

LAW REVIEW 1007

Active Duty that Enables You to Receive Reserve Retirement before Your 60th Birthday

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

Q: I am an Army Reserve Colonel and a life member of ROA and I have performed a lot of active duty (voluntarily and involuntarily) in recent years, especially since the terrorist attacks of September 11, 2001. I understand that in early 2008 Congress amended the reserve retirement law to allow somebody like me to start receiving reserve retirement pay before my 60th birthday. I was told that for each 90 days of active duty that I perform I can reduce the age at which I start receiving the retired pay by three months.

I performed exactly one year of active duty, from Sept. 1, 2008 to Aug. 31, 2009. I figure that I should start receiving my retired pay on my 59th birthday—one year of active duty should reduced my age eligibility date by one year. But the personnel office told me that this year of active duty reduced my age eligibility date by only nine months. I think that I am getting gypped by sharp-penciled accountants. Is the personnel office correct?

A: Unfortunately, yes, under the law as currently written. Here is the text of the pertinent subsection:

"In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 [Jan. 28, 2008], the eligibility age for purposes of subsection (a)(1) shall be reduced below 60 years of age by three months for each aggregate of 90 days on which such person so performs *in any fiscal year* after such date, subject to subparagraph (C). A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph."

10 U.S.C. 12731(f)(2)(A) (emphasis supplied).

You only get credit for this purpose for a period of active duty of at least 90 days, and only if you performed the entire period during a specific fiscal year—the federal fiscal year starts on Oct. 1 and ends on Sept. 30. Your active duty period started in Fiscal Year (FY) 2008 (which ended Sept. 30, 2008). Your period of active duty during FY 2008 was only 30 days, so you get no credit for that period. The law does not provide for partial credit and you cannot carry over credit to the next fiscal year.

In FY 2009, you performed 90 days of active duty from Oct. 1 to Dec. 29, and you get a three-month reduction for that period. You performed another 90 days of active duty from Dec. 30 to Mar. 29, and you get three months reduction for that period. You performed 90 days of active duty from Mar. 30 to June 27, and you get a three-month reduction for that period. Your active duty from June 28 to Aug. 31 was only 65 days, so you get no reduction for that period.

You get nine months reduction for 365 days of active duty. I agree that you are being gypped, but this is the way the law was written. If you could have figured out a way to stay on active duty until Sept. 30, 2009 (the end of FY 2009), you would have received an additional three-month reduction.

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.