

Law Review 1176

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Active Duty Time Counts for Federal Civilian Leave Accrual Purposes, Part 2

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3.1—Reserve Retirement and Civilian Employment (Federal)

Q: I read with great interest your Law Review 1164 (September 2011). I am a Colonel in the Army Reserve and a life member of ROA. My active duty (in many different periods) totals 15 years and 3 months. I am not yet retired from the Army Reserve, and I am still 3 years away from my mandatory retirement date. Also, I have not given up on being promoted to Brigadier General, which would extend my mandatory retirement date.

I recently started a new federal civilian job, and this is the first time I have worked for the Federal Government as a civilian employee. Since I have more than 15 years of active duty time, I should receive 8 hours of annual leave per pay period, in my new federal civilian job, based on 5 U.S.C. 6303(a), as you explained in Law Review 1164.

The personnel office has given me credit, for leave accrual purposes, for some of my active duty time but not all of it. The personnel office has given me credit for those active duty periods for which I can produce a DD-214, but not for those periods for which I do not have a DD-214. As a result, I am receiving only 6 hours of annual leave per pay period, rather than 8.

I have performed numerous short active duty periods, for which I did not receive a DD-214, in accordance with Department of Defense policy. I don't see where it says, in the United States Code, that it is necessary to have a DD-214 in order to receive credit for the period for leave accrual purposes. I can prove that I performed each of these periods of active duty, based on endorsed copies of orders, military performance reports, and other documentation. Do you think that my rights have been violated?

A: Yes, I believe that your rights have been violated. The pertinent section of the United States Code specifically provides, "The determination of years of service [for leave accrual purposes] may be made on the basis of an affidavit of the employee." 5 U.S.C. 6323(a) (penultimate sentence).

Q: The civilian personnel official told me, "Without a DD-214, we do not know that your service was honorable." What do you have to say about this?

A: The personnel official is showing his ignorance about military matters, but this is not unusual. Congress abolished the draft in 1973, and with each passing year a higher percentage of the folks we must deal with (in government agencies, private businesses, etc.) have never served in the military in any capacity.

The fact that you are still in the Army Reserve, and that you performed additional periods of service after the periods in question, demonstrates beyond doubt that your service was honorable during each of these periods. If your service had been other than honorable, your military career would have ended.