



Department of Defense
INSTRUCTION

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AD-A270 338



ASD(FM&P)

SUBJECT: Eligibility of Regular and Reserve Personnel for Separation Pay

- References:
- (a) DoD Directive 1332.29, "Eligibility of Certain Regular and Reserve Personnel for Separation Pay Upon Involuntary Discharge or Release from Active Duty," July 20, 1985 (canceled)
 - (b) Deputy Secretary of Defense Memorandum, "Delegation of Authority Relating to Separation Pay," June 15, 1991
 - (c) Section 501 of Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991," November 5, 1990
 - (d) Title 10, United States Code
 - (e) through (j), see enclosure 1

A. REISSUANCE AND PURPOSE

This Instruction:

1. Reissues reference (a) under authorities delegated in reference (b).
2. Implements legislative changes (reference (c)) to reference (d) and updates policy, procedures, and responsibilities for determining eligibility for separation pay for Regular and Reserve members who are involuntarily separated from active duty (AD).

B. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

C. POLICY AND PROCEDURES

1. Full Separation Pay (Nondisability). Full payment of nondisability separation pay, computed as provided in subsection C.3., below, is authorized to members of the Regular and Reserve components involuntarily separated from AD who meet each of following four conditions:

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a. The Service member meets one of the following criteria for active service:

(1) The member is on AD or full-time National Guard duty and has completed at least 6 years, but fewer than 20 years, of active service. For Reserve members not on the AD list when separated, 6 years of continuous AD or full-time National Guard duty must have preceded immediately before such separation. A period of AD is continuous if any break in military service does not exceed 30 days.

(2) The member (other than a regular enlisted member) was on AD or full-time National Guard duty on November 5, 1990, and on that date had 5 or more, but less than 6, years of active service. For Reserve members not on the AD list when separated, 5 years of continuous AD or full-time National Guard duty must have preceded immediately before such separation. A period of AD is continuous if any break in active service does not exceed 30 days.

(3) The member is a Regular officer, commissioned or warrant, who is being separated under Chapter 36 of 10 U.S.C. (except under Section 630(1)(A) or 643 of such Chapter) or under Section 564 or 6383 of 10 U.S.C. (reference (d)) and has completed at least 5 years, but fewer than 20 years of active service.

b. The Service member's separation is characterized as "Honorable" as defined in subparagraph C.2.b.(1) of Part 2, enclosure 3, of DoD Directive 1332.14 (reference (e)), and none of the conditions in subsection C.4., below, apply.

c. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on AD or full-time National Guard duty under one of the following specific conditions:

(1) The member is fully qualified for retention but is denied reenlistment or continuation by the Military Service concerned. This includes a Service member who is eligible for promotion as established by the Secretary of the Military Department concerned, but is denied reenlistment or continuation on AD by the Military Service concerned under established promotion or high year of tenure policies.

(2) The member is fully qualified for retention and is being involuntarily separated under a reduction in force by authority designated by the Secretary of the Military Department concerned as authorized under 10 U.S.C (reference (d)).

b. The Service member's separation is characterized as "Honorable" or "General" as defined in paragraph C.2.b. of Part 2, enclosure 3, of DoD Directive 1332.14 (reference (e)), and none of the conditions in subsection C.4., below, apply.

c. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on AD or full-time National Guard duty under one of the following specific conditions:

(1) The member is not fully qualified for retention and is denied reenlistment or continuation by the Military Service concerned as provided for in reference (e) or DoD Directive 1332.30 (reference (f)) under any of the following conditions:

- (a) Expiration of Service obligation.
- (b) Selected changes in Service obligation.
- (c) Convenience of the Government.
- (d) Homosexuality.
- (e) Drug abuse rehabilitation failure.
- (f) Alcohol abuse rehabilitation failure.
- (g) Security.

(2) The member is being separated under a Service-specific program established as a half payment level by the Secretary of the Military Department concerned, as provided for in section D., below.

(3) The member, having been denied reenlistment or continuation on AD or full-time National Guard duty by the Military Service concerned under subparagraphs C.2.c.(1) and (2), above, accepts an earlier separation from AD.

d. The Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve as provided for in paragraph C.1.d., above.

3. Computation of Active Service and Separation Pay. Separation pay for Service members eligible for full payment shall be computed at 10 percent of 12 times the amount of monthly basic pay to which entitled at the time of separation from AD times the number of years and fractions of a year of active service when separated. Separation

pay for Service members eligible for half payment shall be computed at one half times what the full payment would have been. Active service time shall be computed as follows:

a. Qualifying years, except as noted in paragraph C.1.a., above, do not have to be continuous; however, the last phase of the qualifying term must end immediately before the separation from AD occurs.

b. Compute fractions of years in the following manner: Count each full month of military service that is in addition to the number of full years of active service as one-twelfth of a year. Disregard any remaining fractional part of a month.

c. Periods for which a Service member previously has received separation pay, severance pay, or readjustment pay may be counted for eligibility purposes (to ensure the member meets the minimum required years of AD), but may not be used in the multiplier to determine the amount of separation pay for a subsequent separation.

d. Count periods of active military service in a Regular or Reserve component. Include AD for training performed.

e. Do not include periods of absence without leave, confinement time awaiting trial that results in conviction, confinement time while serving a court martial sentence, and time lost while not in the line of duty. Count time served to make good lost time.

f. Do not include service as a cadet or midshipman while in a service academy or a Reserve officer training program.

4. Limitations on Eligibility for Separation Pay. Service members separated under the following circumstances are not eligible for separation pay:

a. The member is separated from AD at the member's own request. The following examples shall be considered to be a separation at the member's own request:

(1) A member who declines training that the Military Service offers to qualify for a new skill or rating as a precondition to reenlistment or continuation on AD.

(2) A member who requests separation as provided for in DoD Directives 1332.14 and 1332.30 (references (e) and (f)) or under

regulations established by the Secretary of the Military Department concerned.

(3) The member is a Reserve officer who declines a Regular appointment if offered at the mandatory integration point, when an all-Regular career force program is implemented by the Secretary concerned.

b. The member is separated from AD during an initial term of enlistment or an initial period of obligated service. The initial term of enlistment or initial period of obligated service is the active service obligation that the member incurred upon initial enlistment or upon enrollment in a commissioning program. This limitation also applies to a member who desires to reenlist or continue at the conclusion of the initial term of enlistment or an initial period of obligation and is denied by the Service concerned.

c. The member is released from AD for training or released from full-time National Guard for training.

d. The member is immediately eligible upon separation for retired or retainer pay based upon his or her military service.

e. The member is a warrant officer whose appointment is terminated and who then elects to enlist.

f. The member is separated as a result of execution of a court-martial sentence.

g. The member is being dropped from the rolls of the Military Service concerned.

h. The member is being separated under other than honorable conditions.

i. The member is an enlisted member who is separated for unsatisfactory performance or misconduct as specified in DoD Directive 1332.14 (reference (e)).

j. The member is an officer who is separated for substandard performance or acts of misconduct or moral or professional dereliction under Section 1166 or 1186 of 10 U.S.C. (reference (d)) or DoD Directive 1332.30 (reference (f)), except when half pay is allowed in subsection C.2., above.

k. The member is separated under a Service-specific program established as a no payment level by the Secretary concerned, as provided for in section D., below.

1. Determination in extraordinary cases by the Secretary concerned that the conditions under which the member is separated do not warrant separation payment. It is intended that this discretionary authority to deny payment be used sparingly. This authority is not to be delegated.

5. Saving Provisions of Law for Readjustment Pay, Severance Pay (Other than Disability), and Separation Pay (Other than Disability)

a. Service members on AD (other than for training) on September 14, 1981, who are involuntarily separated from AD under any provision of 10 U.S.C. (reference (d)), in effect after that date, shall be entitled to receive any readjustment or severance pay to which they would have been entitled under laws and directives issued by the Military Departments before September 15, 1981. Service members entitled to readjustment or severance pay under this paragraph and separation pay under subsection C.1. or C.2., above, may not receive both, but shall select the one they will receive. If no selection is made, Service members shall receive the amount that is more favorable to them.

b. Service members (including Regular enlisted members) on AD (other than for training) on November 5, 1990, who were involuntarily separated from AD before the effective date of this Instruction, shall be entitled to receive any separation pay to which they are entitled to under reference (d), as amended by Pub. L. No. 101-510, Section 501 (reference (c)), in accordance with the policies and procedures in DoD Directive 1332.29 (reference (a)) modified as follows:

(1) For the purposes of paragraphs C.1.a. and C.1.b. of reference (a), and subject to the conditions and limitations otherwise stated in reference (a), regular enlisted members who are separated involuntarily or as the result of denial of reenlistment after having completed 6 or more but fewer than 20 years of AD shall receive separation pay.

(2) The limitations concerning the maximum amount of separation pay that members may receive as stated in paragraphs C.1.a. and C.1.b. and subsection C.2. of reference (a) shall not apply.

(3) In addition to the disqualifying circumstances enumerated in subsection C.4. of reference (a), a member is not eligible for a separation payment if:

(a) The member does not meet one of the criteria for active service in paragraph C.1.a., above.

(b) The member has not entered into a written agreement with the Military Service concerned to serve in the Ready Reserve of a Reserve component of the Armed Forces for a period of not less than 3 years following the separation from AD under the same requirements and procedures stated in paragraph C.2.d., above.

(c) The member is separated from AD during an initial term of enlistment or an initial period of obligated service. "Initial term of enlistment" and "initial period of obligated service" shall have the same meaning as in paragraph C.4.b., above.

6. Repayment of Separation Pay, Severance Pay, or Readjustment Pay

a. Service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any provision of law based on service in the Armed Forces, and who subsequently qualify under 10 U.S.C. (reference (d)) or 14 U.S.C. (reference (g)) for retired or retainer pay shall have deducted an amount equal to the total amount of separation pay, severance pay, and readjustment pay. This amount will be recouped from each payment of this retired or retainer pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

EXAMPLE:

Individual separated with 10 years, 2 months of active military service, and paid \$38,289.33 separation pay; member subsequently retires with 20 years of active military service:

years service at separation = 10.167
years service at retirement = 20.000 = .508 (multiplier)

gross monthly retired pay	\$1,800.00
<u>times multiplier</u>	<u>x .508</u>
equals monthly recoupment rate	\$ 914.40

The monthly recoupment rate would be recomputed when gross retired pay is increased for cost-of-living adjustments. Only the difference between the recoupment and gross retired pay (\$885.60) is taxable.

b. Service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any law based on active military service, and become eligible for disability compensation administered by the Department of Veterans Affairs shall

have deducted from such disability compensation an amount equal to the total amount of separation pay, severance pay, or readjustment pay received. However, such reduction shall not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of AD than the period of AD for which the separation pay, severance pay, or readjustment pay was received.

c. Notwithstanding paragraphs C.6.a. and C.6.b., above, Service members who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, become entitled to retired or retainer pay under 10 U.S.C. (reference (d)) or 14 U.S.C. (reference (g)) shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981 (Pub. L. No. 97-22, Section 638 (reference (h))).

D. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel):

a. Shall monitor and evaluate the implementation of this policy.

b. Shall modify or reissue this Instruction, as required, under authorities delegated in the Deputy Secretary of Defense Memorandum (reference (b)).

2. The Comptroller of the Department of Defense shall prescribe implementing instructions (DoD Military Pay and Allowances Entitlements Manual (reference (i))) consistent with this Instruction.

3. The Secretaries of the Military Departments shall:

a. Establish with the concurrence of the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) separation payment levels consistent with the policies of this Instruction for Service-specific programs as provided for in DoD Directives 1332.14, 1332.30, and 1304.20 (references (e), (f), and (j)).

b. Prescribe implementing instructions within 180 days of the effective date of this Instruction that are consistent with the policies in this Instruction.

c. Provide an annual report to the ASD(FM&P) within 60 days of the end of each fiscal year that summarizes:

REFERENCES, continued

- (e) DoD Directive 1332.14, "Enlisted Administrative Separations,"
January 28, 1982
- (f) DoD Directive 1332.30, "Separation of Regular Commissioned
Officers for Cause," February 12, 1986
- (g) Title 14, United States Code
- (h) Public Law 97-22, "Defense Officer Personnel Management Act
Technical Corrections Act," July 10, 1981
- (i) Department of Defense Military Pay and Allowances Entitlements
Manual, March 9, 1987
- (j) DoD Directive 1304.20, "Enlisted Personnel Management System,"
December 19, 1984

SUPPLEMENTARY

INFORMATION

DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
1332.29, Change 1	February 23, 1996	1000 Series

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ATTACHMENTS

None

ERRATA

INSTRUCTIONS FOR RECIPIENTS

The following pen changes to DoD Instruction 1332.29, "Eligibility of Regular and Reserve Personnel for Separation Pay," June 20, 1991, are authorized:

PEN CHANGES

Page 4, paragraph C.2.c., line 4. Change "under one of the following specific conditions:" to ", or the service member is being separated instead of board action as provided in DoD Directive 1332.30 (reference (f)), under one of the following specific conditions:"

Page 5, subparagraph C.4.a.(2), line 2. Change "and 1332.30 (references (e) and (f))" to "(reference (e))"

Page 7, paragraph C.5.a., line 3. After "date," insert "or are being separated instead of board action as provided in DoD Directive 1332.30 (reference(f)), under one of the specific conditions in paragraph C.2.c., above,"

EFFECTIVE DATE

The above changes are effective immediately.



B. C. WHITEHEAD
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT