

**You Are Entitled to Seniority and Pension Credit for the Entire Period
that you were away from your Job for Military Service**

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Q: I am the same guy who asked the questions in Law Review 17120 (December 2017), the immediately preceding article in this “Law Review” series. In that article, you explained to me my rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), especially with respect to the computation of USERRA’s five-year limit. In September 2012, I left my job at Coors Heineken & Schlitz Incorporated (CHSI) to enter active duty. I was on active duty for exactly five years, from 10/1/2012 until 9/30/2017.

I was also away from my CHSI job for 16 days in September 2012. My last day at the job was 9/14/2012, 16 days before I entered active duty on 10/1/2012. I was also away from my CHSI

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, 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 (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. 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. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 35 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

job for 45 days on the back end of my military service. I left active duty on 9/30/2017 and applied for reemployment on 11/14/2017, 45 days later.³ Initially, CHSI denied me reemployment, claiming that I was beyond the five-year limit by 61 days.

I provided the CHSI personnel director and attorney a copy of a draft of your Law Review 17120, and they reluctantly agreed to reemploy me and to give me seniority and pension credit for the five years that I was on active duty. The company denied me credit for the 16 days between my last day at the civilian job and the date that I entered active duty, and the 45 days between the date that I left active duty and the date that I applied for reemployment at CHSI.

Depriving me of 61 days of seniority will put me behind four other employees who were hired by the company a few days after I was originally hired. Depriving me of 61 days of pension credit will mean that I must wait another two months to be eligible for a CHSI pension.

Was the personnel director's decision correct?

A: No. The personnel director's decision is wrong. Although it is only your *active duty period* (exactly five years) that counts toward your five-year limit under section 4312(c) of USERRA,⁴ but you are entitled to seniority and pension credit for the *entire period of your military-related absence from your CHSI job*. That includes your active duty period (exactly five years), as well as the 16 days between your departure from your civilian job and your entry on active duty and the 45 days between your departure from active duty and your application for reemployment at CHSI.

I invite your attention to two sections of the Department of Labor (DOL) USERRA Regulations:

In determining entitlement to seniority and seniority-based rights and benefits, the period of *absence* from employment due to or necessitated by uniformed service is not considered a break in employment.⁵

If the employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. *Taking such time off is also necessitated by the uniformed service.*⁶

³ Because your period of service lasted longer than 180 days, you had 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D).

⁴ 38 U.S.C. 4312(c).

⁵ 20 C.F.R. 1002.210 (emphasis supplied).

⁶ 20 C.F.R. 1002.74(b) (emphasis supplied).