

Chapter 17 - Reservist Unsatisfactory Participation

Selected Reservists who do not satisfactorily fulfill their drilling or training requirements may be charged with unsatisfactory participation. As punishment, such reservists may be ordered to involuntary active duty, transferred to the Individual Ready Reserve, or discharged. This discharge is involuntary and may be characterized as Honorable, General (under Honorable Conditions), or Under Other Than Honorable Conditions (OTH). Each Service has varying standards for unsatisfactory participation and varying methods of punishment. As of 1997, the Army will not order unsatisfactory participants to involuntary active duty, but the Navy, Marines, and Air Force may.

Criteria

A reservist will be charged with unsatisfactory participation for accruing a number of unexcused absences, poor performance at drills, or not completing active duty training satisfactorily. The Department of Defense provides the Services with a range of possible punishments for unsatisfactory participation. Not all of the Services utilize all possible punishments.

Unsatisfactory participants may be:

- Ω ordered to active duty or active duty for training for a maximum of 24 months, or until their total time on active duty and active duty for training equals 24 months;
- Ω ordered to active duty for training for a period of not more than 45 days;
- Ω transferred to the Individual Ready Reserve (IRR) when the reservist “still possesses the potential for useful service if mobilized;”
- Ω discharged for unsatisfactory participation.

The type of punishment imposed depends on how a member entered the reserves, the Service, and a commander’s discretion. The Selected Reserve is composed of reservists who either:

- Ω contract for a specified number of years of mandatory drilling through direct enlistment, or
- Ω transfer to the reserves after serving on active duty.

The punishment of involuntary active duty is imposed only on reservists under their initial enlistment contract who either enlisted directly in the Selected Reserve or have served less than two years on active duty. Reservists who fulfilled their initial military service obligation and have reenlisted are exempt from the punishment of involuntary active duty and will be transferred to the IRR or discharged. Each Service’s criteria for charging a reservist with unsatisfactory participation, and the punishments each impose, are detailed below.

Army

Enlisted Army Selected Reservists who accrue nine or more unexcused absences in any 12-month period, or who fail to attend or complete annual training, will be charged with unsatisfactory participation. Unsatisfactory participants may be discharged or transferred to the IRR but, as of 1997, will not be ordered to involuntary active duty.

Absences are unexcused unless the unit commander determines “sickness, injury, or some other circumstance beyond the soldier’s control caused the absence.... Employment conflicts, overtime, schooling, and loss of income are not normally considered valid reasons for absence....” Exceptions to unexcused absences may be granted for members who have shown “exemplary performance,” and when there are determined to be “extenuating circumstances bearing directly on the failure to attend the scheduled training.” Failure to attend a multiple unit training assembly (MUTA) may result in a charge of up to four unexcused absences.

Navy

Naval Selected Reservists must attend 90 percent of scheduled drills and perform a minimum of 12 days of annual training each fiscal year. In addition, a reservist’s participation in a drill may also be deemed unsatisfactory. When unsatisfactory drills added to unexcused absences totals six or more drills in a 12-month period, the reservist will be charged with unsatisfactory participation. (The Navy policy is presently in conflict with the controlling DoD policy of allowing nine unexcused absences. See “Unsatisfactory Participation” below.)

Reservists who previously served on active duty may be transferred to the IRR or separated. Reservists under contract who enlisted directly in the reserves (called “Sea/Air Mariners”), may be activated for up to 45 days involuntary active duty for training or separated. However, as of 1997, Naval reservists who fail to report for involuntary active duty or active duty for training will be separated for unsatisfactory participation. Commanders may, instead of recommending separation or involuntary active duty, place an unsatisfactory participant on probation if “the circumstances that caused the reservist to be an unsatisfactory participant have been resolved.” While on probation the reservist must perform satisfactorily and accrue no additional unexcused absences. (The Navy criteria and grounds for excusing an absence are contained in COMNAVRESFORINST 1001.5.)

Marine Corps

A Marine Selected Reservist may be charged with unsatisfactory participation after nine unexcused absences, failure to meet minimum standards, or failure to attend annual training. Reservists charged with unsatisfactory participation may be assigned to “Equivalent Instruction or Duty” or separated. In addition, reservists under contract who enlisted directly in the reserves, or reservists who have served less than two years active duty, may be ordered to involuntary active duty for up to 24 months or to 45 days involuntary active duty for training.

Absences may be excused “when the absence is essential to the health or welfare of the reservist or the reservist’s immediate family.” Acceptable circumstances include death or life-threatening illness, a serious or unusual hardship, serious accidents or incidents enroute, severe inclement weather or natural disasters, and “other reasons as determined by the unit commander.”

Air Force

The Air Force defines unsatisfactory participation differently in two separate regulations. Air Force Manual 36-8001 considers a unit member an unsatisfactory participant who has “five unexcused IDT [inactive duty training] absences or has not completed a scheduled AT [annual training] tour (unless substituted or excused) in the FY [fiscal year].” This definition, however, contradicts the controlling DoD policy allowing nine unexcused absences. (See “Unsatisfactory Participation” on page 17.3.)

Based on the AF Manual 36-8001 definition, commanders unable to “return a member who has potential for a useful service under conditions of full mobilization to a satisfactory participation status” may take the following actions:

- Ω delay or defer promotion,
- Ω administrative demotion, or for members with a remaining “military service obligation (MSO) or formal training course service obligation,” order the member to 45 days involuntary active duty for training.

When a commander determines that a member’s “service is not in the best interest” of the Air Force, the commander may:

- Ω Transfer the member to the IRR.
- Ω Discharge the member for unsatisfactory participation.

Contradicting the above definition, but complying with the controlling DoD policy, Air Force Instruction 36-3209 states that Air Force Selected Reservists may be discharged based on unsatisfactory participation after nine or more unexcused unit training assembly absences within a 12-month period, or failure to report to their unit of assignment within 90 days after their release from active duty.

Counseling

Reservists who face involuntary active duty due to unsatisfactory participation may request a deferment of, or exemption from, the active duty orders or attempt to contest the charge of unsatisfactory participation.

Exemptions from involuntary active duty will be hard to obtain. The reservist must request to be screened out of the Ready Reserve or request an administrative discharge before active duty orders are published. Once on active duty, a reservist can continue to request screening out of the Ready Reserve or seek discharge. (See Chapter 18, Mobilization and Involuntary Active Duty.)

Contesting a charge of unsatisfactory participation will not be easy because there is no formal process for doing so. Reservists charged with unsatisfactory participation for missing drills can present a legitimate excuse for the absence or, if charged erroneously, document their presence at the drill(s). Unfortunately, excuses for absence must be submitted to the unit commander within 30 days of the absence. However, getting a recent absence excused might bring the reservist under the absences limit for unsatisfactory participation. Reservists charged with unsatisfactory participation due to poor performance must document that their performance was satisfactory or seek a performance-based discharge.

Deferment of Annual Training

It is often possible to have orders for annual training delayed or canceled because of a family hardship, medical or psychiatric problems, an application for conscientious objection, or even school schedule conflicts. It is best to request a delay or exemption, with documentation, from the unit commanding officer as soon as possible. Deferments are less likely to be granted after the reservist has received his or her orders.

Documentation

The reservist's military personnel file, which is located at the reservist's unit, has a record of unexcused absences and unsatisfactory performance. Check the file for information on what to rebut to remove a charge of unsatisfactory performance. The file can also be checked for any procedural errors that can be used to argue that the active duty orders are improper.

To excuse an absence, document not only the reason for the absence (with, for example, a doctor's letter or car repair bill) but also explain why the reservist has not submitted an excuse in a timely manner. Reservists mistakenly marked absent can write a letter stating the time they reported for the drill and what they did during the period. Reservists charged with unsatisfactory participation due to poor performance will need to state how they conformed to performance standards or document why they were unable to meet performance standards.

Approaching the Command

Reservists must contact their unit commander within 30 days before, or within 30 days after, absences from drill or active duty training in order to have the absence excused. All documentation disputing a charge of unsatisfactory participation, or requesting a deferment of involuntary active duty, screening from the Ready Reserve, or discharge, should be sent to the unit commander before active duty orders are published.

Official Process

When a reservist is charged with unsatisfactory participation, the unit commander recommends transfer to the Individual Ready Reserve, discharge, or, where applicable,

involuntary active duty. Except for emergency situations, deferments of involuntary active duty must be requested in writing before active duty orders have been published. The DoD does not provide standardized grounds for deferment of involuntary active duty due to unsatisfactory participation. However, the Marine Corps regulations give an idea of what grounds are likely to be accepted:

- Ω seasonal employment,
- Ω initial employment,
- Ω federal or state examinations,
- Ω employment as a teacher to complete the school year,
- Ω students (until the end of the term),
- Ω emergency reasons,
- Ω temporary illness or injury, and
- Ω community or personal hardship.

An argument for deferment could also be based on improper procedure. In order for the military to enforce orders to involuntary active duty, an unsatisfactory participant must be “given notice of the activation and the reasons therefor, and an opportunity to object to the activation.” The reservist must show that the military did not properly follow its regulations, that such action violated the reservist’s right to due process, and therefore any subsequent orders to active duty are invalid.

Notification

Reservists will be notified of their unsatisfactory participation, recommendations for transfer to the IRR, recommendations for separation, and recommendations for involuntary active duty. Depending on the Service, reservists will usually be notified of unexcused absences when they approach their limit.

If the member cannot be notified in person, notices are sent via registered or certified mail to the most recent address furnished by the reservist. (It is the reservist’s responsibility to notify the military of any new address.) A reservist’s failure to reply to a letter of notification regarding separation may constitute a waiver of various rights, including the right to an administrative board hearing.

Type of Separation

Discharge for unsatisfactory participation will be Honorable, General (under Honorable Conditions), or Under Other Than Honorable Conditions (OTH). Each Service provides guidelines for commanders to decide whether discharge or transfer to the IRR is appropriate. (See “Criteria” on page 17.1.) Members transferred to the IRR are still eligible for activation in a mobilization.

Appeals

Reservists recommended for a characterization of service Under Other Than Honorable Conditions have the right to an administrative board. (See Chapter 3, Understanding the Discharge Process, under “Administrative Board” on page 3.10.) There is no right to a hearing for unsatisfactory participants ordered to involuntary active duty.

In the Marines, appeals of the unit commander’s recommendations can be made, through the unit commander, to Marine Corps Commandant, Reserve Affairs.