



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for September 14, 2018

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COURT DECISIONS

PRECEDENTIAL:

Petitioner: Richard L. Miller

Respondent: Office of Personnel Management

Tribunal: U.S. Court of Appeals for the Federal Circuit

Case Number: [2017-1792](#)

Issuance Date: September 10, 2018

Civil Service Retirement System (CSRS) basic annuity

Service credit

Military service

The petitioner retired under the CSRS in 2012 after a complicated history of military and Federal civilian service dating back to 1970. In calculating his annuity, the Office of Personnel Management (OPM) excluded three periods of civilian service: (1) June 21, 1982 to June 30, 1982, (2) August 27, 1990 to October 30, 1990, and (3) August 22, 1994 to December 22, 1995. During period 1, the petitioner was employed as a civilian but was on terminal leave from the U.S. Army and was receiving military retirement credit for that period. During period 2, the petitioner was on military leave from his civilian

position because he had been called up on active duty with the Air Force Reserve, and he received military retirement credit for that period too. During period 3, the petitioner was working in a civilian position, but he had the Air Force Board for Correction of Military Records (AFBCMR) retroactively amend his record to reflect active military service for that period in leave-without-pay status, void his civilian service for that period, and receive military retirement credit. The Board affirmed OPM's final decision.

Holding: The court affirmed in part, reversed in part, and remanded for further proceedings.

1. As applicable here, 5 U.S.C. § 8332(c) provides that, if an employee is awarded retired pay based on any period of military service, unless he waives his military retired pay for that period and in some circumstances pays a deposit, the service of the employee generally may not include credit for such period of military service. See 5 C.F.R. § 831.301.

This means that a CSRS annuitant cannot increase his annuity by adding to his creditable civilian service military service time for which he is receiving military retirement pay. In other words, the bar only applies to credit for military service - not to credit for concurrent periods of civilian service. The Board's interpretation of the statute as a general prohibition against receiving both civilian and military service credit for the same period was overly broad.

2. Period 1 Although an agency may not generally employ an active duty service member in a civilian capacity, there is an exception for individuals in terminal leave status. 5 U.S.C. § 5534a. Because the petitioner was fully employed as a civilian during period 1, he was entitled to credit for that civilian service notwithstanding his concurrent military service in terminal leave status.

3. Period 2 Although the petitioner was on leave from his civilian position during this period in order to fulfil his military obligation, the record shows that it was payed leave for which he was otherwise entitled to service credit under CSRS. The petitioner's concurrent military service does not prevent this civilian service from counting toward his retirement.

4. Period 3 Because AFMBCR retroactively returned the petitioner to military service for this period, and he received military retired pay without making a deposit into CSRS, he was not entitled to civilian service credit for this military service. Furthermore, because the petitioner's civilian employing agency voided his civilian service for this period, there

was no civilian service to credit toward the petitioner's retirement.

4. The court directed the Board to remand the case to OPM to recalculate the petitioner's CSRS annuity, accounting for the civilian service credit that earned during periods 1 and 2.

NONPRECEDENTIAL:

Villaruel v. Office of Personnel Management, No. [2018-1199](#) (Sep. 7, 2018) (MSPB No. SF-0831-17-0457-I-1) The court affirmed the Board's final decision upholding OPM's denial of the petitioner's application for a CSRS annuity. Although the petitioner had approximately 20 years of creditable service at the U.S. Naval Ship Repair Facility in Subic Bay, Philippines, all of this service was in temporary, term, and indefinite excepted appointments. Therefore, none of this service was "covered" under the CSRS, and the petitioner did not meet the requirement of having covered service for at least one of the last two years prior to his separation.

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