Judicial review of military action with respect to type of discharge given member of Armed Forces. 92 ALR Fed 333

5. Permissible grounds for discharge

Navy officer could not be administratively discharged without regard to his guilt or innocence of his alleged crime, sodomy, under 10 USCS § 1162(a), since it would force navy to improperly assume officer is guilty and administrative discharge is not available if officer involved happens to be member of regular military force as opposed to being reservist. *Silvero v Chief of Naval Air Basic Training* (1970, CA5 Fla) 428 F2d 1009.

Punitive discharge of reserve officer was impermissibly based upon his statements about his moral objections to use of nuclear weapons for offensive purposes. *Tilley v United States* (1989) 19 Cl Ct 33.

Discharge of reservist as unsuitable for service, because reservist evidences homosexual behavior or interest, but is without overt homosexual acts, is violation of First Amendment right to personal privacy and Fifth Amendment substantive due process. *Ben Shalom v Secretary of Army* (1980, Ed Wis) 489 F Supp 964, 22 BNA FEP Cas 1396.

6. Statement of reasons

Even though initial denial by Marine Corps of reservist's application for discharge on conscientious objector grounds was defective for failure to assign reason for such action, it does not follow that reservist's application for discharge must necessarily be granted, as proper procedure would be to remand proceedings to service for reprocessing and for compliance with requirement of statement of reasons. *United States ex rel. Coates v Laird* (1974, CA4 NC) 494 F2d 709.

7. Role and power of court

Court of Appeals is empowered to determine whether officer in Army Reserve had his procedural rights violated by army's failure to follow pertinent regulations and statutes in regard to his application for discharge as conscientious objector. *Earls v Resor* (1971, CA2 NY) 451 F2d 1126.

Regular air force officer is entitled to "fair and impartial" hearing on separation under 10 USCS § 8792, but there is no similar provision for reserve officers in 10 USCS §§ 1162, 1163; however, Air Force Regulation 36-2, applying to both regular and reserve officers, guarantees "fair and impartial" hearing and United States Court of Appeals has jurisdiction of action seeking declaration that discharge of reserve officer was illegal because hearing guaranteed by regulations was denied. *Denton v Secretary of Air Force* (1973, CA9 Cal) 483 F2d 21, cert den 414 US 1146, 39 L Ed 2d 102, 94 S Ct

900.

Although courts are extremely reluctant to interfere with military's internal affairs, particularly those involving personnel changes, courts will review without hesitation cases where it is alleged that military violated Constitution, statutes or its own regulations; mandamus for reinstatement is appropriate remedy where reservist's discharge is found to be unconstitutional. *Ben Shalom v Secretary of Army* (1980, ED Wis) 489 F Supp 964, 22 BNA FEP Cas 1396.

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Print Number: 1861:15147103

Number of Lines: 317

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