

October 11, 1996

VAOPGCPREC 9-96

General Counsel (022)

Concurrent Payment of VA Disability Compensation and Reservists' Special Separation Pay (RSSP) and Reservists' Involuntary Separation Pay (RISP) Under Pub. L. No. 102-484

Under Secretary for Benefits (20)

QUESTION PRESENTED:

- a. Whether VA disability compensation must be offset to recoup the amount of Reservists' Special Separation Pay (RSSP) received by a veteran under Pub. L. No. 102-484?
- b. Whether VA disability compensation must be offset to recoup the amount of Reservists' Involuntary Separation Pay (RISP) received by a veteran under Pub. L. No. 102-484?

COMMENTS:

1. This responds to your request whether the Department of Veterans Affairs (VA) disability compensation must be offset to recoup the amount of any Reservists' Special Separation Pay (RSSP) or Reservists' Involuntary Separation Pay (RISP) received by a reservist.
2. The National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, §§ 4416(b), 4418, 106 Stat. 2315, 2715, 2717 (1992) provides the authority for certain reservists to receive RSSP and RISP.<sup>1</sup> Section 4416(b) provides the eligibility requirements for certain reservists to receive

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<sup>1</sup> Pub. L. No. 102-484 does not expressly use the phrase, "Reservists' Special Separation Pay" within the provisions of section 4416(b) or the phrase, "Reservists' Involuntary Separation Pay" within the provisions of section 4418. However, the Department of Defense, Office of General Counsel, has informed us that "annual payments" as used in section 4416(b) refers to Reservists' Special Separation Pay and that "separation pay" as used in section 4418 refers to Reservists' Involuntary Separation Pay.

2.

RSSP, an immediate, reduced annuity which is paid for a five-year period or until the reservist reaches age 60. H.R. Conf. Rep. No. 966, 102nd Cong., 2d Sess. 890 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1636, 1931-32. Section 4418 provides the eligibility requirements for certain reservists who are being involuntarily released from the Selected Reserve, because their units are being deactivated to receive RISP.

3. The statutory language of sections 4416(b) and 4418 govern whether VA disability compensation must be offset to recoup the amount of RSSP or RISP received by a veteran under those sections of Pub. L. No. 102-484. Section 4416(b) does not contain a provision which requires VA to offset disability compensation to recoup the amount of RSSP received by a veteran. Thus, a veteran who receives RSSP under section 4416(b) and is subsequently determined to be entitled to VA disability compensation is entitled to receive the compensation without offset.

4. Subsection (c) of section 4418 entitled, "RELATIONSHIP TO OTHER SERVICE-RELATED PAY" provides that, "subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section." Section 1174 of title 10, United States Code, governs the eligibility of armed forces members for separation pay upon involuntary discharge or release from active duty. Section 1174(h) provides in pertinent part that:

A member who has received separation pay under this section, or severance pay or readjustment pay under any other provisions of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

3.

10 U.S.C. § 1174(h)(2)<sup>2</sup>; see also VAOPGCPREC 14-92 (citing 38 C.F.R. § 3.700(a)(5); *Sabonis v. Brown*, 6 Vet. App. 426, 428, 430 (1994) (“The meaning of 10 U.S.C. § 1174 is unambiguous: “[T]here shall be deducted from that disability compensation an amount equal to the total amount of . . . readjustment pay received”), *aff’d*, 56 F.3d 79 (Fed. Cir. 1995)). Thus, section 4418(c), which provides that the provisions of section 1174(h)(2) are applicable to RISP, clearly requires that the amount of VA disability compensation must be offset to recoup the amount of RISP a veteran received, less amounts withheld from the RISP for Federal income tax. See VAOPGCPREC 14-92.

5. The regulation which implements the provisions of section 1174(h)(2), 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. See VAOPGCPREC 14-92. Thus, section 3.700(a)(5) also requires that any RISP received under section 4418 must be offset from VA disability compensation provided that the VA compensation is for a disability incurred in or aggravated by service prior to the date of receipt of the RISP.

6. The interpretations that there is no authority under section 4416(b) of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of RSSP received and that there is authority under section 4418 of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of RISP received are consistent with paragraphs 570504 and 570505(B)(6), Vol. 7A, Department of Defense Financial Management Regulation which indicate that VA is required to offset RISP from disability compensation, except where the compensation is for a disability incurred or aggravated after the period for which the RISP was paid.

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<sup>2</sup> The purpose of section 1174(h)(2) is “to eliminate receipt of double benefits for the same period of service.” VAOPGCPREC 14-92 (citing H.R. Rep. No. 1295, 94th Cong., 2d Sess. 71 (1976)).

4.

HELD:

a. The Department of Veterans Affairs (VA) is not authorized under section 4416(b) of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of Reservists' Special Separation Pay (RSSP) received by a veteran pursuant to section 4416(b).

b. Section 4418(c) of Pub. L. No. 102-484, which provides that the provisions of section 1174(h)(2) are applicable to Reservists' Involuntary Separation Pay (RISP), and 38 C.F.R. § 3.700(a)(5) require VA to offset disability compensation to recoup the amount of RISP received by a veteran pursuant to section 4418 (less any amounts withheld for Federal income tax) provided that the VA compensation is for a disability incurred in or aggravated by service prior to the date of receipt of the RISP.

Mary Lou Keener

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3. The statutory language of sections 4416(b) and 4418 govern whether VA disability compensation must be offset to recoup the amount of RSSP or RISP received by a veteran under those sections of Pub. L. No. 102-484. Section 4416(b) does not contain a provision which requires VA to offset disability compensation to recoup the amount of RSSP received by a veteran. Thus, a veteran who receives RSSP under section 4416(b) and is subsequently determined to be entitled to VA disability compensation is entitled to receive the compensation without offset.

4. Subsection (c) of section 4418 entitled, "RELATIONSHIP TO OTHER SERVICE-RELATED PAY" provides that, "subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section." Section 1174 of title 10, United States Code, governs the eligibility of armed forces members for separation pay upon involuntary discharge or release from active duty. Section 1174(h) provides in pertinent part that:

A member who has received separation pay under this section, or severance pay or readjustment pay under any other provisions of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

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6. The interpretations that there is no authority under section 4416(b) of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of RSSP received and that there is authority under section 4418 of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of RISP received are consistent with paragraphs 570504 and 570505(B)(6), Vol. 7A, Department of Defense Financial Management Regulation which indicate that VA is required to offset RISP from disability compensation, except where the compensation is for a disability incurred or aggravated after the period for which the RISP was paid.

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HELD:

a. The Department of Veterans Affairs (VA) is not authorized under section 4416(b) of Pub. L. No. 102-484 to offset VA disability compensation to recoup the amount of Reservists' Special Separation Pay (RSSP) received by a veteran pursuant to section 4416(b).

b. Section 4418(c) of Pub. L. No. 102-484, which provides that the provisions of section 1174(h)(2) are applicable to Reservists' Involuntary Separation Pay (RISP), and 38 C.F.R. § 3.700(a)(5) require VA to offset disability compensation to recoup the amount of RISP received by a veteran pursuant to section 4418 (less any amounts withheld for Federal income tax) provided that the VA compensation is for a disability incurred in or aggravated by service prior to the date of receipt of the RISP.

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