

October 7, 1997  
L-97-38

Mr. D.G. P.

In reply refer to  
S.S.A. No.

Dear Mr. P.:

This is in response to your letter to me of September 9, 1997, wherein you stated that you wanted to appeal a decision of the Railroad Retirement Board that your service in the United States (U.S.) Army National Guard for the period from October 1963 through April 1964 would not be creditable service under the Railroad Retirement Act (45 U.S.C. §231 et seq.).

I should point out initially that there has been no formal written decision of the Board which may be appealed at this time. Rather, it is my understanding that you have been advised by the Board's office in Billings, Montana, that your military service would not be creditable for railroad retirement purposes. Similarly, the discussion below explains the legal basis for not giving railroad retirement credit for service in the Army National Guard, but does not constitute a "decision" on this matter.

Because the crediting of military service involves an interpretation of portions of the Railroad Retirement Act, I have asked the Board's General Counsel to review this matter. She has provided the following discussion.

Section 3(i)(2) of the Railroad Retirement Act [45 U.S.C. §231b(i)(2)] provides that for purposes of computing a railroad retirement annuity, an individual's "years of service," as that term is defined in section 1(f) of the Act [45 U.S.C. §231(f)], shall also include his voluntary or involuntary military service, within or without the United States, during any "war service period."□

Section 3(i)(2) also provides that military service shall be creditable under the Act only if prior to the beginning of the military service and in the same calendar year in which the military service began, or in the next preceding calendar year, the individual rendered compensated service for a railroad employer.

Section 212.2 of the Board's regulations defines military service in pertinent part as follows:

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United

Mr. Dick G. Pritchard

States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. [20 CFR 212.2].

You indicated that your military service was in the U.S. Army National Guard. The "Army National Guard of the United States" is defined by statute to mean:

the reserve component of the Army all of whose members are members of the Army National Guard. [32 U.S.C. §101(5)].

That same statute defines "active duty" to mean:

full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty. [32 U.S.C. §101(12)].

Because service in the U.S. Army National Guard is reserve service and is not active military duty, it is not creditable under the Railroad Retirement Act.

I hope that the above discussion is helpful to you.

Sincerely,

Glen L. Bower  
Chairman