

December 9, 1998
L-98-24

TO : Nancy Z. Marks
Chief of Calculation Analysis and Systems
Through: John L. Thoresdale
Director of Policy and Systems

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : Creditability of Military Service
S.S.A. No. - R. C. K.

This is in reply to your memorandum of November 30, 1998, inquiring whether Mr. R. C. K.'s military service on active reserve duty from February 23, 1986, through May 16, 1986, may be credited as service under the RRA. Mr. K. joined the Army voluntarily in 1974 and performed active duty for the Army National Guard during four periods from 1974 through 1977, within a war service period. He served a fifth period of active reserve duty in 1986. You also asked whether it is correct to conclude that all military service after the draft was abolished and after the non-war service period began on September 15, 1978, through August 1, 1990 (the end of the non-war period), was entered into on a voluntary basis, and is therefore not creditable as service under the RRA.

Section 3(i)(2) of the Act provides, in pertinent part, that:

The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: Provided, however, that such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative * * *.

Section 1(g) of the Railroad Retirement Act provides that:

(1) For purposes of section 3(i)(2) of this Act, an individual shall be deemed to have been in "military service" when commissioned or enrolled in

the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 3(i)(2) of this Act, a "war service period" shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense. For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year.

(3) For purposes of section 3(i)(2) of this Act, a "war period" shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 3(i)(2) of this Act, a "war period" shall be deemed to have ended on the date on which hostilities ceased.

In order for military service to be creditable as railroad service under the Railroad Retirement Act, the employee must have entered active military service during a war service period or have entered the Armed Services involuntarily. Mr. K.'s enlistment in the reserves was voluntary. Therefore, even though his subsequent active duty in the reserves was required, it follows that that subsequent active duty is considered voluntary since it grew out of his voluntary enlistment. Since his enlistment was voluntary, and 1986 is not included within a war service period, Mr. K.'s military service in 1986 is not creditable.

With respect to your question as to whether it may be concluded that all military service after the draft was abolished and after the non-war service period began on September 15, 1978, through August 1, 1990 was entered into on a voluntary basis, I do not believe such a blanket conclusion can be made. The facts of individual cases should be considered, as they were in this case.