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DD-214 Delay Could Delay Retirement from Civilian Career

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- 1.1.1.7—USERRA applies to state and local governments
- 1.3.1.3—Timely application for reemployment
- 1.3.2.3—Pension credit for service time
- 1.8—Relationship between USERRA and other laws/policies

Q: I am a Colonel in the Air Force Reserve and a life member of ROA. I read with great interest your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA).¹

I began my career as a local police officer on March 1, 1989. As of March 1, 2014, I am eligible to retire with 25 years of service, and I plan to do so.

I am currently on active duty and have been since late 2012. My current orders expire on March 15, 2014, and I expect to leave active duty at that time. My plan is to return to work shortly after March 15 for just one day and then retire from the police department.

The personnel director for the police department has agreed to my plan with one caveat. She has told me that I must provide my DD-214 for this current period of service before I can retire from the police department. The Air Force Reserve does not routinely provide DD-214s to reservists leaving active duty. The individual must request a DD-214, and it takes the Air Force at least a year, and sometimes as long as two years, to provide a DD-214. I don’t think that I should have to wait for a year or more to retire from my civilian job, just because the Air Force is slow with paperwork. What do you think?

A: I entirely agree with you that it is unsatisfactory that the Air Force Reserve, uniquely among the seven reserve components, cannot provide the reservist a DD-214 on the last day of active duty, as part of the check-out process. I have 15 DD-214s from the Navy, and I received each one on the last day of active duty.

As I explained in Law Review 1281 and other articles, you must meet five conditions to have the right to reemployment under USERRA:

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find 1,004 articles about USERRA and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. Captain Wright initiated this column in 1997, and we add new articles each week. We added 169 new articles in 2013.

- a. You must have left a civilian position of employment (federal, state, local, or private sector) for the purpose of performing voluntary or involuntary service in the uniformed services. You clearly did this in late 2012.
- b. You must have given the employer prior oral or written notice. I shall assume that you gave such notice.
- c. You must not have exceeded the cumulative five-year limit on the duration of the period or periods of uniformed service, relating to the employer relationship for which you seek reemployment. As I explained in Law Review 201 and other articles, *all* involuntary service and *some* voluntary service is exempted from the computation of the five-year limit. I shall assume that you have not exceeded the limit.
- d. You must have been released from the period of service without having received a disqualifying bad discharge from the military. Unless you have done something incredibly stupid during this most recent active duty period, you will meet this criterion on or about March 15, 2014.
- e. You must have made a timely application for reemployment with the pre-service employer. Because your period of service is more than 180 days, you have 90 days (starting on the date of release) to apply for reemployment.² But you will not want to wait. You will want to apply for reemployment and return to work as quickly as possible, so that you can retire from the civilian job and start receiving your retirement benefits.

When you are “reemployed under this chapter” (USERRA), you are entitled to be “treated as not having incurred a break in service with the employer or employers maintaining the [pension] plan by reason of such person’s [your] period or periods of uniformed service.”³

For example, let us assume that you are released from active duty on March 15, you apply for reemployment on March 16, and you return to work for one day on March 17, so then you are eligible to retire as a police officer and start drawing your retired pay, along with your police department colleagues who entered the police academy with you on March 1, 1989.

As I explained in Law Review 14011 (January 2014), when you return from a period of service of more than 30 days you are required to provide documentation to the employer, upon the employer’s request, to establish that your application for reemployment is timely, that you are not disqualified from reemployment by virtue of having received a punitive or other-than-honorable discharge, and that you are not disqualified by virtue of having exceeded the cumulative five-year limit on the duration of the period or periods of uniformed service.⁴

Under section 4312(f), the employer is required to reemploy you on an interim basis while awaiting the documentation, if the documentation does not yet exist or is not yet readily available, but the employer is permitted to withhold pension credit for the period of service

² 38 U.S.C. 4312(e)(1)(D).

³ 38 U.S.C. 4318(a)(2)(A).

⁴ 38 U.S.C. 4312(f).

until the returning service member provides the documentation. Section 4312(f)(3)(B) provides:

“(B) An employer who reemploys a person absent from a position of employment for more than 90 days *may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4318(a)(2)(A).*”

38 U.S.C. 4312(f)(3)(B) (emphasis supplied).

Thus, the city is within its rights in denying you the opportunity to retire from the police department until you provide a DD-214 or other sufficient documentation concerning the period of uniformed service that is scheduled to end on March 15, 2014.

As I explained in Law Review 14011, the DD-214 is the most common form of documentation but by no means the only permissible form of documentation. The Department of Labor (DOL) USERRA regulation provides as follows concerning the kinds of documentation that the returning service member can use to meet the documentation requirement:

“What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

- (1)** DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;
- (2)** Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;
- (3)** Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;
- (4)** Certificate of completion from military training school;
- (5)** Discharge certificate showing character of service; and,
- (6)** Copy of extracts from payroll documents showing periods of service;
- (7)** Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.”

20 C.F.R. 1002.123 (bold question in original).

If it is not possible to get the Air Force to expedite the process of providing you a DD-214, you should utilize the alternative forms of documentation mentioned in the DOL USERRA regulation. Call me and I will assist you in preparing the necessary paperwork.