

New York State Department of Labor  
Unemployment Insurance Division  
Adjudication Services Office

August, 2017

Interpretation service  
Determination of Benefits  
Unemployment Compensation for Ex-Service Members

**Bound by what is contained in the DD214**

For purposes of determining the claimant's record of service for unemployment insurance, the DD214 is binding on the Department and the Appeal Board, even though the days credited may not correspond to the actual number of days of active duty. Further, days of military service is based on a 30-day month regardless of the number of actual days in the month.

A.B. 594,841

The Department of Labor issued the initial determination denying the claimant (an ex-service member filing under 5 USC §§ 8521-8525) Unemployment Compensation for Ex-Service Members (UCX) benefits, effective October 3, 2016, on the basis that his active duty was in a reserve status that began November 25, 2015 or later and was less than 180 days of continuous service. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor. By decision filed February 24, 2017 (A.L.J. Case No. 017-01589), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**Findings of fact:** The claimant began active duty military service in the United States Navy in 1994. He transitioned to reserve status in 2001. As a reservist, the claimant transitions in and out of active duty pursuant to military orders. When not in active duty, the claimant continues to do the required periods of training and drills.

In 2016, the claimant received orders, which he followed, requiring that he report for active duty and stating that the period of active duty was April 3, 2016 to September 30, 2016 “for 181 days.” The claimant completed this period of active duty; and, upon completion filed a claim for unemployment insurance benefits, effective October 3, 2016.

When a service member files a claim for unemployment insurance benefits, the military prepares a DD 214 form. The “record of service” is set forth in block 12 of the form. Within that section, the date of entry is recorded in section 12a and the date of separation is recorded in section 12b. The date of entry is subtracted from the date of separation. One additional day is added for the total amount of service credited. That result, entered as number of months and days, is entered in section 12c of the DD 214.

In the claimant’s case, using the numerical dates 04/03/2016 and 09/30/16, Navy Personnel Command prepared a DD 214 crediting the claimant with 5 months and 28 days of service. For purposes of calculating credit, and pursuant to Department of Defense regulation, days of service and wages are determined based on a 30-day month, not on the actual number of days in the month. For this reason, the days credited may not correspond to the actual number of days of active duty service. Using 5 months and 28 days, as recited in 12c of the DD 224, the Department of Labor credited the claimant with 178 days of service.

**Opinion:** Pursuant to 5 USC § 8521(a)(1), as amended November 25, 2015, an armed services member in reserve status must have 180 days (formerly 90 days) of continuous active duty service to establish eligibility to claim unemployment insurance benefits. Significantly, there is no dispute regarding the dates on which the claimant entered and separated from active duty in 2016. Using the numerical dates 04/03/2016 and 09/30/16, Navy Personnel Command prepared a DD 214 crediting the claimant with 5 months and 28 days of service. We accept the sworn credible testimony and evidence submitted by the Workers Management and Benefits Division Director that for purposes of calculating credit and wages, the Department of Defense deems a month to be 30 days.

It is well settled that we are bound by the findings in the DD 214 for all purposes. (Appeal Board No. 582225). Based on the information contained in the DD 214 and consistent with the formula presented by the Workers Management and Benefits Division Director, the claimant was credited with 178 days of active duty service. We are mindful that the actual order which the claimant received stated that his period of service amounted to 181 days. However, for purposes of determining the claimant’s record of service for unemployment insurance purposes, we are bound by what is contained in the DD 214. We are therefore constrained to conclude that the claimant had 178 days of service, 2 days short of the requisite 180 days, and was therefore properly determined to be ineligible.

**Decision:** The decision of the Administrative Law Judge is reversed.

The initial determination, denying the claimant (an ex-service member filing under 5 USC §8521-8525) Unemployment Compensation for Ex-Service Members (UCX) benefits, effective October 3, 2016, on the basis that his active duty was in a reserve status that began November 25, 2015 or later and was less than 180 days of continuous service, is sustained.

The claimant is denied benefits with respect to the issues decided herein.