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TEXT:

Minimum Active-Duty Service Requirement

QUESTION PRESENTED:

In light of 38 U.S.C. § 5303A and 38 C.F.R. § 3.12a, are individuals whose original service obligation was 24 months or more but who are separated from service for the convenience of the Government with less than 24 months of active service pursuant to a reduction-in-strength program eligible for the full range of benefits under title 38, United States Code?

COMMENTS:

1. The provisions of 38 U.S.C. § 5303A and implementing regulations at 38 C.F.R. § 3.12a, specify minimum periods of active duty that certain persons generally must serve in order to qualify for benefits under title 38. This minimum active-duty service requirement applies to two categories of individuals: (1) those who originally enlisted after September 7, 1980; and, (2) officers and enlisted personnel who entered active duty, not necessarily for the first time, after October 16, 1981, and who have not previously completed a continuous period of active duty of at least 24 months or been discharged or released under the "early out" provision of 10 U.S.C. § 1171 38 U.S.C. § 5303A(b)(2); 38 C.F.R. § 3.12a(c). For such individuals, benefit eligibility is dependent upon the individual's completion of at least the shorter of 24 months of continuous active duty or the full period for which such person was called or ordered to active duty. 38 U.S.C. § 5303A(b)(1); 38 C.F.R. § 3.12a(a)(1).

2. The provisions of 38 U.S.C. § 5303A(b)(3) specify that the minimum active-duty periods need not be met under certain circumstances: (1) if an individual is discharged or released from active duty under 10 U.S.C. § 1171 which authorizes premature releases up to three months prior to expiration of the term of enlistment for regular enlisted personnel, or under 10 U.S.C. § 1173, which permits early discharges for hardship of regular enlisted members with dependents; (2) if an individual is discharged for service-connected disability or has a compensable service-connected disability; (3) for purposes of provision of benefits based upon service-connected disability or death; (4) for purposes of servicemembers' and veterans' life insurance under chapter 19 of title 38; and, (5) for purposes of Montgomery GI Bill benefits under certain circumstances.

3. In determining whether persons who are discharged with less than 24 months of active service pursuant to a reduction-in-strength program such as the FY 88 Early Transition Program or the FY 90 CONUS Early Release Program are eligible for the full range of title 38 benefits in light of section 5303A, we first examine the concerns of Congress that prompted the enactment of the minimum active-duty service requirement. The legislative history of Pub. L. No. 97-66, s 604(a)(1), 95 Stat. 1026, 1035 (1981), which was codified as 38 U.S.C. § 3103A (now § 5303A), reveals Congressional concern over the high rate of attrition in the all-volunteer military force and over failures of service personnel to fulfill their contracts of enlistment. See H.R. Rep. No. 97-179, 97th Cong., 1st Sess. 20 (1981). Through the minimum active-duty service requirement, Congress sought to avoid payment of benefits to service personnel who fail to fulfill their military obligations and receive early discharges as a result of inappropriate or unproductive conduct. See S. Rep. No. 97-153, 97th Cong., 1st Sess. 36-37 (1981), reprinted in 1981 U.S.C.C.A.N. 1595, 1621-22. The enactment of the minimum active-duty service requirement reflected a Congressional desire to equalize eligibility requirements and promote personal responsibility with respect to enlistment. See 127 Cong. Rec. S8392 (daily ed. July 24, 1981) (statement of Sen. Simpson). However, while such legislative history sheds light on the circumstances which gave rise to the statute, it cannot be construed to contravene the plain meaning of the statute. See 2A N. Singer, Sutherland Statutory Construction § 46.01 (4th ed. 1984). In this case, it appears that the statutory language actually employed by Congress is broader than that necessary to fulfill Congress' stated objectives.

4. In light of the statutory terms chosen by Congress, we must consider whether persons to whom section 5303A applies and who are discharged pursuant to a reduction-in-strength program prior to completion of 24 months of active service can be considered to have served the full period for which they were called or ordered to active duty for purposes of 38 U.S.C. § 5303A(b)(1)(B) and 38 C.F.R. § 3.12a(a)(1)(ii). For purposes of this discussion, we will assume that the individuals in question served under enlistments for a fixed term of 24 months or more, and not under orders for an indefinite period of service. Legislative history reveals that Congress enacted the "full period" provision to address the possibility of initial enlistment contracts and reserve call-ups for periods of less than two years. Explanatory Statement on S. 917, 127 Cong. Rec. H6835, H6839 (daily ed. Oct. 2, 1981), 127 Cong. Rec. S10, 979, S10, 983 (daily ed. Oct. 1, 1981), reprinted in 1981 U.S.C.C.A.N. 1651, 1664; S. Rep. No. 97-153, 97th Cong., 1st Sess. 40, reprinted in 1981 U.S.C.C.A.N. at 1625. The "full period" provision also allows benefits to be awarded to individuals who complete service under calls to duty of indefinite duration.

5. In enacting former section 3103A (now section 5303A) as part of Pub. L. No. 97-66, Congress specifically exempted from the minimum active-duty service requirement persons discharged from service under the provisions of 10 U.S.C. § 1171. See what is now 38 U.S.C. § 5303A(b)(3)(A); see generally S. Rep. No.

97-153, 97th Cong., 1st Sess. 41, reprinted in 1981 U.S.C.C.A.N. at 1626 ("discharges under section 1171 serve the government's interest and do not reflect adversely on the quality of the individual's service or of the individual's commitment to carrying out fully the obligations of his or her enlistment"). Although the legislative history contains general statements to the effect that early discharges for the convenience of the Government would be a valid exception to the minimum active-duty service requirement, see H.R. Rep. No. 97-179, 97th Cong., 1st Sess. at 21; 127 Cong. Rec. E4397 (daily ed. Sept. 23, 1981) (statement of Rep. Gilman), the explanatory statement clearly demonstrates that Congress recognized that section 1171 applied only to discharges for the convenience of the Government up to 90 days prior to expiration of an enlistment. See Explanatory Statement on S. 917, 127 Cong. Rec. at H6839 and S10,983, reprinted in 1981 U.S.C.C.A.N. at 1665. Inclusion in section 5303A(b) of this exception to the minimum active-duty service requirement suggests that Congress did not consider discharges for the convenience of the Government prior to completion of the full period of active service for which a person enlisted or was called to generally fulfill the "full period" requirement of section 5303A(b)(1)(B).

6. We further note that 38 U.S.C. § 5303A(b)(3)(F)(iii) provides an exception to the minimum active-duty service requirement for purposes of benefits under chapter 30 of title 38 (All-Volunteer Force Educational Assistance Program) by reason of an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force. Since each part of a statute should be construed to produce a harmonious whole, see 2A N. Singer, Sutherland Statutory Construction § 46.05 (4th ed. 1984), we conclude that the presence of this provision in the same subsection as section 5303A(b)(1)(B) as an exception to paragraph (b)(1) reflects a view by Congress that an individual who receives an involuntary discharge due to a reduction in force has not served the full period for which that person was called or ordered to active duty. If such an individual could be considered to have completed the full period for which he or she was called to duty, there would have been no need for Congress to include this exception.

7. In light of the foregoing, we must consider the extent to which individuals discharged under a reduction-in-strength program may be exempted from the minimum active-duty service requirement by virtue of the section 5303A(b)(3) exceptions. Section 5303A(b)(3)(F) establishes an exception to the minimum active-duty service requirement for purposes of entitlement to chapter- 30 benefits, consistent with the requirements of 38 U.S.C. §§ 3011 and 3012, when an individual receives an involuntary discharge or release from active duty due to a reduction in force. Legislative history reveals that Congress intended this provision to apply to discharges that are part of an effort to reduce the number of servicemembers because of fiscal constraints or part of a major realignment of the force structure of one or more of the Armed Forces. Explanatory Statement on the Compromise Agreement on S. 2049 as Amended, 134 Cong. Rec.

S16,966 (daily ed. Oct. 20, 1988), and 134 Cong. Rec. H10, 683 (daily ed. Oct. 20, 1988), reprinted in 1988 U.S.C.C.A.N. 5907, 5926.

8. As noted above, an additional exception, applicable to all title 38 benefits, is provided by section 5303A(b)(3)(A) with respect to persons discharged under 10 U.S.C. § 1171. The Department of Defense has used section 1171 when, among other reasons, budgetary or authorization limitations required a reduction in strength. S. Rep. No. 97-153, 97th Cong., 1st Sess. 38, reprinted in 1981 U.S.C.C.A.N. at 1623. It appears that at least some of the reduction-in-strength programs rely on the authority of 10 U.S.C. § 1171. See Army Reg. 635-200, para. 16-8 (Sept. 17, 1990) (referenced on the DD214, submitted with the request for opinion, issued in connection with the FY 88 Early Transition Program). Therefore, at least some personnel discharged under a reduction-in-strength program may have received early discharges under section 1171 for purposes of 38 U.S.C. § 5303A. However, since section 1171, by its plain terms, applies only to premature releases of up to three months prior to expiration of the term of enlistment for regular enlisted personnel, that provision creates no exemption from the minimum active-duty service requirement for individuals discharged more than ninety days prior to the expiration of their term of enlistment.

9. In summary, we find that, generally, an individual discharged from service under a reduction-in-strength program with less than 24 months of continuous active duty and prior to the expiration of the individual's initial enlistment or call to duty does not fulfill the minimum active-duty service requirement of section 5303A. Although provision of veterans' benefits to such an individual would not conflict with the objectives of section 5303A, such payments would not be authorized under the current statutory terms. Pursuant to the statutory exception provided by section 5303A(b)(3)(A), enlisted personnel who are discharged under the authority of 10 U.S.C. § 1171 within three months of the expiration of their terms of enlistment are not barred by section 5303A from eligibility for title-38 benefits. Chapter 30 benefits are authorized for personnel involuntarily discharged for the convenience of the Government under a reduction in force as described in 38 U.S.C. §§ 3011 and 3012.

HELD:

The minimum active-duty service requirements under 38 U.S.C. § 5303A and 38 C.F.R. § 3.12a for purposes of general entitlement to benefits under title 38, United States Code, are generally not fulfilled by individuals who are separated from service with less than 24 months of active service pursuant to a reduction-in-strength program. However, statutory exceptions, such as that applicable to early discharge of enlisted personnel within three months before expiration of an enlistment under 10 U.S.C. § 1171 and that applicable to entitlement to certain education benefits under chapter 30 of title 38, United States Code, may apply.

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