



RELEASED

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-193165

November 9, 1978

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Rochester, New York 14610

Dear Major

Reference is made to your letters of September 25, and October 17, 1978, with enclosures, addressed to Mr. A. James Riedinger of my staff, in which you seek information concerning your eligibility to be retained on active duty under the provisions of 10 U.S.C. 1006 (1976), so as to permit you to acquire 20 years' service for the purpose of immediate retirement from the United States Army.

According to the enclosures with your letter, you were released from active duty with the United States Army effective March 6, 1977, at which point you had completed 17 years, 3 months and 12 days of active service. You say that the reason for your release was that you had been twice passed over for promotion to the grade of lieutenant colonel.

Immediately prior to that release you were selected to perform a 2-year tour of active duty for training (ADT), effective March 7, 1977. You say that you are currently serving on that tour of duty and have completed well over 18 years of active duty. Further, you will have completed over 19 years of active duty when your current ADT period expires in March 1979, or 8 months and 18 days short of 20 years' active service.

You say that you have been informally advised that your ADT period will not be renewed and you would like to know if the provisions of 10 U.S.C. 1006 would prevent the Army from releasing you from active duty prior to your reaching the 20-year service mark.

An official decision is not being rendered at your request on the question presented; however, the following may be of assistance to you.

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Section 1006 of title 10, United States Code, provides generally that Reserve commissioned officers who have completed 18 or more years of service on an active list are to be so retained until they have completed 20 years on that list. The subsections which specifically authorize retention are (a), (b) and (e).

Subsection (e) relates to retention of Reserve commissioned officers serving "on active duty (other than for training)" who are within 2 years of retirement (20 years of active duty) and who but for this provision, would be removed from an "active status" for the reasons specified therein. It provides that in such case they may be retained on "active duty" for not more than 2 years and that if they are retained on "active duty", they may not be removed from an "active status" while on that duty.

Subsections (a) and (b), on the other hand, apply to Reserve commissioned officers who have 18 plus and 19 plus years of creditable service, respectively. Service is computed under 10 U.S.C. 1332, which applies to retirement for Reserve service. Those sections authorize the officer covered to be retained in an "active status" until they have 20 years of such service.

It is to be observed that where subsection (e) refers to retention on "active duty" for those serving on active duty (other than for training) subsections (a) and (b) refer only to retention in an "active status."

The term "active status" as used in 10 U.S.C. 1006, is defined in 10 U.S.C. 101(25) as being the status of a Reserve commissioned officer "who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve." The term "active duty" is defined in 10 U.S.C. 101(22) to mean "full-time duty in the active military service of the United States." While full-time training duty is included in this second definition, it is noted that such training duty is specifically excluded from 10 U.S.C. 1006(e) by the provisions of that section.

It is to be noted that 10 U.S.C. 267 categorizes the statuses of the various Reserves. Subsection (b) thereof provides:

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"Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status." (Under-scoring supplied.)

As the foregoing relates to retention protection of 10 U.S.C. 1006(a) and (b), it would appear that an individual serving in a period of active duty for training at the time he has more than 18 but less than 20 years of active duty could not invoke the protection of these provisions in order to force retention on "active duty" beyond the termination date of those orders. Rather, it would appear that the only protection afforded by these provisions in such a case would be the right of the individual to be retained in an "active status" as a reservist until completion of at least 20 years of service creditable under 10 U.S.C. 1332.

We note that you have written to the Department of the Army concerning this matter. Presumably, they will be able to advise you more specifically how 10 U.S.C. 1006 relates to your situation.

Sincerely yours,

Edwin J. Monsma

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Assistant General Counsel