



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

July 18, 2013

Director (00/21)
All VA Regional Offices and Centers

In Reply Refer To: 201D
Fast Letter 13-16

ATTN: All Veterans Service Center Personnel

SUBJ: National Veterans Legal Services Program (NVLSP) and co-counsel Crowell & Moring, LLP lawsuit against the Department of Navy (*Bargsley et al. v. United States of America*).

Purpose

This fast letter (FL) provides procedures on restoring VA compensation withheld to recoup disability severance pay (DSP) for certain Navy and Marine Corps Veterans with a corrected DD Form 214 (DD 214), Certificate of Release or Discharge from Active Duty, or corrected separation orders.

Background

Generally, 10 U.S.C. §1212(d) requires VA to withhold VA compensation payable for the same disability for which the DSP was paid until the amount of DSP has been recouped.

However, Public Law (PL) 110-181, §1646 amended 10 U.S.C. §1212(d) to provide that VA will not recoup DSP related to disabilities incurred in a combat zone or combat-related operations, as designated by the Department of Defense (DoD), for members of the armed forces separated with DSP on or after January 28, 2008. Section 103 of PL 110-389 conformed 38 U.S.C. 1161 to the change made by section 1646 of PL 110-181, §1646. In addition, 38 CFR 3.700(a)(3) was amended to reflect this change.

DoD, in its Directive Type Memorandum (DTM) dated March 13, 2008, provided implementing guidance for section 1646 of PL 110-181. The DTM directed the military service departments to determine whether disabilities leading to the separation of service members were incurred in a combat zone or combat-related operations. In addition, the DTM provided four new Separation Program Designator (SPD) Codes to be inserted into block 26 of DD 214 (and corresponding narrative reasons to be inserted into block 28) to indicate the decisions made. Two codes were provided to indicate

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favorable decisions (i.e., the disability leading to separation was incurred in a combat zone or combat-related operations), and 2 codes were provided to indicate unfavorable decisions (i.e., the disability leading to separation was not incurred in a combat zone or combat-related operations).

In FL 08-15, released May 21, 2008, VA instructed field stations that DSP should not be recouped from VA disability compensation when one of the two codes indicating a favorable decision (and the corresponding narrative reason) is shown on the DD 214. The two SPD Codes indicating a favorable decision and the corresponding narrative reasons are as follows:

SPD Code (block 26)	Narrative Reason for Separation (block 28)
JFI	Disability, Severance Pay, Combat Related
JEA	Disability, Severance Pay, Combat Related (Enhanced)
<i>Note: The SPD Code field on DD 214 and separation orders requires 4 characters; therefore, you will see a fourth character on the documents, e.g., "JEA1."</i>	

The Department of the Navy (DoN) did not immediately implement the directive requiring it to make a determination as to whether disability leading to separation of service members was incurred in a combat zone or combat-related operations. Consequently, on July 25, 2012, NVLSP and co-counsel Crowell & Moring, LLP filed a lawsuit, *Bargsley et al. v. the United States of America*, asserting that, because of DoN's delayed implementation of the aforementioned directive, some Sailors and Marines who were discharged with DSP incurred in a combat zone or combat-related operations had their VA compensation erroneously withheld to recoup DSP.

Corrected DD 214s and Separation Orders

Veterans Benefits Administration (VBA), VA's Office of General Counsel (OGC), Department of Justice (DoJ) and DoN are working together to rectify this issue.

DoN conducted a review of the Physical Evaluation Board (PEB) findings of potentially affected Veterans and service members. As a result of the review, DoN corrected the records of approximately 600 Veterans to show that they were discharged with DSP for disabilities incurred in a combat zone or combat-related operations. Accordingly, on February 15, 2013, DoN began mailing out corrected separation documents (DD 214s and/or orders) to the affected Veterans. In addition, DoN provided VA with copies of the corrected documents.

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DD 214s

- Each corrected DD 214 is accompanied by a cover letter which notifies the Veteran that his/her SPD Code has been changed due to “combat related disability status.”
- Many of the corrected DD 214s provided to VA have block 26, which contains the SPD Code, redacted. However, the “Narrative Reason for Separation” is viewable in block 28.

Separation Orders

- For affected Reservists and Veterans who were on the Temporary Disability Retired List (TDRL), DoN issued letters correcting their separation orders. Henceforth, these letters will be referred to as “correction letters.”
- The discharge date shown on the correction letters is to be used when determining whether or not a Veteran was separated from service on or after January 28, 2008. Note: For Veterans who were on the TDRL, the date discharged from TDRL is the date of discharge.

VBA must restore any compensation withheld to recoup DSP for any of the members with favorable decisions who were separated on or after January 28, 2008.

Enhanced Disability Severance Pay (EDSP) List and Separation Document Folder

The corrected DD 214s and correction letters provided by DoN have been uploaded into a SharePoint List called “Enhanced Disability Severance Pay (EDSP) List.” The EDSP List contains a record for each of the affected Veterans.

Designated individuals at each VA Regional Office (VARO) will be given access to the EDSP List (*see the “Points of Contact” section below*).

Regional Office Responsibilities

Points of Contact (POC)

Each VARO will designate a primary and secondary POC who will be responsible for facilitating this project for their respective VARO. Each VARO should email the names, phone numbers and email addresses of their POCs to the corporate mailbox shown in the “Questions” section at the bottom of this letter **within 3 days from the date of this fast letter**.

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POC Responsibilities

1. POCs will be emailed a link to access the EDSP List. Upon receipt of the link, POCs must:
 - a. Access the EDSP List and save the separation documents for the Veterans under their VARO's jurisdiction to an approved destination on their local network drive. *See Enclosure 1. Note: The documents will eventually be uploaded into Virtual VA (see the Reviewer Responsibilities section); however, they cannot be uploaded directly from the EDSP List into Virtual VA.*
 - b. Forward the downloaded documents to the Veterans Service Representative (VSR) who will be reviewing the cases, or notify the VSR where the documents are saved on the local network drive. *Note: The POC and VSR can be one and the same.*
2. Upon receipt of the completed checklist from the reviewing VSR (see Reviewer Responsibilities), the POC must:
 - a. Access the EDSP List and update it to reflect the results of the review, as shown on the checklist. *See Enclosure 1.*

NOTE: If DoN provides additional separation documents, they will be uploaded into the EDSP List. The POCs will be notified, via an email from the corporate mailbox provided at the bottom of this fast letter, that additional documents have been received from DoN. Upon receipt of the email, the POC will repeat the steps shown above.

End Product

Each VARO should establish an end product (EP) 290 with a claim label of "Enhanced Disability Severance Pay" for each Veteran identified in the EDSP List under their respective jurisdiction.

The date of claim is the date of this fast letter or the date shown in the "Date Received from Navy" column of the EDSP List for the particular Veteran, whichever is later.

If a corrected DD 214 or correction letter is received from a Veteran or representative before the date of this fast letter, the date of claim should be the date of receipt of the corrected document.

Claims Folder Not Required For Review

In the Veterans Service Network (VETSNET), if VA compensation was withheld to recoup DSP, the withholding can be seen in the corporate record (see Enclosure 3).

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However, in the Benefits Delivery Network (BDN), if compensation was withheld to recoup DSP, once the recoupment has been completed, the history of the withholding is not retained in the master record. Thus, with BDN records, it is not always possible to determine whether compensation was withheld to recoup DSP merely by viewing the master record. Rather, either the hard copy BDN awards located in the claims folder must be reviewed or a financial audit must be done.

There are no records remaining in BDN. However, for records converted from BDN into VETSNET, it is possible that compensation was withheld to recoup DSP while the record was still in BDN. If a POC finds a record that has been “converted” from BDN, the POC should contact VA Central Office (VACO) (via the corporate mailbox at the bottom of this fast letter) for guidance. To determine whether a record was converted from BDN into VETSNET, see “Identifying a Converted Record” in the [User’s Guide to Converted – Terminated Records](#) located on the [VETSNET – Awards](#) webpage.

For converted records, VACO will determine whether compensation was withheld to recoup DSP while the record was in BDN, and will provide processing guidance, if needed. Therefore, VAROs are not required to review the claims folder.

Review

Every case on the EDSP List must be reviewed by a VSR for potential entitlement to restoration of compensation withheld to recoup DSP.

Reviewer Responsibilities

- Review each case referred by the POC for potential entitlement to restoration of compensation withheld to recoup DSP, using the provided checklist (*Enclosure 2*) as a guide. The reviewer must answer every question of the checklist and check the appropriate boxes.
- If restoration of DSP is indicated, take award action (*see Enclosure 4*) and send notification letter (*see Enclosure 5*). If award action is not required, clear the EP 290.
- Complete the checklist. The checklist should be saved as a separate document to an approved destination on the local network drive, as it will be inserted into Virtual VA or the Veterans Benefits Management System (VBMS) (as appropriate) by the POC. Associate the award (if done) and notification letter (if done) with the claims folder. The notification letter must be scanned into Virtual VA or VBMS in accordance with [Training Letter 07-03](#).
- Insert the separation document(s) and checklist into Virtual VA or VBMS. See the “*Inserting Documents into Virtual VA or VBMS*” section of this fast letter.
- Provide the POC with the completed checklist.

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Guide to Using the Checklist

Complete all fields at the top of the Checklist (Claim Number, Veteran’s Name, Reviewer’s Name, RO #, and Date Review Completed.

Checklist Question	Explanation/Notes
1. Was the Veteran separated on or after January 28, 2008?	All Veterans on the EDSP List should have been separated on or after January 28, 2008. However, the VSR should check the separation date shown on each DD 214/correction letter to verify.
2. Was the Veteran ever awarded VA compensation?	If the Veteran has never been awarded VA compensation, there is nothing to restore.
3. Was compensation withheld to recoup DSP?	If compensation was not withheld to recoup DSP, then there is nothing to restore. <i>Be sure to check for a converted record (see the “Claims Folder Not Required for Review” section in this fast letter).</i>
4. Is the Veteran Deceased?	If the Veteran is deceased, any compensation withheld to recoup DSP may be payable as accrued benefits. The answers to the next 2 questions will determine whether or not accrued benefits are payable.
5. If the Veteran is deceased, is the date of death on or after the date of receipt of the corrected separation document?	In order for accrued benefits to be payable, the corrected DD 214 or correction letter would have to be in VA’s possession on the date of death (38 CFR 3.1000). Note: The “Date Received from Navy” shown on the EDSP List is the date of receipt of the corrected separation document. Thus, the answer to this question must be “yes” in order for accrued benefits to be payable. If the Veteran is not deceased, the answer to this question is “N/A.”
6. If the Veteran is deceased and the date of death is on or after the date of receipt, did VACO advise that accrued benefits are payable?	If the answer to questions 1-3 and 5 is “yes” accrued benefits might be payable. The POC should contact VACO for guidance (via the corporate mailbox at the bottom of this fast letter). If the answer to question 5 is “no” then the answer to this

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	question is "N/A."
<p>7. Was an adjustment made to restore withheld compensation?</p> <ul style="list-style-type: none"> If the answer is "No," check the reason why an adjustment was not made below: <ul style="list-style-type: none"> <input type="checkbox"/> "No" was selected at least once in question 1 through 3. <input type="checkbox"/> "Yes" was selected in questions 1 through 3; however, the Veteran is deceased and accrued benefits are not payable. 	<p>Answer "Yes" if an adjustment was made or "No" if an adjustment was not made. Also, if an adjustment was not made, select one of the two options provided to indicate the reason the adjustment was not made. The two options will be provided in a dropdown list on the EDSP List.</p>
<p>8. Date of Adjustment: _____</p> <ul style="list-style-type: none"> If an adjustment was not made, leave blank and select "N/A" 	<p>If an adjustment was made, annotate the date of the adjustment in the space provided (i.e., date of award action). If an adjustment was not made, leave the space blank and check "N/A."</p>
<p>9. Dollar Amount Restored: \$ _____</p> <ul style="list-style-type: none"> If an adjustment was not made, leave blank and select "N/A" 	<p>If an adjustment was made, annotate the dollar amount of the adjustment in the space provided. If an adjustment was not made, leave the space blank and check "N/A."</p>

Inserting Documents into Virtual VA or VBMS

For Virtual VA:

Insert each separation document and checklist into Virtual VA. If an eFolder does not exist, create one. The [Virtual VA User Guide](#) should be consulted for instructions on inserting documents into Virtual VA and creating eFolders. Enter the document type, document category, date of receipt, subject and document date, on the "Insert Document" page for each document inserted.

For VBMS:

Upload each separation document and checklist into VBMS. The Transformation Initiatives and Pilots (TIP sheet) ["Uploading Documents into VBMS"](#) should be consulted for instructions on inserting documents into VBMS. Follow the step by step instructions provided on this page. Enter the document type, document category, date of receipt, subject and document date, on the "Insert Document" page for each document inserted.

The requisite entries for each document type are provided below.

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Corrected DD 214:

- Document Type: DD 214 Certified Original – Certificate of Release or Discharge
- Document Category: Service Personnel Records – DD 214 / 215
- Date of Receipt: “Date Received from Navy” as shown on the EDSP List
- Subject: Combat Disability Severance Pay
- Document Date: Date of cover letter

Correction letter:

- Document Type: Discharge / Retirement or ETS
- Document Category: Service Personnel Records
- Date of Receipt: “Date Received from Navy” as shown on the EDSP List
- Subject: Combat Disability Severance Pay
- Document Date: Date of correction letter

Checklist:

- Document Type: VA Memo
- Document Category: Checklist
- Date of Receipt: Date checklist received from VSR
- Subject: Combat Disability Severance Pay
- Document Date: Date checklist completed by VSR

Notification Letter

If award action is taken to restore withheld compensation, the Veteran should be notified using a standard award notification letter, in accordance with M21-1MR [III.v.2.B.9](#), with the first page modified as shown in Enclosure 5. The notification letter must be scanned into Virtual VA or VBMS in accordance with [Training Letter 07-03](#).

Questions

Questions regarding this letter and enclosures should be submitted to VAVBAWAS/CO/MILPAY.

/S/
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Compensation Service

/S/
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Enclosures

Enclosure 1 – EDSP List Instructions

Enclosure 2 – Checklist

Enclosure 3 – How to Determine Whether Compensation was Withheld to Recoup DSP

Enclosure 4 – Award Processing Screenshots

Enclosure 5 – Notification Letter