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What Is "Noncareer" Service?

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

1.3.1.2—Character and Duration of Service

Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA) in 1994, as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which can be traced back to 1940. USERRA's very first section sets forth three purposes that Congress had in mind in enacting this law. The first purpose is as follows: "(1) to encourage *noncareer* service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service." 38 U.S.C. 4301(a)(1) (emphasis supplied).

I worked for the United States Department of Labor (DOL) for ten years (1982-92), and that is when I developed the interest and expertise in the reemployment statute. Together with one other DOL attorney (Susan M. Webman), I largely drafted the interagency task force work product that President George H.W. Bush presented to Congress in February 1991 and that President Bill Clinton signed in October 1994.

The VRRA did not include explicit congressional purposes. The task force decided that including purposes would be useful to courts called upon to interpret provisions of this new law. The USERRA version presented to Congress by President Bush in February 1991 did not include the word "noncareer" as a modifier to "service in the uniformed services."

I well recall, in April 1991, spending a long day with Chuck Lee, then the Chief Counsel of the Senate Veterans' Affairs Committee, which was chaired by Senator Alan Cranston of California. We pored over President Bush's proposal line by line, and Chuck asked me lots of questions and indicated areas where Senator Cranston would likely seek to change our draft. In the first section, Chuck proposed to add "nonregular" as a modifier to "service in the uniformed services." I strenuously objected, pointing out that the reemployment statute had always applied to persons performing regular military service—the law is not limited to the National Guard and Reserve. The Senate Veterans' Affairs Committee added "noncareer" during the mark-up session, and the House of Representatives acceded to this change. If it were up to me, the law would simply say "to encourage service in the uniformed services."

As Director of the Service Members Law Center, I get lots of questions about USERRA, and especially about the five-year limit (with eight statutory exemptions) in section 4312(c), 38 U.S.C. 4312(c). I believe that "noncareer" is simply shorthand for the five-year limit. My concern is that a court could construe "noncareer" as an additional limitation on the duration of the permissible period or periods of uniformed service.

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.