

Does “Health Insurance” Include Income Replacement Insurance?

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

4.4—Right to Health Insurance Reinstatement after Military Service

***Lee v. Allied Pilots Association*, 2009 U.S. Dist. LEXIS 59794 (Northern District of Texas; July 14, 2009).**

A recent decision of the United States District Court for the Northern District of Texas points to a loophole in the Servicemembers Civil Relief Act (SCRA). ROA will push to fill this loophole either through case law development or (more likely) through legislation.

ROA member Kenneth J. Lee earned his commission and his wings while serving on active duty in the late 1970s and early 1980s. He left active duty in 1984 and affiliated with the Marine Corps Reserve (USMCR). He went to work for American Airlines (AA) as a pilot in 1985 and

¹I invite the reader’s attention to www.roa.org/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 very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 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 (VRRRA—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 VRRRA 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 VRRRA 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.

remained continuously employed until January 2004, when the USMCR recalled him to active duty and deployed him to Iraq. He left active duty in May 2005 and returned to work for AA.

Airline pilots generally expect to keep flying until their 60th birthdays or later, and they plan for retirement accordingly. Under rules of the Federal Aviation Administration (FAA), a pilot's health is regularly evaluated, and health conditions can cut short an individual's flying career. Pilots seek insurance to cover the contingency of inability to fly until age 60 because of health reasons. AA provides its pilots an income replacement plan, but that plan only covers about half of the income that a pilot would lose if disability cuts short his or her flying career. The Allied Pilots Association (APA) is the union for AA pilots. It established an income replacement policy for its members. Payments under the APA plan, when added to payments under the AA plan, at least come close to replacing a disabled pilot's income loss.

In early 2000, Mr. Lee applied to join the APA income replacement plan. His application was accepted, and his effective date of coverage was April 1, 2000. He paid substantial monthly premiums for this coverage, and he continued paying the premiums after he was called to active duty in January 2004. The APA plan provides for termination of a member's coverage under certain conditions, and one of those conditions is that the coverage is to be terminated 12 months after the individual goes on a military leave of absence (MLOA) from his or her AA employment. In accordance with the plan, the APA terminated Mr. Lee's coverage in January 2005, 12 months after his MLOA began and five months before it ended.

When Mr. Lee returned to work in May 2005, he promptly applied for reinstatement of his health insurance and income replacement insurance through AA and the APA. His employer promptly reemployed him and restored all of his employer-provided insurance coverage, but the APA refused to reinstate his APA income replacement insurance coverage with the original effective date of April 1, 2000. Instead, the APA gave him a new policy with an effective date of coverage of August 1, 2005. Before the end of that month, Mr. Lee suffered a health event that disqualified him from flying, and the disqualification is likely to be permanent.

After waiting through the 14-month "exclusion period," Mr. Lee applied for payments under the APA income replacement policy. The union denied his claim, based on a rule that benefits are not to be paid for a health condition that manifests itself within the first six months after the effective date of coverage. If the APA had reinstated his coverage with the original 2000 effective date, Mr. Lee's claim for benefits would not have been denied.

In 1917, after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA). The original SSCRA expired after the end of that war. Congress reenacted the law for World War II and made it permanent after that war. In August 1990, Iraq invaded and occupied Kuwait. President George H.W. Bush drew "a line in the sand" and deployed military forces to defend Saudi Arabia and to liberate Kuwait. As part of his

military response to the crisis, President Bush mobilized National Guard and Reserve units. This was the first substantial call-up of the Reserve Components (RC) since the Korean War.

The RC mobilization for the first Gulf war caused ROA and other military associations and the Congress to reexamine the laws enacted for RC mobilization, including the SSCRA and the Veterans' Reemployment Rights (VRR) law. Many of the servicemembers mobilized expressed concern about their civilian health insurance arrangements. When called to the colors, their civilian insurance policies often lapsed or were canceled. They wanted assurance that their policies would be reinstated after they returned from service, without waiting periods and without exclusions of "pre-existing conditions."

In 1991, Congress responded to these concerns and amended both the VRR law and the SSCRA, and made the amendments retroactive to Aug. 1, 1990. The VRR provision applied to health insurance through the individual's civilian job, and the SSCRA provision applied to health insurance other than through the individual's civilian job. In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA), a comprehensive rewrite of the VRR law. In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), a comprehensive rewrite of the SSCRA. Both of these new laws carried over the 1991 health insurance provisions without significant change.

I discuss the SCRA health insurance provision in Law Review 118 (March 2004). All previous Law Review articles are available at <https://www.roa.org/page/lawcenter>. The relevant SCRA provision reads as follows: "A servicemember who, by reason of military service ... is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any *health insurance* that—(1) was in effect on the day before such service commenced; and (2) was terminated effective on a date during the period of such service." 50 U.S.C. App. 594(a) (emphasis supplied).

There was no dispute that Colonel (now Brigadier General) Lee was entitled to the protections of the SCRA, that his APA income replacement insurance was in effect on the day before he entered active duty in January 2004, and that the insurance coverage was terminated while he was on active duty. The big question in this case is whether the APA's income replacement insurance qualifies as "health insurance" for purposes of this section. A substantial sum of money turns on that question.

The SCRA defines nine terms used in the law, but "health insurance" is not one of the defined terms. When a statute uses a term but does not define it, courts often turn to dictionaries to determine the commonly understood meaning of the term, because Congress presumably intended the term to be construed in accordance with its meaning in the English language as of the date of enactment of the provision in question. General Lee's attorneys referred the court to multiple dictionary definitions of the term "health insurance." Most of the available definitions include insurance to compensate for income lost due to illness as well as insurance that pays for medical care necessitated by illness.

In a 12-page decision released on July 14, 2009, Judge Terry R. Means rejected General Lee's argument (relying on dictionary definitions) and accepted the APA's argument (relying on definitions of "health insurance" in other federal statutes). Judge Means wrote: "The term

health insurance has, however, taken on a legal meaning, making resort to lay dictionaries irrelevant. As noted by Defendants, health insurance is defined in several statutes and regulations and its meaning has been addressed in several cases. ... And the Court's job here is to ascertain the legal meaning of the term health insurance, not what the term means within the medical or insurance industry. Where Congress uses a term that has accumulated a legal meaning, it is presumed to know and adopt such meaning."

If Colonel Lee had not been called to active duty from January 2004 to May 2005, he would have qualified for the income replacement payments under the APA policy after he was medically disqualified from flying in late August 2005. Because he was called to the colors, he loses out on these payments. It is not fair, and this is exactly the sort of unjust result that Congress enacted section 594(a) to prevent. The legislative fix is simple and self-evident. ROA will propose that the words "or income replacement insurance" be added after "health insurance" in section 594(a). Enactment of such an amendment would not help General Lee, but it would prevent future such injustices.

Update – March 2022³

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁴ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant sections cited throughout the article can be found as followed:

50 U.S.C. App. § 594 discussing health insurance reinstatement can be found at 50 U.S.C. § 4024. There has been no change to this section to include the words "or income replacement insurance" after "health insurance."

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁵

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This article is one of 2,300-plus "Law Review" articles available at www.roa.org/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.

³Update by Second Lieutenant Lauren Walker, USMC.

⁴*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

ROA is almost a century old—it was established on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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.

If you are now serving or have ever served in any one of our nation’s eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

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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⁶Congress recently established the United States Space Force as the 8th uniformed service.