

**Number 15, August 2000 (updated March 2003):
Pension Credit for Military Service Continued**

By CAPT Samuel F. Wright, JAGC, USNR

I have received quite a few inquiries about Law Review Number 13 (June 2000), concerning Title 10, United States Code, section 12736 (10 U.S.C. 12736). To review, that section provides as follows:

No period of service included wholly or partly in determining a person's right to or the amount of retired pay under this chapter [Chapter 1223 deals with 'retired pay for nonregular service'] may be excluded in determining his/her eligibility for any annuity, pension, or old-age benefit under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

The wording of section 12736 has not changed since it was enacted as part of the Reserve Retirement Law (Public Law 810 of the 80th Congress). Here at ROA headquarters, we have the pen that President Truman used to sign that law. That law is one of the foundations of the modern Total Force Policy. Without the incentive of the age-60 retirement benefit, it would not be possible to recruit Reserve component personnel and retain them for two decades or more.

Section 12736 does not require a state to allow public employees to purchase credit for military service that predates their public employment. Section 12736 simply means that if a state permits public employees generally to purchase such credit, it cannot deny that privilege to public employees who are using the same period of military service to help them qualify for Reserve (age 60) retirement. In other words, section 12736 is an 'anti-anti-double dipping' provision.

In my June article, I mentioned 11 states (Alabama, Alaska, Arizona, California, Connecticut, Louisiana, Massachusetts, Oklahoma, Pennsylvania, Tennessee, and Virginia) whose state laws are inconsistent with 10 U.S.C. 12736. I also stated that the Tennessee Valley Authority is violating this section in the way that it treats employees for retirement purposes. This problem may be more widespread than I believed. I have heard from ROA members in other states. If your employer (at least in the public sector) is telling you that you cannot receive credit for pre-employment military service because you are using the same period of service for Reserve retirement purposes, your employer is probably violating 10 U.S.C. 12736.

I have also heard from an ROA member in Georgia. That member sent me a copy of a new Georgia statute that went into effect 1 July 2000. Under the new law, a public employee in that state is permitted to purchase credit for up to two years of military service that predates the public employment. The

new Georgia law has an 'anti-double dipping' provision, but that provision excludes Reserve retirement from its terms. Thus, the new Georgia law does not run afoul of 10 U.S.C. 12736.

Unfortunately, the new Georgia law only applies to military service performed 'during any period when a military draft was in effect.' Of course, most currently drilling Reservists performed their active-duty periods after the draft was abolished 1 July 1973. Because Georgia is not required to permit employees to purchase credit for pre-employment military service, Georgia can limit the periods of service for which it allows employees to purchase credit (so long as it does not violate 10 U.S.C. 12736). Perhaps ROA's Department of Georgia can lobby the Georgia Legislature to expand this new law to include more recent periods of military service.

Despite the unfortunate limitation, the new Georgia law affects several ROA members who are public employees in that state. If you believe that you may be affected, please call me at 1-800-809-9448, ext. 713, or e-mail me at swright@roa.org.

In my June article, I also addressed military service that predates your civilian career. Military service that interrupts your civilian job is fundamentally different.

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), if you leave a civilian job for service in the uniformed services, you are entitled to re-employment by your civilian employer, as a matter of federal law. Upon re-employment, you are entitled to be treated as if you had been continuously employed for seniority purposes, including pension purposes.

Briefly stated, USERRA's eligibility criteria are simple. You must leave your civilian job for the purpose of service, and you must give your civilian employer prior notice that you are leaving for that purpose. Your period of service must not exceed five years (cumulatively with that employer, and with certain exceptions). You must be released from service under honorable conditions, and you must submit a timely application for re-employment. Get in touch with me if you need the 'long version'.

USERRA was enacted on 13 October 1994, but the result was not significantly different under the prior law, which was called the Veterans Reemployment Rights (VRR) law. While 10 U.S.C. 12736 only applies to public sector employers, the VRR law and USERRA apply to private-sector as well as public-sector employers.

Get in touch with me if your career with a particular employer was interrupted by a period of voluntary or involuntary military service. You are probably entitled to be treated as if your career had not been interrupted, in determining when you qualify for your civilian pension, and also in

determining the amount of your monthly pension check.

Note: Captain Wright's military title is used for purposes of identification only. The views expressed in this article should not be attributed to the Department of the Navy or the U.S. government, generally.

Captain Wright is a Naval Reservist in the JAG Corps. He worked for the U.S. Department of Labor for ten years. He was one of two principal drafters of USERRA. He has also written more than 40 published articles about the VRR law and USERRA.

Captain Wright is on the ROA staff as acting director of Naval Services. If you are calling about a problem with your civilian employer, we suggest that you not call from work.

If your question appears to affect or be of interest to many members, Captain Wright will include it in this column.