Special News Release

Monday, June 13, 2016
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MY VA Appeal Update

AO Claim won, Johnston Island/Atoll

Vets, friends and family, just wanted to update all with some great news.

As you all know I filed for Agent Orange (AO) exposure in 2001 while stationed on Johnston Island/Atoll (JI) in 1972-73 and causing Soft Tissue Sarcoma (Liposarcoma) after having a 26lb tumor mass, left kidney, spleen and some colon removed in 1999. I have been denied by VA multiple times, but continued to appeal. I had multiple other issues too including Peripheral Neuropathy that caused numbness in my legs, feet, left arm & hand and right hand. With feet being numb, it affected balance resulting in falls.

I then had another liposarcoma surgery in 2002, Graves disease in 2005, burst appendix in 2006, another large liposarcoma surgery in 2007 when a 6"x9" tumor was removed from my back muscles, another huge liposarcoma surgery (10 hrs) in 2009 when I was Stage IV cancer and ended up losing my large intestines plus left adrenal bed and another surgery in 2010 when I lost my left testicle. I have had many other surgeries on my eyes and teeth due to chemo caused issues, plus small intestine surgeries - including a rupture in 2013.

Through all of this, I kept appealing all the way to the US Court of Appeals for Veteran Claims (CAVC) after getting a lawyer group with Bergmann & Moore (vetlawyers.com). After winning CAVC in 2012, my case denials were vacated and was remanded back to the VA Board of Appeals, who then remanded back to my local Regional Office (VARO). After sitting there for 1 1/2 years without action, remanded back to VA Board who then remanded back to the VARO. They sent my case then to Michigan for a few months who then finally sent it back to the VA Board again in 2015 (4th time at the Board). My lawyers then put together a brief that was filed Mar 8th 2016 and included letters from 2 other expert Doctors on JI and AO. 2 weeks ago, we found out my case was before a Judge.

Yesterday in the mail I received large packet from the VA Board of Appeals with their decision:

- Service connection for liposarcoma to include as a result of toxic herbicide and ionizing radiation is granted.
- Service connection for residuals of a splenectomy, as secondary to the now serviced connected liposarcoma, is granted.
- Service connection for residuals of a muscle resection, as secondary to the now serviced connected liposarcoma, is granted.
- Service connection for residuals of a colon resection, as secondary to the now serviced connected liposarcoma, is granted.
- Service connection for residuals of a nephrectomy, as secondary to the now serviced connected liposarcoma, is granted.

Many of you provided me with information that helped in my case, plus my US Senator Lankford's staff, Mike, continually pushed VA ---- THANK YOU!!!!

I never lost my faith in the Lord and he has kept me alive plus helped to get me this decision finally after almost 15 years!!

The next step is that the Board will send their decision and my records back to the VARO here in Okla and they will decide the percentage of disability and how much back pay is due me. It should be 100% dating back to 2001 when I first filed. If it is anything else, we will appeal it. Don't know how long it will take.

Those of you that have been getting denied and would like to talk with my lawyers, let me know and I will provide you with a name and phone number.

So many of our JI friends have died due to AO. The rest, keep up the hardest fight ever -- VA, and Trust in God!

Paul Travis
Click HERE to view document

THE GREAT BETRAYAL
Of our Career Military Members

The following is what each member of the seven (7) Uniformed Services needs to regularly know about the unconstitutional taking of retired military pay by State Divorce Courts as "jointly earned" community property.

It is now estimated that over 200,000 of our Career Military members are currently subject to monthly garnishment under the provision of the Uniformed Services Former Spouses' Protection Act (Public Law 97-252)

At the time of marriage, no one ever expects to become divorced. However, the fact of the matter is that over 50 percent of American marriages end in a divorce. The percentage of military members becoming divorced is even higher and still growing. The USFSPA has been a cause of military suicides.

This non-legal discussion will preponderantly show beyond an iota of a shadow of doubt that military retired pay is NOT any type of divisible "pension".

History and issues of the unconstitutional taking of military pay as community property.

On June 26, 1981 the United States Supreme Court ruled in the McCarty versus McCarty decision "**that the military retirement system confers no entitlement to retired pay upon the retired member's spouse, and does not embody even a limited community property division."** The McCarty decision further stated that "the language, structure, and history of the statutes made it crystal clear that retired pay continues to be the sole and personal entitlement of only the retiree." The high court based its decision on the United States Constitution, the applicable federal law, and the Uniform Code of Military Justice (UCMJ). The high court did not prevent state courts from awarding alimony, child support, and / or maintenance to a former spouse. Thus this ruling supported long standing court practice that military retired / retainer pay was **NOT a community property asset!**

The Uniformed Services Former Spouses' Protection Act (USFSPA) Public Law 97-252 was signed into law on September 8, 1982. This law affects all Uniformed Services members who for whatever reason become divorced. This law allows

individual State Courts to place career military members in perpetual servitude to a former spouse until they die. Thousands of our career military members are now under court ordered garnishment action, because state courts have classified military retainer pay to be a property asset, thus allowing military finance centers to garnishee up to 50 % of the military members retired / retainer pay as community property, providing the marriage lasted 10 years, concurrently with 10 years of service.
It must further be noted that thousands of our career military members who were not married for the required 10 years for garnishment action, must directly pay monthly court awarded property awards to their former spouse. In fact...this life time garnishment action does not even stop upon the remarriage of the former spouse. It only ends upon the death of the career military member or the former spouse. If the former spouse predeceases the military member, garnishment action stops and the previously withheld (garnished) amount returns to the military member. There is NO return – "back pay" to the member of any previous payments to the former spouse.

Article 1, section 9 of the United States Constitution specifically states, "No Bill of Attainder or Ex Post Facto law will be passed..." Section 10 states that Congress may not pass any Bill of Attainder, ex post facto law, or Law impairing the obligation of Contracts..." A question which has yet to be addressed is---how could Public Law 97-252 be back dated so as to exist before the U.S. Supreme Court decision 'McCarty'? The Uniformed Services Former Spouse's Protection Act (P.L. 97-252) effective date was to be February 1, 1983, but it was made retroactive to June 25, 1981, one day prior to the Supreme Court decision - McCarty. Congress by back dating this law made law become a Bill of Attainder law, violating the Constitution and mooting "McCarty".

The U.S. Supreme Court in the Buchanan v. Alexander, 45 U.S. 20 (1846), ruled that money owed by the United States to the individual service member belongs to the Treasurer until it is paid DIRECTLY to that individual. Essentially, the Supreme Court held that courts cannot tell a federal disbursing official what to do since it would defeat the purpose for which Congress appropriated the money. As noted by the Supreme Court---"Military retainer pay is not being paid as if it were wages from a vested pension plan." Since military retired / retainer pay is neither a deferred income nor a military pension to the military member, then how can it be a property asset to a former spouse? The USFSPA created "judicial alchemy" !

The Armed Forces Voluntary Recruitment Act of 1945 (Public Law 79-190), Section 4, states: "Whenever any enlisted man of the regular Army shall have completed not less than twenty or more than twenty-nine years of active services, he may upon his own request, be transferred and retired shall receive, except with respect to periods of active duty he may be required to perform, until his death, annual pay. It should be noted that there is NO MENTION OF A MILITARY PENSION. Therefore, military retired pay is being paid as a retainer compensation for a continued military obligation. How can military pay be considered property to a former spouse who has no contract agreement to perform military duty, much less abide by the provision of the Uniform Code of Military Justice (UCMJ)?

The United States Comptroller General stated in Decision B-236084, dated July 31, 1989 that military retired pay constitutes reduced pay for current reduced services, rather than a pension for past military services rendered. The Comptroller General further stated, "We have stated this in our decision since the first volume of published Comptroller General decisions (See 1 Comp. Gen 700 (1922).

The United States Supreme Court in the United States v. Tyler, 105 U.S. 244 (1881), clearly stated "that after a member's retirement, compensation is continued at a reduced rate, and the connection (of the member to the military) is continued, with only a retirement from active service."

On May 30, 1989, the U.S. Supreme Court in a 7-2 decision ruled that Veteran disability benefits were not subject to property division in a divorce proceeding. The case was Mansell v. Mansell, 104 L. Ed 2d 275, 109 S.Ct. 2023, 10EBC2521. However, a Florida court did in fact stop a military member from seeking VA disability benefits because of a divorce action. (Reference the Holland v. Holland case No# DR96-14538 in and for Orange County, Florida). This action violated 38 USC 5301 !

A career military member's position is unique, in that the military member is subject to both civil law and the UCMJ, for the remainder of their life. The civilian spouse of a military member is not subject to the UCMJ, nor are they subject to the

Federal laws which govern dual compensation. No other U.S. wage earner is subject to such a commitment in order for them to receive compensation. Military retainer pay is in fact being paid for a continued military obligation for the life of the career military member. The military retainer pay is not now nor has it ever been paid as a federal pension. Another significant difference between military retirement, and civilian retirement, is that a retired military member can be involuntarily recalled to active duty. According to Department of Defense (DOD) Directive 1352.1: So why have state courts treated military retainer pay as a deferred compensation and a military pension? Because the USFSPA has "allowed" it !

The Uniformed Services Former Spouse' Protection Act abetted the public misconception of military retirement pay as a pension, despite the fact that federal statutes and case law had historically and consistently regarded military retired pay as reduced compensation for reduced services with no attributes of a pension.

The Comptroller General, the Department of Defense, the Internal Revenue Service, and the U.S. bankruptcy courts have taken this position. Members of the Uniformed Services constitute the only group of U.S. citizens whose income, which is being earned while in a retired /reserve status, is treated as both a deferred income and a current income, depending on what the government and or State courts wants to do with it!

For any law within the United States to be truly valid, it must, first, meet the requirements of the United States Constitution and become effective only from or after its actual date of passage. It cannot be backdated - such as the case with the Uniformed Services Former Spouse Protection Act P.L.97-252. To be fair, it must also be universally applied, nondiscriminatory, consistent in its application, and equitable in its considerations.

The application of, and the passage of the Uniformed Services Former Spouse' protection Act P.L.97-252 meet none of these requirements. Military retired / retainer pay completely fails the legal test of marital property.

Military retired / retainer pay cannot be sold, transferred, or passed on to heirs. Furthermore, the military member is not vested into a pension plan. The IRS taxes military retirement pay as current income! The Uniformed Former Spouse Protection Act (USFSPA) clearly and unconstitutionally allows the fraudulent transfer of military funds that are authorized and appropriated for National Defense purposes to social, non-defense purposes for which there is no established earned or contractual basis with the United States Government.

A new violation of the military members civil and constitutional rights occur each month when the involuntary diversion of funds is enforced by the federal government. Without legal intervention many career military members will remain in perpetual servitude to a former spouse until they die!

The U.S. Tax court has ruled:
Military Retirement Pay (MRP) to spouse constitutes alimony, U.S. Tax Court rules
Proctor v. Commissioner (129 T.C. No 12) U.S. Tax Court No. 2813-06. Oct. 10, 2007
MRP fits the IRS criteria of Alimony as explained in the above court case. Alimony is derived and calculated from current income. Alimony is not derived from or calculated from property.

Since Military members and former spouse are required to pay taxes on the MRP income they received, how then can State Judges award MRP as marital property, especially since State Legislative Law does not allow current income that which is earned after a divorce to be considered marital property?
As stated by the United States Supreme court McCarty vs. McCarty (1981) "The military retirement system confers no entitlement to retired pay upon the retired member's spouse, and does not embody even a limited community property division." .

The simple facts as outlined below must be kept in mind

* It's the soldier, not the civilian spouse, who performs military duty.
* It's the soldier whose life is at stake on the battlefield--not the civilian spouse's.
* It's the soldier, who spends time as a P.O.W, not the civilian spouse.
* It's the soldier whose life is expendable, not the civilian spouse.

* And it's the soldier who has a continued military obligation for life under federal law, not the former civilian spouse.

The difference between military retirement, and civilian retirement, is that a retired military member can be involuntarily recalled to active duty. According to Department of Defense (DOD) Directive 1352.1:

- *Involuntary Order to Active Duty. The Secretary of a Military Department may order any retired Regular member, retired Reserve member who has completed at least 20 years of active military service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve to active duty without the member's consent at any time to perform duties deemed necessary in the interests of national defense in accordance with 10 U.S.C. 683 (reference (b)). This includes the authority to order a retired member who is subject to the Uniform Code of Military Justice (UCMJ) to active duty to facilitate the exercise of court-martial jurisdiction under Section 302(a) of reference (b). A retired member may not be involuntarily ordered to active duty solely for obtaining court-martial jurisdiction over the member.*

The Deputy Assistant Secretary of Defense presented the following facts for Military Personnel and Force Management, Feb. 7, 1985. These facts were published in the Defense / 85 Magazine.

1.The military member who has served on active duty for 20 and / or more years is entitled to maintain their military rank and draw a monthly retainer WAGE for a continued military obligation until death.

2.The reason for this continued military obligation is to insure that sufficient manpower is available to meet National Defense requirements in case of increased conflicts or all out war.

3.The military retirement system is NOT an old-age pension plan, as are other systems.

4.There is NOT an iota of comparison between the military retirement system and other retirement programs.

5. Military members who have been transferred into a retired status from active duty retain their military status.

6.They remain under the jurisdiction of the Uniform Code of Military Justice (UCMJ). They are restricted on what kind of work they can perform after retirement.

7.It is not designed or intended to fulfill an old age income maintenance function.

8.It does not offer any capital accumulation.

9.It does not provide any deferred income provision.

10.It does not offer any thrift plan features, nor does it have any matching saving supplemental plans.

11.The military retirement system helps keep our forces vital.

12.It ensures that a smooth promotion flow continues.

13.It operates to keep the force young with the skill and experience mix we need.

14.It forms an integral part of the military compensation system.

15.Contingency mobilization plans include the recall to active duty of between 22 to 86 percent of the military retired reserve force.

16.Thousands of military members already have their recall orders in hand should it become necessary to be recalled to active duty. In short, the military system doesn't look anything like a normal retirement plan for a very good reason, it isn't

one.

No other retirement system, public or private, faces such unique requirements.

Following are some additional facts, which clearly show that military retired / retainer pay is not a community property asset.

1.The I.R.S. Code 26 C.F.R. S 31. 3401 (a)-1(b) (1) (ii) states that military retired pay is a "Current Wage." Question: How then can a state court classify military retired/retainer pay as a deferred income? Note: State Courts did not require Former Spouse's to pay taxes each month on the retired/retainer pay that they receive as a community property asset. Therefore, the military members were being forced to pay federal taxes on income they never received. After 10 years of continual complaints from retirees, DFAS requested IRS direction on how to report separate payments made to retirees and former spouses. Now the gross military retired / retainer pay is reduced by the amount received by the former spouse, and the former spouse is required to pay the taxes.

2. The Department of the Air Force Accounting and Finance Center, on May 19, 1986 notified a military retired Air Force Officer that he owned the Federal Government $3,161.63. The letter stated that he was subject to the Dual Compensation Law, codified in title 5, United States Code (U.S.C.) section 5532. This retired military officer was required by federal law to pay back $3,161.63 of his military retired pay for teaching math to Navajo Indians. The job was considered federal employment, since his contract was with the Bureau of Indian Affairs, Dept. of the Interior. Question: Would a former spouse who receives military retired/retainer pay as a community property asset be required to return funds for teaching Navajo Indians math? This is just another example of discrimination. Reference Lt. Col. Oliver North who lost his Military retired/retainer pay for being convicted of a crime. It took an act of Congress to restore his retired pay. If congress had not acted, then are we to assume that Col. North's wife would have also lost her property rights to his pay, even though she didn't commit a crime?

3. Air Force Times Dated Sept 1, 1986. "Retired Pay Halted during Saudi work." Maj. Stephen H. Hartnett (USMC Ret), who accepted a job in May 1985, with a Delaware based firm of Frank E. Basil Inc, had his military retired pay stopped. The U.S. Comptroller General ruled he was "under the supervision and control of the Saudi Government." Long-standing legal rulings have placed retired military personnel in this category, since they are subject to recall to active duty. Question: Would a former spouse of a military member lose her property rights to military retired pay if she were to become employed by a foreign government? Of course NOT !

4. Air Force Times dated March 5, 1984, "Retiree Renouncing Citizenship." SFC Charles J. O' Fearna retired from the Army in 1965, after 22 years of military service. He moved to Australia in 1966 and has lived there ever since. In April 1981, O' Fearna became a naturalized citizen of Australia, apparently without realizing what input it would have on his military retired pay. The Comp. Gen. held in previous decisions that military retirees lose their right to retired pay when they lose their citizenship. The Comp. Gen. stated, "All members on the retired list of the regular Army remain a part of that force and relied upon as a dependable source of manpower." The finance center told O' Fearna that his retired pay ended when he forfeited his citizenship. They stopped his retired pay immediately and advised him to refund retired pay he received since April 1988. Question: Does a former spouse lose their so-called property asset rights if they lose American Citizenship? Millions of federal tax dollars (military retired/retainer pay) is being paid to Foreign Nationals who divorce military members. Many have returned to their home countries. Some former spouses may even be citizens of known hostile nations !

5. Air Force Times July 11, 1983, "System is not old age pension, by Caspar Weinberger, Secretary of Defense." These dedicated professionals routinely work long and irregular hours with no overtime pay. They face exposure to risk, an inability to control living or working conditions, forced family separation, and periodic relocations. At the same time, they are obliged to accept a highly disciplined and controlled life, unlike any other sector of the American population. Military members serve in a system that provides no vesting in the retirement system, and in fact, only 12% of those who enter active service ever reach retirement eligibility. The other 88% receive no retired pay at all. Question: Do the hardships of military life bring on divorce? If so, then who created this hardship? Have no fault state courts taken these hardships into account when they award 50% of a military members retired/retainer pay as a property asset for life to the former spouse?

Note: The spouse of a military member could leave the military member to all the hardships of military life and collect half the military retired/retainer pay as a property asset for life, regardless if the former spouse were to remarry six times!

6.Sergeant's magazine, December 1985, "Pennsylvania retiree fights state law." Military retirees in Pennsylvania are fighting a state law enacted in 1980. When military retirees are laid off from civilian jobs, the law reduces unemployment compensation by the amount of military pension received. Question: Since when did a military retiree receive a Pension? Will a former spouse have their awarded military retainer pay reduced by the amount of unemployment compensation they receive? This is another clear case of discrimination being ignored by the politicians?

7.Costello vs. United States, Constitutional law 278.6 (1), "Military retirement pay is not deferred compensation for past services but, like active duty pay, is pay for continuing military service and as such, can be prospectively altered without offending due process. U.S. C. A. Cont. Amend." Question: Does this constitutional ruling still apply to military retired pay? If not, then why not?

8. Lemly vs. United States (1948)... "Retirement pay is a continuation of active pay on a reduced basis." Even though an officer is retired from active duty and is receiving retirement pay, he is still subject to involuntary call back to active duty as long as his physical condition will permit. He is still an officer in the services of his country even though on the retired list. Question: Is this still true? If it is, then has the military occupation become the only occupation, which pays retainer pay as a property asset?

9. Reference the National Association of Retired Federal Employees (NARFE) contended that a 3.1 percent COLA become a vested entitlement on December 1, 1985, and therefore, its cancellation by the Gramm-Rudman-Hollings (The Balanced Budget and Emergency Deficit Control Act of 1985) on December 12, 1985, made it illegal. A federal three-judge panel ruled that retirees have no property rights to benefits not yet paid. The transfer of individual military pay by state courts to civilian spouses who have no federal contract actual or implied violates the law and betrays the nation, the nation defense and the individual troops who have pledged to uphold the U.S. Constitution and serve the United States. It is long past the time for Congress to repeal the unjust Uniformed Services Former Spouses Protection Act, (P.L.97-252).

Now our young men and women in uniform are again needlessly risking their lives to preserve our way of life. It is time for Congress and the Department of Defense to uphold the federal laws and the promises made at the recruiting table. To continue forsaking those who have served and continue to serve will in time see the all-volunteer military force fade into history and the return of the draft, to include females as well !

A veteran is someone who, at one point in their life, wrote a blank check made payable to The United States of America, for any amount up to and including their life !

TO FORSAKE THOSE WHO VOLUNTARILY SERVE IN THE MILITARY
IS A NATIONAL DISGRACE! REPEAL 10 USC 1408 (USFSPA) !

For Comments or questions, contact: Bob Balick rbalick@twcny.rr.com

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