



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR
HUMAN RESOURCES MANAGEMENT AND LABOR RELATIONS
WASHINGTON DC 20420

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HUMAN RESOURCES MANAGEMENT LETTER NO. 05-06-04

Changes in Veterans' Preference

1. Purpose. This Human Resources Management Letter (HRML) provides guidance for human resource (HR) officials on recent changes in Title 5 United States Code, Part III, Subpart A, Chapter 21, Section 2108 (5 U.S.C. § 2108), that modify and provide clarification on preference eligibility criteria for National Guard and Reserve members, and award of the Global War on Terrorism Expeditionary and Service Medals as authorized under Executive Order 13289.

2. Background. 5 U.S.C. § 2108, provides the definition of veteran, disabled veteran, and preference eligibility. This section also authorizes veterans' preference for individuals who served on active duty, under honorable conditions, in a campaign or expedition for which a campaign badge has been authorized. It is Department of Veterans Affairs, (VA) policy that qualified preference eligible veterans receive appropriate employment preference. At a time when the armed forces of the United States, including the National Guard and Reserve, are once again called on to protect America's freedoms, it is important that preference eligibles seeking employment are provided every opportunity to entitlements they have earned.

3. Discussion. The U.S. Office of Personnel Management (OPM) and VA have always adhered to a policy that National Guard and Reserve members, who have been separated or discharged, are qualified for veterans' preference if they meet the necessary criteria.

However, there have been circumstances in which some departments and agencies have failed to properly consider National Guard and Reserve members for employment consideration because they were released from active duty, rather than discharged with a certificate. Unfortunately, inconsistencies in granting veterans' preference due to interpretation of statutory language resulted in denying preference to some eligible members. To correct any ambiguous language, the term "veteran" under 5 U.S.C. § 2108 has been modified to clarify the definition of a preference eligible veteran.

4. Guidance.

a. 5 U.S.C. § 2108, now has a new Subsection (D) under (1), "veteran" that means an individual who –

“(D) served on active duty as defined by section 101 (21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom;

and who has been discharged or released from active duty in the armed forces under honorable conditions;”

b. In accordance with 5 U.S.C. § 2108, service on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized also qualifies for preference. Any Armed Forces Expeditionary medal or campaign badge qualifies for preference. Medal holders must have served continuously for 24 months or the full period called or ordered to active duty. In a December 2005, Memorandum for Chief Human Capital Officers, the Director, OPM, provided notification that anyone receiving the Global War on Terrorism Expeditionary Medal (for service in Operation Enduring Freedom) is also entitled to veterans' preference if otherwise eligible.

This award should not be confused with a similar medal also issued under the same executive order, the Global War on Terrorism Service Medal, which qualifies members for appointment consideration under provisions of the Veterans Recruitment Appointment (VRA). Both medals have similar colors and characteristics; however, one is for expeditionary deployment abroad and the other for support service.

The following provides pertinent information about the two medals:

- Global War on Terrorism Expeditionary Medal
 - ✓ Is qualifying for veterans' preference eligibility.
 - ✓ Is awarded to those who have served continuously for 24 months or the full period called or ordered to duty.
 - ✓ Is awarded to service members who deployed overseas for service in Global War on Terrorism operations on or after September 11, 2001, and to a future date to be determined by the Secretary of Defense.

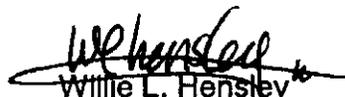
- Global War on Terrorism Service Medal
 - ✓ Is qualifying for appointment consideration under provisions of the VRA.
 - ✓ Is awarded to those who participated in or served in support of Global War on Terrorism operations on or after September 11, 2001, and to a future date determined by the Secretary of Defense.

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c. Before a person is appointed they must submit proof of entitlement to veterans' preference. Some armed forces may not issue DD Form 214, Certificate of Discharge or Separation from Active Duty, to National Guard and Reserve members for mobilization periods under a specific length. There may be members without this document, who were ordered to duty and served a full period and may qualify for preference. Service members will always have orders showing dates of their duty period, and separation or demobilization orders releasing them from active duty. They will also have official documentation from the branch of service for any awards including expeditionary or service medals.

5. Responsibility. Human resource professionals must be aware of these changes in veterans' preference entitlements in order to avoid denying veterans' preference to qualified National Guard and Reserve members. OPM is incorporating these changes in the *VetGuide* and *VetsInfoGuide*, and is currently updating the OPM *Delegated Examining Unit Handbook*. These changes were effective January 6, 2006, the date of the law's enactment.

A copy of 5 U.S.C. § 2108 is attached. Questions concerning these changes can be directed to Ron L. Luzetsky, Recruitment & Placement Policy Service (059), at (202) 273-9876.


Willie L. Hensley
Acting

Attachment: 5 U.S.C. § 2108, Veteran; disabled veteran; preference eligible

TITLE 5 U.S.C., PART III, Subpart A, CHAPTER 21, 2108

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) "veteran" means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(B) served on active duty as defined by section 101 (21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103 (d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; or

(C) served on active duty as defined by section 101 (21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992;

(D) served on active duty as defined by section 101 (21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date Operation Iraqi Freedom;

and who has been ***discharged or released from active duty in*** the armed forces under honorable conditions;

(2) "disabled veteran" means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department;

(3) "preference eligible" means, except as provided in paragraph (4) of this section—

(A) a veteran as defined by paragraph (1) (A) of this section;

(B) a veteran as defined by paragraph (1) (B) or (C) ***or (D)*** of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

- (F)** the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—
- (i)** her husband is totally and permanently disabled;
 - (ii)** she is widowed, divorced, or separated from the father and has not remarried; or
 - (iii)** she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and
- (G)** the mother of a service-connected permanently and totally disabled veteran, if—
- (i)** her husband is totally and permanently disabled;
 - (ii)** she is widowed, divorced, or separated from the father and has not remarried; or
 - (iii)** she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

- (4)** except for the purposes of chapters 43 and 75 of this title, "preference eligible" does not include a retired member of the armed forces unless—
- (A)** the individual is a disabled veteran; or
 - (B)** the individual retired below the rank of major or its equivalent; and
- (5)** "retired member of the armed forces" means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.