

Calendar No. 801

91ST CONGRESS }
2d Session

SENATE }

REPORT
No. 91-783

RECOUPMENT OF DISABILITY SEVERANCE PAY

APRIL 23, 1970.—Ordered to be printed

Mr. TALMADGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 10912]

The Committee on Finance, to which was referred the bill (H.R. 10912) to amend title 38, United States Code, to liberalize the conditions under which the Administrator of Veterans' Affairs is required to effect recoupment from disability compensation otherwise payable to certain disabled veterans, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

EXPLANATION OF THE BILL

Under existing law, members of one of the branches of the Armed Forces who become permanently disabled to such a degree as to make them unfit to perform their duties may be granted disability retirement pay from the branch of the service with which they served, if they have 8 or more years of service and if the degree of disability is 30 percent or more. If the period of service is less than 8 years or the degree of disability is less than 30 percent, as determined under the Veterans' Administration's schedule for rating disabilities, then a lump-sum payment (disability severance pay) is made in lieu of the monthly disability retirement. The law provides that the amount of this lump-sum payment shall be deducted from any compensation for the same disability to which the veteran becomes entitled under laws administered by the Veterans' Administration.

Thereafter, the veteran may not receive the disability compensation to which he would otherwise be entitled until the disability severance pay has been completely repaid. This is true even if his disability becomes more disabling. For example, suppose the severance pay amounted to \$5,000 and the disability was 20 percent (which now amounts to a monthly compensation payment of \$43) and suppose the veteran's disability should increase to being totally disabling. While

the veteran would be entitled to \$400 a month based on total disability, he could not receive any of the increased benefits until and unless the \$5,000 had been completely repaid representing recoupment of the disability severance pay.

The purpose of this bill which was suggested by the Veterans' Administration and transmitted formally to the Congress is to permit the Veterans' Administration, as in the example indicated above, to deduct the initial rate of compensation rather than the current amount to which he is eligible. In the example used, if this bill is enacted into law, the veteran would receive \$400 a month based on his total disability. From that would be deducted each month \$43, that being the current rate for 20-percent disability and this \$43 deduction would be continued until the \$5,000 disability severance pay was completely recouped.

The veterans' Administration states that "the number affected would be small and that any cost involved would not be significant."

The report of the Veterans' Administration follows:

VETERANS' ADMINISTRATION,
Washington, D.C., October 20, 1969.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Further reference is made to your request for a report by the Veterans' Administration on H.R. 10912, 91st Congress.

The bill proposes to limit the rate at which disability severance pay will be recouped by the Veterans' Administration to a monthly amount not in excess of the disability compensation to which the former member would currently be entitled based on the degree of his disability as determined on the initial rating by the Veterans' Administration.

The bill is identical with the draft bill submitted by the then Administrator's letter of April 28, 1969 to the Honorable Spiro T. Agnew, President of the Senate, which was referred to your committee on May 1, 1969. The views expressed in that letter, a copy of which is enclosed, and the recommendation for enactment are applicable to H.R. 10912.

Sincerely,

JOHN J. CORCORAN,
General Counsel.

ENCLOSURES.

VETERANS' ADMINISTRATION,
Washington, D.C., April 28, 1969.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a bill to amend title 38, United States Code, to liberalize the conditions under which the Administrator of Veterans' Affairs is required to effect recoupment from disability compensation otherwise payable to certain disabled veterans, with the request that it be introduced in order that it may be considered for enactment.

Under existing law, members of the Armed Forces of the United States rendered permanently unfit to perform their duties because of service-incurred disability may be granted disability retirement pay, a continuing payment, from the military department concerned, if they have more than 8 years of service and the disability, under the Veterans' Administration's schedule for rating disabilities is 30 percent or more disabling. If the disability is less than 30 percent disabling or if the member has less than 8 years' service (regardless of the degree of the disability), disability severance pay is payable. This benefit is computed on the basis of rank and length of service and is a lump-sum, nonrecurring payment by the military department.

Under laws administered by the Veterans' Administration, disability compensation, a monthly repetitive payment, is payable for disabilities connected with military service. The amount of this benefit is determined by the rated degree of the veteran's disability (reflected in the mentioned schedule for rating disabilities) as shown by the findings made in the course of periodic examinations. Existing law (38 U.S.C. 3104(a)) precludes any former member of the Armed Forces from receiving the full amount of disability compensation to which he is eligible from the Veterans' Administration and the full amount of retired or retirement pay to which he is eligible from the Armed Forces. Generally, based on the philosophy that no person should be compensated twice for the same disability, the veteran must elect between the benefits to which he is eligible. The only exception is contained in 38 U.S.C. 3105, which permits the payment of a combination of the two benefits, at the veterans' election, in an amount which does not exceed the greater of the two.

With respect to disability severance pay, 10 U.S.C. 1212(c) requires that the amount of such pay received by the former member of the Armed Forces—"shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Veterans' Administration."

This provision, consistent with the bar to duplicate benefits of 38 U.S.C. 3104(a), precludes the possibility of double compensation for the same disability. We believe that the general concept behind this provision is sound since we see no justification for any group to be doubly compensated.

We have become aware, however, of a hardship situation that occasionally arises because of this recoupment provision. Disability severance pay often amounts to several thousands of dollars and recoupment of this amount from the disability compensation otherwise payable by the Veterans' Administration for the same disability generally takes an extended period of time, since it is usually based on a low disability evaluation. For example, it would require over 12 years to recoup severance pay of \$5,000 for a peacetime-incurred disability evaluated as 20 percent disabling. We have learned of cases in which the service-connected disability unexpectedly changes into a totally disabling condition requiring prolonged hospitalization, with consequent termination of income. Such veterans are granted a 100 percent disability compensation rating by the Veterans' Administration, but the recoupment provision, of course, continues to bar the payment of disability compensation to the veteran. The increased evaluation

accelerates the recoupment of the disability severance pay but in the meantime the recoupment provision has the effect of terminating all income for the veteran's and his family's maintenance. We believe that some revision of that provision, in order to alleviate this type of hardship situation, is indicated.

The enclosed draft of bill proposes to add a new section 361 to title 38, United States Code, limiting the rate at which the disability severance pay will be recouped to a monthly amount not in excess of the compensation to which the former member would currently be entitled based on the degree of his disability as determined on the initial rating by the Veterans' Administration. In the example given above, the Veterans' Administration would withhold \$34 monthly (the peacetime rate for 20 percent disability) and pay the veteran \$286 (the peacetime rate for total disability being \$320) for his and his family's maintenance during the continuation of the elevated evaluation. If the veteran has dependents, the amount of additional compensation payable in their behalf (under 38 U.S.C. 315 or 335) would be added to the veteran's payment rather than being applied toward the recoupment of the severance pay.

The Veterans' Administration has no firm basis for determining the number of veterans who would benefit from this proposal, if enacted. It is believed, however, that the number affected would be small and that any costs involved would not be significant.

The Veterans' Administration believes that this proposal, if enacted, while precluding double compensation for the veterans concerned and ultimately permitting recoupment of the disability severance pay, would at the same time alleviate hardship situations that develop under the present law. Accordingly, it is respectfully requested that the proposed legislation be introduced and considered for early enactment.

Advice has been received from the Bureau of the Budget that there is no objection from the standpoint of the program of the administration to submission of the draft bill.

Sincerely,

W. J. DRIVER,
Administrator.

ENCLOSURE.

A BILL To amend title 38, United States Code, to liberalize the conditions under which the Administrator of Veterans Affairs is required to effect recoupment from disability compensation otherwise payable to certain disabled veterans

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 11 of title 38, United States Code, is amended by adding the following new section at the end thereof: "§ 361. Payment of disability compensation in disability severance cases.

"The deduction of disability severance pay from disability compensation, as required by 10 USC 1212(c), shall be made at a monthly rate not in excess of the rate of compensation to which the former member would be entitled based on the degree of his disability as determined on the initial Veterans' Administration rating."

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

§ 360. Special consideration for certain cases of blindness or bilateral kidney involvement or bilateral deafness

When any veteran has suffered (1) blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of non-service-connected disability not the result of his own willful misconduct, or (2) has suffered the loss or loss of use one of kidney as a result of service-connected disability, and has suffered severe involvement of the other kidney such as to cause total disability, as a result of non-service-connected disability not the result of his own willful misconduct, or (3) has suffered total deafness in one ear as a result of service-connected disability and has suffered total deafness in the other ear as the result of non-service-connected disability not the result of his own willful misconduct, the Administrator shall assign and pay to the veteran concerned the applicable rate of compensation under this chapter as if his blindness in both eyes or such bilateral kidney involvement or such total deafness in both ears were the result of service-connected disability.

§ 361. *Payments of disability compensation in disability severance cases*

The deduction of disability severance pay from disability compensation, as required by section 1212(c) of title 10, United States Code, shall be made at a monthly rate not in excess of the rate of compensation to which the former member would be entitled based on the degree of his disability as determined on the initial Veterans' Administration rating.

○