

DATE: 6-22-92

CITATION: VAOPGCPREC 14-92
Vet. Aff. Op. Gen. Couns. Prec. 14-92

TEXT:

Subj: Concurrent Payment of VA Disability Compensation and Voluntary Separation Incentive Payments or Special Separation Benefits

QUESTIONS PRESENTED:

- a. Should VA disability compensation be offset to recoup the amount of special separation benefits received by a veteran under authority of 10 U.S.C. § 1174a?
- b. Should VA disability compensation be offset to recoup the amount of voluntary separation incentive payments received by a veteran under authority of 10 U.S.C. § 1175, or is the Department of Defense (DoD) responsible for any recoupment of concurrent benefits?

COMMENTS:

1. The Defense Authorization Act, Pub. L. 102-190, Div. A., Title VI, §§ 661(a)(1) and 622(a)(1), Dec. 5, 1991, 105 Stats. 1394 and 1396, added section 1174a creating a lump-sum benefit designated as a special separation benefit, and section 1175 creating an annuity benefit designated as a voluntary separation incentive to title 10 of the United States Code. The purpose of these sections is to encourage service members who would otherwise face possible involuntary separation or denial of reenlistment to voluntarily separate from service while offering a choice between the two programs. H.R. Rep. No. 60, 102 Cong., 1st Sess., 555-557, (1991), reprinted in 1991 U.S.C.C.A.N. 1111-1113. Regardless of which program the service member selects, however, if he or she is entitled to receive VA compensation for the same period of service, either the DoD benefit or the VA compensation must be offset to prevent concurrent receipt of benefits.
2. If a veteran elects to receive special separation benefits pursuant to 10 U.S.C. § 1174a, the amount of the separation benefit will be recouped from VA disability compensation. If, however, a service member elects to receive the voluntary separation incentive pursuant to 10 U.S.C. § 1175 the voluntary separation incentive will be reduced up to the amount of the VA disability compensation concurrently received. The plain language of sections 1174a and 1175, the legislative history of relevant statutes, the implementing regulations and a DoD policy statement all support this interpretation.
3. Section 1174a(g) refers to section 1174(e) through (h) for administration of

the special separation benefits program. Section 1174(h)(2) provides that the amount of any separation pay shall be offset from VA disability compensation awarded in connection with service which occurred prior to receipt of the separation pay. The implementing regulation, 38 C.F.R. § 3.700(a)(5), states that a veteran who has received separation pay may also receive VA compensation subject to recoupment of the amount of separation pay, provided that the VA compensation is for a disability incurred in or aggravated by service prior to the date of receipt of the separation pay. These provisions, 10 U.S.C. §§ 1174a(g) and 1174(h)(2) and 38 C.F.R. § 3.700(a)(5), clearly and unambiguously require that the amount of any special separation benefit received pursuant to section 1174a shall be offset from VA disability compensation.

4. Under the annuity program authorized by 10 U.S.C. 1175(e)(4), a service member who elects to receive the voluntary separation incentive may also receive VA disability compensation, provided that "there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received." This section further provides that no deduction will be made from the DoD annuity for any VA disability compensation awarded for an earlier period of active duty if the DoD annuity is received because of a release from a later period of active duty. Thus, this provision clearly requires that the amount of VA disability compensation shall be offset from the voluntary separation incentive.

5. It is, of course, the general rule that a court need not subject a clear and unambiguous statute to interpretation by examining legislative history that pertains to the statute. 2A Norman J. Singer, *Statutes and Statutory Construction* 4 (4th ed. 1984). In this instance, however, we note that the legislative history of sections 1174a, 1174(h) and 1175 of title 10 does not contradict their apparent plain meaning.

6. A House Report analyzing H.R. 13958, an earlier bill which included a provision substantially similar to that ultimately enacted as 10 U.S.C. § 1174(h)(2), noted that the section "prescribes that there shall be deducted from VA disability compensation an amount equal to the separation, readjustment and severance pay received." H.R. Rep. No. 1295, 94th Cong., 2nd Sess. 70 (1976). This report noted that the purpose of the provision was "to eliminate receipt of double benefits for the same period of service." H.R. Rep. No. 1295, 94th Cong., 2nd Sess. 71 (1976).

7. This is also supported by the regulatory history of 38 C.F.R. § 3.700(a)(5). When 38 U.S.C. § 3.700 was amended to add section 3.700(a)(5), the summary, published in the Federal Register along with the final rule, noted that section 3.700(a)(5), which was being added to implement certain provisions of the Defense Officer Personnel Management Act, including section 1174(h)(2) provided that VA compensation would be withheld "to recoup separation pay and readjustment pay." 52 Fed. Reg. 27339 (July 21, 1987). It was explained that

the effect of the amendment was to "prevent duplication of payments of compensation and military separation and readjustment pay." 52 Fed. Reg. 27339 (July 21, 1987).

8. Similarly, the DoD policy statement relating to the voluntary separation incentive program states that "[s]ervice members who receive VSI and subsequently qualify for disability compensation under laws administered by the Department of Veterans Affairs shall have deducted from the VSI an amount equal to the amount of disability compensation payable to the member. No deductions will be made from VSI payments for any disability compensation which is based on an earlier period of service than that for which the VSI is payable." Memorandum from Christopher John, Assistant Secretary for Defense, Voluntary Separation Incentive (VSI) and Special Separation Benefit (SSB) Policy Guidelines para. C.7.a(1), (January 3, 1992).

HELD:

a. In accordance with the provisions of 10 U.S.C. § 1174a and 38 C.F.R. § 3.700, VA disability compensation should be offset to recoup the amount of special separation benefits received by a former member of the armed forces.

b. VA disability compensation need not be offset when a veteran is in receipt of voluntary separation incentive payments under authority of 10 U.S.C. § 1175, since any offset will be from the voluntary separation incentive.

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