MILITARY RETIREMENT, MEDICAL CARE, AND "CREDITABLE SERVICE"

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Accurate knowledge of "creditable service" is an essential part of the skills needed by counsel representing a spouse of former spouse of a servicemember (SM) or retiree in a divorce case. It comes into plan when calculating retirement and when dealing with medical benefits; "full medical benefits" are given to 20/20/20 former spouses—those with a 20-year overlap between 20 years of marriage and 20 years of creditable service by the SM-spouse. Direct payment from DFAS is reserved for those who have ten years of marriage concurrent with ten years of creditable service. A member of the armed forces who retires from active duty must, in general, have at least 20 years of creditable service. An RC member (member of the Reserve Component—Reserves or National Guard) must in general have 20 creditable years of retirement points in order to retire.

There are several types of military retirement, and different methods are employed for determining how time served in a particular capacity will be credited towards that retirement. 10 U.S.C. Subtitle A, Part II, Ch. 71 contains various statutes used to determine *regular* military retired pay, and 10 U.S.C. Subtitle E, Part II, Ch. 1223 is the location for provisions governing *non-regular* military retirement. Outside of a small number of military retirement personnel specialists and a few federal attorneys, there is a dearth of knowledge, experience, and skills for dealing with what is "creditable service" in the legal community, especially in cases where a servicemember has gone back-and-forth in pursing a regular (versus a non-regular) retirement.

"Creditable service" is a confusing concept. Generally speaking, creditable military service means *service that is counted towards the entitlement to receive military retired pay*. DoD 7000.14-R, Financial Management Regulation, Vol. 7B, Ch 29, paragraph 290205; and, 32 C.F.R. § 199.3(b)(i)(C). For *regular retirements*, which is the usual retirement for servicemembers with 20 or more years of *active duty service*, "creditable years of service" are determined under 10 U.S.C. § 1405 (2001). For *non-regular retirements*, which is the typical retirement of members of the Reserve Component (Reserves or National Guard), "years of creditable service" are determined under 10 U.S.C. § 12732 (2008) and are based on how many Reserve Credit Points are earned during their military career.

For those SMs attempting to qualify for a *regular* (i.e., active duty) *retirement*, the former spouse need only determine the number of months of active duty the member has performed. But what happens if the active duty service has not been continuous? There are often breaks in service where the SM may have gotten out and then returned to active duty service such that his or her service has not been continuous?

A useful document for the family law practitioner to obtain by discovery is the service member's DD Form 214, "Discharge Certificate from the Armed Forces." This single document will provide the recorded dates of creditable service of the military member for determining a regular retirement. For those seeking a *non-regular* retirement by serving in a Reserve Component (i.e., Reserves or National Guard), a year of creditable service would be one in which at least 50 retirement points have been earned making that year a "good year" for retirement See 10 U.S.C. § 12732(a)(2) (2008).

Another useful document for the family law practitioner to obtain during discovery is the "Reserve Point Summary Sheet," which is an official record of the Reserve Component member's personnel file that shows "year-by-year" how many points were earned. This useful document is somewhat analogous to the DD Form 214, "Discharge Certificate from the Armed Forces" for the servicemember pursuing a *regular* retirement. It carries essential information that the practitioner must have in order to calculate how many points toward retirement the RC SM has at any given time.

But what happens if the military member did not earn the 50 retirement points in a given year required for that the year to be "creditable towards retirement?" Like the previously mentioned break in service, a year with *less than* 50 retirement points earned will not be counted for the former spouse to satisfy the 20/20/20 or 20/20/15 Rules for military medical care. It is difficult to apply the 20/20/20 and 20/20/15 Rules in a marriage where the SM shifts back-and-forth between pursuing a *non-regular* and *regular retirement*. The problem for the non-military former spouse is a "good year" for determining *non-regular* retirement may not be considered as a creditable year of service in determining the SM's eligibility for a *regular* retirement.

Compare how "years of service" under 10 U.S.C. § 1405 (2001) are figured for determining eligibility for a *regular* retirement with how *non-regular* retirement is determined for members of the Reserve Components under 10 U.S.C. § 12733 (2008). Generally speaking, periods of time a Reserve Component SM spends on active duty can be converted to "creditable service" for determining eligibility for a *non-regular* retirement; however, time spent in the Reserve Component will not be considered in determining *eligibility* for a *regular* retirement except for periods of active duty, such as when SMs are mobilized or when they perform two weeks of annual training each year. In the case of the Reserve Component member seeking to qualify for a *regular* retirement, the Guard/Reserve retirement points will only be used to determine the number of years of service for determining military retired pay as well as years for longevity of service for determining their monthly retirement benefit. On the other hand for a non-regular retirement, time spent on active duty by a Reservist will convert to points and can be used to determine a creditable year of service in the Guard/Reserves for purposes of determining retirement eligibility.

Stated differently, the military member may have 20 *combined* years of time in the Reserve Component and while serving on active duty, but will not be *eligible* to retire under either a *regular* or *non-regular* retirement. Counsel for the former spouse should advocate for a special finding of fact included in the applicable court order stating that *20 years of creditable service had occurred during the marriage* (substantiated with either a DD Form 214 or other military service records) to help to convince a TRICARE or DEERS representative that the non-military former spouse satisfies each component of the 20/20/20 or 20/20/15 Rule.