

# LAW REVIEW<sup>1</sup> 23055

October 2023

## Can an Individual who Enlists in the Armed Forces Today Get the Five-Point Veterans' Preference in Federal Civilian Employment? No.

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

### 8.0—Veterans' preference

**Q: I am an Army recruiter in Northern Virginia, in the DC metropolitan area.<sup>3</sup> By doing Internet research, I found your Law Review 23001 (January 2023), about the rights of persons enlisting in the Active Component of the armed forces under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the**

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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 2,000 "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 Spouses' 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

<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. For 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

<sup>3</sup> The factual set-up for this article is hypothetical but realistic.

**Servicemembers Civil Relief Act (SCRA). This matter comes up in 5-10% of my encounters with potential recruits, and I have used your article to good effect several times.**

**This morning, I was visited by a 24-year-old man who graduated from college two years ago. He has been trying to land a federal civilian job but has been unable to get selected for a job that interests him. He told me that his father told him that if he enlists in the armed forces and serves honorably, he will qualify for a five-point veterans' preference in getting selected for a federal civilian job. Is what his father said true?**

**Answer, bottom line up front:**

Unfortunately, no. A person who entered active duty after 8/31/2010 is not entitled to the five-point veterans' preference in federal civilian employment.

**Explanation:**

A person who served on active duty in the armed forces<sup>4</sup> for a consecutive period of more than 180 days is entitled to the five-point veterans' preference if any part of the period occurred between 9/11/2001 and 8/31/2010 (the declared end of Operation Iraqi Freedom).<sup>5</sup> A person who enters active duty today is not entitled to veterans' preference in federal civilian employment unless he or she serves in a campaign or expedition for which a medal is awarded, or

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<sup>4</sup> The armed forces are the Army, Navy, Marine Corps, Air Force, Coast Guard, and Space Force. 10 U.S.C. § 101(a)(4). The Space Force was created after 8/31/2010.

<sup>5</sup> See 5 U.S.C. § 2108(1)(D). See also <https://www.fedshirevets.gov/job-seekers/veterans/veterans-preference/#5point/>.

unless the President or Congress establishes a new “war” period for veterans’ preference purposes, or unless he or she qualifies for the ten-point veterans’ preference as a disabled veteran.

**Q: Who is entitled to the ten-point preference?**

**A:** You are a ten-point preference eligible if you served on active duty in the armed forces at any time and you:

- a. Are a service-connected disabled veteran, or
- b. Received a Purple Heart.<sup>6</sup>

**Q: I can think of several individuals who are well qualified for military service and who would be much more likely to enlist if it meant getting the five-point preference in federal civilian employment. What would it take to give today’s enlistees this valuable benefit?**

**A:** That would require a statutory amendment. Congress would need to amend section 2108 of title 5 of the United States Code.

I favor such an amendment. This would cost the Federal Government nothing, and it would help recruiters like you get qualified young men and women to enlist.

This is not a magic bullet. This change alone is not going to solve our country’s military recruiting problems, but it is worth doing even if it only brings in a handful of new recruits.

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**As a military recruiter, you should purchase and read *We Don't Want You, Uncle Sam*, by Second Lieutenant Matthew Weiss, USMC.** I purchased the book on-line, via Amazon, and the cost was only about \$20, including shipping. I read the book and found it most interesting and helpful. To buy the book, use this link:  
<https://www.amazon.com/dp/BOCDE7Z32K/>.

The author, Lieutenant Weiss, has also asked for “thoughts and ideas for solving the recruitment crisis,” and comments can be submitted on-line at [www.unclesambook.org](http://www.unclesambook.org).

### **Please join or support ROA**

This article is one of 2,000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).<sup>7</sup>

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The

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<sup>7</sup> See <https://crsreports.congress.gov/product/pdf/IF/IF10540>. These are the authorized figures as of 9/30/2022.

meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” 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 more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, congressional and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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 eight<sup>8</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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.

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<sup>8</sup> Congress recently established the United States Space Force as the eighth uniformed service.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://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:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002<sup>9</sup>

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<sup>9</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).