SILENT PARTNER

Medical Retirements: Dividing the Pension

*Introduction: **SILENT PARTNER** is a lawyer-to-lawyer resource for military legal assistance attorneys and civilian lawyers, published by the North Carolina State Bar's military committee. Please send comments to the address at the end of this Silent Partner. There are many **SILENT PARTNER** infoletters on military pension division, and other aspects of military divorce. All SILENT PARTNER infoletters on military family law issues are located at: www.ncbar.gov > For Lawyers > View All Bar Programs > LAMP (the website of the military committee, N.C. State Bar).*

Introduction

Is military disability retired pay divisible in divorce? Is Concurrent Disability and Retired Pay (CRDP) divisible? A recent administrative rules change by the Defense Department sheds new light on dividing CRDP when there is a disability retirement and a divorce. Let's see what the new rule is.

Disability Retirement and Divorce

When a servicemember (SM) is found unfit to continue serving, he or she is separated with a disability discharge.[1] A military disability rating of 30% or more, or the completion of at least 20 years of service, means that the SM's separation comes with retired pay, often called MDRP, or military disability retired pay.

The common wisdom used to be that only a small part of MDRP would be divisible. Here's the logic chain:

- Gross retired pay is not divisible; federal law only made "disposable retired pay" subject to division in the case of a decree of legal separation or divorce.[2]
- Disposable retired pay is gross pay minus certain deductions.[3]
- One of these deductions is military disability retired pay when the amount paid is calculated *according to the percentage of disability*.
- Medical retirees get to choose whether their retired pay will be determined based on the "percentage of disability" or the "years of service."
- If the retiree elects to receive "percent of disability" retired pay, then it is not divisible. If, however, he chooses to get retired pay based on his years of service, and that figure is larger than the amount payable under "percent of disability," then only the difference between the two would be divisible.[4]

---

[1] Disability retirement is covered at Chapter 61 of Title 10, U.S. Code.
[2] 10 U.S.C. § 1408 (a)(4).
[3] 10 U.S.C. § 1408 (a)(4)(A).
[4] For an explanation of MDRP and divorce, see the SILENT PARTNER, *Q&A – Military Disability Retired Pay*.

The receipt of VA disability compensation (which is not divisible as property) means that the retiree must waive an equal amount of retired pay.[5] This is called the "VA waiver."

However, retirees with a VA rating above 40% are reimbursed for the waiver by a statutory payment called Concurrent Disability and Retired Pay, or CRDP.[6] CRDP restores the amount of waived retired pay.[7] For example, if John Doe receives $2000 in MDRP monthly and he elects to get $1200 per month VA disability compensation,[8] then he must waive $1200 of his retired pay; the amount waived, however, is made up by CRDP. Thus, he receives his full $2000 each month as well as the $1200 from the Department of Veterans Affairs.

Division of CRDP: From Canon to Canard

It has long been an assumption of military divorce practitioners that CRDP paid in connection with MDRP could not be divided. The reasoning behind this canon was that CRDP was simply the return of waived retired pay and, since the waived retired pay was non-divisible (in most cases), so was the CRDP which restored it.

In a typical case, Jane Doe (the non-military spouse or former spouse) had few options to deal with the loss of a major marital asset, the military pension of her soon-to-be-ex.

- She might negotiate spousal support payments from John, since alimony is not property division and the garnishment of alimony is allowed in a disability retirement case.
- Or she might negotiate for a greater share of other marital or community property.
- Or she might just write it off.

New rules which were promulgated in February 2026 by the Defense Finance and Accounting Service (DFAS) changed all of that. It's a major change which makes the former assumption (non-divisibility) into a *canard*, i.e., an unfounded rumor or story.

The new rules are found at Chapters 29 and 64 of Vol. 7B, Department of Defense Financial Management Regulation (DoDFMR). The text explaining the change says that:

> …military retired pay payable to military retirees under Title 10, Chapter 61, of United States Code that is paid concurrently with Department of

[5] 38 U.S.C. 5304-5305.
[6] 10 U.S.C. § 1414, "Concurrent payment of retired pay and veterans' disability compensation." The amount of CRDP paid is found on the second page of the disability retiree's RAS, or *Retiree Account Statement*. For the Coast Guard and officers in the Public Health Service and the National Oceanic and Atmospheric administration, it's called the *Statement of Monthly Income*.
[7] For an explanation of CRDP and the VA waiver, see the Silent Partner titled *Military Pension Division: The "Evil Twins" - CRDP and CRSC*.
[8] The servicemember can elect VA disability compensation; it is not automatic. CRDP is automatic, once the VA election is made and the VA rating is 50% or greater, with the Department of Veterans Affairs notifying the retired pay center of this. The only exception to the automatic receipt of CRDP is when an eligible retiree chooses to receive Combat-Related Special Compensation (CRSC) pursuant to 10 U.S.C. § 1413a, since the receipt of CRSC terminates CRDP.

Veterans Affairs disability compensation is disposable pay subject to division under the Uniformed Services Former Spouse's Protection Act, because the amount paid effectively removes the disability factor from the Chapter 61 retired pay payable.[9]

Impact of the Rules Change: On the Government, On the Parties

What is the impact of this rules change on the retired pay centers?[10] It could be enormous. DFAS has admitted in underlying administrative litigation that it has been applying the non-divisibility policy for 13 years in over 20,000 cases involving divorce and disability retirees. DFAS has indicated that the entitlement to a share of CRDP will be retroactive to March 2022, the date of the Claims Appeals Board decision which stated that CRDP is part of divisible property.

What does this decision mean for the former spouse, Jane Doe? When there was no alternative settlement benefit that Jane received, she may want to ask the court for a military pension division order to divide the CRDP. If Jane is already receiving alimony as a substitute for pension division, she may want to "let sleeping dogs lie," since the spousal support payments she's getting are tax-free under the Tax Cuts and Jobs Act (TC&JA).

There's an impact as well for the retiree, John Doe, if he is paying alimony in lieu of pension division. The TC&JA makes his spousal support payments non-deductible; the garnishment payments of pension division, however, are excludable from John's taxable income, so (in his words) "That's a tax deduction!" He may want to ask his lawyer about "revisiting" the alimony settlement to try to convert it into pension division.

What if John wants to "dodge the division," that is, make it impossible for his ex-wife to receive any part of CRDP? In appropriate cases, John may decide to apply for CRSC. If he is found to have wounds, illnesses or conditions which are "combat-related" under the statute (10 U.S.C. §1413a) and the regulations (DoDFMR Vol. 7B, Ch. 63), then he can elect to receive CRSC and this would wipe out any CRDP that he's entitled to receive.

Conclusion

It is important that both parties and their attorneys know about the divisibility of CRDP in the disability retirement case when the divorce is in the process of negotiations and settlement.[11] The former spouse needs to know that there is a benefit which may be divided and that she needn't push for an alimony award as a substitute for pension division. The retiree needs to know that payments may be made through a garnishment

[9] "Explanation of Change/Revision" from Vol. 7B, Ch. 64, DoDFMR.

[10] The retired pay center for the Army, Navy, Air Force, Space Force and Marine Corps, as well as the National Guard and the Reserves, is the Defense Finance and Accounting Service, or DFAS. For the Coast Guard and the officer corps of the Public Health Service and the National Oceanic and Atmospheric Administration, retired pay is administered by the Coast Guard Pay and Personnel Center.

[11] As mentioned in Note 6 above, the place to find information about the CRDP amount is on page two of the RAS (Retiree Account Statement). To ascertain whether the SM received a disability separation, check the individual's retirement orders and also the DD Form 214 or "Report of Separation." For DoD retirees, the letter sent at retirement from DFAS to the SM stating how his or her retired pay was calculated also contains information about disability retired pay and how it was calculated.

from the retired pay center in appropriate cases,[12] and these payments will be excluded from his income at tax time, unlike alimony payments. A flow chart showing all of this is at the final page of this Silent Partner.

(Rev. 6-23-26)

* * *

This **SILENT PARTNER** was prepared by Raleigh, NC attorneys Mark Sullivan, a retired Army Reserve JAG colonel, and Kris Hilscher. For revisions, comments or corrections, contact them at 919-832-8507, or at law@ncfamilylaw.com.

[12] Division of military retired pay through a garnishment requires an overlap of at least 10 years of marriage and 10 years of military service. 10 U.S.C. 1408 (d)(2).

CRDP* & MDRP† – Divisible in Divorce?

You are a disability retiree from the uniformed services, receiving (or eligible to receive) monthly retired pay.

Did you elect to receive amount of retired pay based on % of disability, or on years of service?

% of disability amount: not subject to division. 10 U.S.C. 1408 (a)(4)(A)(iii)

Yrs of svc. amount: if this is the higher of the 2 amounts, then only the difference between this and % of disability amt. is DIVISIBLE.

Did you elect to get VA disability compensation?

Yes

(NOTE: Virtually ALL disability retirees elect to receive VA disability compensation.)

Your VA payments are not divisible property.

There is a dollar-for-dollar waiver of retired pay for amt. of VA disability comp. received. Is your VA rating less than 50%?

Yes

No

Do you have less than 20 yrs. of creditable active-duty service, or are you a Guard/Reserve member not yet entitled to retired pay?

Yes

You are not entitled to CRDP* - so no divisible CRDP.

No

Did you elect to receive CRSC**?

Yes

No

The CRDP you are receiving is military retired pay that is DIVISIBLE in divorce case, according to February 2026 rules changes, Chapters 29 and 64, Vol. 7B, Dept. of Defense Fin. Mgt. Regulation.

LEGEND

† MDRP is military disability retired pay. Ch. 61 of Title 10, U.S. Code.

*CRDP is Concurrent Retirement and Disability Pay, paid to restore amount of retired pay that is waived to receive VA disability compensation. The retiree must have a VA rating of at least 50%. 10 U.S.C. 1414. See P.2 of RAS (Retiree Acct. Stmt.) under "Messages" for information on amount, if any, of CRDP.

**CRSC is Combat-Related Special Compensation, a tax-free benefit that is not divisible property. 10 U.S.C. 1413a.