

Date: February 10, 1995

O.G.C. Precedent 6-95

From: General Counsel (022)

Subj: Classification of Service -- Attendance at the United States Military Academy Preparatory School or United States Naval Academy Preparatory School.

To: Under Secretary for Benefits (212B)

QUESTION PRESENTED:

Whether service consisting solely of attendance at the United States Military Academy Preparatory School or United States Naval Academy Preparatory School may be considered "active duty" for purposes of title 38, United States Code.

COMMENTS:

1. In O.G.C. Prec. 18-94, we held that classification, for purposes of title 38, United States Code, of an individual's service at the United States Air Force Academy Preparatory School (USAFAPS) depends upon the status in which that individual entered the USAFAPS. Under Air Force regulations, persons entering the USAFAPS from civilian life or reserve or National Guard duty attend the school as reservists called to active duty for the sole purpose of attending the USAFAPS. Such service constitutes "active duty for training" within the meaning of 38 U.S.C. § 101(22) and is thus excluded from the definition of "active duty" in 38 U.S.C. § 101(21). In contrast, persons who enroll in the USAFAPS directly from active duty under a prior enlistment continue to serve on "active duty" within the meaning of 38 U.S.C. § 101(21) during their attendance at the USAFAPS. You have requested our opinion as to whether the analysis in O.G.C. Prec. 18-94 would apply equally to attendance at the academy preparatory schools operated by the other service departments.

2. The other service academy preparatory schools are the United States Military Academy Preparatory School (USMAPS) and the United States Naval Academy Preparatory School (USNAPS). The Coast Guard does not operate a service academy preparatory school, but recruits cadets for the Coast Guard Academy from the USNAPS. Based upon our contact with personnel at the USMAPS and the United States Naval Academy (USNA), which handles recruitment for the USNAPS, we find no significant differences between the criteria governing the enlistment status and service obligation of persons attending the USAFAPS and persons attending the USMAPS or USNAPS. Accordingly, we con-

clude that the analysis stated in O.G.C. Prec. 18-94 applies equally to all three service academy preparatory schools.

3. Like the USAFAPS, the USMAPS and the USNAPS accept applications from active duty servicemembers, reservists, National Guard members, and civilians. The Army and Navy have both issued instructions governing application and enrollment procedures for their active duty servicemembers and reservists. Army Regulation (AR) 351-12; Naval Operations Instruction (OPNAVINST) 1531.4F. The Army regulation also applies to members of the Army National Guard. The procedures established in those instructions are essentially similar in pertinent respects to the procedures discussed in O.G.C. Prec. 18-94 governing enrollment at the USAFAPS by members of the regular Air Force, the Air Force Reserve, and the Air National Guard. In contrast to the detailed Air Force regulations and instructions discussed in O.G.C. Prec. 18-94, neither the Army nor the Navy has issued specific regulations or instructions governing the enlistment and service obligation of civilians who are accepted to the USMAPS or USNAPS. However, personnel at the USMAPS and the USNA have informed us that the procedures governing enlistments and service obligations for civilians enrolling in the USMAPS and USNAPS are essentially the same as those described in O.G.C. Prec. 18-94 with respect to the USAFAPS.

4. A person serving on active duty in the Army who is accepted to the USMAPS will be reassigned from his or her current duty assignment to the USMAPS, without any change in status or in the service obligation incurred under the current enlistment. See AR 351-12, ¶¶ 8, 13.a., and 14.a.(1). In the event that such a person becomes disenrolled from the USMAPS prior to completion of the program, he or she will be reassigned to other duty and required to serve out his or her existing service obligation. AR 351-12, ¶ 14.d.

5. A member of the Army Reserve or the Army National Guard who is accepted into the USMAPS will be "ordered to active duty" and transferred to the USMAPS. AR 351-12, ¶¶ 13.c. and d. and 14.a.(2) and (3). As noted in O.G.C. Prec. 18-94, the service department's use of the term "active duty" in this context is not conclusive as to whether the service constitutes "active duty" within the meaning of 38 U.S.C. § 101(21) or "active duty for training" within the meaning of 38 U.S.C. § 101(22). In the event that such a person is disenrolled from the USMAPS prior to completion of the program, he or she will be relieved from active duty and returned to the appropriate National Guard unit or assigned to the Army Reserve

Personnel Center for further disposition in accordance with his or her reserve status. AR 351-12, ¶ 14.e. and f.

6. According to personnel responsible for overseeing recruitment and enrollment into the USMAPS, a civilian who is accepted into the USMAPS is enlisted into the Army Reserve and called to "active duty" as a reservist for the sole purpose of attending the preparatory school. We have been advised that the enlistment agreement under which such a person enters the Army Reserve establishes that the enlistment is for the purpose of attending the USMAPS and that, if the person becomes disenrolled from the USMAPS prior to completing the program, he or she will be separated from the Army Reserve and will incur no further service obligation. However, these procedures apparently are not expressly stated in Army regulations or other official directives.

7. A person serving on active duty in the Navy or Marine Corps who is accepted to the USNAPS will be reassigned from his or her current duty assignment to the USNAPS without any change in status or in the service obligation incurred under the current enlistment. See OPNAVINST 1531.4F, ¶¶ 7.a., 9.b., and enclosure (2), ¶ 2.i. In the event that such a person becomes disenrolled from the USNAPS prior to completing the program, he or she will be reassigned and required to complete his or her existing service obligation. OPNAVINST 1531.4F, ¶ 7.c.

8. According to personnel responsible for overseeing recruitment and enrollment into the USNAPS, a member of the Naval Reserve or Marine Corps Reserve who is accepted into the USNAPS is called to "active duty" as a reservist and transferred to the USNAPS. We have further been advised that if such person becomes disenrolled from the USNAPS before completing the program, he or she will be released from active duty and returned to his or her prior reserve status. However, this procedure is not expressly stated in OPNAVINST 1531.4F, and we have not found any other Navy directive establishing such a procedure.

9. We have been advised that a civilian who is accepted into the USNAPS is enlisted into the Naval Reserve and ordered to active duty as a reservist for the sole purpose of attending the USNAPS. We have further been advised that the enlistment agreement under which such a person enters the Naval Reserve establishes that the enlistment is for the purpose of attending the USNAPS and that, if the person becomes disenrolled from the USNAPS prior to completing the program, he or she will be separated from the Naval Reserve and will incur no further service obligation. However, these procedures apparently are not expressly provided by Navy regulations or other official directives.

10. Under the analysis of O.G.C. Prec. 18-94, the service of active duty members of the Army who become enrolled in the USMAPS and active duty members of the Navy and Marine Corps who become enrolled in the USNAPS constitutes "active duty" within the meaning of 38 U.S.C. § 101(21). Those servicemembers serve under a preexisting enlistment in the regular Army, Navy, or Marine Corps; they are not released from active duty, but are merely transferred to the preparatory school. Accordingly, their service at the preparatory school may be viewed as a continuation of their period of active service under the preexisting enlistment.

11. The service of members of the Army Reserve and Army National Guard who become enrolled in the USMAPS, and of members of the Naval Reserve and Marine Corps Reserve who become enrolled in the USNAPS, is most accurately characterized as "active duty for training" under 38 U.S.C. § 101(22). "Active duty for training" is defined to include "full-time duty in the Armed Forces performed by Reserves for training purposes." 38 U.S.C. § 101(22) (A). In O.G.C. Prec. 18-94, we indicated that the program of education and instruction at the USAFAPS constitutes "training" within the meaning of section 101(22). The USMAPS and USNAPS are essentially similar in nature and

purpose to the USAFAPS. Army Regulation 351-1, ¶ 3-3, states that "[t]he mission of the US Military Academy Preparatory School (USMAPS) is to provide instruction and training to qualify active duty candidates for entrance to the [United States Military Academy]." Similarly, the Navy's instruction OPNAVINST 1531.4F, ¶ 4.b., states that "[t]he Naval Academy Preparatory School provides intensive instruction and preparation for the academic, military and physical training curricula at the Naval Academy." Accordingly, attendance at the USMAPS or USNAPS by reservists constitutes "active duty for training" under 38 U.S.C. § 101(22) (A), rather than "active duty" under 38 U.S.C. § 101(21).

12. "Active duty for training" is also defined to include full-time duty by members of the Army National Guard under section 316, 502, 503, 504, or 505 of title 32, United States Code. 38 U.S.C. § 101(22) (C). Section 505 of title 32, United States Code, provides that "the Secretary of the Army may authorize a limited number of members of its Army National Guard to . . . attend any service school except the United States Military Academy, and to pursue a regular course of study at the school." Accordingly, attendance at the USMAPS by a member of the Army National Guard is authorized by 32 U.S.C. § 505 and may be considered "active duty for training" under 38 U.S.C. § 101(22) (C).

13. The service of persons who are accepted into the USMAPS or USNAPS from civilian life also is most accurately characterized as "active duty for training." Such persons reportedly are enlisted into the Army Reserve or Naval Reserve, respectively, and attend the preparatory schools in the status of reservists ordered to active duty for the sole purpose of attending those schools. Accordingly, their service at the USMAPS or USNAPS constitutes "full-time duty in the Armed Forces performed by Reserves for training purposes" and is thus "active duty for training" under 38 U.S.C. § 101(22) (A).

14. The Air Force regulations discussed in O.G.C. Prec. 18-94 clearly establish the enlistment status and service obligations applicable to the various classes of persons attending the USAFAPS. In contrast, the Army and Navy directives discussed in this opinion do not establish clear guidelines with respect to civilians who are accepted to attend the USMAPS or USNAPS. Rather, we have been informed that the enlistment status and service obligations of such persons are governed by the terms of the enlistment agreements into which they enter prior to attending the service preparatory schools. Accordingly, it may be advisable in adjudicating an individual claim

by a person who entered the USMAPS or USNAPS from civilian life to examine the pertinent service records regarding that servicemember's enlistment and separation to confirm that the servicemember attended the USMAPS or USNAPS in the status of a reserve called to active duty for training purposes, rather than as an active duty member with a commitment to serve on active duty which would be binding upon disenrollment from the preparatory school.

15. Similarly, we note that OPNAVINST 1531.4F does not clearly establish that members of the Naval Reserve and Marine Corps Reserve remain in reserve status during their attendance at the USNAPS. Accordingly, it may be advisable, in individual cases, to ensure that the reserve member did not undergo a change in status which would bring his or her service within the meaning of "active duty" under 38 U.S.C. § 101(21). As explained above, mere characterization of the service as "active duty" by the service department is not conclusive as to the nature of the service for purposes of title 38, United States Code. Rather, the service of a member of a reserve component called to active duty to attend the USNAPS should be considered active duty for training unless the member, in documents accompanying the change of status, made a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.

HELD:

The analysis of O.G.C. Prec. 18-94 regarding characterization of service while attending the United States Air Force Academy Preparatory School applies equally to service consisting of attendance at the United States Military Academy Preparatory School or the United States Naval Academy Preparatory School. Accordingly, persons transferred to these schools from active duty remain on active duty status while in attendance at the schools. For members entering the USMAPS and the USNAPS from reserve components and the Army National Guard, attendance at the schools may generally be characterized as active duty for training. However, in adjudication of individual claims of persons who enrolled in the USNAPS from the Naval Reserve or Marine Corps Reserve, it may be necessary to confirm from service records that such persons attended the USNAPS in the status of reserves called to active duty for training purposes. In addition, it may be necessary in individual cases of persons entering the USMAPS and USNAPS from civilian life to examine the pertinent service records to confirm that such persons entered the service in reserve status in order to attend the preparatory school.

Mary Lou Keener