

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chapter CC23--Staffing
Subchapter CC23.8--Retirement
Personnel INSTRUCTION 4--Involuntary Retirement After 20 Years of Service

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Section A. Purpose and Scope

This INSTRUCTION establishes the policy and procedures by which a Public Health Service (PHS) commissioned officer may be retired, without the officer's consent, on the first day of any month following completion of 20 years of active service. A retirement action taken under this subsection shall be taken only after consideration of the recommendation of a retirement board (see Section D., below).

For information regarding involuntary retirement of an officer with less than 20 years of service, pursuant to failure to be recommended for permanent promotion, see Commissioned Corps Personnel Manual (CCPM), INSTRUCTION 5, Subchapter CC 23.4, "Failure of Permanent Promotion."

For information on disability retirement, see CCPM INSTRUCTION 6, Subchapter CC 23.4, "Disability Retirement."

For information on involuntary retirement 30 years of active service, see CCPM INSTRUCTION 3, Subchapter CC23.8, "Retirement of an Officer With 30 Years of Active Service."

Section B. Authority

1. Section 211(a)(3) of the PHS Act (42 U.S.C. 212(a)(3)) and regulations prescribed in CCPM INSTRUCTION 1, Subchapter CC43.8, of this manual, authorize retirement of a regular or reserve corps officer who has completed 20 or more, but less than 30 years of active service without consent of the officer concerned, provided that not less than 10 years of such service have been active commissioned service in the PHS. Computation of active service will be made in accordance with Section 211(d) of the PHS Act (42 U.S.C. 212(d)).
2. The authority to administer the PHS Commissioned Corps is prescribed in Section 215 of the PHS Act (42 U.S.C. 216). The authority for daily administration of the PHS Commissioned Corps has been delegated to the Director, Division of Commissioned Personnel (DCP), Human Resources Service, Program Support Center.

Section C. Referral to an Involuntary Retirement Board

1. When an officer attains 19 years of retirement credit, in which at least nine of those years have been active service with the PHS Commissioned Corps, the officer's record will be reviewed by DCP to determine if the officer is qualified for retention beyond 20 years or if the record should be referred to an Involuntary Retirement Board (IRB).
2. Thereafter, the record of an officer will be reviewed at least every 3 years by DCP for possible referral to an IRB. Referral shall be made by the Director, DCP.
3. In addition to Section C.1., above, the record of an officer who has 19 or more years of retirement eligibility credit may be referred to an IRB by the Director, DCP, based upon the recommendation of the Operating Division (OPDIV) or Program Head or his/her designee to which the officer is assigned. In addition, the Director, DCP, may refer such officer to an

IRB, if he/she questions the officer's qualifications for retention on active duty.

Section D. Grounds for Involuntary Retirement

An officer may be involuntarily retired for one or more of the following reasons:

1. The officer's performance of duty, as reflected by the Commissioned Officers' Effectiveness Report (COER) (Form PHS-838), or by other appropriate documentation, is marginal or at a level below that expected of an officer of that grade and category;
2. The officer has not been recommended for a permanent or temporary promotion by a regular annual promotion board;
3. The officer has engaged in conduct contrary to laws, regulations, standards of conduct, or administrative directives applicable to commissioned officers;
4. The officer has intentionally omitted or misrepresented facts in official statements, either oral or written;
5. The officer has engaged in acts of intemperance or personal misconduct to the discredit of the Department of Health and Human Services, the OPDIV or Program to which to officer has been assigned, or the PHS Commissioned Corps;
6. The officer has failed to obtain and/or maintain a current, valid, unrestricted professional license or certification as required by the appointment standards for the officer's professional category;
7. There is a reduction in strength of the PHS Commissioned Corps because of budgetary constraints, program contraction, or numbers limitations;
8. There is a substantial reduction in funding or staffing levels within the specific OPDIV or Program to which the officer is assigned, and after a Corps-wide review completed by DCP indicates that there is no other suitable assignment for the officer;
9. There is no suitable assignment for the officer.
10. Officer in a billet for two or more grades below his/her pay grade for a period in excess of 2 years.

Section E. Involuntary Retirement Boards

1. An IRB will be convened as necessary for the purpose of reviewing the service records of an officer and recommending retirement or retention on active duty of officers referred for consideration under Section C., above.
2. An IRB shall be appointed and convened by the Director, DCP. An IRB shall consist of at least five senior officers, two of whom, insofar as practicable, shall be of the same professional category as the officer(s) whose records are submitted to them for consideration.

The Director, DCP, will make every effort to assure that Boards do not consist entirely of men or women or entirely of individuals of one race, but no Board member will be selected solely on the basis of gender or race.

3. Board deliberations are confidential.
4. One or more DCP officers shall be appointed by the Director, DCP, to be a resource to the board.

Section F. Notification of Officer

1. When an officer's record is to be referred to an IRB, DCP shall notify the officer of that fact and the reason for the referral. No board shall consider the record of an officer until 30 days after the officer is notified. During this period, the officer may:
 - a. Enter into the record any pertinent facts for consideration by the board; or
 - b. Request voluntary retirement.
2. Pertinent supplementary information will be provided by the appropriate management levels at the time the referral is made to DCP. This information will include, but is not limited to the following:
 - a. Reports concerning the general value of the officer;
 - b. Evaluations by superiors of the officer's competence in the current assignment, including a statement as to whether the responsibilities are in line with the grade held;
 - c. Probable duration of the officer's current assignment; and
 - d. Availability of more suitable personnel for the assignment.

3. The above information will be entered into the officer's record prior to referral to the IRB. The officer will be provided a copy of the information with the notice in Section F.(1), above.

Section G. Retirement vs. Retention on Active Duty

1. The board report, consisting of the findings and recommendations of an IRB will be based on material contained in the record submitted to it for review by the OPDIVs or Programs, the officer in question, and DCP. The report will be signed by the board members. If the IRB's recommendation is not unanimous, such fact shall be so indicated in the recommendation, and those members of the board who disagree with the recommendation of the majority may submit a separate report or reports and their findings and recommendations.
2. The IRB's findings and recommendations, along with all documentation, will be forwarded to the SG, for approval or disapproval. The decision of the SG, shall be based on the IRB's findings and recommendations, and any other relevant information in the record.
3. An officer who is not recommended for involuntary retirement, or whose recommendation for retirement is disapproved, shall be retained on active duty with or without reassignment. However, the officer may be retired or separated under other provisions of law, or as a result of a subsequent referral of the record to an IRB.
4. An officer will be retired if an IRB so recommends for one or more of the grounds set forth in Section D., above, and the IRB's recommendation is approved by the Surgeon General (SG).

Section H. Computation of Retired Pay

Retired pay for officers retired under the provisions of this INSTRUCTION is computed in the same manner as for voluntary 20-year retirements in accordance with Section 211(a)(4) of the PHS Act (42 U.S.C. 212(a)(4)). See CCPM INSTRUCTION 2, Subchapter CC23.8, "Computation of Retired Pay," of this manual.

Section I. Request for Reconsideration

An officer may request reconsideration of the SG's decision if the officer provides newly discovered relevant material, information, or evidence, which was not available or discoverable prior to the IRB which may have resulted in a different outcome. The officer should submit his/her request in writing to the

SG within 10 working days of the date of SG's decision. The SG may (1) uphold his/her decision, (2) modify or rescind his/her decision, or (3) reconvene the IRB for further deliberations.

Unless specifically authorized by the SG, a request for reconsideration does not stay or suspend the implementation of the SG's original decision or any other personnel action.

Section J. Effective Date of Retirement

The effective date of the officer's involuntary retirement shall be determined by the SG. However, by law, retirements under this INSTRUCTION must be made effective on the first day of a month.

Section K. Privacy Act Provisions

Personnel records are subject to the provisions of the Privacy Act of 1974. The applicable systems of records are 09-37-0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OSG; and 09-37-0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OSG.