

## LAW REVIEW<sup>1</sup> 020

### Service Academy Appointments for Children of Reserve Component Members

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5.2—Military Service and Child Matters

9.0—Miscellaneous

**Q: I am a Major in the Army Reserve. I currently have 12 "good years" for reserve retirement purposes. My son is a sophomore in high school and is starting to think seriously about college. I have encouraged him to think about the service academies, and he seems interested. I understand that most persons admitted to the service academies get appointments from United States Senators and Representatives, but the children of "career" military personnel are eligible for Presidential appointments. How does this system work, and is my son eligible for a Presidential appointment?**

**A:** The three service academies in the Department of Defense (DoD) are the United States Military Academy (USMA), the United States Naval Academy (USNA), and the United States Air

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<sup>1</sup>I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

Force Academy (USAFA). The United States Coast Guard Academy, in the Department of Transportation, has a very different admissions system.

Separate but virtually identical sections of Title 10 of the United States Code (10 U.S.C.) apply to each service academy. Section 4342 applies to the USMA, section 6954 to the USNA, and section 9342 to the USAFA.

Each year, the President is authorized to make 100 special appointments to each of the three DoD service academies. See 10 U.S.C. 4342(b) (USMA), 6954(b) (USNA), and 9442(b) (USAFA). Only certain Armed Forces personnel are eligible to have their children appointed under these provisions.

Until quite recently amended by the Fiscal Year (FY) 2001 National Defense Authorization Act (NDAA), it was necessary that the parent be on active duty (other than for training) and have been on active duty continuously for at least eight years. See 10 U.S.C. 4342(b)(1)(A) (USMA), 6954(b)(1)(A) (USNA), and 9342(b)(1)(A).

Section 531 of the FY 2001 NDAA expands the Presidential appointment authority to include children of parents who "are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title." See 10 U.S.C. 4342(b)(1)(C) (USMA), 6954(b)(1)(C) (USNA), and 9442(b)(1)(C) (USAFA). (All of these subsections are as amended by the FY 2001 NDAA.) A member of a reserve component is credited with a "year of service" for this purpose if the member accumulates at least 50 points in the year. See 10 U.S.C. 12733(a)(2).

Since you already have 12 "good years" for retirement purposes, your son will be eligible for a Presidential appointment to a service academy, provided you are still a member of a reserve component at the time he graduates from high school and applies for such an appointment. This gives you another reason to remain in the Army Reserve, at least until your son graduates high school.

**Q: Since I am in the Army Reserve, is my son limited to a Presidential appointment for the USMA?**

**A:** No. Your son will be eligible for a Presidential appointment to any one of the three DoD service academies.

**Q: What about the children of military retirees? Are they eligible for Presidential appointments to service academies? Are reserve retirees treated differently from regular retirees for this purpose?**

**A:** Children of regular military retirees have always been eligible for Presidential appointments. Until quite recently, children of reserve retirees were excluded from such consideration. Section 531 of the FY 2001 NDAA repeals this unfair exclusion of reserve retirees. Under the

revised law, children of regular and reserve retirees are equally eligible for Presidential appointments to the service academies. This includes "gray area" retirees. (A "gray area" retiree is a person who has met all the qualifications for a reserve retirement except having attained his or her 60th birthday.)

**Q: My older brother retired from the Naval Reserve as a Captain when he was 50. He died five years later, without ever reaching his 60th birthday or drawing any of his Naval Reserve retirement. His daughter is now a senior in high school. Is she eligible for a Presidential appointment to a service academy?**

**A:** Yes. The FY 2001 NDAA added three new subparagraphs to the relevant Title 10 sections. See 10 U.S.C. 4342(b)(1)(D) (USMA), 6954(b)(1)(D) (USNA), and 9442(b)(1)(D), all as very recently added. The child of a parent who was a gray area retiree at the time of his or her death is now eligible for a Presidential appointment.

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This article is one of 1800-plus "Law Review" articles available at [www.roa.org/page/lawcenter](http://www.roa.org/page/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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