Compensation Offsets: Readjustment, Separation, & Severance Pay (VSR Advanced)

Trainee Handout

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Objectives

* Review prohibition against duplication of benefits
* List places to find evidence of pay potentially requiring offsets
* Identify critical dates and considerations
* Apply compensation offset knowledge by correctly working scenarios

**References**

All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).

* [38 CFR 3.700](http://vbaw.vba.va.gov/bl/21/publicat/Regs/Part3/3_700.htm), General
* [M21-1, Part III, Subpart v.4.B](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/), Recoupment of Separation Benefits

Topic 1: Prohibition against duplication of benefits

38 CFR 3.700 is a prohibition against duplication of benefits. This means that we have to *offset* the amount of compensation is due to the Veteran if any of the following types of separation benefits have been paid:

* **readjustment pay** under former 10 U.S.C. 687 and 3814a
* non-disability severance pay under [10 U.S.C. 1174(h)(2)](https://www.law.cornell.edu/uscode/text/10/1174)
* **separation pay** under [10 U.S.C. 1174](http://law.cornell.edu/uscode/html/uscode10/usc_sec_10_00001174----000-.html)
* Reservists’ Involuntary Separation Pay (RISP)
* **Special Separation Benefit (SSB)** under [10 U.S.C. 1174a](http://law.cornell.edu/uscode/html/uscode10/usc_sec_10_00001174---a000-.html)
* Voluntary Separation Pay (VSP) under [10 U.S.C. 1175a](http://law.cornell.edu/uscode/html/uscode10/usc_sec_10_00001175---a000-.html), and
* **disability severance pay** under [10 U.S.C. 1212(c)](http://law.cornell.edu/uscode/html/uscode10/usc_sec_10_00001212----000-.html).

Topic 2: Finding evidence of Separation benefits and Amounts

Places to check include: 21-526EZ, DD214, Misc. Info tab on Veteran Identification screen in BIRLS, Discharge Pay tab on Military Payment Information screen in VETSNET Awards and VBMS-A, or in Military Payments tab on Military Information screen in SHARE.

*Although the 21-526EZ and DD214 are great places to check to see if a separation benefit has been received, they are often inaccurate about what type of benefit was paid and the amount of the benefit. It is critical to validate this information through SHARE, PIES, or the service department.*

Topic 3: Review of Separation Pay and Adjustment Considerations

**Important**: The presence of an amount in the SEPARATION PAY field is ***only*** an indicator the Veteran received *some type* of separation benefit.  It is ***not*** a reliable indicator of whether this benefit is the same “separation pay” described in [10 U.S.C. 1174](http://law.cornell.edu/uscode/html/uscode10/usc_sec_10_00001174----000-.html).

Factors in determining how much separation pay to recoup are **type** of separation benefit, **date** of entitlement to VA compensation, and **date** of receipt of the separation benefit.

Verify type and amount of separation pay by: VIS, PIES, or contacting finance activity center of service department.

**Readjustment pay**: dates to consider September 15, 1981 and September 30, 1996; these determine if/how much will be recouped and whether that will be pre or post tax (chart slide 14).

**Separation pay**: replaced readjustment pay September 15, 1981. Pay attention to whether the Separation Pay is on/before or after September 30, 1996! This determines if a **pre**-tax or **post**-tax amount must be recouped.

**Special Separation Benefit (SSB)**: lump sum equal to 15% of the service-member’s annual basic pay multiplied by years of active service. *DD Form 214* usually indicates whether SSB or Voluntary Separation Incentive (VSI) was received and amount. (SSB codes include CB, FCB, KCB, & MCB).

*The amount shown on the DD214 may not be accurate – verify!*

**Recouping**: This is missed often, so … make a note, highlight, make a check list – whatever works for you!

*PL 105-178* provides for recoupment of the ***after-tax*** amount of SSB a Veteran receives, regardless of the date of receipt.

Disability Severance Pay: Before recouping disability severance pay, it is necessary to identify the disability(ies) for which the Veteran received this benefit.  The best source for this information is the Veteran’s Physical Evaluation Board (PEB) report, which is normally included in his/her STRs or Personnel Record.

* Generally, if a Veteran received disability severance pay, VA must withhold from monthly compensation an amount equal to the monthly compensation payable for the disability(ies) for which the Veteran received disability severance pay.  VA continues to withhold this amount until it has recouped the amount specified in [M21-1, Part III, Subpart v, 4.B.2.c](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/).
* The monthly withholding may never exceed the monthly amount of compensation payable based on the *initial, compensable rating*

**Note:** *there is also a non-disability severance pay. this is rare, so just look it up in the manual if you come across it. Remember to check whether it is disability or non-disability severance pay as that will change recoupment considerations!*

**Disability Severance Pay Exceptions:**

* 10% under 3.324 (multiple 0s)
* Temporary 100%
* Combat related disability severance (separation on or after January 28, 2008)

If there are both disability severance conditions and non-disability severance conditions, VA may not not withhold an amount greater than that to which the Veteran is entitled based on the non-severance pay disability(ies).

Scenario:  In a decision on a Veteran’s original claim for benefits, VA awards service connection for

* a severance pay disability rated 50 percent disabling, and
* a non-severance pay disability rated 100 percent disabling.

Result:  VA may not withhold any compensation to recoup the Veteran’s disability severance pay while the non-severance pay disability is rated 100  percent disabling.

Pay attention to whether the Disability Severance Pay is on/before or after September 30, 1996! This determines if a **pre**-tax or **post**-tax amount must be recouped.

Practical Exercise

**Directions**: answer the following warm-up questions then read the scenarios and answer questions related to offsetting the separation benefits.

**Warm-up questions**

1. What regulation covers concurrent payments?
2. Name three common types of separation benefits.
3. Name two scenarios in which we would **not** withhold for disability severance pay.
4. Where can you verify type and amount of separation pay?
5. The SSB amount recouped must ***always***  be the after-tax or before-tax amount?
6. Does VA or DoD make the determination on whether a disability severance condition is combat-related?
7. Name a code you might see on the *DD Form 214* to indication combat-related disability severance pay.

**Scenario questions**

***Scenario 1****:* Joe Veteran received $15,287.00 total/gross amount of disability severance pay for lumbosacral strain. Date of receipt of the disability severance pay was April 30, 2015. The lumbosacral strain is service connected at the 10% level. His only other two service connected conditions are 0% for atrioventricular block, and 0% for hypertention. All three conditions were granted effective May 1, 2015. The combined rating is 10% from May 1, 2015.

1. Would withholding for severance pay be the pre-tax or after-tax amount?
2. What would the rate of payment be from June 1, 2015?
3. If the lumbosacral strain is granted an increased evaluation of 20% after a couple of years, what would be the level of withholding?

***Scenario 2:*** Jane Veteran received a Special Separation Benefit of $31,845.60 on April 7, 2016. She has now been granted service-connection for several conditions with a combined evaluation of 70%.

1. Would the withholding be for the pre-tax amount of $31,845.60 or the after-tax amount of $23,884.20?
2. If the SSB payment had been received on December 21, 1995, would the withholding amount been before tax or after tax?

***Scenario 3:*** Chuck Veteran received $23,932.80 in disability severance pay for a left shoulder injury impingement syndrome with mild degenerative changes on May 8, 2013. He was granted service connection at 100% combined evaluation on July 20, 2015 due to a temporary 100% evaluation for service connected spondylosis of the lumbar spine; a 40% evaluation was assigned for the lumbar spine condition effective September 1, 2015, and on that date the combined evaluation dropped to 50% (comprised of 40% lumbar spine condition and 10% left shoulder injury impingement syndrome disability severance pay condition).

1. Would there be withholding from July 20, 2015? Why or why not?
2. Would there be withholding from September 1, 2015?
3. If there was withholding from September 1, 2015, what would be the rate of withholding?
4. Would the withholding amount be for the pre-tax or after-tax amount?

***Scenario 4:***  If the Chuck Veteran, from Scenario 3, had the following service-connected conditions on September 1, 2015, 40% lumbar spine condition, 10% chronic bronchitis, and 10% left shoulder injury impingement syndrome disability severance pay condition,

1. Would there be withholding?
2. Why or why not would there have been withholding?

***Scenario 5:*** If Chuck the Veteran, from Scenario 3, had the following service-connected conditions on September 1, 2015, 40% lumbar spine condition, 10% chronic bronchitis, 10% hypertention, and 10% left shoulder injury impingement syndrome disability severance pay condition,

1. Would there be withholding?
2. Why or why not would there have been withholding?

***Scenario 6:*** If Chuck the Veteran, from Scenario 5, still has the following service-connected conditions on September 1, 2015, 40% lumbar spine condition, 10% chronic bronchitis, 10% hypertention, and the left shoulder injury impingement syndrome disability severance pay condition increases to 20% on February 8, 2016,

1. Would there be withholding?
2. What would be the rate of the withholding?
3. Why?