

MANUAL: Personnel
Chapter Series CC--Commissioned Corps Personnel Manual
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC23--Staffing
Subchapter CC23.4--Promotion
Personnel INSTRUCTION 5--Failure of Permanent Promotion

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Section A. Purpose and Scope

1. This INSTRUCTION sets forth the conditions under which administrative review and action will be taken to terminate the commission of, place in retired status, and/or reduce to lower grade, a Public Health Service (PHS) commissioned officer when he/she fails to be recommended for permanent promotion.
2. Failure of promotion as used in this INSTRUCTION applies only to PHS commissioned officers who are considered and not recommended for permanent promotion. It does not apply to officers who are recommended for promotion but who are not promoted because of limitations on numbers in grade.
3. For information on promotion policy and procedures, see Subchapter CC23.4, INSTRUCTIONS 1 and 2, of this manual.

4. Medical and dental officers who fail to be recommended for promotion may become ineligible for certain special pay pursuant to Subchapter CC22.2, INSTRUCTIONS 2 and 3, of this manual.
5. Regular and reserve corps officers may also be subject to reduction in grade for marginal or substandard performance pursuant to Subchapter CC23.7, INSTRUCTIONS 4 and 6, and for misconduct pursuant to Subchapter CC46.4, INSTRUCTION 1, of this manual.

Section B. Authorities

1. Section 215 of the PHS Act (42 U.S.C. 216) authorizes the President to prescribe regulations governing the promotion of PHS commissioned officers. The President's authority to issue regulations was delegated to the Secretary, Department of Health and Human Services (DHHS), by Executive Order 11140 dated January 30, 1964. Implementing regulations are set forth in Subchapter CC43.4, INSTRUCTION 1, and Subchapter CC43.7, INSTRUCTION 1, of this manual.
2. The authority to terminate commissions of PHS commissioned officers was delegated by the President to the Secretary, DHHS, by Executive Order 11140. Redelegations of this authority to PHS officials are stated in Part 3 of this manual. The authority for separation from service upon failure of promotion and determination of severance pay for regular corps officers is set forth in 42 U.S.C. 211(g).
3. 42 U.S.C. 211(g)(3) authorizes retired pay for regular corps officers who twice fail to be recommended for permanent promotion to an unrestricted Senior grade.
4. Pursuant to 42 U.S.C. 211(b), the nurse, pharmacist, health services, therapist, dietitian, and sanitarian categories are restricted at the Senior grade.

Section C. Policy

1. An officer assumes a continuing responsibility for effective performance of duty by virtue of an appointment in the PHS Commissioned Corps. Officers are eligible for consideration for permanent promotion upon completion of specified periods of training and experience or length of time in grade as set forth in Subchapter CC23.4, INSTRUCTION 1, of this manual.
2. In accordance with the provisions set forth in Exhibits I and II of this INSTRUCTION, if a promotion board recommends against the permanent promotion of an officer and such recommendation is concurred in by the Director, Commissioned Personnel Operations Division (CPOD), Office of Personnel Management, Office of Management, the officer:

- a. May be reduced in grade;
 - b. Have his/her commission terminated; or
 - c. May be placed in retired status.
3. Upon the initial recommendation against the permanent promotion of an officer in the permanent Assistant, Senior Assistant, Full, or Senior grade, the Director, CPOD, will provide written notification to the officer about:
 - a. The officer's failure to be recommended for permanent promotion;
 - b. When the officer will again be considered for permanent promotion;
 - c. The consequences of another failure to be recommended for permanent promotion; and
 - d. The availability of counseling to assist the officer to improve his/her performance or conduct.
 4. Officers in the permanent Assistant, Senior Assistant, Full, and Senior grades who fail to be recommended for permanent promotion twice in succession, and who are not separated or retired from active duty, shall not be considered for any future permanent or temporary promotion until a determination is made by the Director, CPOD, that the officer's performance and conduct fully justify reinstatement of the officer on the promotion list.
 5. Officers who hold temporary promotions and who twice in succession fail to be recommended for permanent promotion will have their temporary promotions rescinded, effective on the date that the recommendation of the promotion board is concurred in by the Director, CPOD. Such officers shall serve in their permanent grade.
 6. A regular corps officer who has less than 20 years of retirement eligibility credit when he/she twice in succession fails to be recommended for permanent promotion to the restricted Senior grade or to the Director grade will be referred to an Involuntary Separation Board pursuant to Subchapter CC23.7, INSTRUCTION 4, of this manual, or to an Involuntary Retirement Board pursuant to Subchapter CC23.8, INSTRUCTION 4, when he/she completes 20 years of service as determined by the Director, CPOD.
 7. Where the provisions of Exhibits I and II of this INSTRUCTION require referral of an officer to an Involuntary Separation Board, the board's action will be in accordance with the policy and procedures set forth in Subchapter CC23.7, INSTRUCTIONS 4 and 6, of this manual. Where the provisions of Exhibits I and II of this INSTRUCTION require referral of an officer to an Involuntary Retirement Board, the board's action will be in accordance with the policy and procedures set forth in Subchapter CC23.8, INSTRUCTIONS 3 and 4, of this manual.

8. All records of officers are subject to the Privacy Act of 1974. For information on the Privacy Act, see Subchapter CC26.1, INSTRUCTION 7, of this manual.

Section D. Conditions for Action

1. Exhibits I and II of this INSTRUCTION set forth the conditions under which administrative review and action will be taken when an officer fails to be recommended for permanent promotion. Use Exhibit I for regular corps officers. Use Exhibit II for reserve corps officers. In each Exhibit, begin with Rule 1 and read from left to right. Columns A and B list the applicable conditions, and column C lists the actions to be taken. If any one of the conditions under a rule is not met, proceed to the next rule, until all the conditions applying to the officer are met.
2. Where automatic separation is indicated in the Exhibits, the law requires separation of the regular corps officer. This is extended by policy to reserve corps officers. Reserve corps officers, however, will not be paid severance pay as authorized by law for certain regular corps officers. (See Section E, below.)
3. The date of separation or retirement will be as determined by the Director, CPOD, in consultation with the program to which the officer is assigned. To the extent possible, the date of separation or retirement will be determined so as to give the officer a reasonable period within which to formulate plans.

Section E. Pay Provisions

1. No severance pay is authorized for reserve corps officers who have their commissions terminated for failure to be recommended for permanent promotion. In addition, retirement is not authorized for reserve corps officers with less than 20 years of retirement eligibility credit who twice fail to be recommended for promotion to the restricted Senior grade.
2. Pursuant to 42 U.S.C. 211(g), a regular corps officer in the permanent Junior Assistant grade who once fails to be recommended for permanent promotion to the Assistant grade shall have his/her PHS commission terminated and shall not be eligible for severance pay.
3. Pursuant to 42 U.S.C. 211(g)(1), a regular corps officer in the permanent Assistant grade who twice in succession fails to be recommended for permanent promotion to the Senior Assistant grade shall have his/her PHS commission terminated and shall be paid six months' basic pay and allowances.
4. Pursuant to 42 U.S.C. 211(g)(2), a regular corps officer in the permanent Senior Assistant grade who twice in succession fails to be recommended for permanent promotion to the Full grade shall have his/her PHS commission terminated and shall be paid one year's basic pay and allowances.

5. Pursuant to 42 U.S.C. 211(g)(3), a regular corps officer in the permanent Full grade who twice in succession fails to be recommended for permanent promotion to the nonrestricted Senior grade shall be retired at such time thereafter as the Assistant Secretary for Health may determine. The officer's retired pay base shall be the basic pay of the permanent grade held by the officer at the time of retirement. The officer's retired pay is computed as follows (unless he/she is otherwise eligible for retirement and thus is entitled to a greater amount by reason of another provision of law):
- a. In the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2 1/2 percent of the retired pay base determined under Section 1406(h) of 10 U.S.C., for each year, not in excess of 30, of his/her active commissioned service in the PHS; or
 - b. In the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying the retired pay base determined under 10 U.S.C. 1407 by the retired pay multiplier determined under 10 U.S.C. 1409, for the number of years of his/her active commissioned service in the PHS.

EXHIBIT I

REGULAR CORPS OFFICERS ONLY

	A	B	C
R U L E	If an officer fails to be recommended for permanent promotion to	and has completed (years of service for retirement)	officer will be
1	Assistant Grade ONCE	less than 20	Terminated from PHS (See Section E).
	or		
2	Senior Assistant Grade TWICE or Full Grade TWICE	20 or more	Referred to Involuntary Retirement Board.
3	Nonrestricted Senior Grade TWICE (See Note below)	less than 20	Retired as may be determined by ASH (See Section E).
4		20 or more	Referred to Involuntary Retirement Board.
5	Restricted Senior Grade TWICE or	less than 20	Referred to Involuntary Separation Board or Involuntary Retirement Board upon completion of 20 years service.
6	Director Grade TWICE	20 or more	Referred to Involuntary Retirement Board.

NOTE: The nurse, pharmacist, health services, therapist, dietitian, and sanitarian categories are restricted at the Senior Grade.

EXHIBIT II

RESERVE CORPS OFFICERS ONLY

	A	B	C
R			
U	If an officer fails to	and has completed	
L	be recommended for	(years of service	officer will be
E	permanent promotion to	for retirement)	
1	Assistant Grade ONCE	less than 20	Terminated from PHS (No severance pay authorized).
	or		
	Senior Assistant Grade TWICE	20 or more	Referred to Involuntary Retirement Board.
	or		
	Full Grade TWICE		
3	Nonrestricted Senior Grade TWICE (See Note below)	less than 20	Referred to Involuntary Separation Board.
4		20 or more	Referred to Involuntary Retirement Board.
5	Restricted Senior Grade TWICE	less than 20	Referred to Involuntary Separation Board.
	or		
6	Director Grade TWICE	20 or more	Referred to Involuntary Retirement Board.

NOTE: The nurse, pharmacist, health services, therapist, dietitian, and sanitarian categories are restricted at the Senior Grade.