

LAW REVIEW 13053

April 2013

Do I Receive the \$100,000 Death Gratuity if I Die?

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

1.1.1.3—National Guard Service

9.0—Miscellaneous

11.0—Veterans' Claims

Q: I am a Major in the Army National Guard and a member of ROA. I am currently serving on Title 32 active duty, at the headquarters of the National Guard of my state. I am currently working with my attorney and my financial advisor to prepare my will and my financial plan, for the unlikely but certainly not inconceivable event of my death while my two very young children are still minors. If I die while on this Title 32 active duty, will the \$100,000 death gratuity be paid to my survivors?

A: No.

Section 1475(a) of Title 10 of the United States Code [10 U.S.C. 1475(a)] provides that the death gratuity is to be paid to the survivors of a member of an armed force *who dies while on active duty*. Section 101 of Title 10 defines many terms used in Title 10 and elsewhere in the United States Code. One of the defined terms is the term “active duty”—defined as follows: “The term ‘active duty’ means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. *Such term does not include full-time National Guard duty.*” 10 U.S.C. 101(d)(1) (emphasis supplied).

Section 101 also defines the term “full-time National Guard duty” as follows:

“(5)The term ‘full-time National Guard duty’ means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.”

10 U.S.C. 101(d)(5).

I have reviewed your current active duty orders, and I see that your orders cite 32 U.S.C. 502(f) as their authority. Because section 502 is one of the Title 32 sections enumerated in section 101(d)(5), your current duty qualifies as “full-time National Guard duty.” Thus, your current duty does not qualify as “active duty” for purposes of 10 U.S.C. 1475(a). If you die while on your current duty status, the death gratuity is not payable.

Q: All the time, I hear references to “Title 10 duty” and “Title 32 duty.” What do these references mean?

A: There are 49 titles (broad subject areas) of the United States Code, numbered 1 through 50.¹ Title 32 deals with the National Guard, including both the Army National Guard and the Air National Guard. When you are on

¹ Title 34, pertaining to the Navy and Marine Corps, was repealed in 1947, when Congress consolidated the Department of War (Army) and the Department of the Navy and formed the new Department of Defense (DOD). Prior to 1947, Title 10 dealt with the Army (which included the Air Force until it became a separate service in 1947)

Title 32 orders, you are in your state status, as a member of the National Guard of your particular state. When you are on Title 10 orders, you are in a federal status, just as federal as the Regular Army.

and Title 34 dealt with the Navy and Marine Corps. In 1947, all the provisions governing the four DOD services were consolidated into Title 10, and Title 34 was repealed, but the number was preserved.