

13324 PLM-I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

[Retirement Credit for Academy Service]

FILE # *B7195448* DATE: April 3, 1980

MATTER OF: *Address Incursion of academy service*
Retirement credit for academy *retirement*
service as a cadet or midshipman *credit*

DIGEST: Section 971 of title 10, U.S. Code, *for a cadet or*
provides that cadet or midshipman *midshipman*
service at a service academy may not
be included in the computation of
length of service for any purpose of
an officer. 10 U.S.C. 971. However,
this does not preclude the crediting
of such service for the purposes of
determining the eligibility of an
enlisted member to retire under
10 U.S.C. 8914. Service as a cadet
or midshipman at one of the academies
is service in the Navy, Army, or Air
Force since the academies are integral
parts of those services.

The following question has been presented for advance decision:

"May a member count his cadet time spent in a Military Academy under the provisions of 10 U.S.C. 8911 or 8914 for retirement purposes?"

The answer is that service as a cadet or midshipman at a service academy is creditable for the purpose of determining eligibility for retirement under 10 U.S.C. 8914 (enlisted retirement) but is not creditable for a member retiring under 10 U.S.C. 8911 (commissioned officer retirement).

This question was asked by the Assistant Secretary of Defense and he enclosed with it Department of Defense Military Pay and Allowance Committee Action No. 545, containing a discussion of the question.

A factual situation typifying other cases is presented in the Committee Action. Staff Sergeant John W. B. Shirley, USAF, 250-54-3776, enlisted in the Regular Army on May 28, 1957. On July 6, 1959, he was released from

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active duty to enter the United States Military Academy. He entered the Academy on the following day and graduated June 4, 1963, receiving a commission as a second lieutenant in the Regular Air Force on June 5, 1963. He served on active duty as an officer until June 29, 1977, when he was discharged from all appointments by resignation. On July 15, 1977, he enlisted in the Regular Air Force and has continued on active duty to date in that status.

The Committee Action generally concludes that the only apparent bar to crediting cadet or midshipman service at one of the academies for the purposes of retirement is 10 U.S.C. 971, which prohibits the crediting of such service in computing for any purpose the length of service of an officer.

Subsection 971(a) provides in part that a period of service under an enlistment or period of obligated service while also serving as a cadet or midshipman at one of the service academies under an appointment accepted after June 25, 1956, may not be counted in computing the length of service of an officer of an armed force. Subsection (b) provides that no officers of the Army, Air Force, Navy, and Marine Corps may be credited with service at any of the service academies in computing length of service for any purpose after certain dates not relevant here.

The provisions of 10 U.S.C. 8911, to which the submission refers, authorize the retirement of Air Force Regular or Reserve commissioned officers who have at least 20 years of service, 10 years of which have been active service as a commissioned officer. Since 10 U.S.C. 971 precludes officers counting of academy service for any purpose, it clearly precludes crediting of cadet or midshipman service for retirement purposes under 10 U.S.C. 8911.

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Reserve*

As to crediting academy service in cases such as Sergeant Shirley's for retirement as an enlisted member, we note that he was appointed to the academy subject to 10 U.S.C. 516. Subsection 516(a) provides that an enlistment or period of obligated service of an enlisted member

who accepts an appointment as a cadet or midshipman at one of the service academies may not be terminated because of acceptance of such appointment. While serving as a cadet or midshipman, he is entitled only to the pay, allowances, compensation, premiums and other benefits provided by law for cadets or midshipmen of the academies. If a person covered by section 516 is separated from service as a cadet or midshipman, for any reason other than appointment as an officer or because of physical disability, he resumes his enlisted status and must complete the enlistment or period of obligated service. Time spent as a cadet or midshipman is included in the period of enlistment or obligated service.

Section 8914 of title 10, to which the submission also refers, authorizes the retirement of an enlisted member of the Air Force who has at least 20 but less than 30 years' service computed under 10 U.S.C. 8925. Section 8925 provides that an enlisted member's years of service for retirement and computation of retired pay are determined by adding all active service in the armed forces and service computed under 10 U.S.C. 8683.

Active service as used in 10 U.S.C. 8925 means service on active duty. 10 U.S.C. 101(24). Active duty is defined in 10 U.S.C. 101(22) as:

"(22) 'Active duty' means full-time duty in the active military service of the United States. It includes duty on the active list, 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."

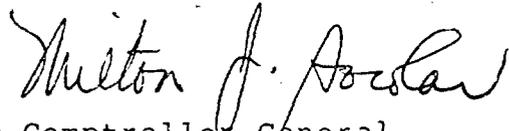
While service schools referred to in this provision do not include the academies, it is well established that service as a midshipman at the Naval Academy or as a cadet at the Military Academy is considered service in the Navy or the Army, since such academies are integral parts of those

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services. United States v. Morton, 112 U.S. 1 (1884), United States v. Baker, 125 U.S. 646 (1888), United States v. Watson, 130 U.S. 80 (1889). This is equally applicable to the Air Force. See also 10 U.S.C. 3075 and 8075 (1976).

Furthermore, we have construed service at the academies as active Federal service. See 29 Comp. Gen. 331 (1950), 31 Comp. Gen. 528 (1952); 35 Comp. Gen. 566. See also 37 Comp. Gen. 465 (1958) wherein it was held that retired enlisted men who are advanced on the retired list to commissioned or warrant officer grade may credit cadet or midshipman service at the academies since they retain their enlisted status and are not affected by statutes similar to 10 U.S.C. 971.

Accordingly, in the absence of a specific provision precluding crediting such service, service at the academies as a cadet or midshipman may be credited to an enlisted member for the purposes of retirement under 10 U.S.C. 8914. It may not be credited to an officer for the purposes of retirement under 10 U.S.C. 8911.



For the Comptroller General
of the United States