

***OpJAGAF 2018-24, 8 August 2018, Title 10, U.S.C. §§14701 and 14703 (Age Exception/Limitations)***

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***TOPIC***

If 10 U.S.C. § 14703 is an exception to the requirement to separate an officer at a specified commissioned service date in accordance with 10 U.S.C. § 14701.

***TEXT OF THE DECISION***

The AFBMCR requested an advisory opinion regarding a current issue pending before the Air Force Personnel Council. Specifically, the AFBCMR asked if 10 U.S.C. § 14703 (authority to retain chaplains and officers in medical specialties until specified age) is an exception to the requirement to separate an officer at a specified commissioned service date in accordance with 10 U.S.C. § 14701 (selection of officers for continuation on the reserve active-status list). The answer is yes; the age exception in 10 U.S.C. § 14703 is an exception for chaplains and officers in medical specialties to the commissioned service limitations provided in 10 U.S.C. §14701. The only explicit exceptions to the age limitation in 10 U.S.C. §14703 are the service limitations set out in 10 U.S.C. §§ 14503-14506.

***GUIDANCE***

10 U.S.C. § 14701

10 U.S.C. §14703

DoDI 1320.08, *Continuation of Commissioned Officers on Active Duty and on the Reserve Active-Status List*

***DISCUSSION***

Under circumstances provided in 10 U.S.C. §14703(a)(3), the Secretary of the Air Force may: “with the officer’s consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain,” until that officer “becomes 68 years of age.”<sup>1</sup>

The Secretary’s authority under 10 U.S.C. §14703(a)(3) to retain officers in the above-listed career fields to age 68 is nearly unimpeded by the continued service limitations outlined in Chapter 1407 of Title 10 (failure of selection for promotion and involuntary separation).<sup>2</sup> Of the 19 provisions in Chapter 1407, only four exceptions continue to apply to officers who seek to continue service to age 68. The four exceptions address the continued service of officers found not qualified to

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<sup>1</sup> The second quoted phrase comes from 10 U.S.C. § 14703(b)

<sup>2</sup> 10 U.S.C. § 14703(a) states “[n]otwithstanding any provision of chapter 1407...”

promote to first lieutenant who are within the first six years of commissioned service<sup>3</sup> or officers who fail to be selected for promotion to first lieutenant,<sup>4</sup> captain,<sup>5</sup> and major.<sup>6</sup>

The language in 10 U.S.C. § 14703 does not address the impact of 10 U.S.C. §14701 service limitations on officers eligible to serve to age 68 under §14703. Like §14703, §14701 is a provision of Chapter 1409 and §14703 is silent on the impact of other Chapter 1409 provisions on it. This silence led to disagreement in interpretation at the Air Force Personnel Council.

In practical terms, the question at issue may be framed as follows: must a reserve chaplain in the grade of lieutenant colonel who is not promoted to the next higher grade leave the service after the “officer completes 33 years of commissioned service” as per 10 U.S.C. § 14701(a)(4) or is that chaplain able to serve to age 68 as per 10 U.S.C. § 14703(a)(3), without regard to the 10 U.S.C. § 14701(a)(4) continued service limitation? One interpretation is that §14701 limits §14703 because it is not specifically excepted in the statute. This first interpretation concludes that the total commissioned service limitations cannot be nullified by §14703 because they arise from Chapter 1409, not Chapter 1407. The opposing interpretation is that §14701 does not impact §14703 because the operative statutory references made in §14701, that would limit continued service, come from Chapter 1407.

We conclude that §14701 does not limit §14703 eligible officers. It is clear that §14701 is a general statute, whereas §14703 is a specific statute applicable only to chaplains and officers in medical specialties. It is a settled principle of statutory interpretation that “specific terms prevail over the general in the same or another statute which otherwise might be controlling.”<sup>7</sup> The same principle is used to resolve conflict between two statutes on the same issue.<sup>8</sup>

In addition, 10 U.S.C. §14703 excludes provisions in Chapter 1407, not Chapter 1409. The total commissioned service limitations outlined in 10 U.S.C. §§ 14701(a)(2-7)<sup>9</sup> are part of

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<sup>3</sup> 10 U.S.C. § 14503 (discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade))

<sup>4</sup> 10 U.S.C. § 14504 (effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy)

<sup>5</sup> 10 U.S.C. § 14505 (effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy)

<sup>6</sup> 10 U.S.C. § 14506 (effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy)

<sup>7</sup> *Kepner v. U.S.*, 195 U.S. 100, 125 (1904). See also *Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932) (citing in part *MacEvoy Co. v. United States*, 322 U.S. 102, 107 (1944): “However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.”

<sup>8</sup> *U.S. v. Estate of Romani*, 523 U.S. 517 (1998) (later, more specific statute governs); *Morton v. Mancara*, 417 U.S. 535 (1974): “...where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of the enactment.”

<sup>9</sup> 10 U.S.C. § 14701(a)(2-7) sets limitations for continued service based on total years of commissioned service. See below: (2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

Chapter 1409. So, at first glance, it would appear that 10 U.S.C. § 14701 governs. However, each of the limitations in 10 U.S.C. 14701(a)(1-7) operates according to a provision in Chapter 1407. For example, 10 U.S.C. §14701(a)(4):

A reserve officer who holds the grade of lieutenant colonel...and **who is subject to separation under section 14514 of this title** may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.”

The operative language in this provision relies on a provision of Chapter 1407 which, as stated above, is not applicable to officers eligible to serve to 68 years old under §14703.

This statutory interpretation is consistent with governing DoD guidance – DoDI 1320.08, *Continuation of Commissioned Officers on Active Duty and on the Reserve Active-Status List*, last published on 7 July 2017. DoDI 1320.08 “[e]stablishes policy, assigns responsibilities, and provides direction for the continuation of officers on the Active-Duty List (ADL) and on the Reserve Active-Status List (RASL),” and “[i]mplements Sections...14505-14514, 14701, and 14703 of Title 10, United States Code (U.S.C.), governing continuation of commissioned officers.” DoDI 1320.08 implements §§14505-14 of Chapter 1407 and §14701 and §14703 of Chapter 1409.

Paragraph 3.8 of DoDI 1320.08 implements DoD guidance regarding §14703: “...the Secretaries of the Military Departments may, **notwithstanding any other provision of this issuance** and with the officer’s consent, retain in an active status any Reserved commissioned officer assigned as follows....” Paragraph 3.8 does not provide any exception to the sweeping “notwithstanding any other provision of this issuance...” which suggests DoD interpreted §14703 to trump other provisions of Title 10 that are implemented by DoDI 1320.08. The continued service limitations by years of continued service provisions from §14701 are specifically implemented in paragraph 3.5 of DoDI 1320.08 and fall within the sweeping language of paragraph 3.8.

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- (4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.
  - (5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.
  - (6) An officer who is selected for continuation on the reserve active-status list under regulations prescribed under paragraph (1) but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.
  - (7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

***CONCLUSION***

Based on the foregoing, Reserve officers eligible for continued service to age 68 under 10 U.S.C. §14703 are not subject to the total commissioned service limitations in 10 U.S.C. §§ 14701(a)(2-7).

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