

Number 167, April 2005:

Pension Rights of Federal Employees Returning from Military Service

By MAJ Mathew B. Tully, NYARNG*

Q: As a federal civilian employee, I participate in the Thrift Savings Plan (TSP), which is part of the Federal Employees Retirement System (FERS). I gave my employer advance written notice when I was called to active duty. I recently completed the period of active duty, and I have returned to work at my civilian job. I want TSP credit for the 18 months that I was away from work for active duty.

I have read your Law Review articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), especially the articles about pension rights (Law Reviews 4, 9, 40, 74, 75, 76, 82, 107, and 119). I think that USERRA requires my federal agency employer to accord me pension credit for the time I was on active duty. Does USERRA apply to the TSP?

A: USERRA does not apply to the TSP. "In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of Title 5. The first sentence of this subparagraph shall not be construed to affect any other right or benefit under this chapter." [38 U.S.C. 4318(a)(1)(B).] Section 8432b of Title 5 provides a benefit that is quite similar to what USERRA provides.

For those who are unaware, the Thrift Savings Plan is a federally sponsored retirement program. The TSP is available as a supplemental retirement program for members of the uniformed services or federal civilian employment. The above question asks about the civilian employment aspect of the TSP and the information that follows will discuss that version of the TSP. Of course, some aspects of the TSP differ when applied to the uniformed services as opposed to federal civilian employees.

The goal of the TSP is to provide income during retirement. In essence, the TSP is a type of pension plan for federal employees. For most Federal employees, the TSP is one part of a three-part retirement program. The TSP supplements Social Security and the FERS basic annuity. Moreover, enrolling into the TSP does not affect the calculation of Social Security or the FERS basic annuity.

The TSP is a defined contribution plan. The differences between a defined contribution plan and defined benefit plan are discussed in Law Reviews 4 and 40. Currently, employees may contribute up to 15 percent of their basic pay into the TSP. Note that the contribution limit will no longer exist in FY06 and such contributions will be subject only to limitations imposed by the IRS. [5 U.S.C. Sect. 8432(a).]

According to Section 8432 of Title 5, the executive director [of the Thrift Savings Plan] shall make regulations to determine which employees are eligible to participate in the Thrift Savings Program. [See 5 C.F.R. 1603.] The executive director manages the TSP program with the Federal Retirement Thrift Investment Board. When an employee is deemed eligible, he or she may elect to participate in the program. The election may be made at any time and will take effect as soon as "administratively feasible." [5 U.S.C. Sect. 8432.] An election to make contributions to this program will remain in effect until modified or terminated.

One significant aspect of the TSP is that the employer will always contribute 1 percent of the employee's basic pay for the plan. For example, as long as the TSP is vested on the employee, the employee does not need to contribute a dime and the employer will still contribute 1 percent of his or her basic pay to the TSP. Such contribution is quite important for someone on active duty who is unable to make regular contributions.

Section 8432b of Title 5 applies to TSP members who temporarily cease civilian service to participate in military duty and are subsequently re-employed upon return from duty. An employee may still contribute to the TSP in the same amount as prescribed by Section 8432(a), which is currently 0 to 15 percent. In the employee's absence, the maximum amount that may be contributed to the TSP is the amount that the employee would have contributed from the time he/she departed for military service until the time such employee returned. Therefore, the employee receives contribution as though he or she was still working in his or her civilian capacity. To clarify, the contribution is the automatic contribution of 1 percent coupled with any employer contribution that matches employee contribution.

The contributions, including the automatic 1 percent, by the employer will be based on what the Reservist's pay would have been if he or she had not stopped working at the civilian job. [5 U.S.C. § 8432b(e).] Under this law, the employee is entitled to receive contribution of 1 percent of his or her basic pay. [Id. Sect. 8432b(d).] In short, although the employee may stop working, the TSP will continue as though the employee never left.

Note: Additional information on this topic can be obtained by reviewing the TSP May 2003 newsletter available online at: <http://www.tsp.gov/forms/high03a.pdf>

* Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government.

The best way to reach Captain Wright is by e-mail, at samwright50@yahoo.com.