

LAW REVIEW¹ 19059

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Reserve Component Service Members Deserve To Receive a DD-214 Regularly

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Importance of timely and accurate documentation of military service

For six years (June 2009 through May 2015), I was the Director of the Service Members Law Center (SMLC),³ as a full-time employee of the Reserve Officers Association, now doing business as the

¹I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2000 “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, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 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. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 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.

³Please see Law Review 15052 (June 2015) for a detailed discussion of the accomplishments of the SMLC during its six-year existence. Since my ROA employment ended more than four years ago. I have continued some of the SMLC activities as a volunteer and ROA member.

Reserve Organization of America (ROA).⁴ I recall that during that period I received several inquiries from ROA members complaining that they were not receiving military retired pay to which they believed themselves to be entitled.

I recall one specific member who called me several times. He turned 60 in about 2000 and applied for his Army Reserve retired pay. The Army told him that he was not entitled to retired pay because he had only 17 “good years” for a Reserve Component retirement at age 60, and it is necessary for a reservist to have at least 20 good years.⁵ He insisted that during the 1980s he had earned four “good years” for reserve retirement, but those years were not reflected in his Army records, and he was unable to come up with satisfactory evidence showing that he had performed qualifying service to earn those good years. He never received any Army Reserve retired pay, and this was a terrible injustice.

My own experience with the Navy Reserve was substantially more satisfactory. In Law Review 11069 (August 2011) I wrote:

I turned 60 earlier this year and started drawing my Navy Reserve retirement pay. I submitted my application late in 2010 and was approved in March 2011, effective 9 May, my birthday. While preparing to submit my application, I asked the Navy Personnel Command (NPC) for a print-out of all my retirement points. I am most pleased to say that the Navy’s computation was exactly correct. I do not believe that there is a single retirement point that I earned that was not reflected in the NPC print-out. ... *Bravo Zulu* to my Commanding Officers over the years, to the Navy and Navy Reserve in general, and to NPC.

In Law Review 11069, I also wrote:

I am writing this article as a “word to the wise” to those who are participating in the National Guard or Reserve today, including very junior people to whom the 60th birthday seems a million years away. It is incumbent on you to ensure that your participation is properly recorded and credited. You should check this on an annual basis and then take action promptly if you find that some of your participation has not been properly credited. If you did a drill weekend 25 months ago and it was not properly credited, it should be

⁴At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new “doing business as” (DBA) name: Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

⁵Please see Law review 16086 (September 2016).

feasible to get this mistake corrected. If the uncredited drill weekend was 25 years ago, good luck with that!

I reiterate what I wrote eight years ago about it being incumbent on the individual Reserve Component member to ensure the accuracy of his or her own military records, but I also believe that each Reserve Component can do and needs to do a much better job of providing the individual service member with timely and accurate information and giving the service member an easy way to correct errors.

Under current Department of Defense (DOD) policy,⁶ a Reserve Component service member should receive a DD-214⁷ in the following circumstances:

- a. Upon separation from a period of active duty for training, full-time training duty, or active duty for special work that lasted for at least 90 days.
- b. When required by the service secretary [like the Secretary of the Navy] for shorter periods.
- c. Upon separation for cause or for physical disability, regardless of the duration of the individual's period of service.
- d. When released from active duty at the end of a call-up for a contingency operation, regardless of the duration of the individual's period of service.

The Air Force Reserve, especially, routinely fails to comply with the requirement to provide the reservist leaving active duty a DD-214. A senior Air Force Reserve Colonel reported to me:

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.⁸

In response, I wrote:

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 or before the last day of active duty, as part of the check-out process. I have 15 DD-214s [during my long Navy Reserve career], and I received each one as part of the check-out process.⁹

Corrective legislation introduced

⁶DOD Instruction 1336.01.

⁷The DD-214 is the military form that a service member receives upon discharge or release from active duty. All services, including the Coast Guard (which is part of the Department of Homeland Security) use the DD_214, and that form, with that number, has been used for more than 70 years.

⁸Law Review 14013 (January 2014).

⁹*Id.*

Senator Gary Peters of Michigan has introduced S. 1360, the proposed Reserve Component DD-214 Act of 2019.¹⁰ If enacted, the bill would require that each Reserve Component service member must receive a DD-214 whenever he or she leaves active status, regardless of the duration, occasion, etc. I support Senator Peters' bill. ROA Legislative Director Susan Lukas has written:

ROA believes this [ensuring that Reserve Component service members receive timely DD-214s] cannot be resolved with DOD policy. We have brought this issue to DOD for many years, but DOD has not fixed the documentation and proof of service problem. We believe that legislation is necessary to ensure that each service member receives the benefits that he or she has earned during a career of service.

Contents of the DD-214

The DD-214 that the Reserve Component service member receives at the end of a period of active status¹¹ needs to include the following elements:

- a. The date the individual entered and left the active status period.
- b. The location where the individual served the majority of his or her period of service, and his or her location on the date of release from service.¹²
- c. Any military decorations or service ribbons earned during the period of service (including a Purple Heart for a combat wound).
- d. A statement that the period of service does not count toward exhausting the individual's cumulative five-year limit, under the Uniformed Services Employment and Reemployment Rights Act (USERRA), on the duration of the period or periods of uniformed service pertaining to his or her current civilian employer, if applicable.¹³
- e. A statement that the period of service counts in authorizing the individual service member to start receiving his or her reserve component retirement before his or her 60th birthday.¹⁴

¹⁰Although this bill, like all bills in Congress, calls itself an "Act," it is not law unless both houses of Congress pass it in the same form and the President signs it into law. Please see Law review 17099 (October 2017).

¹¹Active status includes active duty and full-time training duty. Periods of inactive duty training, like drill weekends, need to be documented and recorded in a different way.

¹²If the individual served in a "combat" area or an area where imminent danger pay is awarded, he or she may be entitled to special treatment for federal and state tax purposes or veteran's preference in federal, state, or local government employment. Upon release from a period of service lasting 30 or fewer days, the service member or veteran is required to report his or her civilian employer "not later than the beginning of the first full regularly scheduled work period on the first calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service of the person's residence." 38 U.S.C. § 4312(e)(1)(A)(i). Thus, the service member will need to show the place of release from service to show the time reasonably required for safe transportation from that place to the service member's residence.

¹³Please see Law Review 16043 (May 2016) and Law review 17119 (December 2017).

¹⁴As I have explained in detail in Law review 16090 (September 2106), a Reserve Component service member who has performed "contingency service" after January 28, 2008, can start receiving his or her reserve component retirement before his or her 60th birthday. Each 90 days of contingency service after that 2008 date earns the member a three-month reduction on the start date for receiving reserve component retirement.

- f. A statement of how the service member can get errors in the DD-214 corrected in a timely manner.¹⁵

Purposes of the DD-214

The service member needs to receive in a timely manner an accurate DD-214 for the following purposes:¹⁶

- a. Determining when and if the service member will start receiving military retirement and the amount of the monthly retirement check.¹⁷
- b. Helping the service member to obtain prompt reinstatement in the civilian job that he or she left for this period of uniformed service and for obtaining seniority and pension credit for the period that he or she was away from the civilian job for this period of service.
- c. Determining how much military retirement credit the member received during a period that he or she was married, in determining the later division of disposable military retired pay as an asset to be divided in marriage dissolution.¹⁸
- d. Determining federal and state tax treatment of the money that the service member earned during this period of service.¹⁹
- e. Determining the service member's later eligibility for veteran's preference in federal, state, or local government employment or for other purposes.²⁰
- f. Determining the service member's eligibility for benefits administered by the Department of Veterans Affairs (VA) if he or she was wounded or injured while on active duty or if he or she was exposed to something (noise, Agent Orange, ionizing radiation, burn pits pollution, etc.) which later caused adverse health effects.

Action

Please contact your United States Senators and your United States Representative and ask them to support S. 1360, the proposed Reserve Component DD-214 Act of 2019.

¹⁵Each service member needs to establish an expenditure procedure for correcting DD-214 errors. It should not be necessary for the service member to go to the slow and inefficient Board for Correction of Military records of his or her military department for this purpose.

¹⁶There may be other purposes that have not occurred to me.

¹⁷Even after the service member has met the 20-good-year threshold and has received a Notice of Eligibility (NOE), the number of active duty days and the total number of reserve component retirement points is relevant in determining the amount of the monthly retirement check. Please see Law review 16087 (September 2016).

¹⁸Please see law Review 19058 (June 2019).

¹⁹Enlisted service members are exempt from having to pay federal income tax on money earned during service in a combat zone, and some states have similar rules regarding state income tax.

²⁰Under the Veterans' Preference Act of 1944, veterans who served in wartime are entitled to a five-point preference in federal civilian employment, and service-connected disabled veterans are entitled to a ten-point preference. Please see Law Review 0721 (May 2007) and Law Review 0850 (October 2008). More than 40 states have similar laws governing veterans' preference in state and local government employment. Please see Law Review 0801 (January 2008).

Update – May 2022²¹

The proposed Reserve Component DD-214 Act of 2019 has not been passed. Thus, service members will still only receive a DD-214 in the circumstances enumerated in this article or upon request.

However, by 2025, service members in the National Guard and reserve components of all military branches will receive a Defense Department Form 214 following their completion of service.²² This action follows language in the fiscal 2020 National Defense Authorization Act requiring DoD to develop a form that documents a reserve-component member's complete time of service. This new form will show when a retiring service member is eligible to start collecting their non-regular retired pay.

Please join or support ROA

This article is one of 1800-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

²¹Update by Second Lieutenant Lauren Walker, USMC.

²²*New Policy Provides DD-214 to Guardsmen at End of Service*, NGAUS, <https://www.ngaus.org/newsroom/new-policy-provides-dd-214-guardsmen-end-service> (last visited May 3, 2022).

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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1 Constitution Ave. NE
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