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STUDENT REPORT

DUAL COMPENSATION--NEED FOR CHANGE?

MAJOR DONALD H. HANSEN

88-1155

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TITLE DUAL COMPENSATION--NEED FOR CHANGE?

AUTHOR(S) MAJOR DONALD H. HANSEN, USAF

FACULTY ADVISOR LT COL RANDY BLAKELOCK, ACSC/3821 STUS-01

SPONSOR MAJOR HARVEY R. GREENBERG, HQ USAF/DPXE

**Submitted to the faculty in partial fulfillment of
requirements for graduation.**

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PREFACE

Under the Dual Compensation Act of 1964, retired regular officers who work in government jobs forfeit some of their retired pay while so employed. Since 1964, numerous exceptions have crept into the law, and the Comptroller General is often asked to rule on dual compensation applicability. Arguments for and against the dual-compensation concept continue today.

The purpose of this research project is to summarize the current law and its legislative history, assess the issue, and make recommendations, if appropriate, for changes to the law.

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—ABOUT THE AUTHOR—

Major Donald H. Hansen, USAF (BS, The Citadel) is currently a student at the Air Command and Staff College. Prior to his assignment at ACSC, he was assigned to the 4450th Tactical Group at Nellis AFB, Nevada. Previous assignments included flying F-18s with the Marines and F-4s at Torrejon AB, Spain and Spangdahlem AB, Germany.

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REPORT NUMBER 88-1155

AUTHOR(S) MAJOR DONALD H. HANSEN, USAF

TITLE DUAL COMPENSATION--NEED FOR CHANGE?

I. **Purpose:** To summarize the current dual compensation law, Public Law 88-448, and its legislative history, assess the issue, and make recommendations, if appropriate for changes to the law.

II. **Problem:** The Dual Compensation Act of 1964 represents the current philosophy on the dual compensation issue. This philosophy, now 24 years old, is increasingly being circumvented by individuals and governmental agencies who cannot work within the confines established in 1964. Additionally, PL 88-448 combines with 5 USC 5532 to place a sizeable financial penalty on the retired officer who works for the government.

III. **Data:** Information for the study came from public sources. Public Law 88-448 and its legislative history were the primary sources in determining the policy and intent of the 1964 Dual Compensation Act. Additional information was gathered from the various reports and hearings of the 88th and 95th Congress as they studied the dual compensation issue in "modernization" hearings.

The issues presented were at the discretion of the author. However, these issues are not new, as most surfaced during the modernization hearings and remain unsolved today. Data

CONTINUED

supporting the issues are a combination of opinion and facts from various sources.

IV. **Conclusions:** The Dual Compensation Act of 1964 is outdated. It fails to satisfy three of the four basic policy intents which the 88th Congress intended to implement with its passage. The three policy failures are: 1) It fails to act as a single, simple source of the law which is relatively simple to interpret and administer. 2) PL 88-448 combines with 5 USC 5532 to impose a sizeable financial penalty and thus hinders recruitment of retired military personnel who possess scarce skills into government programs. 3) The Dual Compensation Act does not provide for equitable treatment of all retired military personnel.

Because the law fails to satisfy these three intents it has become increasingly difficult to work within its constraints. As a result many government agencies and individuals are circumventing the law. The result is a clouded dual compensation policy which no one seems to fully understand.

V. **Recommendations:** A new dual compensation policy must be adopted by the Congress. The policy should be enacted into law and should contain a no exception clause which will prohibit individuals and government agencies from circumventing the law. Additionally, current statute 5 USC 5532 should be amended to state that a retired member of the uniformed services retirement pay cannot be considered as compensation for meeting Level V of the Executive Schedule Compensation limits. By modernizing its policy on dual compensation Congress can eliminate the inequities of the current system.

Chapter One

INTRODUCTION

DUAL COMPENSATION--NEED FOR CHANGE?

This research project centers on the subject of dual compensation. Without a doubt, this issue is addressed by every retiring regular officer who considers employment with the United States Government. Thus, this project will look first at the legislative history surrounding the issue and determine the intents and policies Congress desired upon passage of the current law. Next, this paper examines the current statute in effect, Public Law 88-448, entitled the Dual Compensation Act. Consisting of four sections or titles, each title is explained. Third, the project addresses the current problems surrounding the issue of dual compensation. Problem areas covered include: 1) effects of the law on government agencies, 2) the numerous exceptions to the current law, 3) the complexity of the law, 4) the effects of the Defense Officer Personnel Management Act (DOPMA) on the current law, and 5) does dual compensation make sense since military retirement was earned while a Civil Service salary provides compensation for the present job? Finally, the paper concludes with recommendations, based upon the previous discussion, which will simplify or enhance the dual compensation issue.

HISTORY

Dual compensation is an emotional issue which has received increasing attention in the preceding years. Dual compensation has become synonymous with the term double-dipping. Both terms are applied to anyone who draws a government salary and government retirement pay simultaneously. This issue, the legality of dual compensation, dates to the post Civil War period and has been debated by Congress ever since. Since the Civil War, there have been no less than 40 laws and in excess of 200 comptroller general cases concerning the dual compensation issue (11:4). Of those 40 laws, four of them are basic with government-wide application (11:4). An explanation of these four laws follows.

The act of July 31, 1894, which dealt with the dual employment or dual-office holding statute, is the earliest of

these basic laws (11:4). It stated that "no person may hold two offices if the salary attached to either is \$2,500 or more per annum" (11:4). The act applied to retired regular military officers who were considered to hold an office within the Federal Government because of their regular status. Retired reservists, on the other hand, were not considered to hold an office (11:4). Consequently, the 1894 act applied to the "employment in civilian positions of retired (regular) military officers and to the holding of two different civilian positions" (11:4).

The second act of 1916 applied to the holding of two civilian government positions. The law stated that "no person may receive two salaries when the combined rate exceeds the sum of \$2000 per annum" (11:4). This sum was even more restrictive than the basic act of 1894. The result was that many government agencies went to Congress to obtain special statutory exemptions from the act (11:5). By this time, many government salaries were in excess of \$2000 per annum and the retired regular officer was effectively prevented from employment within the Federal Government.

The third of the basic dual compensation acts passed in 1932. This act applied to regular officers and certain "temporary" officers who were retired for "non-combat" disability (11:5). This act, as amended in 1956, stated that regular officers could not receive retired pay if their combined salary from dual compensation, retired pay and government salary, exceeded \$10,000. It further stated that if the retired pay alone exceeded \$10,000 then the officer could choose either his retired pay or the salary of the civilian position. If his retired pay was less than \$10,000 then he could receive all of the civilian salary, but his retired pay would be adjusted to bring the combined sum within the \$10,000 limit (11:5). Officers who retired for disability "incurred in combat with an enemy of the United States or caused by an instrumentality of war in time of war," were granted exception to the \$10,000 limit (11:4-5). Retired reserve officers were subjected to this act. However, a series of Court of Claim decisions in 1954 exempted reserve officers by virtue of other legislation (11:5). Thus we have the foundation for the fourth and present act enacted by the 88th Congress.

The fourth act entitled the "Dual-Compensation Act" is the foundation upon which present enforcement of the dual compensation laws are enforced. The report continues by examining the intent of this law and then the law itself as contained in the Dual Compensation Act of 1964.

INTENT

The Dual Compensation Act (PL 88-448) was not enacted without controversy. The legislation itself represents over eight years

of "intensive studies and discussion within the executive branch, appropriate committees of the Congress, and representatives of employee, veterans, and retired military personnel organizations" (11:2). In fact, the Committee on Post Office and Civil Service held hearings on the issues of dual employment and dual compensation. Within the hearings all agencies involved with these issues testified. There were four major policy criteria which the Dual Compensation Act was intended to carry out. According to the Committee on Post office and Civil Service, these criteria are listed below (11:2).

1. The policy should be to codify all existing dual compensation and dual-employment laws into one law which will be relatively simple to interpret and administer and which will eliminate the hardships caused individuals as a result of inadvertent, good faith misunderstandings of the application of the law.
2. The policy should make it possible for the Government to recruit any retired military person who possesses scarce skills needed for government programs.
3. The policy should protect career civilian employees from advantages enjoyed by retired military personnel solely as a result of military services such as, the advantage of veterans preference in reductions in force enjoyed by most military retirees.
4. The policy should provide for equitable treatment of all retired military personnel, whether regular or reserve officer, or enlisted.

Three out of the four major policy criteria were embraced within the bill. The fourth policy criteria, equitable treatment of all retired military personnel, was adopted in part (11:2). The reasoning behind each of these policy criteria follows.

The first policy was to simplify and codify all existing dual compensation and dual-employment laws. By 1964 there were over 50 statutes and at least 200 separate comptroller general decisions relating to the employment of retired military personnel and the dual employment of civilian officers (11:4). The House Report 890 stated: "There were only a few experts in government [who] completely understand these laws," and that the "complexity of the statutes make economy of administration impossible" (11:5). In addition, the report stated:

From the standpoint of good administration alone a single, simplified dual-compensation law would save much of the time and money now spent in the executive branch in an attempt to administer and enforce the existing

collection of obsolete, complex, and now unrealistic statutes (11:5).

Clearly, there was a need to simplify the existing laws. The result was the Dual Compensation Act repealed existing statutes on dual compensation and dual employment and established itself as a single statute "setting forth clearly the Government's policy on dual compensation and dual employment" (11:2).

The second policy criteria was to make it possible for the Government to recruit any retired military person who had scarce skills the Government needed for its programs. These skills included scientists, engineers, administrators, medical officers and nurses, and many other skilled occupations. According to John W. Macy, then Chairman of US Civil Service Commission, this act would "help the Government to obtain the best qualified people available to fill certain of its hard-to-fill civilian positions" (11:16). Mr Macy continued by stating: "We can no longer afford to exclude from consideration retired military personnel who have the highly technical knowledge and skills which are in demand." Congress believed that this act would immediately benefit those agencies which dealt in high technology and/or higher educational levels such as National Aeronautics and Space Administration (NASA), the Veterans Administration (VA), and many research and development programs (11:6-7). The bottom line was "retired military personnel . . . constitute a useful source of scarce skills for civilian employment" (11:6). The intent was to make this manpower available. By eliminating the statutory restriction on employment imposed by Section 2 of the act of July 31, 1894, as amended (5 USC 62) on retired regular officers, Congress felt it adopted this policy.

The third policy intent of this act was to protect career civilian employees from advantages enjoyed by retired military. The issues involved were numerous but the two primary issues included the inclusion of service time for consideration in reduction of forces, computing for annual leave purposes, and favoritism on hiring. The committee report stated a need "to eliminate advantages enjoyed by retired military over career civilian personnel in reductions in force," and "counting military service for annual leave purposes" (11:2). In addition, a competitive exam was needed where practicable in "connection with the appointment of a retired member" to a civilian position. Protection of the civilian was embodied in Section 204 and 205 of Title II of the current act. The last policy criteria was equality.

The fourth and last policy criteria was for "equitable treatment of all retired military personnel" (11:2). This policy criteria was not adopted. Although the intent of the Eisenhower Administration policy was to treat equally all retired military personnel, regardless of whether regular or reserve officer, or

enlisted, the result is just the opposite. As was done in previous bills the regular officer was cited while retired reserved officers and enlisted men were exempted from the act. Clearly, the intent of Congress was that a distinction exists between the regular officer and his counterparts. This distinction is still in effect today. A look at the Dual Compensation Act and its meaning follows.

Chapter Two

DUAL COMPENSATION ACT

The Dual Compensation Act, passed by the 88th Congress, incorporated its guidance under four separate titles:

Title I--Definitions

Title II--Employment of Retired Members of Uniformed Services

Title III--Limitation on Dual Compensation From More Than One Civilian Office

Title IV--Miscellaneous Provision.

This section examines these titles to better understand how the act affects the military.

TITLE I

Title I defines the basic definitions required to enact the law. The act defines a retired member as: "A retired member of any uniformed services means a member or former member of any of the uniformed services who is entitled, under any provision of law, to retired, retirement, or retainer pay on account of his service as such a member" (5:556). Since the act dealt with employment within civilian offices, the act defined civilian office as:

A civilian office or position (including a temporary, part-time, or intermittent position) appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including each corporation owned or controlled by such Government and including non-appropriated fund instrumentalities under the jurisdiction of the armed forces) or in the municipal government of the District of Columbia (5:556).

Both definitions leave no doubt as to who the law applies to nor does there seem to be a question as to what constitutes a civilian office. The retired member even seems to include reserve officers and enlisted members. However, this is not the case as Title II emphasizes.

TITLE II

Title II of PL 88-448 entitled, "Employment of Retired Members of Uniformed Services," is the heart of the Dual Compensation Act and applies directly to the retired military member. Its main provisions and their effect on a military member follow.

Section 201(a) of Title II provides the specific guidance for employment compensation for a "retired officer of any regular component of the uniform service" (5:557-558). It states that a retired regular officer may receive the full salary of the civilian job which he holds; however, his retired pay will be reduced to the "first \$2000 of such pay, plus one-half of the remainder, if any" (5:552). Congress further stated that this \$2000 could be increased as necessary to reflect changes in the Consumer Price Index. Since 1963, this \$2000 figure has increased to \$7104.04. Therefore in this example, a lieutenant colonel who retires with \$24,000 a year in retirement pay and who accepts a civil service job will forfeit \$8447.98 of his retirement pay to work for the government.

\$24,000.00	Yearly retirement pay
-7,104.05	First \$2000 adjusted since 1963 for CPS
<u>16,895.95</u>	
x 0.50	One half of the remainder
<u>8,447.97</u>	
7,104.05	
<u>\$15,552.02</u>	Allowed to keep
\$24,000.00	Yearly retired pay
-15,552.02	Amount allowed to keep
<u>\$8,447.98</u>	Amount forfeited

This equates to over one-third of his earned benefits--retired pay.

Title II does give special consideration to individuals whose retirement is based upon a disability. Individuals whose retirement is based upon the following are not required to take a reduction in their retirement pay when working for the government:

1. A disability "resulting from injury of disease received in line of duty as a direct result of armed conflict" (5:558-560), or
2. A disability "caused by an instrumentality of war and incurred in line of duty during a period of war" (5:558-560).

Title II's additional exceptions to the law are based upon the needs of the government. As described in Section 201(c) exceptions are authorized as follows. First, exceptions are warranted on the "basis of special or emergency employment needs

which otherwise cannot be readily met" (5:558). The act directs the President of the Senate, the Speaker of the House of Representatives, and the Architect of the Capitol to provide for a means by which exceptions may be made to ensure the special or emergency employment needs of the government are met (5:559-560). Further, NASA is granted up to 30 exceptions at any time for "any individual in a scientific, engineering, or administrative position . . . whenever the Administrator determines that such exception is warranted on the basis of special or emergency employment needs which otherwise cannot be readily met" (5:560). However, the maximum number of exceptions at any time may not exceed 30. NASA is the only agency listed by name. Other agencies must petition the US Civil Service Commission or the President of the Senate, Speaker of the House of Representatives, and the Architect of the Capitol to acquire exceptions.

Section 202 and 203 of Title II address a veteran's active duty time in computation of several items while employed in a civil service position. First, Section 202 removes a veteran's Preferred Status as a preference employee under a civilian reduction in force; unless his retirement was based upon a disability resulting from an injury, disease, or instrumentality of war, occurred in the line of duty in armed conflict or during a period of war (11:10). Secondly, the act reduces the amount of military service that may be counted by employees to compute annual and sick leave entitlements and seniority when a civilian reduction-in-force is occurring. Essentially, the law states the military may count only the time served in the active Armed Forces during any war or in any campaign or expedition for which a campaign badge has been authorized in computation of entitlements in these three areas (11:10). These restrictions placed the professional civilian and the retired military member on equal footing in these areas. The remaining sections of Title II, Sections 204 and 205, establish safeguards for the civilian worker.

These safeguards ensure that consideration of retired military personnel for civil service positions are accomplished on an equitable and competitive basis (11:10). Essentially, these sections eliminated the so called "buddy system." This occurred when a position within the government was created or held open for a retiring military member (11:10). Congress established a 180 day waiting period for any retired military accepting employment within the Department of Defense (DOD). Waivers to this waiting period are specific and are defined in the law. The net result is a 6-month wait for employment within the DOD for retired members of the Services. Title III of the Dual Compensation Act is next.

TITLE III

Title III of PL 88-448 is entitled "Limitation on Dual Compensation From More Than One Civilian Office." This section of the bill deals completely with the employment of civilian personnel in more than one office. It states that "Civilian personnel shall not be entitled to receive basic compensation from more than one civilian office for more than an aggregate of 40 hours of work in any one calendar week" (11:561). There are further provisions within this title to allow for overtime payments and even an avenue for exceptions. The authorized exceptions are numerous and are addressed. Title III address no further issues. This brings up Title IV, the last part of the act.

TITLE IV

Title IV of the act is "Miscellaneous Provisions." This section incorporates specific amendments and changes to various other laws which make this act apply across the spectrum. It also encompasses a few special riders not pertaining to the subject of dual compensation.

This section has covered the specific enactments of the law. Title II of the act is the heart of the law as it pertains to retired military members. Title II emphasizes that this act applies only to regular retired officers. Enlisted and retired reserve officers are not affected unless they attempt to hold two civilian government jobs and then they fall under Title III. In the next chapter, current issues concerning the law are discussed.

Chapter Three

ISSUES

The issues surrounding the current law are not new. In fact, most of these issues were raised at the "modernization" hearings prior to enactment of PL 88-448 in 1964 and again in 1977-1978 when Congress readdressed the issue of total compensation. The issues presented are: 1) effects of the law on government agencies, 2) the numerous exceptions to the current law, 3) the complexity of the law, 4) the effects of DOPMA on the law, and 5) does dual compensation limitations make sense? The effects of PL 88-448 on selected government agencies is first.

EFFECTS

One of the primary intents of PL 88-448 was to "make it possible for Government to recruit any retired military person who possesses scarce skills needed for government programs" (11:2). Over the years the law has done just the opposite. Certainly, as the cost of living and civilian salaries increased, fewer retired regular officers who possess the scarce skills needed within government programs, are willing to forfeit a portion of their retired pay and benefits to serve the Government. The result is a shortage of the best qualified people available within some of our most technical and highly visible programs. For examples, agencies as the Veterans Administration (VA), NASA, and the Uniformed Services and University of the Health Sciences (USUHS) have petitioned for relief from the salary reduction status within PL 88-448 and 5 USC 5532.

NASA in its petition to the Speaker of the House and President of the Senate stated that relief from these statutes "will allow NASA to attract highly qualified and competent individuals who otherwise would not work for the Federal Government because of the lower salary" (13:1). Thus, under the current statutes, some agencies cannot attract the highly qualified individuals needed to provide the level of competency required within their respective agencies. The result is a decrease in the quality of their respective programs and/or an increase in their program costs as these agencies contract the work to civilian firms. Other effects upon government agencies include these points.

Agencies which require a certain skill level find that they are forced to initiate training programs to bring their lesser qualified employees up to the competency level required. This delays productivity and increases operating costs. In addition, agencies simply apply for relief from current statutes. If granted, then a two-tier salary scale emerges within the agency. This leads to a decrease in morale among the lesser paid employees and can lead to resignations and thus a continued or increased shortage of qualified personnel. If relief is not granted, then upgrading of civilian jobs to attract those scarce skills becomes necessary. This also leads to increased operating costs through higher salaries. If upgrading of civilian jobs does not attract the required personnel, then the agency will again petition Congress for exemptions to the current statutes.

EXEMPTIONS

Exemptions to current statutes have become necessary tools for acquiring qualified individuals. For example, the Veterans Administration requested exemptions and were authorized them in passage of PL 98-528. This bill authorized the Veterans Administrator to "waive the mandatory reductions in military retirement pay of Federal employees . . .if necessary to recruit a well-qualified doctor of medicine or osteopathy . . .which results from a severe shortage of well-qualified candidates" (8:4415). In addition, NASA and the USUHS have requested legislative amendments which would enable each agency to perform its functions (13:1; 14:1). NASA in a 1987 request for relief asked for legislation "to give the Administrator of NASA a two-year appointment authority to appoint up to 30 individuals (retired military and/or civilian employees) who receive their Federal salary without automatic reductions to their Federal or military retirement benefits" (13:1). This waiver is in addition to the already authorized 30 exemptions granted specifically to NASA by PL 88-448.

The USUHS request was contained in The Uniformed Services University of the Health Sciences Employment Act of 1986 (14). Within the act was a request to authorize the USUHS board the authority to authorize exceptions to the compensation restrictions in Section 5532 of Title 5 "to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions which otherwise cannot be met" (14). Other agencies have also petitioned the government for relief as authorized under the statutes within PL 88-448. Exemptions authorized by PL 88-448 include school teachers within the District of Columbia and employees of the Tennessee Valley Authority (11:12). Certainly, there have been many other exemption requests since 1964 which have not been successful. However, the largest exemption within the law is that the Dual Compensation Act does not apply to all military

retirees equally. Reserve officers and enlisted personnel are not subject to its statutes (5:557).

The numerous exemptions authorized within the US Codes have violated the underlying policy criteria set forth by the 88th Congress, "to codify all existing dual compensation and dual-employment laws into one law which will be relatively simple to interpret and administer" (11:2). The 1964 Act is rapidly being overcome. It no longer provides the guidance and flexibility to cope with governmental needs. An act so riddled with exceptions has certainly outlived its usefulness. As the act is circumvented the complexity of the dual compensation issue rises.

COMPLEXITY

The policy of the 88th Congress to simplify the dual compensation statutes has not occurred. Since 1964 the issue has been further clouded by enforcement of the Executive Level V cap on combined military retired pay plus civil service pay, and the numerous exemptions requested by various agencies such as the VA, NASA, and the USUHS. There is no single source document or policy by which a prospective retiree or employer may consult for guidance. Additionally, since 1964 there have been at least 69 comptroller general cases requiring decisions on the dual compensation issue. Each of these cases was unique and interpreted the Dual Compensation Act in a manner to suit those prevailing circumstances. Clearly, if the 1964 Act was a single, simple source of the law, these decisions would not be needed. The complexity of the subject continues to increase yearly as governmental agencies are granted exemptions. Certainly, there are few, if any, experts in government who completely understand the current situation and who can render decisions on appointments and other matters involving these laws and cases. Without a simplistic, common sense approach to the problem, the comptroller general will continue to pass judgments and cloud the issue. Although the law is only 24 years old, it has failed to be "relatively simple to interpret and administer" (11:2). A look at the Defense Officer Personnel Management Act and its effect on the dual compensation issue is next.

DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

With passage of PL 96-513 on 12 December 1980 Congress intended that all career, active-duty officers would become regular officers (6:6336). By directing that all career officers be incorporated into the regular force no later than their 11th year of service, Congress has accomplished its goal (6:6355). The intent behind this measure was two-fold.

First, Congress felt that the anomaly that a retired reserve officer could work for the Federal Government without a reduction in his retired pay should be corrected (6:6344). By requiring all career officers to be regular force Congress eliminated this anomaly. Secondly, by creating an all-regular force Congress felt it was partially adopting the policy of the 88th Congress that a dual compensation policy "should provide for equitable treatment of all required military personnel, Regular or Reserve, officer or enlisted" (11:2; 6:6344). DOPMA fails to address the enlisted issue.

DOPMA has succeeded in eliminating the distinction between regular and reserve officers. However, DOPMA has also helped eliminate a pool of experienced personnel who once considered employment within the Federal Government after retirement. Many highly qualified retired officers cannot afford the financial penalty and thus fail to consider employment within the Federal Government after retirement. It appears that in attempting to provide some measure of equality Congress may have actually hindered its ability to "recruit any retired military person who possesses scarce skills needed for Government programs" (11:2). Clearly, the VA, USUHS, and NASA have experienced recruitment problems. However, the true effect of DOPMA may not be felt for a number of years when the current retired, reserve officers retire from federal service, and the Government cannot attract the highly qualified replacement needed for an ever-increasing technical society. The last issue to examine is the treatment of retirement pay.

RETIREMENT PAY

The issue surrounding the dual compensation battle is that the Government, viewed as an employer, should not dual compensate or overcompensate an individual while that individual is employed by the Government. For example, a retired officer who receives his retirement pay while receiving salary for a civil service position is considered dual compensated. In addition, if that individual receives more than \$72,500-CPI yearly from these two sources of income, then he is considered overcompensated.

To ensure an individual is not overcompensated Congress passed PL 95-454 which states payment over this amount must be forfeited to the US Treasury (3:698). This statute, 5 USC 5532, combine with PL 88-448 to place a sizeable financial penalty on the retired officer who works for the Government. Now not only must he forfeit up to one-third of his retired pay, he may receive the full authorized compensation for his current job only if his retirement check plus his salary check do not exceed the Level V limits. Thus, the lieutenant colonel who is allowed to keep only \$15,552 of his retirement pay must realize that 21% of his earning potential is eroded (\$15,552 divided by \$72,500 =

21%) and that his maximum salary from the government job he performs cannot exceed \$56,948 (\$72,500 - \$15,552 = \$56,948). Should retirement pay be considered as compensation?

Logically, retired pay should not be considered as compensation but should be viewed as deferred compensation for a job previously performed. Congress itself has recognized that retired pay is earned income for services rendered (4:15; 2:43). According to Commander John Wanamaker, Legislative Council to the Retired Officers Association in 1977, a military member

. . . agrees to risk his life under unpredictable circumstances; he forfeits certain Constitutional privileges and civil rights under restraints imposed by military discipline; he is subjected to frequent moves and family separations; he is unable to accumulate an estate or develop an equity in a permanent home; and his work hours and conditions of work are neither prescribed nor predictable (3:31).

In addition, one must consider that a military member is not granted tenure for his years of service. He is subject to an up or out promotion system until he reaches 20 years of service. Although the current figure is unknown, as of 1977 only 10% of military people ever reach retirement (3:31).

For all these reasons retirement pay is justified as an earned benefit for past services and should be paid in full. Just as an individual is entitled to his full retirement benefits he is also entitled to the full compensation for any job he is currently performing. A study submitted by the Subcommittee on National Policy Machinery in 1955 had this to say with respect to dual compensation laws: "These statutes purport to keep a retired officer from drawing two Government salaries. But actually, the Government checks involved are very different. One is a salary check. The other is for retirement benefits earned over a 20- or 30-year career in the Armed Forces" (4:44).

Clearly, retired pay is an earned benefit. To treat it as less is simply unfair.

SUMMARY

The issues presented here are the immediate visible issues surrounding the dual compensation battle. A complete study would require the cooperation of all government agencies and reams of paper. However, these issues would slowly fade if Congress would reassess their current policy and incorporate the changes recommended in the next chapter.

Chapter Four

RECOMMENDATIONS

Prior to passage of the 1964 Dual Compensation Act, Congress conducted over eight years of intensive study and discussion (11:2). With an eye on revising the statutes, Congress felt that four underlying policies should be incorporated within a dual compensation act. Those four policies are: 1) to facilitate simplicity and ease of interpretation, 2) to increase the ability of government to recruit any retired military person who possesses scarce skills needed for government programs, 3) to protect the career civilian from advantages enjoyed by the retired military, and 4) to provide for equitable treatment of all retired military personnel (11:2). Therefore, any recommendations should embrace these policies.

SIMPLICITY

To ensure ease of interpretation and simplicity Congress needs to reassess the issue of dual compensation. After a congressional policy has been adopted, Congress must combine this policy with current exceptions and enact a new, single, simple dual compensation act. Within this act should be a section which forbids any exceptions to the law. Precedent for a no exception clause was established in 1978 when the Subcommittee for the Committee on Post Office and Civil Service advocated a no exception clause to the 95th Congress when it considered dual compensation legislation (4:8). However, prior to establishing a statute with a no exception clause, Congress must ensure that a sound and equitable policy is contained within the statute and that all governmental agencies can live within its framework today and in the future.

RECRUITMENT

To better enable government agencies such as VA, NASA, and the USHUS to attract the scarce skills needed, an overall new policy on dual compensation is warranted. First, Congress must formally recognize that retirement pay is not compensation for any job presently performed but is an earned benefit for past services. As such, retirement pay must be paid in full to any individual regardless of the individual's current employment status. Second, 5 USC 5532 should be amended to state that a

retired member of the uniformed services' retirement pay will not be considered as compensation for meeting Level V of the Executive Schedule Compensation limits. Compensation received for the current employed position must be the only basis for Level V limits of the Executive Schedule. These two actions combined will eliminate the financial penalty associated with government employment after retirement and encourage the highly skilled to consider government employment once out of uniform.

CIVILIAN PROTECTION

Protection of the career civilian was accomplished with passage of the Dual Compensation Act in 1964. Therefore, the guidelines established in Title II of the Dual Compensation Act should be continued in any revision.

EQUALITY

Equality of treatment of all retired military personnel, whether Regular or Reserve, officer or enlisted, must be adopted in full. Any future statute must contain the clause that it "applies to any retired military personnel, whether Regular or Reserve, officer or enlisted." There appears to be no other method to ensure that equitable treatment is afforded to all military personnel.

SUMMARY

This chapter presented recommendations which embrace the legislative intent explained in Chapter One. There can be little argument with a law which incorporates simplicity, fairness, and equality within its statutes. By revising the current statutes encompassing the dual compensation issue and combining them into one complete act, with the recommendations presented, a simpler, fairer, and more equitable law will emerge--a law which both employer and employee can live with harmoniously.

CONCLUSION

The focus of this project was to examine the issue of dual compensation. From the legislative history the intents and policies of Congress were examined. Then Public Law 88-448 was analyzed and its effect on a retired regular officer shown. Highlighted were the effects of five of the most important issues associated with the law: 1) effects of PL 88-448 on government agencies, 2) the numerous exceptions to the current law, 3) the complexity of the law, 4) the effects of DOPMA, and 5) does the present dual compensation policy make sense? Finally,

recommendations to simplify administration and provide more equitable treatment for all retirees yet adhere to the legislative intent were presented.

Clearly, this subject is so complex that this paper only scratches the surface of the problem. However, the issue affects every retiring officer considering employment with the Government and is also directly affecting the ability of government agencies to accomplish their assigned tasks. It is time for Congress to reassess and modernize its policy on dual compensation. It is the hope of the author that this project will stir the pot and provide a foundation for future study of the dual compensation issue.

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