

CITATION: VAOPGCPREC 4-90  
Vet. Aff. Op. Gen. Couns. Prec. 4-90

DATE: 03-20-90

**TEXT:**

**SUBJECT:** Offset of Medal of Honor Pension for Purposes of Collecting Debts Due the Department of Veterans Affairs

**QUESTION PRESENTED:**

Do the provisions of 38 U.S.C. § 3114(a), requiring the offset of future benefit payments to recover certain indebtedness to the United States, authorize VA to offset Medal of Honor pension in order to collect a loan guaranty debt due this Department?

**COMMENTS:**

1. This inquiry addresses the relationship between 38 U.S.C. § 562 and 38 U.S.C. § 3114(a). Section 562 of title 38, United States Code, provides for payment by VA of a special monthly pension to persons whose placement on the Medal of Honor Roll has been certified to VA by the Secretary of the service department concerned. Section 562(c) provides such "special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever." Section 3114(a) states that "the Secretary shall ... deduct the amount of indebtedness of any person who has been determined to be indebted to the United States by virtue of such person's participation in a benefits program administered by the Department of Veterans Affairs from future payments made to such person under any law administered by the Department of Veterans Affairs."

2. The answer to this question turns on the phrase in section 3114(a), "from future payments made to such person under any law administered by the Department of Veterans Affairs." Unlike most payments to veterans by VA, the payment of Medal of Honor pension is not a benefit which VA administers. Instead, VA's function is a limited, ministerial one in which VA merely effects actual payment of the pension after placement of a veteran's name on the Medal of Honor Roll by the Secretary of the individual military service. In order to fully understand the nature of VA's role in this program, a review of the Medal of Honor pension program is necessary.

3. The Act of April 27, 1916, ch. 88, 39 Stat. 53, established Medal of Honor Rolls in the military departments and entitlement to Medal of Honor pension for persons on those rolls. Section 3 of the Act of April 27, 1916, provided:

That each surviving person whose name shall have been entered on said roll ... shall receive and be paid by the Commissioner of Pensions in the Department of the Interior, out of any moneys in the Treasury of the United States not otherwise appropriated, a special pension of \$10.00 per month for life....

The statute also included an exemption provision virtually identical to current 38 U.S.C. § 562(c).

4. The current law governing payment of Medal of Honor pension is codified in 38 U.S.C. §§ 560-562. While the amount of pension and the names of the government agencies have changed, the current law is very similar to the original act. Section 560(a) provides " t here shall be in the respective military departments and the Department of Transportation, ... a roll designated as the ... Medal of Honor Roll." Under section 560(c), the Secretary of the concerned department establishes procedures for application to be placed on the roll. Section 561(a) continues, "the Secretary concerned shall determine whether or not each applicant is entitled to have such person's name entered on the ... Medal of Honor Roll." A certificate is then issued by the Secretary concerned, under section 561(b), indicating that a successful applicant has been placed on the roll and is entitled to special pension. The mechanism for payment of the pension is discussed in 38 U.S.C. § 561(c):

The Secretary concerned shall deliver to the Secretary of Veterans Affairs a certified copy of each certificate issued ... in which the right of the person named in the certificate to the special pension ... is set forth. Such copy shall authorize the Secretary of Veterans Affairs to pay such special pension to the person named in the certificate.

Section 562(a) directs the Secretary of Veterans Affairs to pay pension at a specified rate to each person named in such a certificate delivered to VA. Section 3.802 of title 38, Code of Federal Regulations, is nearly identical to the statute; it emphasizes the responsibility of the individual service Secretary in making eligibility determinations, viz., "the Secretary of the service department will determine the eligibility of applicants ... and will deliver to the Secretary of Veterans Affairs a certified copy of each certificate issued in which the right ... to the special pension is set forth."

5. It is clear from a careful reading of the applicable statutes that the responsibility of the Secretary of Veterans Affairs under this program is quite limited. The administration of the program is primarily the responsibility of the individual service departments. Once the service department makes the decision to enter a veteran's name on the Honor Roll and certifies the veteran's right to pension, then it is the responsibility of VA to see that the veteran is paid.

6. The legislative history of the various Federal laws which relate to Medal of Honor pension highlights the very limited role that Congress intended for VA. In the legislative history of the Veterans' Benefits Act of 1957, Pub. L. No. 85-56, 71 Stat. 83, the "ministerial" function of VA under the program is addressed in a letter to the Chairman, House Committee on Veterans' Affairs, by Administrator of Veterans' Affairs H.V. Higley incorporated in H.R. Rep. No. 279, 85th Cong., 1st Sess., reprinted in 1957 U.S. Code Cong. and Admin. News 1214. The letter provides in pertinent part:

Since the functions of the Department of Veterans Affairs with respect to the special pension are purely ministerial, in that we VA act as paymaster of the pension authorized by the secretaries of the military departments concerned, it is recommended that these provisions be deleted from the pension title ... and be added to the appropriate title or titles of the United States Code....

Id. at 1233. The above-referenced committee report indicates the suggested incorporation in title 10 of the United States Code of the provisions relating to payment of pension to Medal of Honor holders was not adopted because a

recodification of title 10 had recently been completed. There are numerous other references in congressional materials to VA functioning in a "ministerial" manner concerning the payment of Medal of Honor pension. See, e.g., letter to Chairman, Senate Finance Committee, by VA Administrator J.S. Gleason, Jr. commenting on H.R. 845, 87th Cong., 1st Sess. (ultimately enacted as Pub. L. No. 87-138) FN1 in which VA declined to take a position on the bill, referring the Committee to the service departments, who determine basic eligibility for special pension.

7. In the past, VA has taken the position that it may not make a forfeiture or apportionment determination affecting naval pension because the payment of that pension is not made under a law administered by VA. A.D. 931 (1953); A.D. 772 (1947). As with Medal of Honor pension, naval pension was paid by VA in a ministerial capacity upon certification by the service department. The issue of whether a payment was made under a law administered by VA was also addressed in Op. G.C. 9-83, (10-12-87). The General Counsel held that VA could not offset Treasury settlement check overpayments against VA benefits as the "issuance of settlement checks is an independent program established in the Department of the Treasury to provide relief to victims of check forgery", and issuance of such a check is therefore not a payment under a law administered by VA.

8. It is also important that 38 U.S.C. § 3114 does not specifically mention Medal of Honor pension, and it would therefore be inappropriate to imply repeal of the previous, unambiguous statute exempting such pension from attachment or other process. See 2A N. Singer, Sutherland Statutory Construction § 51.01 (4th ed. 1984) (presumption against implied repeal); see also id. § 51.05 ("Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.")

9. In a 1966 unpublished opinion approved by the General Counsel addressing the issue of whether Medal of Honor pension is subject to forfeiture under the provisions of 38 U.S.C. § 3503 the VA Chief Attorney, Washington, D.C., held that:

Congress did see fit to include a specific clause exempting the special benefits from being "subject to any attachment, execution, levy, tax lien, or detention under any process whatever," thereby indicating a reluctance to rely on the exemption provision in 38 U.S.C. § 3101 relating to veterans' benefits in general. It would seem, therefore, that had Congress intended to extend the forfeiture provisions governing veterans' benefits in general to the special Medal of Honor benefits, it could have done so by specific enactment or by means of incorporation by reference. Digested Opinion, 4-27-66 (14-15 Medal of Honor).

At the time the above opinion was issued, 38 U.S.C. § 3114 had not been enacted. However, the analysis used is instructive in the situation presented in this case. Although 38 U.S.C. § 3101(a) contains language similar to 38 U.S.C. § 562(c) barring attachment or other process against benefits, Congress nonetheless chose to retain the specific protection for Medal of Honor pension in the latter provision. In this regard, it is noteworthy that the second sentence of the former section contains an exception for claims of the United States arising under laws administered by VA, while the latter section contains no such exception. Congress' retention of the more comprehensive exemption provision specifically applicable to Medal of Honor pension

suggests that it intended to provide greater protection to that benefit, i.e., that such pension would not be subject to offset for collection of debts due the United States regardless of the program under which the debts arose. FN2

**HELD:**

VA may not set off indebtedness created due to a VA loan guaranty against Congressional Medal of Honor pension. Under 38 U.S.C. §§ 560-62, the function of VA concerning payment of Medal of Honor pension is ministerial in that VA merely pays the pension authorized, once the name of the veteran has been placed on the Medal of Honor Roll by the Secretary of the service department concerned. The Medal of Honor pension statutes are therefore not laws administered by VA, and thus payments under those statutes are not subject to the offset requirement of 38 U.S.C. § 3114.

1 The text of the letter was appended to S. Rep. No. 500, 87th Cong., 1st Sess., reprinted in 1961 U.S. Code Cong. & Admin. News. 2344, 2346.

2 Administrative offset is also governed by 31 U.S.C. § 3716 which establishes procedures for the collection, by offset, of indebtedness owed Federal agencies. However, 31 U.S.C. § 3716(c) does not authorize using administrative offset to collect a claim where, as here, such offset is prohibited by statute.

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