

Law Review 1274

August 2012

No Retirement Points for Midshipman Cruises

By Rachel M. Kelly¹

9.0—Miscellaneous

Q: I was a member of the Naval Reserve Officers Training Corps (NROTC) and was commissioned an Ensign in 1980. I spent the next five years on active duty, then another 24 years in the Navy Reserve, before I retired in 2009. I am now a “gray area retiree” waiting for my 60th birthday to start drawing my Navy Reserve retirement pay.

During the summers of 1977, 1978, and 1979, I served on Navy ships, as an NROTC midshipman, for my “summer cruises.” These three cruises total 165 days, and I think that I should receive 165 additional retirement points, thus adding to the Navy Reserve retirement, which I will start receiving in 2018 when I turn 60. My uncle graduated from the same university, and the same NROTC program, and was commissioned in 1955. He also retired from the Navy Reserve. He told me that he long ago received retirement points for his midshipman cruises in 1952, 1953, and 1954. What about me? Can I get retirement points for my midshipman summer cruises?

A: You are not entitled to retirement points for your summer cruises in the NROTC program. Section 2107(g) of title 10 of the United States Code provides: “In computing length of service *for any purpose*, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.” 10 U.S.C. 2107(g) (emphasis supplied).²

Some have argued that §2107(g) means that an officer cannot use the midshipman summer cruises for purposes of earning “good years” needed to qualify for the Reserve retirement at age 60, but that the officer should be able to use the points in the formula that determines the amount of his or her monthly retirement check, or not for time but for pay. The problem with this interpretation is that it ignores the “for any purpose” phrase in §2107(g). There is a rule of statutory construction that each word and phrase included in a statute is put there for a reason. When interpreting the meaning of a statute, if there are multiple possible interpretations, the ones that require us to ignore a word or phrase will be disfavored.³

In any case, the Navy’s interpretation is that you do not earn Reserve retirement points for your midshipman cruises in the NROTC program. It is unlikely that the Navy’s interpretation will be changed or overturned.

This issue has only arisen in the Navy, with respect to NROTC summer training. Graduates of Army ROTC and Air Force ROTC have never received retirement credit for their ROTC training, either during the school year or the summer break. NROTC graduates have received retirement points for summer cruises in the past, but not recently. Either the Navy’s interpretation has changed since your uncle’s time or your uncle was inadvertently given that credit.

¹ Rachel M. Kelly is a second year law student at William & Mary School of Law in Williamsburg, Virginia. She is married to LT Justin Kelly, USN, and she and her husband are both members of ROA. She spent the summer of 2012 as the summer associate at the ROA’s Service Members Law Center.

² 10 U.S.C. §2107(g) has been amended a few times since being enacted under the ROTC Vitalization Act of 1964. The current form of §2107(g) was enacted as part of the National Defense Authorization Act for Fiscal Year 1997. Pub. L. No. 104-201, 110 Stat. 2422.

³ “It is the duty of the court to give effect, if possible, to every clause and word of a statute/”

Inhabitants of Montclair Twp. v. Ramsdell, 107 U.S. 147 (1883).