

to better organize the rules, notify applicants of their rights and Board procedures, and remove other shortcomings as described below.

The current rules fail to inform the public of the following important matters: the proper format for briefs in support of an application; the need for a family member or legal representative to submit proof of his or her proper interest before applying on behalf of a deceased or incompetent veteran; the requirement that applicants inform the Board of any change in their mailing address prior to final action by the Board; the fact that applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing may be entitled to representation by a Coast Guard law specialist in accordance with 10 U.S.C. 1034(f)(3)(A); the presumption of regularity accorded military records and the burden of proof borne by applicants; the possible actions the Secretary or his or her delegate may take when reviewing a recommended decision of the Board; the possible reduction of monetary awards resulting from record corrections because of setoffs required by law or regulation; and the availability of copies of the Board's final decisions, redacted to protect the privacy of applicants, for review in the Board's reading room and on an Internet site.

Furthermore, the current rule allows an applicant only 15 days to respond to the written views of the Coast Guard on his or her application. § 52.82(d). In light of the underway schedules of some of the Board's active duty applicants assigned to sea duty, 15 days is insufficient time for some applicants to respond. Moreover, no provision addresses applicants' requests for extensions to consult counsel or gather more evidence. The current rule requires members who submit evidence after submitting their applications to waive their right to a final decision within ten months and makes no provision for a new deadline. § 52.61(c). Moreover, no provision addresses the consequences of an applicant's decision to change his or her request for relief.

The current rule states that Board action is required before a member can withdraw an application. § 52.26. It also allows the Chair to deny an application, without prejudice and without action by the Board, if he or she believes that the evidence is insufficient or that the application was untimely and lacks merit. § 52.32.

The current rule does not address or facilitate the Board's access to privileged, classified, and sensitive information, such as reports of investigations, which is occasionally

necessary for the Board to determine whether an error or injustice has been committed. The current rule also permits applicants to inspect the Board's record of proceedings without expressly providing for the protection of privileged, classified, and sensitive information. § 52.66.

The current rule states that the Board shall consider any written recommendation submitted by the Chief Counsel of the Coast Guard before issuing a decision. § 52.82(e). However, it provides no deadline for the Chief Counsel's submission even though the Board must take final action on each application within ten months. 14 U.S.C. 425. Delayed submissions by the Chief Counsel's office can leave the Board with little or no time to receive the applicant's response, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. The current rule also does not take into account written views submitted by a delegate of the Commandant of the Coast Guard other than the Chief Counsel. In addition, the current rule fails to require the Coast Guard to describe what "significant issue of Coast Guard policy" is at stake when he or she invokes review of a Board decision by the delegate of the Secretary. § 52.64(a)(2).

The current rule permits the Board to specify any correction of a record in its order and to order the Coast Guard to take "any other action deemed necessary to carry out the Board's recommendation," but it does not expressly permit the Board to order the Coast Guard to convene medical boards to determine an applicant's disability rating so that his or her separation can be corrected. § 52.61(e). The current rule also requires the delegate of the Secretary to review cases in which the Board corrects a record to show that a member is entitled to a medal or award contrary to the Coast Guard's recommendation. In addition, the current rule does not address what the Coast Guard should do if it finds that an order of the Board is incomplete because of an oversight. All of these matters are addressed in the final rule.

Notice and Comment

The Department published a Notice of Proposed Rulemaking on December 11, 2002, at 67 FR 76142. No comments were received in response to that notice. Therefore, this final rule adopts the proposed rule without change.

Section-by-Section Analysis of the Final Rule

Subpart A—Purpose and Authority

Section 52.1 Purpose

This section remains unchanged.

Section 52.2 Authority

This section is amended to reflect the codification of the Board's ten-month deadline for issuing decisions under 14 U.S.C. 425 and to add a citation (10 U.S.C. 1552(a)(4)) for the finality and conclusiveness of the Board's orders.

Subpart B—Establishment, Function, and Jurisdiction of Board

Section 52.11 Establishment and Composition

Throughout this section and all of Part 52, the term Chair is substituted for the term Chairman to establish gender neutrality. This section is also amended to remove a citation to 49 U.S.C. 108(a).

Section 52.12 Function

This section is amended to reflect the fact that the Board considers submissions from the Coast Guard and other Government offices along with applications and military records in reaching its decisions.

Section 52.13 Jurisdiction

No changes have been made to this section.

Subpart C—General Provisions Regarding Applications

Section 52.21 General Requirements

No changes have been made to paragraph (a). Paragraph (b) is amended to inform family members and legal representatives that they must submit proof of their proper interest when applying to the Board for the correction of the military record of a deceased or incompetent veteran. Paragraph (c) is amended to reflect the fact that applications are not docketed by the Board until they are complete and to reflect the need for substantial evidence or information and all military and medical records before an application is considered complete. Paragraph (d) is added to advise applicants of the necessity of keeping the Board informed of any changes in mailing address so that they will receive the Board's correspondence. Paragraph (e) is added to ensure that briefs submitted in support of applications are readable, replicable, and not unduly lengthy.

Section 52.22 Time Limit for Filing Application

This section is reworded to clarify why an applicant must provide reasons