

Congress Enacted an Amendment for Exactly your Situation

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

Update on Sam Wright

9.0--Miscellaneous

Q: I am a Major in the Army Reserve and a life member of the Reserve Officers Association (ROA). For years, I have read and utilized your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve in the Reserve Components (RC) of the armed forces.

I enjoyed reading your recent series of articles (Law Reviews 16086-16092) about the RC retirement system. I don’t make a lot of money in my civilian employment, and I have been counting on receiving RC retirement benefits at age 60 (or perhaps a little earlier based on contingency service that I have performed since 2008). I have 16 “good years” toward the 20 that I need to qualify for RC retirement.

Until recently, I worked as a public school teacher at the high school level in a major urban school district. I suffered terrible injuries in a brutal assault perpetrated by gang members trying to recruit students in our school. I suffered serious disabilities that are likely to be permanent.

The severity of my injuries has cut short both my teaching career and my Army Reserve career. I have received worker’s compensation for my injury—it clearly occurred in the course and scope of my civilian job. The worker’s compensation benefits compensate me for about half of what I have lost in teaching salary and regular retirement benefits for the rest of my life.

¹ Please see www.servicemembers-lawcenter.org. You will find more than 1500 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

² BA 1973 Northwestern University, JD 1976 University of Houston Law School, LLM 1980 Georgetown University Law Center. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA, and for six years (2009-15) I served as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA. Please see Law Review 15052 (June 2015) concerning the accomplishments of the SMLC. Although I am no longer employed by ROA, I have continued the work of the SMLC on a part-time voluntary basis. You can reach me through ROA at (800) 809-9448, extension 730, or. SWright@roa.org.

Is there any way that I can be compensated for what I have lost in Army Reserve retirement? I do not yet have 20 good years for RC retirement, and I will be unable to get four more good years because my injuries preclude me from further military participation.

A: Good news. In 1999, Congress added a section to the chapter of title 10 that deals with RC retirement. I am referring to section 12731b of title 10. Here is the entire text of that section:

§ 12731b. Special rule for members with physical disabilities not incurred in line of duty

- (a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this [title](#), determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this [title](#).
- (b) Notification under subsection (a) may not be made if--
 - (1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned; or
 - (2) the disability was incurred during a period of unauthorized absence.

History

(Added Oct. 5, 1999, [P.L. 106-65](#), Div A, Title VI, Subtitle E, § 653(b)(1), [113 Stat. 666](#).)

Because you have more than 15 good years for RC retirement, and because your disability was not due to any misconduct on your part, the Secretary of the Army will approve you for RC retirement with only 16 good years.