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VIEW FROM THE CHARTHOUSE

By Dennis Egge, President
American Retirees Association

I am choosing not to comment, regarding MOAA’s opposition to the Pentagon’s 401K retirement compensation proposal. I simply cannot help former military dependent spouses perpetuate their hold over our members and their families. MOOA has advised me, in the past that only a small minority of their members are at all concerned about USFSPA reform.

After failing to impress Congress with its 2001 USFSPA proposals, the Pentagon is choosing to simply “freeze” and replace the current non-contributory defined benefit military retirement with a defined contribution military retirement plan. In my view, this would compel family law/domestic relations jurisdictions to address jointly earned marital property issues in their final decrees. Removing the USFSPA incentive, for a military dependent spouse to opt-out half way through the mission, will do so much to restore peace and harmony in the military family.

Those who threatened to quit, if the Pentagon implements the 401K proposal, will have nothing more to say, when the Pentagon advises, why it is no longer necessary to pay a selected few to serve until they are discharged, resign or die, while 83% are terminated, with nothing to be grateful for, after fulfilling their uniformed service obligations. Thanks to its War on Terror experience, the Pentagon finally managed to fully integrate its active, re-serve and guard components into a unified, cohesive, fighting force: The inter-service stove-pipes are gone, now. The blood shed in the sand-box was not wasted, after all. The African continent will test the Pentagon’s mettle, next.

I am still amazed that 10 USC 1408(h) provisions stand, un-amended; only 31 former abused dependent military spouses benefit from them. Denying all benefits, entitlements and privileges to an abusive dependent military spouse would attract the targets of their predatory conduct and behavior, and speak volumes in support of the Pentagon’s alleged zero-tolerance for domestic violence policy. LGBT military marriage and divorce action issues can serve as a catalyst and dramatically amplify the voice of abused female personnel, in Congress.

At your service,

Dennis Egge; President, ARA BOD

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MOAA Urges Unified
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daunting suicide statistics.
Noting that one veteran dies every 80 minutes and one servicemember died every 36 hours during the period 2005-2010, Campos said renewed efforts are required to reverse this unacceptable trend.
She recommended that Congress:
- Require VA-DoD to establish a single strategy and a joint suicide prevention Office;
- Authorize funding to expand VHA mental health capacity and capability to improve access and delivery of quality and timely care and information; and
- Provide funds to expand outreach and marketing efforts to encourage enrollment of all eligible veterans in VA health care, with special emphasis on Guard and Reserve members, rural veterans, and high risk populations.

Campos related that one caregiv spouse of a recently retired veteran with post-traumatic stress disorder and traumatic brain injury told MOAA, “When my husband attempted suicide in March, the VA doctor told me to take him to the ER. But the ER had no beds and gave us no alternatives for care. I was scared, and no one in the VA did anything to help us or help me know what to do in a situation like this.”

Remembering Jesse Campbell

Jesse performed 26 years of honorable service, first in the U.S. Navy, for four years, and then in the U.S. Air Force. His specialty was EOD; he saw boots on the ground combat in Vietnam and retired from active duty as a Master Sergeant.

Jesse is one of ARA’s founding members. He and his Nevada Rangers successfully engaged the Nevada Legislature in a battle for USFSPA repeal. When the Governor signed that Bill into law, he thanked Jesse for his noble efforts.

Jesse also participated in the last Congressional USFSPA public hearings. His testimony caused at least two Nevada family law attorneys more than a little discomfort. One of them withdrew from the arena.

Jesse and Frank Ault became good friends, and now that they are both gone. We have their legacies to carry forward. We cannot afford to fail; too many brave warriors depend on us. We are at their service, in Congress and our State Legislatures where we work the USFSPA inequities, one provision at a time until the objective is achieved.

Our mission remains equal protection for military personnel in military divorce actions. Hostilities in Iraq and Afghanistan indicate clearly that USFSPA provisions are the root-cause, while heightened operations tempo serves as a catalyst; the consequences are too often tragic.

Jesse is survived by his loving wife Ann and wonderful sons, daughters and grandchildren. We will miss him.

LETTERS TO THE EDITOR
Continued from page 2

DFAS acknowledges 32 abused former spouse payments cases. The earliest was in February 1994, the latest February 2011. All are females; one has been terminated, due to the death of the targeted member. These females are not paid by the Retired Pay Section of DFAS since the member is not retired due court martial. They are paid manually by voucher each month. The amount of payment was not available “due method of payment.” On the determining the question of remarriage issue, DFAS does not have an automatic system to determine if a former abused spouse, is remarried.

Editors note: I am advised that Florida’s cohabitation law prohibits court ordered USFSPA payments, if anyone will call for the question.

There is no difference between “retired pay” and “retirement pension.” Defined benefit pensions – generating a lifetime stream of benefits – are made by the Civil Service, by ERISA-based private pension plans, and by most State government plans, precisely as with the military plan. Some of those have converted to 401(k)-type plans; when they do so, there is no difference of any kind as to divisibility with spouses – only a change in what is to be divided. As to your follow-up question: It appears to be a non-sequitur. The spouse has just what the member has – an undivided one-half interest in the portion of the unvested benefits that accrued during marriage, for whatever value they have (and there is value, as they can be rolled into Civil Service or State government plans, or topped out by later reserve service). Spouses regularly accrue interests in assets that may or may not have any value – unvested retirements, speculative stocks, or other. The value of the thing, and the fact of accrual during marriage, are totally unrelated concepts; if one party has an interest in something accrued during marriage, whether it has any value or not, so does the other.

AFERS apportionment would only be discontinued if the court order specifically says it would end if the ex spouse remarries. If your court order states the apportionment stops at marriage, contact the Office of Personnel Management http://www.opm.gov/ Customer Services Group office at 1 (888) 767-6738 court order benefits branch for assistance and provide proof the ex spouse has remarried.

Editor’s note: Why no mention of USFSPA awareness / military divorce action survival training? Unit commanders agree it is essential; 50% of these tragedies are divorce related.

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This U.S. Army veteran survived not one but THREE IED attacks in Iraq. He suffers with both severe PTSD and TBI. He has so much body pain that he takes a cocktail of pain killers, and he doesn’t sleep - even with meds. Because of his TBI, he can’t even think rationally. He is fearful at every turn, and he can hardly even speak a coherent sentence.

This veteran and his wife asked the court to accommodate his severe disabilities, but they did nothing for him. His now-ex-wife left him when he returned from Iraq, primarily because of his inability to manage himself or his life with these disabilities. She left him, then went to court to get her share of his retirement. Problem is, because he is so-disabled, he has no disposable retirement pay to divide with her.

This hero was dragged into a family courtroom IN HANDCUFFS. He was denied a court-appointed attorney. The judge refused to allow his current wife to participate or speak for him. He had the book thrown at him, and the judge awarded his wife alimony in order to make up for the retainer pay that was eliminated pursuant to his disabilities. The court then entered an order forcing this man to pay his ex-wife’s attorney’s fees. It was that point he snapped.

He was then hauled off to jail, and it was in jail that he attempted to overdose on morphine. From there, he was taken to a psych ward and pinned down and medicated, to keep him from killing himself. That is where we are today.

Indemnification is a method courts use to circumvent the federal prohibition against diverting a veteran’s VA disability compensation. Las Vegas attorney Marshal Willick, a well-known proponent of indemnification, in his 2007 paper titled “Hitting the Jackpot in Pension Cases: Secrets to Getting the Retirement Share Your Client Deserves”, writes the following: “Cautious practitioners ensure that property settlement agreements and divorce decrees are so crafted as to allow a later reviewing court to transcend any kind of recharacterization of the benefits addressed, whether anticipated (or even conceived of) at the time of divorce, or not. The tools for doing so are explicit indemnification and constructive trust language, and explicit reservations of jurisdiction, either generally, or to award spousal support, or both.”

One of the most aggregious positions by reviewing courts is that veterans voluntarily agree to indemnify their former spouse. For example, in the Minnesota case (in RE Gatfield, 682 N.W.2d 632 (Minn. Ct. App. 2004)), the court writes:

“Neither the Supreme Court’s holding in Mansell nor the Uniformed Services Former Spouses Protection Act precludes a veteran from voluntarily entering into a contract whereby he or she agrees not to waive retirement pay in favor of disability benefits and to indemnify a former spouse for any loss the spouse might incur should the veteran choose to waive any portion of retirement pay” [emphasis mine].

Thus, from a reviewing court’s perspective, the disabled veteran here in Georgia (Tom Smith) apparently “voluntarily” agreed to this nonsense. I would argue that his recent attempts to kill himself over this matter says otherwise.

Quite frankly, the judge here in Muscogee County, Georgia has forced upon this severely disabled soldier a requirement to divide his disability compensation with his ex-wife (who, by the way left him when he returned from Iraq). The judge “repackaged” the disability by calling it “alimony”, as clearly the condition to pay alimony is based upon the disabled soldier’s receipt of disability compensation. Thus, this court has done indirectly what it cannot do directly. Sadly, we may unnecessarily lose a decorated combat-wounded veteran, all as a result of a family court judge abusing his discretion.

Congress clearly intends that VA disability compensation inure wholly to and only to the disabled veteran and his dependents. Once a divorce is final, the former spouse is no longer a part of the veteran’s family. So, neither should he or she share in any benefits of the community. An excellent description of this was written in a special-concurrence opinion in a 1970s Arizona appellate case, Flowers v. Flowers, 118 Ariz. 577 (1978).

“In my opinion, the holding that pure disability benefits, after divorce, are the separate property of the disabled party can be sustained on grounds other than their similarity to personal injury payment, that is, then are not the result of onerous title. Rather, workmen’s compensation benefits and service-connected disability payments are received, not as the result of past labors, and thus “earned”, but rather by society’s decision, through the legislative process, that work related injuries and their results are a societal responsibility, rather than an individual responsibility. In this sense they are acquired by lucrative title rather than onerous title and as such are separate property. During the term of the marriage, since these payments represent earning capacity and loss of wages (labor) they are properly considered community property. See Dawson v. McNaney, 71 Ariz. 79, 223 P.2d 907 (1950); Guerrero v. Guerrero, supra. However, once the marriage is terminated, the right of the community to share in the labors of the parties is likewise terminated and

Continued on Page 5
The last statement of retired Army Sergeant Tom Bell, one of the 18 veterans a day who commit suicide, provides a realistic picture and well documents the horror of men caught up in the divorce, domestic violence, and child “protection” industries today.

Sergeant Bell points out that roughly 36 million Americans, mostly men, have been arrested for “domestic violence” since 1984. And “domestic violence” is now the most common crime in Colorado, although criminal violence only rarely occurs. As a result of these insane laws and practices, Sergeant Bell estimates some 72 million men, women, and children have ended up homeless at some point in their lives over the last 25 years. While one might debate, as he does, the absolute accuracy of his estimates, his research is unchallengeable and there are no better data available. And with such numbers it is of little surprise to find our economy on the ropes with little prospect of recovery despite all the Washington propaganda.

While Sergeant Bell’s ten-year battle with the “justice” system ended in his self immolation at the door of the Keene County, New Hampshire, courthouse, it is to be hoped that his testament will bring some measure of relief to millions of others. But, as he notes, this country is currently run by idiots. So let us not imagine any turnaround by Fathers Day 2012 by which time another 1.5 million men will have been added to this tale of insanity.

VA disability compensation is not earned income - rather, it represents lost earning capacity. Title 38 CFR §4.1 states explicitly that “The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations.” See 38 CFR §4.1.

As a side note, had the Oklahoma State Legislature enacted SB 928 in the last session, this tragedy would not have taken place. I hope the OK legislators and attorneys who worked so hard to kill Sen. Steve Russell’s bill can now see what happens when you allow family court judges and attorneys to carve up an injured veteran.

Isn’t it time to end the war on men if our nation is to survive? As Erin Pizzey, who pioneered the shelter for battered women movement in 1971, famously stated many decades ago: ³Any country that has tried to create a political solution to human problems has ended up with concentration camps and gulags.² Is there any question that America, with the highest percentage of our population of any country on earth already in prison, now satisfies Ms. Pizzey’s prediction?

Charles E. Corry, Ph.D., F.G.S.A., President
Equal Justice Foundation http://effi.org/
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Georgia jurisdiction
Continued from page 4

Since one spouse has no right to the future earnings of the other after divorce, so no right should exist to payments representing those earnings, provided the entitlement to those payments is based on lucrative rather than onerous title. Being acquired by lucrative title, after divorce, I would hold such payments to be separate property.” [emphasis mine].

Mark W. Beres, Maj., USAF (ret).
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If NOT, please advise me: My objective is to assure all service personnel have an opportunity to read this reference guide before they marry and divorce.

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Thank you for your service,
Dennis Egge; President,
American Retirees Association BOD

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- In marriages six to 10 years long, alimony is capped at 60 percent of the length of the marriage.
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- In marriages lasting no longer than five years, “reimbursement alimony” would pay to compensate an ex-spouse who helped support the payer through school or job training.
- “Rehabilitative alimony” would limit payments for ex-spouses who are expected to reach economic independence.
- For marriages that last longer than five years, “transitional alimony” would help to equalize the payer and payee’s living standards after divorce.

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...recently enacted a wide reaching reform of their Alimony laws to prevent unbridled and extremely difficult to modify “lifetime” alimony payments. These changes will become effective in March, 2012. Massachusetts courts are already encouraging use of the new guidelines anticipating finalization after March 1st.

These reforms did not address military retirement pay property settlement issue. However, the possibility of using this new law to modify Massachusetts divorce decree(s) of military members is being researched, because the USFSPA does not prevent lifetime payments which may have been considered alimony.

The potential audience of interest are, retired and active duty personnel having finalized Massachusetts divorce decrees that ordered division of their military retired pay, using the USFSPA and Massachusetts case law as the authority. The important factors for this needed info are (1) the divorce must be only from a Massachusetts court and (2) must specify division of military retired pay under the

USFSPA and/or Mass state case law. Other divorce decree internal factors, such as DFAS involuntary allotment (aka garnishment) or direct member to former spouse payments, are not important to this issue.

This effort will also consider Massachusetts modifications of another state’s divorce decree. The member’s current residence can be in or outside Massachusetts. If you think your Massachusetts divorce decree may be a good candidate, and you wish it to be considered for this proposed effort, please express your interest at contactara@rocketmail.com, not later than 15 Feb 2012, stating you will allow release of your divorce decree info when appropriate. You are strongly encouraged to “spread the word”. Remember - military retired pay is not a pension. This is not an offer of legal advice or pro bono assistance, only a search for information.

Editor

ATTENTION SERVICE MEMBERS AND SPOUSES

Trying to make your way through the USFSPA maze? Need assistance in working with your attorney? Want to learn how to save money throughout your divorce process?

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