

LAW REVIEW 1132

When may a Washington State government-employee veteran increase their score on a promotion exam?

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1.1.1.7 - State and Local Governments

1.1.3.1 - Voluntary and Involuntary Service

1.8 - Relationship Between USERRA and Other Laws/Policies

The State of Washington gives veterans who were employed with a government entity, and called to active duty for more than one year, the benefit of a 5% increase on the passing score of their first promotional examination. This law review addresses whether a veteran-employee of a government entity can use his or her 5% first-time-promotional-examination increase with a subsequent government employer. Specifically, the paper addresses the situation of: (1) a veteran; (2) employed with government agency A; (3) getting called to active duty for more than one year; (4) honorably completing his or her service; and, (5) returning to government agency A. The veteran then leaves government agency A for employment at government agency B and seeks to add the 5% promotional examination benefit to his first promotional examination at government agency B. Is the veteran limited to using the 5% benefit only at government agency A? The answer is likely "no," so long as the veteran did not previously use the 5% increase while at government agency A.

Since the end of World War II the State of Washington has allowed veterans to increase their entrance examination test score for state or local government employment by 5% to 10%.^[2] Veterans can use the 5-10% increase on as many entrance examinations as they choose until they receive their first offer of government employment. The State of Washington also allows veterans who were (a) employed with a government entity and (b) called to active duty for more than one year to add 5% to the score of their first promotional examination. ^[3] A veteran may claim the 5-10% entrance examination increase or, if applicable, the 5% first-time-promotional-exam increase "upon release from active military service."^[4]

Washington case law and RCW 41.04.010, the statute that authorizes the increase, are silent on the issue of whether a veteran who worked for government agency A is limited to using the 5% first-time-promotional-exam increase only while employed at government agency A. The Washington State Attorney General has, however, issued an opinion that is somewhat analogous to the issue. Although Attorney General Opinions are not binding legal authority, they are illustrative as to how a Washington court would rule on the issue.^[5]

Washington State Attorney General Opinion No. 22, 1974, addressed the issue of whether a veteran could use the 5-10% entrance examination increase a second time *after* obtaining initial government employment: i.e. whether the veteran could use the benefit to obtain employment at government agency A and then use the benefit a second time to obtain employment at government agency B. The Attorney General opined that the answer was "no" and cited the legislative history and statute's text as support.

The Opinion's analysis of the statute's legislative history revealed that the statute, which was passed immediately following World War II, initially gave veterans preferences in entrance examinations and promotional examinations without limitation. Subsequent versions of the law limited the times and circumstances when a veteran could use the benefit and required, among other things, that the veteran exercise the preference within five years of discharge. The Attorney General opined that the restrictive legislative trend would persuade a court as to the limited scope of the 5-10% benefit. The opinion further addressed the 5% first-time-promotional-exam benefit, concluded that the benefit was limited "to a single occasion,"^[6] but implied that the "single occasion" use would apply regardless of employer. Since the 1974 publication of the Attorney General Opinion the statute's protections have become somewhat broadened, as seen by the statute now allowing veterans to claim their preference at any time following discharge. As such, the "restrictive legislative trend" argument may not carry as much weight today.

Nonetheless, this "single occasion" language, coupled with the statutory language that "[a]ll veterans' scoring criteria may be claimed upon release from active military service" leads to the conclusion that the veteran introduced in the above hypothetical can use his 5% first-time-promotion increase with government agency B so long as he or she had not used the benefit previously. Since there is no time limit as to when the veteran may use the 5% benefit, it follows that Washington State legislature contemplated the veteran changing jobs and choosing to use the benefit at a time and place when the veteran saw fit. This conclusion is further illustrated by the legislative history of the statute insofar as the veteran previously had to exercise the above-benefits within five years following discharge from active duty but now may claim the benefit at any time.^[7]

Accordingly, the veteran can use his or her 5% first-time-promotional-examination increase at a subsequent government employer so long as he or she had not previously used the benefit.

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[2] The 5% increase applies to veterans who: (1) fulfilled their initial military service obligation; (2) were honorably discharged; but, (3) did not serve during a period of war or in an armed conflict or (4) receive a military retirement. RCW 41.04.010(2). The 10% increase applies to veterans who: (1) received an honorable discharge - - or is currently serving honorably - - (2) served during a period of war or in an armed conflict; but, (3) does not receive a military retirement. RCW 41.04.010(1).

[3] RCW 41.04.040(3).

[4] RCW 41.04.010(4). Prior versions of Washington law limited the application period to 5 to 8 years.

[5] The text of the Attorney General Opinion is available at <http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=7192>

[6] Op. Atty. Gen. 1974, No. 22 pg. 4.

[7] *Id.*