

## LAW REVIEW 18009<sup>1</sup>

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### VPA Continued

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[Update on CAPT Sam Wright](#)

#### 8.0—Veterans' preference

**Q: I am the same person who asked the questions in Law Review 18008, the immediately preceding article in this “Law Review” series. I have some additional questions about how the Veterans’ Preference Act (VPA) applies to my specific situation.**

**I was born in May 1951, and I graduated from high school in May 1969. I went to college and graduated in May 1973. While in college, I participated in the Army’s Reserve Officers Training Corps (ROTC). When I graduated, I was simultaneously commissioned a Second Lieutenant. I remained on active duty for ten years, until May 1983, when I was released from active duty as a Captain. I affiliated with the Army Reserve shortly after I left active duty. I also took a job with our state government shortly after I left active duty in 1983.**

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<sup>1</sup> I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1600 “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 1400 of the articles.

<sup>2</sup> 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 (VRRA—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 VRRA 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 VRRA 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](mailto:SWright@roa.org).

**In the last 35 years, I have moved up steadily in my Army Reserve career and my state civilian career. I was recalled to active duty in 1990-91 (for service in Saudi Arabia, Kuwait, and Iraq), in 1997-98 (for service in former Yugoslavia), and in 2001-02 (for INCONUS service in the immediate aftermath of the terrorist attacks of 9/11/2001). I was promoted to Colonel in December 1995. In May 2003, 30 years after I was commissioned a Second Lieutenant, I reached my Mandatory Removal Date (30 years of commissioned service). I transferred to the Inactive Status List (colloquially called “gray area retiree”) until May 2011, when I reached my 60<sup>th</sup> birthday and started drawing my Army Reserve retirement money.**

**While on my final active duty period, I suffered a serious injury in the line of duty, and I received a 50% disability rating when I retired in May 2003. As a disabled veteran, I am entitled to ten-point veterans’ preference.**

**I recently retired from my state job, but I am not ready to retire. I want to continue working for a few more years. I want to apply for a federal civilian position. Am I eligible for the ten-point preference in getting a federal civilian job?**

**A: Yes. Because you are entitled to the ten-point preference, as a disabled veteran, you did not lose your veterans’ preference when you retired from the military at or above the grade of O-4.**

**Q: Now, let’s consider the case of my younger brother, Little Joe or LJ. He was born exactly ten years after me, in May 1961. He graduated from high school in May 1979 and from college in May 1983. While in college, he participated in the Navy Reserve Officers Training Corps (NROTC), and when he received his college diploma he simultaneously received a commission as an Ensign in the Navy. He remained on active duty for exactly ten years, until May 1993, when he left active duty and affiliated with the Navy Reserve.**

**In the Navy Reserve, he continued his honorable service and was promoted to Captain (O-6) in 2005. In May 2013, he reached his Mandatory Removal Date, based on 30 years of commissioned service as an O-6. He is now a “gray area retiree” while awaiting his 60th birthday in May 2021, when he will start drawing his Navy Reserve retirement pay.**

**LJ has never worked for the Federal Government as a civilian, but he is interested in applying for a federal civilian job. Is LJ entitled to the five-point veterans’ preference?**

**A: Yes. LJ’s ten-year active duty period, from May 1983 to May 1993, included a period of more than 180 consecutive days of active duty during the period between 8/2/1990 and 1/2/1992, one of the designated “war” periods. Thus, LJ is entitled to the five-point preference.**

A “gray area retiree” is not a retiree for purposes of losing the five-point preference based on retirement at or above the grade of O-4. The official, statutory name of Li’s current status is the “Inactive Status List” (ISL).

Section 2108(5) defines the term “retired member of the armed forces” as “a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.”<sup>3</sup>

Your brother is not yet entitled to his Navy Reserve retired pay, so he has not lost his five-point veterans’ preference.

**Q: In your Law Review 16090 (September 2016), you explained that Congress amended the Reserve Retirement law in 2008 and that Reserve Component personnel who have “contingency service” after 1/28/2008 can qualify to start receiving Reserve Retirement prior to their 60<sup>th</sup> birthdays. Near the end of his Navy Reserve career, my brother served on active duty in Afghanistan from 10/1/2010 until 9/30/2012. Based on that service, my brother will likely start drawing his Navy Reserve retirement on his 58<sup>th</sup> birthday, in May 2019, rather than his 60<sup>th</sup> birthday, in May 2021. How will that affect his veterans’ preference rights?**

**A:** When your brother starts drawing his Navy Reserve retired pay, he loses his five-point veterans’ preference.

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<sup>3</sup> 5 U.S.C. 2108(5).