

LAW REVIEW 949

1.3.2.2—Continuous Accumulation of Seniority-Escalator Principle

Retroactive Seniority Adjustment to Your Civilian Seniority Date Based on Military Interruption of Your Civilian Career

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

Q: I am a Staff Sergeant in the Air Force Reserve and an air traffic controller (ATC) for the Federal Aviation Administration (FAA). The agency hired me in 2007. I completed the ATC training program in July 2009, and my seniority as a journeyman controller dates from my completion of the training program.

My training program was interrupted by a four-month call to active duty in the Air Force. If my FAA training had not been interrupted, I would have completed the training program in March 2009. I seek a retroactive adjustment of my seniority date as a journeyman controller, from July 2009 to March 2009.

My seniority date is very important for two reasons. First, it will determine when I am next eligible for a promotion within the FAA. Second, and more importantly, it could determine whether I will be laid off from my job. If the economic downturn results in a Reduction in Force (RIF) of controllers, layoffs will be by seniority. Having a March 2009 seniority date will give me greater protection against layoff than if I have a July 2009 seniority date.

The way I read your Law Review 53, I am entitled to the retroactive seniority adjustment that I seek. Do you agree?

A: Yes.

There is a United States Supreme Court case directly on point and directly supportive of your claim. “A returning veteran cannot claim a promotion that depends solely upon satisfactory completion of a prerequisite period of employment training unless he first works that period. *But upon satisfactorily working that period, as petitioners did here, he can insist upon a seniority date reflecting the delay caused by military service.* Any lesser protection would deny him the benefit of the salutary provisions of sections 9(c)(1) and 9(c)(2) of the Universal Military Training and Service Act.” *Tilton v. Missouri Pacific Railroad Co.*, 376 U.S. 169, 181 (1964) (emphasis supplied).

I discuss *Tilton* and its implications in detail in Law Review 53 and Law Review 0848. You can find more than 600 Law Review articles at www.roa.org/law_review.

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers’ Law Center) at swright@roa.org or 800-809-9448, ext. 730.