

CITATION: VAOPGCPREC 7-90
Vet. Aff. Op. Gen. Couns. Prec. 7-90

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TEXT:

Improved Pension Rate for Estranged Married Veterans

QUESTIONS PRESENTED:

1. Does 38 U.S.C. § 521 (f) require the application of a combined improved pension rate when veterans married to one another are estranged and neither spouse is reasonably contributing to the support of the other?
2. When an estranged veteran is reasonably contributing to the support of a veteran spouse, does 38 U.S.C. § 521(f) require the application of the combined rate?

COMMENTS:

1. The questions present issues concerning the administration of the improved pension program for veterans married to one another but estranged. We are unaware of any prior guidance issued in the form of General Counsel opinions on this issue. Likewise, the legislative history accompanying the Veterans' and Survivors' Pension Improvement Act of 1978, Pub. L. No. 95-588, 92 Stat. 2497 (establishing a combined annual pension rate) does not specifically address treatment of veterans married to one another and estranged.

2. Resolution of these issues may be derived from a careful review of the various provisions of 38 U.S.C. § 521 taking into account the purposes of the improved pension program, which was established by Pub L. No. 95-588. A primary goal of that program is to "assure an income standard above the Department of Labor's 'poverty guidelines' so that all eligible veterans and survivors receive a pension commensurate with their need." S. Rep. No. 95-1016, 95th Cong., 2d Sess. 18 (1978).

3. In prescribing the rate of pension applicable to estranged veterans, 38 U.S.C. § 521(b) provides:

If the veteran is unmarried (or married but not living with or reasonably contributing to the support of such veteran's spouse) ... and unless the veteran is entitled to pension at the rate provided by subsection (d)(1) or (e) of this section for certain severely disabled veterans, pension shall be paid to the veteran at the

specified annual rate ... reduced by the amount of the veteran's annual income.

The above-quoted subsection would appear to apply, by its terms, in any situation where a veteran is estranged from his or her spouse and is not reasonably contributing to the spouse's support. FN1 The provision makes no distinction as to whether the individual in question is married to a veteran. Rather, the key issue is whether the individual is estranged and not reasonably contributing to the support of the spouse. The importance of living with and reasonably contributing to the support of a spouse is also apparent in 38 U.S.C. § 521(c), which provides in pertinent part:

If the veteran is married and living with or reasonably contributing to the support of such veteran's spouse, ... pension shall be paid to the veteran at the specified annual rate ... unless the veteran is entitled to pension at the rate provided by subsection (d)(2), (e), or (f) of this section. FN2

4. Confusion could result from a restrictive reading of 38 U.S.C. § 521(f)(1) outside the context of the above-quoted provisions. "A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." See 2A N. Singer, Sutherland Statutory Construction § 46.05 (4th ed. 1984) (the "whole statute" interpretation). Subsection 521(f) is referred to in 38 U.S.C. § 521(c) as an exception to the general rule permitting each intention to establish a system which could operate in this manner. We note, however, that where one spouse is reasonably contributing to the support of the other, this inequity would not arise, and application of section 521(f) would not lead to unduly harsh results.

7. In view of the foregoing, we conclude that the terms and objectives of section 521 are best effectuated by confining the application of section 521(f) to the situation where veterans married to one another are living together or one spouse is reasonably contributing to the other's support.

HELD:

1. When veterans married to one another are estranged and neither veteran is reasonably contributing to the other's support, the combined improved pension rates applicable under 38 U.S.C. § 521(f) to veterans married to one another do not apply.

2. When the special combined rate does not apply because the married veterans are estranged and neither is reasonably contributing to the other's support, the pension rate for each veteran is based upon 38 U.S.C. § 52(b) (or section 521(d)(1) or (e) in the case of certain severely disabled veterans), which specifies pension rates for single veterans and veterans who are married but not living with or reasonably contributing to the support of their spouse.

3. When veterans married to one another are estranged, but one veteran is making a reasonable contribution to the support of the other, the combined improved pension rates in section 521(f) apply.

1 Under 28 U.S.C. § 521(h), a veteran and his or her spouse who reside apart are considered to be living together unless they are estranged.

2 A veteran who is reasonably contributing to the support of his or her spouse is entitled to the section 521(c) benefit regardless of whether or not the veteran is estranged from the spouse.

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