

The statute in question provides that commissioned officers of the Regular Army in grades below major may be involuntarily discharged whenever a reduction in the active duty officer personnel strength of the Army is required. The act provides that if the officer is not eligible for retirement under 10 U.S.C. 3911, or any other provision of law, then under prescribed board recommendations he will be removed from the active list of the Regular Army and discharged. An officer so discharged who has completed immediately before his discharge, at least five years of continuous active duty is entitled to readjustment pay as provided by 10 U.S.C. 3814a(c).

Other than the method authorized by 10 U.S.C. 3814a the involuntary release of Regular Army officers short of completion of a set number of years of service is prohibited except in specific situations. Officers in a probationary status (less than three years of active commissioned service in the Regular Army) may be separated at the discretion of the Secretary of the Army and officers holding the grade of captain or below may be separated because of promotion failure or pursuant to a court-martial, or show cause proceedings. Separated Regular officers of the Army may be eligible for severance pay under 10 U.S.C. 3786(b)(2).

In contrast, Reserve officers serving on active duty in grades below major can be released involuntarily at the discretion of the Secretary of the Army. See 10 U.S.C. 1162 (1970). Such involuntarily released officers may be entitled to readjustment pay under 10 U.S.C. 687.

The statutory authorities for travel and transportation allowances as cited above contain the phrases "discharged with severance pay" which is applicable to discharged Regular Army officers and "involuntarily released from active duty with readjustment pay" which is applicable to Reserve officers. The phrase "discharged with readjustment pay" is not used therein since prior to the enactment of 10 U.S.C. 3814a it would not have been applicable to either a Regular or Reserve officer.

The legislative history of Public Law 93-558 indicates that as a result of current events the number of officers authorized for the Army has been reduced. This has resulted in heavy reductions in force of Reserve officers in prior years and has resulted in careful screening of all Reserve officers on active duty in the grade of

captain and below. Apparently, a comparison of the records of the Reserve officers remaining on active duty with those of their Regular contemporaries revealed that many Reserve officers had greater potential. Therefore, Congress determined that in the best interest of the Army any additional reduction in force should be applied to both Regulars and Reserves. In considering the legislation which allowed the reduction in force to be applicable to Regulars as well as Reserves, the statement was made that the readjustment payment provision of the act was designed with the same provisions as that for Reserve officers released from active duty.

It was also stated that it was anticipated that the Regular officers who were not selected for continuation would be treated similarly to Reserve officers who have been released from active duty and be given the opportunity to accept a Reserve commission. This was done in order to place them in the same approximate position as their contemporaries in the Reserve who upon being released from active duty, normally retain their status in the Reserves.

Thus it would appear that in enacting Public Law 93-558, supra, Congress intended to bestow upon a Regular separated from the service in accordance with this act all the rights and benefits applicable to a Reserve separated in similar circumstances. While it is true that the applicable sections of the statutes granting travel and transportation allowances do not specifically apply to a Regular who is discharged with readjustment pay as is the case under the new act, we believe the intent of Congress was to provide the Regular all the benefits of a Reserve separated under the same conditions. In view of that intent the technical terms used to describe the type of separation and the type of additional payment received upon separation should not be used to prevent the granting of travel benefits based upon home of selection. Accordingly, it is our view that Regular officers discharged under 10 U.S.C. 3814a are entitled to home of selection travel benefits to the same extent as if they had been "discharged with severance pay" or "released from active duty with readjustment pay." In view of the above interpretation of the controlling statutes no change in the regulations is required to implement this decision.

The submission is answered accordingly.

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