



Retired Pay Center of all benefit changes. You must sign 21e if you want to keep getting military retired pay instead of VA compensation.

The member noted on the VA Form 21-526 that he was receiving retired pay in the monthly amount of \$1,855.00. He did not sign 21e to continue to receive his retired pay instead of VA compensation. Effective February 1, 2009, the member began receiving VA compensation. Although the member was receiving compensation from the VA, DFAS failed to reduce his retired pay by a portion of the compensation he was receiving from the VA. As a result, he was overpaid \$21,056.00 in retired pay during the period February 1, 2009, through December 31, 2011.

On December 29, 2017, the Army Human Resources Command (AHRC) received the member's application for Combat Related Special Compensation (CRSC). On July 3, 2018, the AHRC approved the member's application for CRSC and determined that the member was entitled to receive \$4,668.30 in CRSC during the period December 1, 2017, through June 30, 2018. DFAS applied the \$4,668.30 in CRSC to the member's overpayment reducing his debt to \$16,387.70 (\$21,056.00 - \$4,668.30).

The DOHA adjudicator upheld DFAS's denial of the member's request for waiver of the overpayment. The adjudicator found that the member was on notice by filling out the VA Form 21-526 that his retired pay would be reduced by the VA compensation he received. The adjudicator stated that the member did not provide any documentation, such as an official statement from the VA and/or DFAS, reflecting that he was entitled to receive both VA compensation and his retired pay during the period of overpayment.

In the member's request for reconsideration, he states that he does not remember filling out the VA Form 21-526. He states that his purpose for applying for compensation from the VA was to receive hearing aids. He does remember receiving a letter from the VA informing him that he was granted compensation and telling him what the monthly amount would be. He states that the VA did tell him in a meeting that he would receive both VA compensation and retired pay. He states that in 2017 he did contact the Army when he discovered there was an error. However, the Army was only allowed to correct the mistake back six years due to the six-year statute of limitations. He states that three years of his entitlement to CRSC is therefore barred from payment and cannot be applied to reduce his debt. Thus, he requests under equity, his debt be waived.

### **Discussion**

Our authority in this matter pertains to the appropriateness for waiver under 10 U.S.C. § 2774. Under that statute, we have the authority to waive claims for erroneous payments of pay, including military retired pay, and certain allowances made to or on behalf of members or former members of the uniformed services, if repayment would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. Waiver is not appropriate when the member knows, or reasonably should know, that a payment

is erroneous, or does not attempt to obtain a reasonable explanation from an appropriate official concerning any unexplained payment of pay or allowance. The member has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary. *See* Department of Defense Instruction 1340.23 (February 14, 2006) ¶¶ E4.1.1 through E4.1.5.

In this case, the member was on notice by virtue of his application for VA compensation that his retired pay would be reduced by his VA compensation. He should have questioned the fact that deductions were not being made from his retired pay during the period February 1, 2009, through December 31, 2011. Under the circumstances, waiver is not appropriate. *See* 2016-WV-120502.2 (April 17, 2017). As for the member's entitlement to further retroactive payments of CRSC, he should contact DFAS and the AHRC for an accounting of the amount he is owed for the period of overpayment. That amount should be paid to him or applied to reduce his total indebtedness.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the appeal decision dated March 22, 2022. In accordance with DoD Instruction ¶ E8.15, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairperson, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

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Richard C. Ourand, Jr  
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board