

American Military Society



Advocate



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TRANSITION FROM 107th TO THE 108th CONGRESSIONAL SESSION

The incoming Congress reconvened just after press time, January 7, 2003.

In the House, there are 229 Republicans, 205 Democrats and 1 Independent.

In the Senate, there are 51 Republicans, 48 Democrats and 1 Independent.

U.S. Federal Court of Appeals Rules Against Military Retirees

In a decision that could have far-reaching financial implications for millions of U.S. military retirees, the U.S. Federal Court of Appeals for the Federal Circuit, Washington, D.C. agreed with the government that Military Retirees have no legal standing and the government was authorized to break the promise and is not liable to provide lifetime, free medical care to those servicemen and women who served their country honorably for 20 years or more.

The 9-4 decision was made November 19 by the full U.S. Court of Appeals for the Federal Circuit.

Although the government's lawyers agreed recruiters made these promises, they argued that they never had the authority to do so. Since no authority existed to make the promises and Congress never agreed to them, they argued no valid contract existed.

The judges agreed with that assessment. "Because no authority existed to make such promises in the first place, and because Congress has never ratified or acquiesced to this problem, we have no alternative but to uphold the judgment against the retirees' breach-of-contract claim."

The lawsuit began in 1996 when retired Air Force Colonel George "Bud" Day filed a federal class-action lawsuit on behalf of a specific group of uniformed service retirees who served from

1941 to June 1956. It was during this time that military retirees were able to receive full medical care from military treatment facilities on the same basis as active duty.



In 1995, that law changed to allow the military retirees to get care on a space-available basis. Later still, it terminated defense TRICARE health care coverage at age 65.

The class action lawsuit then charged they were wrongfully denied the free life-

time healthcare which recruiting materials had promised them.

Billions of dollars in out-of-pocket costs were paid by retirees between 1995 and 2001 when TRICARE for Life was finally enacted. Had the ruling stood in the retirees' favor, they would have been entitled to \$10,000 each towards out-of-pocket costs experienced during the 1995-2001 timeframe.

This Battle Is Not Over

The case now heads for the Supreme Court and more uncertainty. "We're going right back to war," Col. Day said.

Without question, the actions of the government stem from worries about cost. Some have estimated that U.S. liability could be significant, if it lost the case.

Whatever the cost, no one now disputes that World War II and Korean War veterans were promised free lifetime care. Recruiters offered it, service leaders supported it, service members counted on it, and Congress funded it through the regular health care appropriations. This, in the view of the Day group, was nothing if not a "contract."

No one doubts that retiree health care has seen remarkable improvements in recent years. Congress and the

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A New Beginning ... The Same Issues

The start of the 108th Congress officially began on Tuesday, January 7, 2003, with a swearing-in ceremony for the members of the new Congress.

Nearly 450 bills were introduced in the first two days of the 108th Congress. Among these were two bills reintroduced by Representative Michael Bilirakis, R-FL. They were H.R. 36, to prevent termination of DIC payments upon remarriage after age 55, and H.R. 303, a provision that would allow for the concurrent receipt of retired pay and VA disability compensation.

On the Senate side, Senator Tom Daschle, D-SD, introduced S. 19, the Veterans and Military Personnel Fairness Act of 2003. It contains several important initiatives. These include full concurrent receipt of military retired pay and veterans' disability compensation, mandatory funding increases for veterans' health care programs, changes in the capital gains tax rules for military members, and amendments to VA rules to allow filling prescriptions from private physicians, without the patients having to see a VA doctor first.

It is important that you communicate with your elected officials on those issues that are important to you. We urge you to contact your representative and ask them to support H.R. 36, and H.R. 303. Also, contact your two senators and ask them to support S. 19.

Other bills have been reintroduced and we will provide coverage on them as soon as information becomes available. ★

Health Care Information Theft

The TRICARE Management Activity announced today that computer equipment and files were stolen on Dec. 14, 2002, from its TRICARE Central Region health contractor, TriWest Healthcare Alliance Corp. in Phoenix, Ariz. TriWest contracts with the Military Health System to provide health services to service members, their families and retirees residing mostly in Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming and western Texas. The theft does not affect beneficiaries' TRICARE eligibility or their access to TRICARE services.

The stolen equipment and files contain personal information including social security numbers, addresses, phone numbers and some claims data. TRICARE remains focused on the need to advise affected beneficiaries on ways to protect themselves from potential identity theft.

The total impact of the theft is still being assessed. The case is being investigated by the Defense Criminal Investigative Service, FBI and other law enforcement agencies.

The Defense Department, after learning of the theft from TriWest on Dec. 20, began working with them to ensure uninterrupted delivery of medical benefits in the wake of the break-in. As more information is known about the theft, the department will ensure that TriWest will be in touch with affected beneficiaries.

TriWest will contact affected individuals and will establish both a toll-free number and an e-mail address for TRICARE beneficiaries who have questions about what they need to know and do.

The department has ordered all contractors working with the TRICARE system to assess their current physical and electronic security.

For further information, TRICARE beneficiaries can call toll-free (888) 339-9378 or e-mail questions to computertheft@triwest.com. ★

EDITOR'S NOTE

Starting with this issue, we're asking to hear from you! Please mail your responses to *EDITOR: P.O. Box 98186, Washington, D.C. 20090-8186*.

Rep. Charles B. Rangel (D-NY) introduced a measure to require all U.S. citizens and permanent residents ages 18 to 26 to complete two years of compulsory service inside or outside the armed services.

He explains: "... as a combat veteran of the Korean conflict, I believe that if we are going to send our children to war, the governing principle must be that of shared sacrifice. Throughout much of our history, Americans have been asked to shoulder the burden of war equally. That's why I will ask Congress next week to consider and support legislation I will introduce to resume the military draft.

Carrying out the administration's policy toward Iraq will require long-term sacrifices by the American people, particularly those who have sons and daughters in the military. Yet the Congress that voted overwhelmingly to allow the use of force in Iraq includes only one member who has a child in the enlisted ranks of the military — just a few more have children who are officers.

I believe that if those calling for war knew that their children were likely to be required to serve — and to be placed in harm's way — there would be more caution and a greater willingness to work with the international community in dealing with Iraq. A renewed draft will help bring a greater appreciation of the consequences of decisions to go to war."

Let us know what you think about resuming the military draft. Is bringing back the draft the way to go? Why or why not? We look forward to your comments. Some comments will be published in upcoming issues of the *Advocate*. ★



DOUG RUSSELL

In the final weeks of last year, we really had the rug pulled out from under us. Although, we always knew that stalling until after the critical November elections would put us at a disadvantage for Concurrent Receipt legislation, we never really believed that lawmakers would wipe the language out completely. And that is what I feel that they did.

Some may say that this is a start. I, on the other hand, feel that the compromise they reached was an abandonment of the justification for Concurrent Receipt. It is the 111-year old law that keeps disabled retirees from collecting both disability pay and retired pay. It is the 111-year old law that we want abolished.

Rather, they devised a special added pay for a very few disabled retirees. So few, in fact, that only 1.5 percent to 5 five percent of the total disabled population will see any advantage from it.

Clearly, these are the most deserving disabled retirees to receive the special pay, but falls far short of the AMS goal and from solutions offered in earlier plans.

What's worse is the timing of it all. How is it that an issue that has had lawmakers debating for months, is suddenly agreed upon just one day after returning from November elections? In part, it is this suspicious timing that has led some to coin the phrase "concurrent deceit."

Don't misunderstand me. We've come a long way this year in ensuring many of our goals were met ... or will be. We've laid the groundwork for Concurrent Receipt. We've protected our COLA. Our active duty, guard and reserve members are getting their much deserved pay increases. We've stopped the attempt by

some to make retired veterans decide between using DOD or the VA Health Care System, rather than allowing them their entitled choice. SBP coverage is now available for spouses of those killed on active duty. We've given doctors more incentive to participate in the TRICARE system.

These are substantial gains.

But, there's still work to be done. Of course, we want full Concurrent Receipt, and that will be on our agenda until it becomes a reality. We'd like to continue to see Congress make improvements to the TRICARE system ... changes that will help the under-65 military retired population. This would include giving that population an option to enroll in the Federal Employees Health Benefit Plan (FEHBP). This is growing increasingly more important as more and more physicians are opting not to participate in the TRICARE program.

In addition, we'd like to get rid of those Medicare Part B late enrollment penalties that so many retirees are forced to put up with. They didn't enroll because they were told that in doing so, they would lose access to military or VA care. We also believe that we should increase the SBP-age 62 annuity and eliminate the SBP-DIC offset.

These are the goals of AMS in the 108th session, and beyond. I'm glad to count you as part of the team to get things done.

Remember to contact your legislators. Introduce yourself as a military retiree, a constituent, and part of the AMS organization. And introduce him to your goals in this Congressional Session. ★

Lawmakers Make Clear: Cutting End Strength Not an Option

Congress has given DOD an additional authority: the ability to boost the number of people on active duty up to 3 percent, should they choose to do so. At the same time, however, they took away their authority to reduce active-duty strength approved in the bill, nearly 1.4 million.

According to Defense Secretary Donald Rumsfeld, no increase in strength is needed. Lawmakers seem to have a different view. According to a report that accompanied the bill, they still believe it "should be increased substantially" and go on to oppose any type of cuts by the Administration.

Lawmakers base their opinions on testimony given by senior military officers who say their forces are already stretched thin. Additionally, over 51,000 mobilized reservists remain on active duty more than one year after the start of the war on terrorism. Thousands more have had their tours involuntarily extended because the active force cannot meet requirements.

Congress probably will not impose any penalty should DOD drop below the strength levels authorized or exceed the three percent approved, making the provision of the law largely symbolic. That makes it highly unlikely that the services will boost the number of people on active duty. ★

Concurrent Receipt: Hardly a Beginning. Not Nearly the End.

When lawmakers adjourned in mid-autumn without a decision on Concurrent Receipt, retirees were left holding their breath. Although it had attracted nearly 500 co-sponsors and looked like a “sure-win”, there was enormous pressure against it and the leverage of the November elections was lost.

Then Congress returned for its lame-duck session and settled on the decision just one day later and in the safety of post-November elections. In just one day they were finally able to come to an agreement on an issue that had them circling and debating for months.

A “Compromise” Plan

Lawmakers working on the final details of the defense authorization bill left the law intact that requires a dollar-for-dollar reduction in retired pay for those who also receive disability compensation pay. In other words, they failed to approve Concurrent Receipt.

Instead, they created a new type of special compensation for approximately 30,000 retirees. It is called Combat-Related Special Compensation (CRSC). But, there is a catch.

This new payment is only available for military retirees with disabilities related to combat or combat-like training. In fact, of the more than 600,000 veterans whose retired pay is currently cut, only 10,000 to 35,000 (1.5-5 percent) will actually get any relief.

Just three small groups of retirees are eligible for this special pay.

- Retirees whose disability resulted from being wounded in combat and who received the Purple Heart for an injury that is rated as 10% or more disabling. Purple Heart recipients whose disability is based on an injury or illness not related to combat are not eligible. Recipients with disabilities based on a combination of combat service and another condition will receive pro-rated payments based on the combat injury.

- Retirees with service-connected disabilities rated 60% or more whose disability resulted from one of the following: direct combat, combat-related train-

ing, hazardous service under conditions simulating war, or caused by an “instrumentality of war.” This last category could include injuries or illness caused by weapons, service aboard a ship or aircraft, or exposure to hazards such as toxic fumes.

- Retirees severely disabled by service-connected conditions. This is the continuation of the special pay that ranges between \$50 per month and \$300 per month for military retirees awarded VA disabilities of 60% or higher within 4-years of retirement. Disabled retirees now receiving these payments and qualifying for the special compensation described above will have the choice of either payment, but not both.

Veterans in either category must have also served at least 20 years in active or reserve status, or a combination of both.

AMS agrees that, clearly, these are the most deserving disabled retirees to receive the special pay, but falls far short of the AMS goal and from solutions offered in earlier plans.

A Funny Thing Happened on the Way to Concurrent Receipt

Potential solutions were passed in both the Senate and House bills prior to the elections. Both were aimed at killing the offset in retired pay with the Senate pushing for full Concurrent Receipt for all disabled retirees and the House pushing for Concurrent Receipt for those with disability ratings of 60 percent or more.

So how did the compromise fall so far from either bill?

One key reason was the threat of a veto by the President. This left Congress wondering whether or not they would be able to uphold their support and override his veto.

Another reason was DOD’s all out public relations assault. Through its Undersecretary of Defense for Personnel Readiness, David Chu, the Pentagon made explicitly clear its non-support for Concurrent Receipt.

Chu told Congress and taxpayers that “the current overall retirement system

and health care plans already do a good job of taking care of disabled military retirees.”

But perhaps more damaging were his earlier comments aimed at having them believe that Concurrent Receipt approval would negatively impact National Security and resources for active-duty and reserve service members. He went as far as to tell active duty personnel that funding for Concurrent Receipt would draw funds from other programs including ammunition, supplies and care for veterans at VA hospitals, allegations refuted by Concurrent Receipt friend Rep. Michael Bilirakis, R-Fla.

“Your argument that funding for Concurrent Receipt will hurt current service members is misleading,” he said. “Neither I nor any of my colleagues would suggest that other personnel funding be cut to pay for Concurrent Receipt, and the enactment of it won’t negatively impact military readiness. If there were any questions that my legislation would have such a negative impact, I sincerely doubt that it would have garnered the support of more than 90 percent of the House and 80 percent of the Senate.”

Then, when lawmakers were able to stall approval of the defense authorization bill until after the November elections, they were able to drop the language without angering the retirees prior to the critical election.

Added Pay Under Fire

Already, the new payment is feeling heat. DOD is already warning that this plan could hurt active and reserve members by taking funding from the budget.

Why? Now it seems that although lawmakers included the special pay, they failed to give the Pentagon any money to cover the payments. Initial estimates were low at \$200 million and lawmakers felt the expense could be easily taken from the \$93.8 billion set aside for personnel costs.

Newer estimates, however, are much higher – up to \$600 million a year. Defense officials say that’s enough to

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Defense Authorization Act – A Summary for the Year 2003

Although it certainly let retirees down with Concurrent Receipt, the defense authorization act, signed into law in December, set up a significant package of goodies. Here are some key points.

BASIC PAY

The act gave service members a minimum pay increase of 4.1%. Some will see larger increases of 6.5 to 9.5% in some cases. Most of the larger increases are limited to enlisted troops in E-5 grades and above, warrant officers in grades W-3 and below and officers in grades O-4 and O-5. This marks the fifth consecutive raise using the targeted pay increases instead of across the board hikes. Pay hikes took effect Jan. 1.

BASIC ALLOWANCE FOR HOUSING

Rates for housing will climb, on average, by 8%. Therefore, average out-of-pocket expenses will drop to 7.5%. This is in accordance with a five-year plan to raise BAH rates in order to fully cover the average cost of housing by 2005. You can find the updated rates at <http://www.dtic.mil/perdiem/bah.html>.

MEDICAL IMPROVEMENTS

The Act calls on DOD and VA to share assets with special attention to pharmaceutical benefits.

RETIREE COLA

The military retired pay increase is based on the rise in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) from the third quarter of the prior fiscal year. This year the CPI-W increase was 1.4 percent. Retirees should have seen this increase beginning with their January paychecks.

TRICARE IMPROVEMENTS

TRICARE experienced a few improvements with the passing of the Defense Authorization Act. First, pre-authorization of inpatient mental health care for Medicare-eligible beneficiaries was eliminated. Also, it extends TRICARE Remote to cover dependents who remain in remote locations when they cannot accompany their sponsors. Third, it makes sure that veterans that are eligible for both VA medical care and retiree TRICARE can continue to receive care under either program.

RETIRED AVIATORS RECALLED TO ACTIVE DUTY

This provision allows the Secretary of a military department to order a retired officer with aviator expertise back to active duty in order to fill staff positions normally filled by aviators on active duty. The order can only be made with consent of the officer ordered to active duty. A maximum of 500 officers can be on active duty at any one time. The provision expires on September 20, 2008.

GI BILL BENEFITS

Reservists will now have 14 years to use benefits instead of ten. The period for use begins when they start reserve duty. Another change to the bill is for reservists who fail to complete the minimum six-year obligation required in order to be eligible for GI Bill benefits to repay the government for benefits used.

COMMISSARY PRIVILEGES FOR RESERVISTS

Those reservists mobilized under the state authority on missions involving federally declared national emergencies would be eligible for full use of commissaries. They would also be entitled to any other welfare and recreational facilities and stores. ★

Concurrent Receipt

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fund full pay and allowances for 10,000 active duty people or a 1.5 percent pay raise for all active and reserve members.

Payments for CRSC will begin in May, giving time for the Pentagon to review military records and determine eligibility. This should reduce the financial burden for this initial year since funding CRSC will be limited to only the remain-

ing months of the year. Retirees will have to apply for the special compensation.

On to the 108th Congressional Session

Although a special pay was passed in the last moments of the legislative year, Concurrent Receipt was not. This new pay severely limits the number of people who deserve to receive full Concurrent Receipt.

The battle to end this outdated 111-year old law is far from over. In the 108th Congress, AMS will continue to fight for this critical change in current legislation. It's fair. It's urgently needed. And it's time to make things right.

We need your help. Please contact your lawmakers right now and tell them that CRSC is not Concurrent Receipt, and it is not an acceptable substitution. Ask them to stand up for what is right and lead the way for change. ★

More Medicare Payment Cuts Coming

As health care costs continue to climb, the Center for Medicare and Medicaid Services (CMS) recently announced that Medicare payments to health care providers will be reduced 4.4 percent, effective March 1, 2003.

This reduction is in addition to last year's 5.4% cutback. And if that weren't enough, more cuts will be coming over the next two years. All told, unless Congress acts to prevent these rate cuts, the decreases will total 18% over four years, even though doctors complain that the payments are already too low to cover their rising costs.

This clearly poses problems for Medicare-eligible TRICARE For Life beneficiaries. But it also affects any other military beneficiaries who receive care from civilian providers, since military TRICARE payment rates are linked to those set by Medicare. Some physicians have already withdrawn from the TRICARE program, and the reduced reimbursement rates may force more providers to stop treating Medicare and TRICARE beneficiaries.

AMS is very concerned about how these cuts will affect access to health

care for Medicare and TRICARE beneficiaries. We believe military beneficiaries deserve the nation's best health care, not the cheapest.

CMS acknowledges the concerns expressed by AMS and many others that the reduced rates will result in fewer doc-



tors accepting Medicare patients, and even fewer willing to take on any new ones.

And the timing of the payment cuts couldn't be worse. The war on terrorism

and the threat of conflict in Iraq are already straining the capacity of the military direct health care system, as large numbers of medical corps members are deployed to Southwest Asia and elsewhere. That means more and more TRICARE patients will have to get their care in the civilian networks -- putting more pressure on civilian providers who already have absorbed significant fee cuts for their TRICARE patients.

Our deployed service men and women need to focus on their mission, without having to worry whether their family members back home can find a doctor.

The House passed corrective legislation before adjourning last year, but the Senate did not. Now, it will be critical for the 108th Congress to act quickly - hopefully before March 1 -- to restore payment levels.

Access to quality health care for active duty and retired uniformed service personnel is a top priority on AMS's legislative agenda. We urge you to contact your elected officials and tell them that Congress must act now to reverse these cuts and fix this mistake. ★

Appeals Court Ruling

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Executive branch have worked together closely and effectively to improve retiree medical benefits. For one thing, Congress approved the TRICARE for Life second-payer system for 65-and-over retirees. However, the new program is not free; 65-and-over retirees must enroll in Medicare and pay Part B premiums. More importantly, many older retirees already have sustained substantial out-of-pocket expenses.

While the court's majority could not find a legal basis to sustain the retiree case, it did express a "hope" that "Congress will make good on the promises recruiters made in good faith to plaintiffs and others of the World War II and Korean War era." The Bush

Administration could make a good start toward resolving the problem by working closely with the Congress and opening negotiations for a fair and reasonable settlement that the older retirees could accept.

Retirees to Rally in Support of Class Act Suit

Supporters of the Class Act Group's health care lawsuit against the government are organizing a rally, to be held in Washington D.C. on February 12. That's the day on which the Class Act attorney, Medal of Honor recipient Colonel Bud Day, USAF (Ret), plans to file the group's appeal to the U.S. Supreme Court.

The demonstrators will be protesting the November 2002 decision by the Federal Circuit Court of Appeals in the

case of *Schism vs. United States*, which held that the government did not have to honor military recruiters' promises of "lifetime health care."

Participants will meet at 10:00 AM at the Reserve Officer Association building at One Constitution Avenue, NE, and march to the Supreme Court building, which is about one block away.

Although the Supreme Court will not make a decision on whether to hear the appeal for several months, organizers hope to draw attention to the issue among the media, Congress and the public at large.

AMS is lending its support to the Class Act Group's appeal, and we encourage member participation in this rally.

For further information on the rally, and for points of contact in specific areas of the country, visit <http://www.ams.org>.

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For information about any of these programs, call our Customer Service Representatives,
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