

## Section C. Adjusting Department of Veterans Affairs (VA) Benefits Based on a Veteran's Receipt of Active Service Pay

### Overview

Notifying the VA when a servicemember returns to active duty and is still receiving veterans affairs disability payments is optional. It is the VA's responsibility to catch these overpayments and to adjust future payments accordingly.

VA typically learns a Veteran has received drill pay through the data match described in M21-1, Part III, Subpart v, 4.C.1.c. However, a Veteran **may**, on his/her own initiative, notify VA of his/her receipt (or *anticipated* receipt) of drill pay, and whether he/she chooses to waive VA benefits or drill pay, by completing and submitting *VA Form 21-8951-2, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances*

---

**In This Section** This section contains the following topics:

Topic	Topic Name
1	General Information on Waivers of VA Benefits to Receive Drill Pay
2	Determining the Number of Days of VA Benefits a Veteran Must Waive
3	Processing <i>VA Form 21-8951, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances</i> , and Handling a Veteran's Failure to Return the Form
4	Creating a Withholding to Offset a Veteran's Receipt of Drill Pay
5	Restoring Benefits VA Previously Withheld to Offset a Veteran's Receipt of Drill Pay
6	Award Adjustments Necessitated by a Veteran's Return to and Discharge From Active Duty
7	Examples of Award Adjustments

---

# 1. General Information on Waivers of VA Benefits to Receive Drill Pay

---

**Introduction** This topic contains general information on waivers of VA benefits to receive drill pay, including

- definition of *drill pay*
  - prohibition against concurrent receipt of drill pay and VA benefits
  - process for identifying Veterans who concurrently received drill pay and VA benefits
  - information contained on *VA Form 21-8951, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances*, from the Hines Information Technology Center (ITC)
  - options a Veteran has when completing *VA Form 21-8951*, and
  - use of *VA Form 21-8951-2*.
- 

**Change Date** April 20, 2015

---

**a. Definition: Drill Pay** The term *drill pay* refers to the monetary benefits a reservist or member of the National Guard receives for performing active or inactive duty training.

*VA Form 21-8951, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances*, which is discussed elsewhere in this topic, uses the terms *military pay* and *training pay* instead of *drill pay*.

---

**b. Prohibition Against Concurrent Receipt of Drill Pay and VA Benefits** [10 U.S.C. 12316](#) and [38 U.S.C. 5304\(c\)](#) prohibit the concurrent receipt of drill pay and Department of Veterans Affairs (VA) disability compensation or pension.

- Veterans who perform active or inactive duty training must choose the benefit they prefer and waive the other.
- Most Veterans choose to receive drill pay instead of disability compensation or pension because drill pay is typically the greater benefit. These Veterans must waive their VA benefits for the same number of days they received drill pay.
- Concurrent receipt of VA benefits and the *subsistence allowance* that a Veteran in the Senior Reserve Officers' Training Corps (SROTC) might receive is *not* prohibited. Only concurrent receipt of VA benefits and pay the Veteran receives for active or inactive duty training in the SROTC is prohibited.

**Exception:** According to [VAOPGCPREC 10-90](#), a reservist or member of the National Guard *may* concurrently receive VA benefits and the “temporary disability compensation” described in [37 U.S.C. 204\(g\), \(h\) and \(i\)](#).

**References:** For more information about the prohibition against concurrent receipt of active service pay and VA compensation or pension, see

- [38 CFR 3.654](#), and
- [38 CFR 3.700\(a\)\(1\)](#).

**c. Process for Identifying Veterans Who Concurrently Received Drill Pay and VA Benefits**

The table below describes how VA identifies Veterans who concurrently received drill pay and VA benefits:

Stage	Description
1	<p>At the end of each fiscal year, the Defense Manpower Data Center (DMDC) sends an electronic file to the Hines Information Technology Center (ITC) that identifies Veterans who received both drill pay and VA disability compensation or pension during that fiscal year.</p> <p><i>Note:</i> If an interruption occurs in obtaining this data from DMDC, the file might include drill pay data for one or more prior years.</p>
2	<p>Before processing the file, the Hines ITC updates the corporate record of each Veteran to reflect the number of days he/she received drill pay during the prior fiscal year.</p> <p><i>Notes:</i></p> <ul style="list-style-type: none"> <li>● The update is visible in the DRILL PAY PROFILE field of the DRILL PAY tab under the AWARD ADJUSTMENTS screen.</li> <li>● If DMDC sends drill pay data for multiple fiscal years, only the data pertaining to the most recent fiscal year appears in the DRILL PAY PROFILE field.</li> </ul> <p><i>Reference:</i> For more information about viewing drill pay data in VETSNET Awards, see the <a href="#">VETSNET Awards Handbook</a>.</p>
3	<p>The Hines ITC</p> <ul style="list-style-type: none"> <li>● generates a <i>VA Form 21-8951</i> for each Veteran identified in the electronic file</li> <li>● sends the form to each Veteran for completion</li> <li>● uploads a copy of the form into each Veteran’s electronic claims folder (eFolder), and</li> </ul>

	<ul style="list-style-type: none"> <li>• establishes a diary in each Veteran’s corporate record to control for return of the form within 60 days.</li> </ul>
--	--

**Note:** VA considered the completion of *VA Form 21-8951* a one-time waiver of drill pay from 1989 until 1995, when it began requiring Veterans to complete the form annually.

**References:** For more information about

- data the Hines ITC provides for each Veteran on *VA Form 21-8951*, see M21-1, Part III, Subpart v, 4.C.1.d, and
- processing *VA Form 21-8951*, see M21-1, Part III, Subpart v, 4.C.3.

**d. Information Contained on VA Form 21-8951 From the Hines ITC**

The *VA Form 21-8951* that the Hines ITC generates

- informs each Veteran
  - DMDC has identified him/her as a recipient of drill pay, and
  - the law prohibits the concurrent payment of drill pay and VA disability compensation or pension, and
- displays
  - the Veteran’s name, address, contact information, and file number and/or Social Security number (SSN)
  - the return address of the regional office (RO) of jurisdiction (ROJ), and
  - the number of days for which the Veteran received drill pay during the specified fiscal year.

**e. Options a Veteran Has When Completing VA Form 21-8951**

The table below describes the various options a Veteran has when completing *VA Form 21-8951*:

Option	Description
1	Check the box next to the sentence that reads: <i>I elect to waive VA benefits for the days indicated in order to retain my training pay.</i>
2	<ul style="list-style-type: none"> <li>• Declare that the number of training days the Hines ITC printed on the form is incorrect</li> <li>• enter the correct number of training days on the form, and</li> <li>• check the box next to the sentence that reads: <i>I elect to waive VA benefits for the days indicated in order to retain my training pay.</i></li> </ul>

	<b>Important:</b> If the Veteran declares the actual number of training days is <i>less</i> than the number the Hines ITC printed on <i>VA Form 21-8951</i> , the Veteran's unit commander must sign the form.
3	Check the box next to the sentence that reads: <i>I received no military pay and allowances during the fiscal year(s) indicated on the front of this form.</i>
4	Check the box next to the sentence that reads: <i>I elect to waive military pay and allowances for the days indicated in order to retain my VA compensation or pension.</i>

**f. Use of VA Form 21-8951-2**

VA typically learns a Veteran has received drill pay through the data match described in M21-1, Part III, Subpart v, 4.C.1.c. However, a Veteran may, on his/her own initiative, notify VA of his/her receipt (or *anticipated* receipt) of drill pay, and whether he/she chooses to waive VA benefits or drill pay, by completing and submitting *VA Form 21-8951-2, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances*.

**Note:** *VA Form 21-8951-2* is essentially a blank version of the Hines ITC-generated *VA Form 21-8951*.

**Important:** Although VA does not require a Veteran's unit commander to sign *VA Form 21-8951* unless the Veteran asserts the actual number of training days is *less* than the number the Hines ITC printed on the form, VA **always** requires a Veteran's unit commander to sign *VA Form 21-8951-2*.

## 2. Determining the Number of Days of VA Benefits a Veteran Must Waive

---

### Introduction

This topic contains information on determining the number of days of VA benefits a Veteran must waive in order to receive drill pay, including

- number of days reservists and members of the National Guard commonly receive drill pay
  - how reserve and National Guard units calculate the number of days of drill pay a Veteran receives
  - travel time during drills/training
  - example of how to determine the number of days of VA benefits a Veteran must waive, and
  - Veterans who receive pay for active duty training only.
- 

### Change Date

March 25, 2013

---

### a. Number of Days Reservists and Members of the National Guard Commonly Receive Drill Pay

During a single fiscal year, reservists and members of the National Guard commonly receive drill pay for a total of 63 days, which consists of

- 48 armory drills or training sessions, and
- 15 days of active duty training.

*Note:* Variances in the 63-day total are typically due to

- excused absences from drills, or
  - the performance of additional drills for various assignments, such as
    - schooling
    - planning meetings
    - conferences, or
    - preparation for inspections.
- 

### b. How Reserve and National Guard Units Calculate the Number of Days of Drill Pay a Veteran Receives

The table below shows

- the two types of training Veterans in the Reserve or National Guard attend, and
- how reserve and National Guard units calculate the number of days of drill pay to which a Veteran is entitled for each type of training.

Type of Training	Method of Calculation
armory drill and training sessions	<p>Veterans receive one day of drill pay for each four-hour drill/training session they attend. Units may hold one or two of these sessions per day over a weekend or during a weekday.</p> <p><b>Example:</b> During one “drill weekend,” a Veteran may receive four days of drill pay for attending two drill/training sessions each day.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>● Units report the number of days for which a Veteran received drill pay, <i>not</i> the number of calendar days he/she attended drills/training.</li> <li>● Request clarification from the Veteran’s unit if questions arise as to how it calculated the number of days of drill pay the Veteran received.</li> </ul>
active duty training	<p>Veterans receive one day of drill pay for each day of the annual, two-week, active duty training or “summer camp” they attend.</p> <p><b>Important:</b> Do <i>not</i> confuse this period with drill weekends.</p>

**c. Travel Time During Drills/Training**

Include any authorized travel time for which a Veteran received drill pay when computing the number of days of VA benefits he/she must waive.

**d. Example: Determining the Number of Days of VA Benefits a Veteran Must Waive**

**Scenario:** Sergeant Cummins, a reservist, is currently receiving VA compensation for diabetes. His reserve unit certifies he was present for

- 25 days of armory drills/training, with two drill/training sessions each day, and
- 15 days of active duty training.

**Result:** Sergeant Cummins must waive a total of 65 days of VA benefits based on his receipt of drill pay for

- 50 days of armory drills/training, and
- 15 days of active duty training.

**e. Veterans Who Receive Pay for Active Duty Training Only**

Occasionally, a Veteran may

- attend armory drill/training in a no-pay status, and
- receive pay only for the annual, active duty training he/she attends.

**M21-1, Part III, Subpart v, Chapter 4, Section C**

Under these circumstances, the Veteran must waive VA benefits only for the number of days he/she attended active duty training.

---



### 3. Processing VA Form 21-8951 and Handling a Veteran's Failure to Return the Form

**Introduction** This topic contains instructions for processing *VA Form 21-8951* and handling a Veteran's failure to return the form, including

- initial review of *VA Form 21-8951*
- processing *VA Form 21-8951*
- actions to take when a Veteran chooses to waive military pay, and
- actions to take when a Veteran fails to return *VA Form 21-8951*.

**Change Date** April 20, 2015

**a. Initial Review of VA Form 21-8951**

Before processing *VA Form 21-8951*, review the form to make sure it is complete and bears the appropriate signatures:

- The Veteran must *always* sign *VA Form 21-8951*.
- The Veteran's unit commander must sign *VA Form 21-8951* only if the Veteran reports *fewer* training days than the Hines ITC printed on the form.

Return incomplete or unsigned forms to the Veteran and advise him/her that failure to return a completed and signed form may result in a reduction of his/her benefits.

**b. Processing VA Form 21-8951**

Follow the steps in the table below upon receipt of a *VA Form 21-8951* that is complete and signed in accordance with M21-1, Part III, Subpart v, 4.C.3.a.

If the Veteran ...	Then ...
takes the action(s) described under Option 1 or 2 in M21-1, Part III, Subpart v, 4.C.1.e, and there is no reason to question the validity of the information the Veteran provided on the form	follow the instructions in M21-1, Part III, Subpart v, 4.C.4 for withholding the Veteran's benefits for the number of training days either the Hines ITC or the Veteran entered on the form.
checks the box on <i>VA Form 21-8951</i> that reads <i>I elect to waive military pay and allowances for the days indicated in order to retain</i>	follow the instructions in M21-1, Part III, Subpart v, 4.C.3.c.

**M21-1, Part III, Subpart v, Chapter 4, Section C**

<i>my VA compensation or pension</i>	
checks the box on <i>VA Form 21-8951</i> that reads <i>I received no military pay and allowances during the fiscal year(s) indicated on the front of this form</i>	<p>review the evidence of record to determine whether the Veteran was a reservist or member of the National Guard during the fiscal year in question.</p> <ul style="list-style-type: none"> <li>● If there is reason to question the validity of the Veteran’s assertion, initiate development, to include requesting a field examination, if necessary and appropriate.</li> <li>● If the evidence of record confirms the Veteran was <b>not</b> a reservist or member of the National Guard, <ul style="list-style-type: none"> <li>– clear an EP 290, and</li> <li>– delete the diary the Hines ITC established in Stage 3 of the process described in M21-1, Part III, Subpart v, 4.C.1.c.</li> </ul> </li> </ul>

**Important:** Follow the instructions in M21-1, Part III, Subpart v, 4.C.6.i if

- *VA Form 21-8951* shows training in excess of 179 days, or
- the evidence of record suggests the Veteran served on active duty during the fiscal year the *VA Form 21-8951* covers.

**Note:** Deleting the diary according to the instructions in the table above prevents the events described in M21-1, Part III, Subpart v, 4.C.3.d from occurring.

**Reference:** For information about deleting diaries through

- Share, see the [Share User's Guide](#)
- VETSNET Awards, see the [VETSNET Awards Handbook](#), or
- the Veterans Benefits Management System (VBMS), see the [VBMS-Awards User Guide](#).

**c. Actions to Take When A Veteran Chooses to Waive Military Pay**

Follow the instructions in the table below if a Veteran checks the box on *VA Form 21-8951* that reads *I elect to waive military pay and allowances for the days indicated in order to retain my VA compensation or pension*.

<b>Step</b>	<b>Action</b>
1	Clear an end product (EP) 290.
2	Delete the diary the Hines ITC established in Stage 3 of the process described in M21-1, Part III, Subpart v, 4.C.1.c.
3	Prepare an encrypted e-mail addressed to Compensation Service’s Procedures Staff (VAVBAWAS/CO/212A).

	<ul style="list-style-type: none"> <li>● In the subject line of the e-mail, type <i>VA Form 21-8951-Waiver of Military Pay</i></li> <li>● In the body of the e-mail, <ul style="list-style-type: none"> <li>– provide the <ul style="list-style-type: none"> <li>▪ Veteran’s name and file number</li> <li>▪ date VA received the <i>VA Form 21-8951</i>, and</li> <li>▪ document identification number assigned to the electronic version of <i>VA Form 21-8951</i>, and</li> </ul> </li> <li>– type <i>Veteran elects to waive military pay and allowances for the days indicated in order to retain VA compensation or pension. Please forward the form to the appropriate service department finance center.</i></li> </ul> </li> </ul> <p><b>Important:</b></p> <ul style="list-style-type: none"> <li>● Make one attempt to contact the Veteran by telephone prior to sending the e-mail to Compensation Service to ensure the Veteran understands <ul style="list-style-type: none"> <li>– the effect of the waiver, and</li> <li>– the likelihood that he/she is waiving the greater benefit.</li> </ul> </li> <li>● If telephone contact is made with the Veteran, document the conversation on <i>VA Form 21-0820, Report of General Information</i>.</li> <li>● If, during the telephone call, the Veteran reaffirms his/her choice to waive military pay, note this fact in the e-mail to Compensation Service.</li> <li>● If the attempt to contact the Veteran by telephone is unsuccessful, document the action as a note in <ul style="list-style-type: none"> <li>– Modern Awards Processing – Development (MAP-D), or</li> <li>– the Veterans Benefits Management System (VBMS).</li> </ul> </li> </ul>
4	<p>Save a copy of the e-mail as a portable document file (PDF).</p> <p><b>Reference:</b> For more information about saving e-mails in the PDF format, see M21-1, Part III, Subpart i, Chapter 6.</p>
5	<p>Follow the instructions in the <a href="#">VBMS User Guide</a> for uploading the PDF into the Veteran’s eFolder.</p>

**d. Actions to Take When A Veteran Fails to Return VA Form 21-8951**

If the actions described in M21-1, Part III, Subpart v, 4.C.3.b or M21-1, Part III, Subpart v, 4.C.4.i are not taken within 60 days of the date the Hines ITC mails *VA Form 21-8951* to the Veteran for completion,

M21-1, Part III, Subpart v, Chapter 4, Section C

- a work item is automatically created under EP 820 to alert the ROJ that the diary established in Stage 3 of the process described in M21-1, Part III, Subpart v, 4.C.1.c expired, and
- the Hines ITC e-mails a copy of *VA Form 21-8951* to Compensation Service.

Follow the steps in the table below to process a work item established because a Veteran failed to return *VA Form 21-8951*.

Step	Actions
1	Open the Veteran's eFolder and locate a copy of the <i>VA Form 21-8951</i> that he/she failed to return.
2	<p>Does the file number and/or SSN printed on <i>VA Form 21-8951</i> belong to the Veteran whose name, address, and contact information are also printed on the form?</p> <ul style="list-style-type: none"> <li>• If <i>yes</i>, proceed to Step 3.</li> <li>• If <i>no</i>, <ul style="list-style-type: none"> <li>– determine whether the Veteran's SSN is correct in the corporate record</li> <li>– update the corporate record with the correct SSN, if necessary, and</li> <li>– proceed to Step 3.</li> </ul> </li> </ul>
3	<p>Did the Hines ITC send the <i>VA Form 21-8951</i> to a Veteran who, according to the evidence of record, did <b>not</b> receive drill pay during the fiscal year(s) in question?</p> <ul style="list-style-type: none"> <li>• If <i>yes</i>, <ul style="list-style-type: none"> <li>– clear an EP 290 <b>and</b> the pending EP 820, and</li> <li>– proceed no further.</li> </ul> </li> <li>• If <i>no</i>, proceed to Step 4.</li> </ul>
4	Clear an EP 290 <b>and</b> the pending EP 820.
5	Establish EP 600.
6	<ul style="list-style-type: none"> <li>• Follow the instructions in M21-1, Part I, 2.B for sending notice of proposed adverse action to the Veteran.</li> <li>• Enclose a copy of <i>VA Form 21-8951</i> with the notice.</li> <li>• In the notice, inform the Veteran VA will withhold benefits for the same number of training days printed on the <i>VA Form 21-8951</i> unless the Veteran submits evidence within 60 days showing why VA should not take the proposed action.</li> </ul>
7	<b>Did the Veteran respond within 65 days?</b>

	<ul style="list-style-type: none"><li>● If <i>yes</i>, follow the instructions in M21-1, Part III, Subpart v, 4.C.3.b.</li><li>● If <i>no</i>,<ul style="list-style-type: none"><li>– assume the number of training days shown on <i>VA Form 21-8951</i> is correct, and</li><li>– adjust the Veteran’s award accordingly, by following the procedures in M21-1, Part III, Subpart v, 4.C.4.</li></ul></li></ul>
--	--

**Reference:** For more information about 800-series EPs and their corresponding work items, see the [VETSNET 800 Series Work Items Desk Reference](#).

---

## 4. Creating a Withholding to Offset a Veteran's Receipt of Drill Pay

---

### Introduction

This topic contains instructions for creating a withholding to offset a Veteran's receipt of drill pay, including

- determining the effective date and the amount of the withholding
  - determining the date range for withholding benefits
  - handling advance notice of a Veteran's receipt of drill pay
  - temporary 100-percent disability ratings in effect on the last day of the fiscal year
  - withholdings that exceed the current rate of payment
  - actions to take if the monthly rate of payment at the end of the fiscal year is \$0.00
  - circumstances necessitating revision and reissuance of a notice of proposed adverse action
  - actions to take if a Veteran returns to active duty during a period VA withheld or is withholding benefits, and
  - making the award adjustment in VETSNET Awards.
- 

### Change Date

April 20, 2015

---

### a. Determining the Effective Date and the Amount of the Withholding

*Except as noted in M21-1, Part III, Subpart v, 4.C.4.e and f, make all award adjustments that are based on a Veteran's receipt of drill pay from a *future* date, regardless of the fiscal year during which the Veteran earned the drill pay.*

Because the amount of benefits VA is paying the Veteran has likely increased between the time he/she earned drill pay and the date VA adjusts his/her benefits,

- withhold the Veteran's benefits at the rate in effect on the last day of the fiscal year (September 30<sup>th</sup>) in which the Veteran earned the drill pay, and
- pay the Veteran the difference between this rate and the rate in effect on the date the withholding begins.

**Examples:** VA may increase a Veteran's benefits between the end of the fiscal year during which he/she earned drill pay and the date it begins withholding benefits because

- of cost-of-living allowances (COLAs), and/or
- the Veteran becomes entitled to additional benefits
  - for a dependent, and/or
  - based on an increased disability rating.

**Important:** If the Veteran is receiving compensation based on a temporary 100-percent disability rating under [38 CFR 4.29](#) or [38 CFR 4.30](#) on the last day of the fiscal year in which he/she earned drill pay, follow the instructions in M21-1, Part III, Subpart v, 4.C.4.d.

**References:** For examples of the application of instructions contained in this block, see M21-1, Part III, Subpart v, 4.C.7.

---

**b. Determining the Date Range for Withholding Benefits**

When determining the date range during which VA must withhold benefits to offset a Veteran's receipt of drill pay, count each month – *including February* – as having **30 days**.

**Examples:**

- If award action is taken in *December* to withhold compensation based on a Veteran's receipt of drill pay for 55 days of training,
  - the withholding begins January 1<sup>st</sup>, and
  - payment at the full rate resumes February 26<sup>th</sup>.
- If award action is taken in *January* to withhold compensation based on a Veteran's receipt of drill pay for 55 days of training,
  - the withholding begins February 1<sup>st</sup>, and
  - payment at the full rate resumes March 26<sup>th</sup>.

**Important:** The provisions of [38 CFR 3.31](#) do not apply to the *resumption* of benefits in the examples above.

---

**c. Handling Advance Notice of a Veteran's Receipt of Drill Pay**

When a Veteran notifies VA *in advance* that he/she will receive drill pay, VA may not yet know what the Veteran's rate of payment will be on the last day of the fiscal year during which he/she earns the drill pay. In this case, withhold benefits at the current rate for the number of days of drill pay the Veteran will receive.

If the rate payable at the end of the fiscal year turns out to be different than the amount VA originally withheld, correct the amount of the withholding **only if** some other reason exists for making a retroactive adjustment covering the period of the withholding.

**Important:** Do **not** establish an EP to control for correction of the amount of the withholding at the end of the fiscal year.

*Note:* If a Veteran who notifies VA in advance that he/she will receive drill pay ultimately attends *fewer* days of training than he/she initially reported, follow the instructions in M21-1, Part III, Subpart v, 4.C.5.

**d. Temporary 100-Percent Disability Ratings in Effect on the Last Day of the Fiscal Year**

If a Veteran was receiving VA compensation based on a temporary 100-percent disability rating under [38 CFR 4.29](#) or [38 CFR 4.30](#) on the last day of the fiscal year in which he/she earned drill pay,

- determine what the Veteran’s disability rating is *without* the 100-percent temporary disability rating, and
- base the withholding on that disability rating.

*Example:*

*Scenario:*

- A Veteran is 20 percent disabled for a service-connected disorder that required surgery on August 20, 2010.
- VA determines the Veteran is entitled to a temporary 100-percent rating for two months following surgery.
- The Veteran submits *VA Form 21-8951* in January 2011 showing she earned drill pay during fiscal year 2010.

*Result:* VA bases its withholding on the 20-percent disability rating instead of the 100-percent disability rating in effect on September 30, 2010.

**e. Withholdings That Exceed the Current Rate of Payment**

Occasionally, VA is unable to adjust a Veteran’s benefit from a future date to offset his/her receipt of drill pay because

- the Veteran is no longer receiving benefits, or
- VA has reduced his/her benefits to a rate that is less than the rate payable at the end of the fiscal year during which the Veteran earned the drill pay.

*Example:* VA receives *VA Form 21-8951* in 2011 showing the Veteran earned drill pay during fiscal year 2009. VA stopped paying the Veteran compensation in 2010 because he returned to active duty. With no running award, VA is unable to adjust the Veteran’s award from a future date.

Follow the steps in the table below when the current rate of payment is *less* than the monthly amount VA was paying the Veteran at the end of the fiscal year during which he/she earned drill pay.

Step	Action
1	Identify the most recent award line that shows a monthly rate of payment equal to or exceeding the Veteran’s rate of payment at the end of the fiscal year during which he/she earned drill pay.



2	<p>Is the <b>version</b> date of the <i>VA Form 21-8951</i> <b>earlier</b> than February 2015?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 7.</li> </ul> <p><b>Note:</b> The following sentence was added to versions of <i>VA Form 21-8951</i> dated February 2015 and later, thereby eliminating the need to provide notice of proposed adverse action before reducing the Veteran's award: <i>If VA cannot adjust your benefits from a future date, it may make a retroactive adjustment, which may create an overpayment in your account.</i></p>
3	<p>Send the Veteran notice of VA's proposal to reduce his/her benefits</p> <ul style="list-style-type: none"> <li>● by the monthly rate of payment in effect at the end of the fiscal year during which the Veteran earned drill pay, and</li> <li>● effective the date of the award line identified in Step 1.</li> </ul> <p><b>Reference:</b> For more information about issuing a notice of proposed adverse action, see M21-1, Part I, Chapter 2.</p>
4	<p>Did the Veteran respond to the notice of proposed adverse action within 65 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 7.</li> </ul>
5	<p>Did the Veteran request a hearing within 30 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, take no further action until <i>after</i> <ul style="list-style-type: none"> <li>– the hearing is held, and</li> <li>– a decision is made as to whether or not the proposed award adjustment is still warranted.</li> </ul> </li> <li>● If <i>no</i>, proceed to the next step.</li> </ul> <p><b>Reference:</b> For more information about handling requests for a hearing under the circumstances described in this step, see M21-1, Part I, 2.C.3.</p>
6	<p>Did the Veteran provide evidence showing VA should <i>not</i> retroactively adjust his/her award?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, <ul style="list-style-type: none"> <li>– notify the Veteran of VA's decision, and</li> <li>– proceed no further.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>● If <i>no</i>, proceed to the next step.</li> </ul>
7	<ul style="list-style-type: none"> <li>● Retroactively reduce the Veteran’s benefits, effective the date of the award line identified in Step 1, by the Veteran’s rate of payment at the end of the fiscal year during which he/she earned drill pay.</li> <li>● Discontinue the reduction as soon as it has been in place for the same number of days the Veteran received drill pay.</li> </ul>
8	Notify the Veteran of the action taken.

**Important:** If VA is unable to adjust a Veteran’s award to offset his/her receipt of drill pay because it discontinued the Veteran’s award based on his/her return to active duty, do not wait until VA resumes the Veteran’s award following his/her discharge to make the necessary offset in benefits.

**References:**

- For more information about notifying beneficiaries of the action(s) VA has taken and/or the decision(s) it has made, see M21-1, Part III, Subpart v, 2.B.
- If a Veteran returns to active duty during a period VA withheld or is withholding benefits due to the Veteran’s receipt of drill pay, follow the instructions in M21-1, Part III, Subpart v, 4.C.4.h.
- For an example of the application of instructions contained in this block, see M21-1, Part III, Subpart v, 4.C.7.f.

**f. Actions to Take if the Monthly Rate of Payment at the End of the Fiscal Year Is \$0.00**

Follow the instructions in the table below if the monthly rate of payment at the end of the fiscal year in which the Veteran received drill pay is \$0.00.

Step	Action
1	<p>Was the Veteran’s monthly rate of payment \$0.00 for the <i>entire</i> fiscal year in question?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, take no further action. A withholding of benefits under these circumstances is unnecessary.</li> <li>● If <i>no</i>, proceed to the next step.</li> </ul>
2	<p>Are the dates the Veteran attended drills/training known?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 14.</li> </ul>
3	<p>Is the Veteran’s <i>current</i> rate of payment <i>less</i> than the rate in effect while he/she was attending drills/training?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> </ul>

	<ul style="list-style-type: none"> <li>● If <i>no</i>, proceed to Step 12.</li> </ul>
4	Identify the most recent award line that shows a monthly rate of payment equal to or exceeding the rate in effect during the period the Veteran attended drills/training.
5	<p>Is the <b>version</b> date of the <i>VA Form 21-8951</i> <b>earlier</b> than February 2015?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 10.</li> </ul> <p><b>Note:</b> The following sentence was added to versions of <i>VA Form 21-8951</i> dated February 2015 and later, thereby eliminating the need to provide notice of proposed adverse action before reducing the Veteran's award: <i>If VA cannot adjust your benefits from a future date, it may make a retroactive adjustment, which may create an overpayment in your account.</i></p>
6	<p>Send the Veteran notice of VA's proposal to reduce his/her benefits</p> <ul style="list-style-type: none"> <li>● by the monthly rate of payment in effect during the period the Veteran attended drills/training, and</li> <li>● effective the date of the award line identified in Step 4.</li> </ul> <p><b>Reference:</b> For more information about issuing a notice of proposed adverse action, see M21-1, Part I, Chapter 2.</p>
7	<p>Did the Veteran respond to the notice of proposed adverse action within 65 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 10.</li> </ul>
8	<p>Did the Veteran request a hearing within 30 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, take no further action until <i>after</i> <ul style="list-style-type: none"> <li>– the hearing is held, and</li> <li>– a decision is made as to whether or not the proposed award adjustment is still warranted.</li> </ul> </li> <li>● If <i>no</i>, proceed to the next step.</li> </ul> <p><b>Reference:</b> For more information about handling requests for a hearing under the circumstances described in this step, see M21-1, Part I, 2.C.3.</p>
9	Did the Veteran provide evidence showing VA should <i>not</i> retroactively adjust his/her award?

M21-1, Part III, Subpart v, Chapter 4, Section C

	<ul style="list-style-type: none"> <li>● If <i>yes</i>, <ul style="list-style-type: none"> <li>– notify the Veteran of VA’s decision, and</li> <li>– proceed no further.</li> </ul> </li> <li>● If <i>no</i>, proceed to the next step.</li> </ul>
10	<ul style="list-style-type: none"> <li>● Reduce the Veteran’s benefits <ul style="list-style-type: none"> <li>– by the monthly rate of payment in effect during the period the Veteran attended drills/training, and</li> <li>– effective the date of the award line identified in Step 4.</li> </ul> </li> <li>● Discontinue the reduction as soon as it has been in place for the same number of days the Veteran received drill pay.</li> </ul> <p><i>Note:</i> If the monthly rate of payment for any of the days the Veteran attended drills/training was \$0.00, do not include those days when determining the length of time benefits must be withheld.</p>
11	Notify the Veteran of the action taken and proceed no further.
12	Withhold benefits from a future date <ul style="list-style-type: none"> <li>● for the same number of days the Veteran attended drills/training, and</li> <li>● in an amount equal to monthly rate of payment in effect during the dates he/she attended drills/training.</li> </ul> <p><i>Note:</i> If the monthly rate of payment for any of the days the Veteran attended drills/training was \$0.00, do not include those days when determining the length of time benefits must be withheld.</p>
13	Notify the Veteran of the action taken and proceed no further.
14	Determine what the Veteran’s monthly rate of payment was on the date <i>prior</i> to the date it was reduced to \$0.00.
15	Is the Veteran’s <i>current</i> rate of payment <i>less</i> than the rate identified in Step 14? <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 24.</li> </ul>
16	Identify the most recent award line that shows a monthly rate of payment equal to or exceeding the rate identified in Step 14.
17	Is the <i>version</i> date of the <i>VA Form 21-8951</i> <i>earlier</i> than February 2015? <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 22.</li> </ul>

	<p><b>Note:</b> The following sentence was added to versions of <i>VA Form 21-8951</i> dated February 2015 and later, thereby eliminating the need to provide notice of proposed adverse action before reducing the Veteran's award: <i>If VA cannot adjust your benefits from a future date, it may make a retroactive adjustment, which may create an overpayment in your account.</i></p>
18	<p>Send the Veteran notice of VA's proposal to reduce his/her benefits</p> <ul style="list-style-type: none"> <li>● by the amount identified in Step 14, and</li> <li>● effective the date of the award line identified in Step 16.</li> </ul> <p><b>Reference:</b> For more information about issuing a notice of proposed adverse action, see M21-1, Part I, Chapter 2.</p>
19	<p>Did the Veteran respond to the notice of proposed adverse action within 65 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 22.</li> </ul>
20	<p>Did the Veteran request a hearing within 30 days of the date of the notice?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, take no further action until <i>after</i> <ul style="list-style-type: none"> <li>– the hearing is held, and</li> <li>– a decision is made as to whether or not the proposed award adjustment is still warranted.</li> </ul> </li> <li>● If <i>no</i>, proceed to the next step.</li> </ul> <p><b>Reference:</b> For more information about handling requests for a hearing under the circumstances described in this step, see M21-1, Part I, 2.C.3.</p>
21	<p>Did the Veteran provide evidence showing VA should <i>not</i> retroactively adjust his/her award?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, <ul style="list-style-type: none"> <li>– notify the Veteran of VA's decision, and</li> <li>– proceed no further.</li> </ul> </li> <li>● If <i>no</i>, proceed to the next step.</li> </ul>
22	<ul style="list-style-type: none"> <li>● Reduce the Veteran's benefits <ul style="list-style-type: none"> <li>– by the amount identified in Step 14, and</li> <li>– effective the date of the award line identified in Step 16.</li> </ul> </li> <li>● Discontinue the reduction as soon as it has been in place for the same number of days the Veteran received drill pay.</li> </ul>

23	Notify the Veteran of the action taken and proceed no further.
24	Withhold benefits from a future date <ul style="list-style-type: none"> <li>● for the same number of days the Veteran attended drills/training, and</li> <li>● in an amount equal to the monthly rate of payment identified in Step 14.</li> </ul>
25	Notify the Veteran of the action taken.

**g. Circumstances Necessitating Revision and Reissuance of a Notice of Proposed Adverse Action**

*Reissue* notice of proposed adverse action (with revision of the amount and/or duration of the withholding, as applicable) if, after issuing the initial notice, but before making the corresponding award adjustment,

- the amount that VA must withhold increases, and/or
- the number of days VA must withhold benefits increases.

**Examples:**

- After issuing notice of proposed adverse action, VA increases the Veteran’s monthly rate of compensation (due to, for example, an increase in her combined disability rating) from an effective date *prior* to the end of the fiscal year during which the Veteran received drill pay.
- After issuing notice of proposed adverse action, a Veterans Service Representative (VSR) discovers he misread the number of drill pay days printed on *VA Form 21-8951*.

**Important:** Do *not* withhold benefits from a *future* date under the circumstances described in this block in an effort to avoid having to resend a revised notice of proposed adverse action.

**h. Actions to Take if a Veteran Returns to Active Duty During a Period VA Withheld or Is Withholding Benefits**

Follow the instructions in the table below if a Veteran returns to active duty during a period VA withheld or is currently withholding benefits due to the Veteran’s receipt of drill pay.

Step	Action
1	Follow the instructions in M21-1, Part III, Subpart v, 4.C.6 to discontinue the Veteran’s benefits effective the date he/she returned to active duty.
2	Identify the most recent award line ( <i>prior</i> to the date VA discontinued the Veteran’s benefits) that shows a monthly rate of

	payment equal to or exceeding the Veteran's rate of payment at the end of the fiscal year during which he/she received drill pay.
3	<ul style="list-style-type: none"> <li>● Inform the Veteran in a notice of proposed adverse action of the new date from which VA intends to withhold benefits to offset his/her receipt of drill pay.</li> <li>● Take the action(s) described in the next step 65 days after issuing the notice of proposed adverse action.</li> </ul>
4	<p>Did the Veteran respond to the notice of proposed adverse action by requesting a hearing or submitting evidence showing the proposed adjustment would be improper?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, postpone further action until after VA <ul style="list-style-type: none"> <li>– holds the hearing, and/or</li> <li>– considers the evidence the Veteran submitted.</li> </ul> </li> <li>● If <i>no</i>, make the adjustment described in the notice of proposed adverse action.</li> </ul>

**Important:** Do *not* wait until VA resumes the payment of benefits to the Veteran following his/her discharge to make the offset in benefits necessitated by the Veteran's receipt of drill pay.

**References:**

- For more information issuing a notice of proposed adverse action, see M21-1, Part I, 2.B.
- For an example of the application of instructions contained in this block, see M21-1, Part III, Subpart v, 4.C.7.g.

**i. Making the Award Adjustment in VETSNET Awards**

Follow the instructions in the [VETSNET Awards Handbook](#) or [VBMS-Awards User Guide](#) to adjust a Veteran's award based on his/her receipt of drill pay. Process the adjustment under EP 290 (or EP 600 if it was necessary to issue notice of proposed adverse action before making the adjustment).

After making the adjustment, delete the diary the Hines ITC established in Stage 3 of the process described in M21-1, Part III, Subpart v, 4.C.1.c.

**Notes:**

- Deleting the diary prevents the events described in M21-1, Part III, Subpart v, 4.C.3.d from occurring.
- In some cases, this diary might not exist because it has expired.

**Reference:** For information about deleting diaries through

- Share, see the [Share User's Guide](#)
- VETSNET Awards, see the [VETSNET Awards Handbook](#), or
- VBMS, see the [VBMS-Awards User Guide](#).





## 5. Restoring Benefits VA Previously Withheld to Offset a Veteran's Receipt of Drill Pay

---

**Introduction** This topic contains information on restoring benefits VA previously withheld to offset a Veteran's receipt of drill pay, including

- circumstances warranting a restoration of benefits, and
  - process for restoring benefits.
- 

**Change Date** March 25, 2013

---

**a. Circumstances Warranting a Restoration of Benefits** If a Veteran notifies VA *in advance* that he/she will receive drill pay, but the Veteran ultimately attends *fewer* days of training than he/she initially reported, the Veteran may recover the extra benefits VA withheld by notifying VA of the discrepancy within one year of the end of the fiscal year during which the training took place.

The notice must include a signed statement from the Veteran's unit commander (or designee) containing the following information:

- Veteran's unit of assignment
- beginning and ending dates of each
  - armory drill/training session, and
  - period of active duty training, and
- total number of days of drill pay the Veteran received during the fiscal year.

**Reference:** For more information on

- the one-year limitation for notifying VA, see [38 CFR 3.654\(c\)](#), and
  - handling advance notice of a Veteran's receipt of drill pay, see M21-1, Part III, Subpart v, 4.C.4.c.
- 

**b. Process for Restoring Benefits** To restore benefits under the circumstances described in M21-1, Part III, Subpart v, 4.C.5.a, adjust the Veteran's award to shorten the period during which VA previously withheld benefits. Do this by changing only the effective date on which VA previously *stopped* withholding benefits.

**Example:**

**Scenario:**

- A Veteran provides VA advance notice he will receive drill pay for 55 days.
- VA initially

**M21-1, Part III, Subpart v, Chapter 4, Section C**

- withholds benefits effective March 1, and
- resumes benefits effective April 26.
- Within one year of the end of the fiscal year during which the Veteran attended training, he notifies VA he actually attended only
  - 20 armory drill/training sessions, performed over 10 calendar days, and
  - 15 days of active duty training.

**Action:** Because the Veteran received drill pay for only 35 days, adjust his award by changing the date benefits resume to April 6.

**Reference:** To ensure accurate calculation of the number of days the Veteran received drill pay, see M21-1, Part III, Subpart v, 4.C.2.b.

---

## 6. Award Adjustments Necessitated by a Veteran's Return to and Discharge From Active Duty

---

<b>Introduction</b>	<p>This topic contains information on award adjustments necessitated by a Veteran's return to and discharge from active duty, including</p> <ul style="list-style-type: none"> <li>● relinquishment of benefits upon return to active duty</li> <li>● handling notice that a Veteran has returned to active duty</li> <li>● effective date for discontinuing compensation or pension</li> <li>● handling the pending claim of a Veteran who returns to active duty</li> <li>● action to take upon receipt of <i>DD Form 214, Certificate of Release or Discharge from Active Duty</i></li> <li>● action to take upon receipt of a claim for reinstatement of compensation</li> <li>● proper application of 38 CFR 3.31</li> <li>● handling notice of a Veteran's return to active duty that VA receives more than one year after discharge</li> <li>● active duty and drill(s)/training during the same fiscal years</li> <li>● separating training days from days of active duty on <i>VA Form 21-8951</i></li> <li>● Veteran has more active duty days than the number of training days shown on <i>VA Form 21-8951</i>, and</li> <li>● listing of Active Duty for Special Work (ADSW) on <i>VA Form 21-8951</i>.</li> </ul>
---------------------	--

---

<b>Change Date</b>	April 20, 2015
--------------------	----------------

---

<b>a. Relinquishment of Benefits Upon Return to Active Duty</b>	<p>Under <a href="#">38 U.S.C. 5304(c)</a>, Veterans receiving VA disability compensation or pension must relinquish these benefits when they return to active duty. This includes members of the National Guard who are activated under <a href="#">10 U.S.C.</a> or who serve full time in the Active Guard Reserve under <a href="#">32 U.S.C.</a></p>
---	---

**Note:** This restriction does *not* apply to recipients of Dependency and Indemnity Compensation (DIC). For example, a surviving spouse may concurrently receive active service pay and DIC.

**References:** For more information about

- the prohibition against concurrent receipt of active service pay and VA compensation or pension, see
    - [38 CFR 3.654](#), and
    - [38 CFR 3.700\(a\)\(1\)](#), or
  - full-time duty in the uniformed services, see M21-1, Part III, Subpart ii, 6.2.c and d.
-

**b. Handling Notice That a Veteran Has Returned to Active Duty**

Accept written notification or other credible evidence from a Veteran to establish the date he/she returned to active duty.

If VA receives notice a Veteran returned to active duty from a source other than the Veteran,

- determine the date the Veteran returned to active duty by using the
  - Defense Personnel Records Image Retrieval System (DPRIS), or
  - Veterans Information Solution (VIS), and
- notify the Veteran of VA’s proposal to discontinue the payment of compensation or pension.

**Reference:** For more information on

- sending notice of a proposed adverse action, see M21-1, Part I, 2.B
  - VIS, see the [VIS User Guide](#), or
  - DPRIS, select the HELP tab within the DPRIS application, which is accessible at <https://www.dpris.dod.mil>. (Registration is required.)
- 

**c. Effective Date for Discontinuing Compensation or Pension**

According to [38 CFR 3.501\(a\)](#) and [3.654\(b\)](#), an award of compensation or pension to a Veteran will be discontinued effective the day preceding his/her return to active duty. For the purpose of discontinuing an award in VETSNET or VBMS because a Veteran returned to active duty, this means

- the last day the Veteran is entitled to benefits is the day preceding the date he/she returns to active duty, and
- the date the Veteran returned to active duty represents the first day of non-payment of VA benefits.

Because the programming of VETSNET and VBMS requires users to enter the first day of *non-payment* as the effective date of discontinuance of an award due to a Veteran’s return to active duty, the “effective date of discontinuance” referred to in this section is the date on which the Veteran returned to active duty, **not** the day preceding it.

---

**d. Handling the Pending Claim of a Veteran Who Returns to Active Duty**

VA is prohibited from paying compensation or pension to a Veteran while he/she is receiving active service pay. If, however, a Veteran files a claim *before* returning to active duty, VA may not deny the claim solely because the Veteran returned to active duty.

**Rationale:** If VA ultimately grants the Veteran’s claim, it may pay the Veteran any benefits due him/her for the period *preceding* his/her return to active duty.

**Important:** According to [VAOPGCPREC 10-2004](#), the return of a Veteran to active duty under the circumstances described above does not change VA’s duty to assist him/her in substantiating a pending claim, to include providing the Veteran an examination, when necessary to decide his/her claim.

**e. Action to Take Upon Receipt of DD Form 214**

Upon receipt of *DD Form 214, Certificate of Release or Discharge from Active Duty*, or other credible evidence showing a Veteran has been released from active duty,

- ensure VA properly discontinued benefits effective the day the Veteran returned to active duty, and
- notify the Veteran that VA will reinstate his/her benefits effective the day following release from active duty if the Veteran submits a claim for reinstatement within one year of that date.

**f. Action to Take Upon Receipt of a Claim for Reinstatement of Compensation**

Follow the steps in the table below upon receipt of a claim for reinstatement of compensation from a Veteran who is no longer on active duty.

Step	Action
1	Use DPRIS or VIS to confirm the date the Veteran was discharged from active duty.
2	Undertake development to obtain service treatment records (STRs) for the period(s) of service the Veteran most recently completed by following the instructions in M21-1, Part III, Subpart iii, Chapter 2.
3	<p>If the Veteran is claiming reinstatement <b>only</b>, and all of his/her service-connected disabilities are static (no future review examination is indicated on the most recent rating decision),</p> <ul style="list-style-type: none"> <li>● establish EP 290, and</li> <li>● proceed to Step 6.</li> </ul> <p><b>Exception:</b> If VA accepted the claim for reinstatement as a Benefits Delivery at Discharge (BDD) or Quick Start claim, use EP 297.</p>
4	<p>Establish EP 020 if the Veteran</p> <ul style="list-style-type: none"> <li>● has a service-connected disability that is <b>not</b> static, or</li> <li>● is claiming</li> </ul>

M21-1, Part III, Subpart v, Chapter 4, Section C

	<ul style="list-style-type: none"> <li>– an increased disability rating, or</li> <li>– service connection for a new disability, and</li> <li>● submits the claim for reinstatement on a prescribed form.</li> </ul> <p><b>Exception:</b> If VA accepted the claim for reinstatement as a BDD or Quick Start claim, use EP</p> <ul style="list-style-type: none"> <li>● 021 (BDD), or</li> <li>● 027 (Quick Start).</li> </ul>
5	<p>Does the Veteran have any static disabilities?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 8.</li> </ul>
6	<p>If VA received the Veteran’s claim for reinstatement</p> <ul style="list-style-type: none"> <li>● within one year of discharge from active duty, reinstate compensation for static disabilities only effective the day following the date of discharge, or</li> <li>● one year or more after the date of discharge, reinstate compensation for static disabilities only effective one year prior to the date VA received the claim.</li> </ul>
7	<p>Which EP was established to control the Veteran’s claim for reinstatement?</p> <ul style="list-style-type: none"> <li>● If EP 290 or 297 was established, take no further action <b>except</b> to follow the instructions in M21-1, Part IV, Subpart ii, 2.A.1 upon receipt of the STRs requested in Step 2.</li> <li>● If EP 020, 021, or 027 was established, proceed to the next step.</li> </ul>
8	<p>If the Veteran is claiming service connection for a new disability or entitlement to an increased disability rating, undertake any necessary development, to include issuing <a href="#">Section 5103</a> notice according to the instructions in M21-1, Part I, 1.B.</p> <p><b>Note:</b> The claim must be submitted on a prescribed form.</p>
9	<p>If the Veteran has non-static, service-connected disabilities, schedule him/her for an examination <b>unless</b> the evidence of record is sufficient to assign a disability rating without an examination report.</p>
10	<p>Refer the claim to the rating activity for a decision</p> <ul style="list-style-type: none"> <li>● as soon as development is complete (if initiated), and/or</li> <li>● upon receipt of examination reports and STRs (if requested).</li> </ul> <p><b>Note:</b> Do not postpone rating action based solely on the absence of the Veteran’s STRs if the evidence of record supports a grant of the benefit the Veteran is seeking. In such cases,</p>

	<ul style="list-style-type: none"> <li>● process the rating decision, to include clearing the controlling EP, and</li> <li>● follow the instructions in M21-1, Part IV, Subpart ii, 2.A.1 when the STRs eventually arrive.</li> </ul>
--	---

**References:** For more information on

- reinstating benefits following release from active duty, see [38 CFR 3.654\(b\)\(2\)](#)
- handling receipt of notice of a Veteran's return to active duty and subsequent discharge more than one year after discharge occurred, see M21-1, Part III, Subpart v, 4.C.6.h, or
- pre-discharge claims for reinstatement, see M21-1, Part III, Subpart i, 2.C.3.

**g. Proper Application of 38 CFR 3.31**

The *reinstatement* of compensation VA previously discontinued because a Veteran returned to active duty does **not** constitute a new grant of or increase in benefits. Therefore, the requirement in [38 CFR 3.31](#) to *award* benefits effective the first of the month following the month of entitlement is **not** for application.

If, however, in connection with the Veteran's claim for reinstatement, VA grants service connection for a new disability and/or increases the disability rating assigned to a service-connected disability, the provisions of [38 CFR 3.31](#) do apply.

**Example:**

**Scenario:**

- A Veteran with a static, service-connected knee disorder, which VA rated 10 percent disabling, returns to active duty on August 1, 2010.
- VA discontinues the Veteran's benefits effective the date she returned to active duty.
- The Veteran's active duty ends August 15, 2011.
- On October 1, 2011, the Veteran files a claim for reinstatement of her compensation and an increased rating for the knee disorder.
- VA subsequently assigns the knee disorder a disability rating of 30 percent.

**Result:** The effective date of the award that reinstates compensation at the rate payable for a disability rated 10 percent disabling is August 16, 2011. Although the Veteran is *entitled* to the 30 percent disability rating for the knee disorder from August 16, 2011, the proper effective date of the increased award, per [38 CFR 3.31](#), is September 1, 2011.

**h. Handling Notice of a Veteran's Return to**

Sometimes, VA may not discover that a Veteran in receipt of VA benefits returned to active duty and was subsequently discharged until years after the fact. When retroactively discontinuing benefits during the period of active

**Active Duty  
That VA  
Receives More  
Than One Year  
After Discharge**

duty, do *not* discontinue benefits beyond the date of discharge, even though the Veteran did not notify VA of his/her discharge within one year.

**Example:**

**Scenario:** On August 10, 2010, a Veteran in receipt of compensation reports a period of active duty that began December 15, 2007, and ended January 5, 2009.

**Action:** Discontinue the Veteran’s compensation effective December 15, 2007, and reinstate it effective January 6, 2009.

**i. Active Duty  
and Drill(s)/  
Training  
During the  
Same Fiscal  
Year**

If a Veteran received active service pay for both active duty *and* drill(s)/training during the same fiscal year, *VA Form 21-8951* will show the *combined* number of days for which the Veteran received active service pay.

Follow the instructions in the table below if

- *VA Form 21-8951* shows training in excess of 179 days, or
- the evidence of record suggests the Veteran had active duty during the fiscal year the *VA Form 21-8951* covers.

**Note:** Consider a report of training in excess of 179 days on *VA Form 21-8951* an indication the Veteran might have returned to active duty for a period of time.

Step	Action
1	<p>Use VIS and/or DPRIS to determine whether the Veteran had a period of active duty during the fiscal year in question.</p> <p><b>Reference:</b> For more information on</p> <ul style="list-style-type: none"> <li>● VIS, see the <a href="#">VIS User Guide</a>, or</li> <li>● DPRIS, select the HELP tab within the DPRIS application, which is accessible at <a href="https://www.dpris.dod.mil">https://www.dpris.dod.mil</a>. (Registration is required.)</li> </ul>
2	<p>Does VIS and/or DPRIS confirm the Veteran had an unreported period of active duty?</p> <ul style="list-style-type: none"> <li>● If <i>yes</i>, proceed to the next step.</li> <li>● If <i>no</i>, proceed to Step 5.</li> </ul>
3	<p>Notify the Veteran VA proposes to discontinue his/her benefits effective the date he/she returned to active duty. In the notice, ask the Veteran to submit the following with regard to the time period in question:</p> <ul style="list-style-type: none"> <li>● a copy of his/her orders or separation document, or</li> </ul>



	<ul style="list-style-type: none"> <li>● other evidence of the duty he/she performed.</li> </ul> <p><b>Reference:</b> For more information about preparing a notice of proposed adverse action, see M21-1, Part I, 2.B.</p>								
4	<p>Sixty-five days after sending the notice,</p> <ul style="list-style-type: none"> <li>● take the proposed action unless the Veteran                             <ul style="list-style-type: none"> <li>– requested a hearing within thirty days of the notice, or</li> <li>– submits evidence showing VA should not take the proposed action, and</li> </ul> </li> <li>● proceed no further, <b>except</b> to follow the instructions in M21-1, Part III, Subpart v, 4.C.6.j.</li> </ul>								
5	<p>Send a letter to the Veteran asking for the dates he/she was on active duty, if any, during the fiscal year in question and</p> <ul style="list-style-type: none"> <li>● a copy of his/her orders or separation document, or</li> <li>● other evidence of the duty he/she performed during the fiscal year.</li> </ul>								
6	<p>Follow the instructions in the table below after giving the Veteran 30 days to respond.</p> <table border="1"> <thead> <tr> <th>If ...</th> <th>Then ...</th> </tr> </thead> <tbody> <tr> <td>the Veteran responds by confirming his/her return to active duty</td> <td>discontinue benefits effective the date active duty began.</td> </tr> <tr> <td>the Veteran fails to respond</td> <td> <ul style="list-style-type: none"> <li>● assume the days reported on <i>VA Form 21-8951</i> do <b>not</b> include a period of active duty, and</li> <li>● take the actions described in M21-1, Part III, Subpart v, 4.C.3.b.</li> </ul> </td> </tr> <tr> <td>evidence is obtained from a source other than the Veteran that he/she returned to active duty</td> <td>follow the instructions in steps 3 and 4 of this table.</td> </tr> </tbody> </table>	If ...	Then ...	the Veteran responds by confirming his/her return to active duty	discontinue benefits effective the date active duty began.	the Veteran fails to respond	<ul style="list-style-type: none"> <li>● assume the days reported on <i>VA Form 21-8951</i> do <b>not</b> include a period of active duty, and</li> <li>● take the actions described in M21-1, Part III, Subpart v, 4.C.3.b.</li> </ul>	evidence is obtained from a source other than the Veteran that he/she returned to active duty	follow the instructions in steps 3 and 4 of this table.
If ...	Then ...								
the Veteran responds by confirming his/her return to active duty	discontinue benefits effective the date active duty began.								
the Veteran fails to respond	<ul style="list-style-type: none"> <li>● assume the days reported on <i>VA Form 21-8951</i> do <b>not</b> include a period of active duty, and</li> <li>● take the actions described in M21-1, Part III, Subpart v, 4.C.3.b.</li> </ul>								
evidence is obtained from a source other than the Veteran that he/she returned to active duty	follow the instructions in steps 3 and 4 of this table.								

**j. Separating Training Days from Days of Active Duty on VA Form 21-8951**

After confirming the number of days a Veteran was on active duty during a specific fiscal year, calculate the number of days he/she received drill pay by subtracting the number of days the Veteran was on active duty from the total number of training days shown on *VA Form 21-8951*.

**Important:** The instructions in M21-1, Part III, Subpart v, 4.C.4.b for determining the date range during which VA will prospectively withhold

compensation based on a Veteran's receipt of drill pay do **not** apply when calculating the number of days a Veteran was on active duty.

**Example:**

**Scenario:** The number of training days shown on *VA Form 21-8951* is 185. Both the Veteran and personnel records retrieved through DPRIS confirm the Veteran was on active duty from June 25, 2011, through August 31, 2011.

**Result:** The Veteran was on active duty for 68 days (6 days in June, 31 days in July, and 31 days in August) and received drill pay for a total of 117 days.

---

**k. Veteran Has More Active Duty Days Than the Number of Training Days Shown on VA Form 21-8951**

When a Veteran has more active duty days during a given fiscal year than the number of training days shown on *VA Form 21-8951* for the same fiscal year,

- assume the Veteran was on active duty for all of the days printed on *VA Form 21-8951*
- follow the instructions in M21-1, Part III, Subpart v, 4.C.6, h, i, and j to adjust the Veteran's award to reflect his/her return to active duty, and
- take no action on the *VA Form 21-8951* **except** to electronically annotate it with an explanation as to why no action was taken.

**Example:**

- VA terminated a Veteran's benefits for the period November 1, 2011, through May 15, 2012, because the Veteran returned to active duty.
- In 2013, VA receives a *VA Form 21-8951* showing the Veteran was paid for 65 days of drill/training during fiscal year 2012.

**References:** For information about electronically annotating documents in an eFolder, see the [VBMS User Guide](#).

---

**l. Listing of ADSW on VA Form 21-8951**

In addition to active and/or inactive duty training, *VA Form 21-8951* may also include Active Duty for Special Work (ADSW).

Duties performed under ADSW may be for operational, support, or training purposes. The Department of Defense (DoD) defines ADSW as a tour of active duty to fulfill support requirements. VA characterizes ADSW as active duty for the purpose of this topic **unless** the purpose for going on ADSW was to receive training.

**Important:**

- Undertake development to determine the type of duty a Veteran performed while on ADSW, even though
  - the duration of service is less than 180 days, and/or

- DoD issues the Veteran a *DD Form 214* for the ADSW.
- If the Veteran went on ADSW to receive training, treat the active service pay he/she received during this period of time as *drill pay*.
- If the duties a Veteran performed during ADSW cannot be ascertained, treat the period of service as *active duty*.

**Reference:** For assistance in characterizing a Veteran's duty when he/she *provided* training as opposed to *receiving* it, see [VAOPGCPREC 25-90](#).

---

## 7. Examples of Award Adjustments

---

<b>Introduction</b>	<p>This topic contains examples of award adjustments necessitated by a Veteran's receipt of drill pay, including award adjustments when</p> <ul style="list-style-type: none"><li>• training is completed during a prior year</li><li>• Veteran provides advance notice of training</li><li>• VA increases the disability rating after the end of the fiscal year in question</li><li>• VA increases the disability rating prior to the end of the fiscal year in question</li><li>• 38 CFR 3.31 causes the effective date of the increase in compensation to fall after the end of the fiscal year</li><li>• VA reduces the Veteran's disability rating</li><li>• Veteran returns to active duty during a period VA withheld or is withholding benefits</li><li>• Veteran returns <i>VA Form 21-8951</i> for multiple fiscal years</li><li>• VA is withholding compensation in its entirety to recoup separation benefits, and</li><li>• VA is withholding part of the Veteran's compensation.</li></ul>
---------------------	---

---

**Change Date** April 20, 2015

---

<b>a. Training Is Completed During a Prior Year</b>	<p><b>Scenario:</b></p> <ul style="list-style-type: none"><li>• In January 2006, a Veteran with a 10-percent disability rating returns <i>VA Form 21-8951</i> showing he attended 63 days of training during fiscal year 2001.</li><li>• The earliest future date from which VA can make an award adjustment is February 1, 2006.</li><li>• The monthly rate of compensation payable to the Veteran on the last day of fiscal year 2001 (September 30, 2001) was \$101.00.</li><li>• The monthly rate of compensation payable to the Veteran on February 1, 2006, is \$112.00.</li></ul>
---	--

**Results:**

- VA reduces the Veteran's compensation to \$11.00 effective February 1, 2006. (This amount represents the difference between the monthly rate payable at the end of fiscal year 2001 and the monthly rate payable on February 1, 2006.)
  - VA resumes monthly payments of \$112.00 effective April 4, 2006.
- 

<b>b. Veteran Provides</b>	<b>Scenario:</b>
----------------------------	------------------

**Advance Notice of Training**

- In December 2005, a Veteran with a 10-percent disability rating submits *VA Form 21-8951-2* showing she will attend 55 days of training during fiscal year 2006.
- The earliest future date from which VA can make an award adjustment is January 1, 2006.
- The monthly rate of compensation payable to the Veteran on January 1, 2006, is \$112.00.

**Results:**

- VA begins withholding all of the Veteran's compensation effective January 1, 2006.
  - VA resumes monthly payments of \$112.00, effective February 26, 2006.
- 

**c. VA Increases the Disability Rating After the End of the Fiscal Year in Question**

**Scenario:**

- In December 2005, VA increased a Veteran's disability rating from 10 percent to 30 percent, effective December 1, 2001.
- In January 2006, the Veteran returns *VA Form 21-8951* showing he attended 63 days of training during fiscal year 2001.
- The earliest future date from which VA can make an award adjustment is February 1, 2006.
- As of the last day of fiscal year 2001 (September 30, 2001), VA was paying the Veteran \$101.00 per month.
- The Veteran has no dependents.
- The monthly rate of compensation payable to the Veteran on February 1, 2006 is \$337.00.

**Results:**

- VA reduces the Veteran's compensation to \$236.00 per month effective February 1, 2006. (This amount represents the difference between the rate payable at the end of fiscal year 2001 and the rate payable on February 1, 2006.)
  - VA resumes monthly payments of \$337.00 effective April 4, 2006.
- 

**d. VA Increases the Disability Rating Prior to the End of the Fiscal Year in Question**

**Scenario:**

- In December 2005, VA increased a Veteran's disability rating from 10 percent to 30 percent, retroactive to April 1, 1999.
- In January 2006, the Veteran returns *VA Form 21-8951* showing she attended 63 days of training during fiscal year 2001.
- The earliest future date from which VA can make an award adjustment is February 1, 2006.
- The Veteran has no dependents.
- The monthly rate of compensation payable to the Veteran on the last day of fiscal year 2001 (September 30, 2001) was \$298.00.

- The monthly rate of compensation payable to the Veteran on February 1, 2006, is \$337.00.

**Results:**

- VA reduces the Veteran's compensation to \$39.00 per month effective February 1, 2006. (This amount represents the difference between the monthly rate payable on the last day of fiscal year 2001 and the monthly rate payable on February 1, 2006.)
  - VA resumes monthly payments of \$337.00, effective April 4, 2006.
- 

**e. 38 CFR 3.31 Causes the Effective Date of the Increase in Compensation to Fall After the End of the Fiscal Year**

**Scenario:**

- In December 2005, VA increased a Veteran's disability rating from 10 percent to 30 percent, effective September 15, 2001. The effective date of the increase in the Veteran's compensation after application of [38 CFR 3.31](#) was October 1, 2001.
- In January 2006, the Veteran returns *VA Form 21-8951* showing he attended 63 days of training during fiscal year 2001.
- The earliest future date from which VA can make an award adjustment is February 1, 2006.
- The Veteran is married and has no other dependents.
- The monthly rate of compensation payable to the Veteran on the last day of fiscal year 2001 (September 30, 2001) for a 30-percent disability rating was \$334.00.
- The monthly rate of compensation payable to the Veteran on February 1, 2006, is \$377.00.

**Results:**

- VA reduces the Veteran's compensation to \$43.00 per month, effective February 1, 2006. (This amount represents the difference between the monthly rate payable on the last day of fiscal year 2001 and the monthly rate payable on February 1, 2006.)
- VA resumes monthly payments of \$377.00, effective April 4, 2006.

**Rationale:** Under [38 CFR 3.31](#), Veterans are in receipt of increased benefits on the effective date of the *increased rating*, even though the effective date of *payment* is not until the first of the following month. Accordingly, the monthly rate payable to the Veteran in this scenario, as of the end of fiscal year 2001, was \$334.00, not \$101.00.

---

**f. VA Reduces the Veteran's Disability Rating**

**Scenario:**

- Effective April 1, 2005, VA reduced a Veteran's disability rating from 10 percent to 0 percent.
- In January 2006, the Veteran returns *VA Form 21-8951* showing she attended 55 days of training during fiscal year 2001.

- The monthly rate of compensation payable to the Veteran on the last day of fiscal year 2001 (September 30, 2001) was \$101.00.
- The last award line before VA discontinued the Veteran's compensation on April 1, 2005, shows a cost-of-living adjustment (COLA) to \$108.00 on December 1, 2004.

**Result:**

- VA creates an overpayment in the Veteran's account by retroactively reducing her compensation to \$7.00 effective December 1, 2004. (This amount represents the difference between the monthly rate payable on the last day of fiscal year 2001 and the monthly rate payable on December 1, 2004.)
  - VA resumes the \$108.00 rate from January 26, 2005, to April 1, 2005.
- 

**g. Veteran Returns to Active Duty During a Period VA Withheld or Is Withholding Benefits**

**Scenario:**

**Part I:**

- In May 2012, a Veteran with a 10-percent disability rating returns *VA Form 21-8951* showing he attended 64 days of training during fiscal year 2009.
- The earliest future date from which VA can make an award adjustment is June 1, 2012.
- The monthly rate of compensation payable to the Veteran
  - on the last day of fiscal year 2009 (September 30, 2009) was \$123.00, and
  - between December 1, 2011, and December 1, 2012, is \$127.00.

**Results:** VA reduces the Veteran's award to \$4.00 per month for the period June 1, 2012, through August 4, 2012. (This amount represents the difference between the monthly rate payable at the end of fiscal year 2009 and the monthly rate payable on June 1, 2012.)

**Part II:**

- In September 2012, the Veteran informs VA he returned to active duty on July 1, 2012.
- December 1, 2011, is the date of the most recent award line that both
  - precedes the date the Veteran returned to active duty, **and**
  - equals or exceeds \$123.00.

**Results:** VA

- discontinues the Veteran's benefits effective July 1, 2012, and
- issues notice of proposed adverse action to inform the Veteran VA intends to reduce his monthly benefit to \$4.00 for the period December 1, 2011, through January 4, 2012.

- This date range represents the 34-day period during which VA was unable to withhold benefits (from July 1, 2012, through August 4, 2012) because the Veteran is not entitled to VA benefits while on active duty.
- Notice of proposed adverse action is necessary because the *version* date of the *VA Form 21-8951* the Veteran submitted is *earlier* than February 2015.

**Part III:** The Veteran does not respond to the advance notice of adverse action.

**Result:** VA

- reduces the Veteran's monthly benefit to \$4.00, effective December 1, 2011
  - resumes full payment of the Veteran's benefits effective January 5, 2012, and
  - reexecutes the prior award adjustments that
    - reduced monthly benefits to \$4.00 effective June 1, 2012, and
    - discontinued benefits effective July 1, 2012.
- 

**h. Veteran Returns VA Form 21-8951 for Multiple Fiscal Years**

**Scenario:**

- In March 2006, a Veteran with a 10-percent disability rating returns *VA Form 21-8951* showing he attended 55 days of training during each of fiscal years 2002 and 2003.
- The earliest future date from which VA can make an award adjustment is April 1, 2006.
- The rate of compensation payable to the Veteran on
  - the last day of fiscal year
    - 2002 (September 30, 2002) was \$103.00, and
    - 2003 (September 30, 2003) was \$104.00, and
  - April 1, 2006, is \$112.00

**Results:**

- VA reduces the Veteran's compensation to \$9.00 effective April 1, 2006. The amount represents the difference between the rate payable at the end of fiscal year 2002 and the rate payable on April 1, 2006.
  - VA reduces the Veteran's compensation to \$8.00 effective May 26, 2006. This amount represents the difference between the rate payable at the end of fiscal year 2003 and the rate payable on April 1, 2006.
  - VA resumes monthly payments of \$112.00 effective July 21, 2006.
- 

**i. VA Is Withholding Compensation in Its Entirety to Recoup**

**Scenario:**

- In December 2006, VA
  - determines a Veteran is entitled to service connection for residuals of a broken wrist effective June 25, 2005, and



**Separation Benefits**

- assigns the wrist a disability rating of 10 percent.
- VA withheld all of the Veteran’s compensation because she received \$38,000.00 in separation benefits that are subject to recoupment.
- In June 2012, the Veteran returns *VA Form 21-8951* showing she attended 63 days of training during fiscal year 2010.
- The earliest future date from which VA can make an award adjustment is July 1, 2012.
- The monthly rate of compensation payable for a disability rated 10-percent disabling is
  - \$123.00 on the last day of fiscal year 2010 (September 30, 2010), and
  - \$127.00 on July 1, 2012.

**Results:**

- VA continues to withhold all of the Veteran’s compensation. However, effective July 1, 2012, VA withholds
  - \$4.00 for recoupment of the Veteran’s separation benefits (This represents the difference between the rate payable at the end of fiscal year 2010 and the rate payable on July 1, 2012.), and
  - \$123.00 to offset the Veteran’s receipt of drill pay, and
- VA resumes the withholding of \$127.00 for recoupment of the Veteran’s separation benefits effective September 4, 2012.

**Reference:** For instructions about withholding benefits for more than one purpose in

- VETSNET, see the [VETSNET Awards Handbook](#), or
  - VBMS, see the [VBMS-Awards User Guide](#).
- 

**j. VA is Withholding Part of the Veteran’s Compensation to Recoup Separation Benefits****Scenario:**

- In January 2010, VA
  - grants a Veteran’s original claim for service connection, and
  - assigns the Veteran a disability rating of
    - 30 percent for depression, and
    - 10 percent for residuals of a right knee strain.
- The effective date of the rating is June 2, 2009.
- The Veteran has no dependents.
- VA pays the Veteran at the rate payable for a disability rated as 10 percent disabling and withholds the difference because the Veteran received disability severance pay (in the amount of \$49,000.00) for depression.
- In April 2013, the Veteran returns *VA Form 21-8951* showing he attended 60 days of training during fiscal year 2011.

**M21-1, Part III, Subpart v, Chapter 4, Section C**

- The earliest future date from which VA can make an award adjustment without creating an overpayment is May 1, 2013.
- The monthly rate of compensation payable for a combined disability evaluation of 40 percent is \$541.00 on the last day of fiscal year 2011 (September 30, 2011).

***Results:***

- Effective May 1, 2013, VA withholds
    - \$541.00 from the Veteran’s award for the drill pay he received during fiscal year 2011, and
    - the balance of the Veteran’s award (\$28.00) for recoupment of his disability severance pay.
  - VA resumes payment of \$129.00 and the withholding of \$440.00 (for recoupment of disability severance pay), effective July 1, 2013.
-

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into on this 31 date of August, 2020 (the "Effective Date") by and between (a) American Trigger Pullers, LLC ("ATP") and (b) Creedon PLLC (ATP's "counsel") on the one hand, and (a) Shawn Wylde a.k.a Shawn Joyce, (individually referred to herein as "Wylde" (b) Wylde, Inc. d/b/a AAF Nation, (c) Ernest Browne, (d) OAF Nation, Inc. and (e) Semper Silkies, LLC (collectively (a)-(e) the "Defendants"). The Defendants and ATP shall collectively be referred to herein as the Parties.

### RECITALS

WHEREAS, on July 23, 2019, ATP filed a lawsuit against the Defendants in a case styled *American Trigger Pullers v. Shawn Wylde a.k.a Shawn Joyce, Wylde, Inc. d/b/a AAF Nation, Eric Shane Davis, Shane Davis, Inc., Texas Pride Unlimited, LLC d/b/a Texas Pride Apparel, Ernest Browne, OAF Nation, Inc. and Semper Silkies, Inc.*, No. 4:19-cv-02694, United States District Court, Southern District of Texas (the "Lawsuit");

WHEREAS, on October 4, 2019, the Defendants filed a Motion to Dismiss the Lawsuit;

WHEREAS, on October 24, 2019, ATP voluntarily dismissed, without prejudice, Wylde, Inc. d/b/a AAF Nation, Ernest Browne, OAF Nation, Inc. and Semper Silkies, Inc.;

WHEREAS, Wylde filed a Motion for Summary Judgment on February 21, 2020;

WHEREAS, the Court granted the Motion for Summary Judgment on April 9, 2020;

WHEREAS, Wylde served and filed a Motion for Sanctions pursuant to Federal Rule of Civil Procedure 11 against ATP and its counsel of record; and

WHEREAS, in order to settle the remaining issues and disputes in the Lawsuit, the Parties have agreed to enter into this Agreement, and ATP and Wylde have agreed to file the Joint Motion for Entry of Agreed Judgment attached hereto as Exhibit A.

### AGREEMENT

NOW THEREFORE, in consideration of the payment to Wylde set forth herein below and the mutual covenants and releases set forth herein, the receipt and adequacy of which is acknowledged by the Parties hereto, the Parties hereby agree as follows:

#### 1. Payment of Attorneys' Fees and Costs.

Upon execution of this Agreement, ATP and its counsel, jointly and severally, agree to pay Wylde's attorneys' fees and costs incurred in defending Wylde in the Lawsuit, in the amount of [REDACTED]. Wylde agrees and acknowledges that on Friday, July 24, 2020, Wylde's counsel of record received a wire transfer from Creedon PLLC in the amount of [REDACTED] in full satisfaction of ATP's and its counsel's obligations pursuant to this section, which is being held in Wylde's counsel's client trust account as of the Effective Date.

#### 2. Entry of Agreed Judgment.

In exchange for the payment set forth herein above, ATP and Wylde agree to file the Joint Motion for Entry of Agreed Judgment attached as Exhibit A (the "Joint Motion"), requesting the Court to enter the Agreed Judgment attached as Exhibit 1 thereto (the "Agreed Judgment"). The Joint Motion and the Agreed Judgment shall request and provide, respectively, the following:

A. The payment of Wylde's attorneys' fees and costs under 17 U.S.C. §505 as a prevailing party pursuant thereto;

B. The dismissal of all claims against Wylde related to the subject matter of the lawsuit, whether asserted or unasserted, with prejudice;

1 **OMID REJALI**  
2 **REJALI LAW FIRM, APLC**  
3 State Bar No.: 297600  
4 8880 Rio San Diego Dr. Suite 800  
5 San Diego, CA 92108  
6 Telephone: (619) 887-4148  
7 Fax: (619) 274-8222  
8 E-mail: [omid@rejalilawfirm.com](mailto:omid@rejalilawfirm.com)

**FILED**  
Clerk of the Superior Court

JAN 07 2020

By: K. Mulligan, Clerk

6 Attorneys for Plaintiff, SHAWN WYLDE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 SHAWN WYLDE, an individual,  
12 Plaintiffs,

13 vs.

14 DONG DUONG, individually, BINH  
15 HUYNH, individually, AUDREY HUYN,  
16 individually, and Carlin Holdings, LLC.  
17 Defendants.

Case No.: 37-2017-00034487-CU-BC-CTL

**[PROPOSED] AMENDED JUDGEMENT  
ON THE SPECIAL VERDICT OF THE  
JURY**

*Assigned for all purposes to Hon. Ronald L. Styn*

*Action Filed: 09/15/2017*

*Trial Date: 07/22/2019-08/01/2019*

18 This action came on regularly for jury trial on July 22, 2019, in Department C-74, of  
19 the above entitled court, the Honorable Ronald L. Styn presiding, Plaintiff Shawn Wylde  
20 represented by Omid Rejali from the Rejali Law Firm, APLC; Defendant Dong Duong  
21 representing himself *pro se*; Defendant Binh Huynh representing himself *pro se*; Defendants  
22 Audrey Huynh and Carlin Holdings, LLC represented by Kron & Card, LLP through Scott  
23 Kron.

24 A jury of twelve persons and two alternates was duly impaneled and sworn. Witnesses  
25 were sworn and testified. Following the hearing of all the evidence, instructions from the  
26 Court and argument from counsel, the case was submitted to the jury. The jury deliberated and  
27 thereafter, on August 1, 2019, rendered a verdict.

1 the lawsuit within the time otherwise required?

2 Answer: Yes.

3 10. Would a reasonable person in Shawn Wylde's position rely on Dong Duong's  
4 conduct?

5 Answer: Yes.

6 11. Did after the limitations period expire, Dong Duong's words or conduct prove  
7 to be false?

8 Answer: Yes.

9 12. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
10 proceed?

11 Answer: Yes.

12 **C. CONSPIRACY TO COMMIT FRAUD**

13 13. Was Dong Duong aware that Binh Huynh planned to commit fraud?

14 Answer: Yes.

15 14. Did Dong Duong agree with Binh Huynh and intend that the fraud be  
16 committed?

17 Answer: Yes.

18 **D. STATUTE OF LIMITATIONS**

19 **CONSPIRACY TO COMMIT FRAUD**

20 15. Did Shawn Wylde's claimed harm for conspiracy to commit fraud occur before  
21 September 15, 2014?

22 Answer: Yes.

23 16. Would a reasonable and diligent investigation have disclosed before September  
24 15, 2014 that Dong Duong did agree with Binh Huynh to commit fraud?

25 Answer: Yes.

26 17. Did Dong Duong say or do something that caused Shawn Wylde to believe that  
27 it would not be necessary to file a lawsuit?

28 Answer: Yes.

1 18. Did Shawn Wylde rely on Dong Duong's conduct and therefore he did not file  
2 the lawsuit within the time otherwise required?

3 Answer: Yes.

4 19. Would a reasonable person in Shawn Wylde's position rely on Dong Duong's  
5 conduct?

6 Answer: Yes.

7 20. Did after the limitations period expire, Dong Duong's words or conduct prove  
8 to be false?

9 Answer: Yes.

10 21. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
11 proceed?

12 Answer: Yes.

13 **E. BREACH OF FIDUCIARY DUTY**

14 22. Was Dong Duong a corporate officer at Indogroup United, Inc.?

15 Answer: Yes.

16 23. Did Dong Duong act on behalf of Shawn Wylde for purposes of making  
17 appropriate investment decisions?

18 Answer: Yes.

19 24. Did Dong Duong fail to act as a reasonably careful corporate officer would  
20 have acted under the same or similar circumstances?

21 Answer: Yes.

22 25. Was Dong Duong's conduct a substantial factor in causing Shawn Wylde's  
23 harm?

24 Answer: Yes.

25 **F. STATUTE OF LIMITATIONS**

26 **BREACH OF FIDUCIARY DUTY**

27 26. Did Shawn Wylde's claimed harm for breach of fiduciary duty occur before  
28 September 15, 2014?

1 Answer: Yes.

2 27. Would a reasonable and diligent investigation have disclosed before September  
3 15, 2014 that Dong Duong committed a breach of fiduciary duty?

4 Answer: Yes.

5 28. Did Dong Duong say or do something that caused Shawn Wylde to believe that  
6 it would not be necessary to file a lawsuit?

7 Answer: Yes.

8 29. Did Shawn Wylde rely on Dong Duong's conduct and therefore he did not file  
9 the lawsuit within the time otherwise required?

10 Answer: Yes.

11 30. Would a reasonable person in Shawn Wylde's position rely on Dong Duong's  
12 conduct?

13 Answer: Yes.

14 31. Did after the limitations period expire, Dong Duong's words or conduct prove  
15 to be false?

16 Answer: Yes.

17 32. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
18 proceed?

19 Answer: Yes.

20 **G. BREACH OF CONTRACT**

21 33. Did Shawn Wylde and Dong Duong enter into a contract?

22 Answer: Yes.

23 34. Did Shawn Wylde do all, or substantially all, of the significant things that the  
24 contract required him to do?

25 Answer: Yes.

26 35. Did Dong Duong fail to do something the contract required him to do?

27 Answer: Yes.

28 36. Was Shawn Wylde harmed by Dong Duong's breach of contract?

1 Answer: Yes.

2 **H. STATUTE OF LIMITATIONS**

3 **BREACH OF CONTRACT**

4 37. Did Shawn Wylde's claimed harm for breach contract occur before September  
5 15, 2013?

6 38. Would a reasonable and diligent investigation have disclosed before September  
7 15, 2013 that Dong Duong committed a breach of contract?

8 Answer: Yes.

9 39. Did Dong Duong say or do something that caused Shawn Wylde to believe that  
10 it would not be necessary to file a lawsuit?

11 Answer: Yes.

12 40. Did Shawn Wylde rely on Dong Duong's conduct and therefore he did not file  
13 the lawsuit within the time otherwise required?

14 Answer: Yes.

15 41. Would a reasonable person in Shawn Wylde's position rely on Dong Duong's  
16 conduct?

17 Answer: Yes.

18 42. Did after the limitations period expire, Dong Duong's words or conduct prove  
19 to be false?

20 Answer: Yes.

21 43. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
22 proceed?

23 Answer: Yes.

24 **I. DAMAGES**

25 What are Shawn Wylde's damages?

26 44. Economic Damages: Value of loan/invested money. Enter the amount below if you  
27 find that Binh Huynh is liable to Shawn Wylde under 1) Fraud; 2) Conspiracy to  
28 Commit Fraud; 3) Breach of Fiduciary Duty; or 4) Breach of Contract.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\$ 109,662.00

45. Prejudgment interest

\$ 87,496.00

TOTAL: \$ 197,158.00

**AS TO THE COMPLAINT BY PLAINTIFF SHAWN WYLDE AGAINST  
DEFENDANT BINH HUYNH**

**A. FRAUD**

1. Did Binh Huynh Make a false representation of fact to Shawn Wylde?

Answer: Yes.

2. Did Binh Huynh know that the representation was false or did he make the representation recklessly and without regard for its truth?

Answer: Yes.

3. Did Binh Huynh intend that plaintiff Shawn Wylde rely on the representation?

Answer: Yes.

4. Did Shawn Wylde reasonably rely on the representation?

Answer: Yes.

5. Was Shawn Wylde's reliance on Binh Huynh's representation a substantial factor in causing harm to him?

Answer: Yes.

**B. STATUTE OF LIMITATIONS**

**FRAUD**

1. Did Shawn Wylde's claimed harm for fraud occur before September 15, 2014?

Answer: Yes.

2. Would a reasonable and diligent investigation have disclosed before September 15, 2014 that Binh Huynh committed Fraud?

Answer: Yes.

3. Did Binh Huynh say or do something that caused Shawn Wylde to believe that

1 it would not be necessary to file a lawsuit?

2 Answer: Yes.

3 4. Did Shawn Wylde rely on Binh Huynh's conduct and therefore he did not file  
4 the lawsuit within the time otherwise required?

5 Answer: Yes.

6 5. Would a reasonable person in Shawn Wylde's position rely on Binh Huynh's  
7 conduct?

8 Answer: Yes.

9 6. Did after the limitations period expire, Binh Huynh's words or conduct prove to  
10 be false?

11 Answer: Yes.

12 7. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
13 proceed?

14 Answer: Yes.

15 **C. CONSPIRACY TO COMMIT FRAUD**

16 1. Was Binh Huynh aware that Dong Duong planned to commit fraud?

17 Answer: No.

18 **D. BREACH OF FIDUCIARY DUTY**

19 1. Was Binh Huynh a corporate officer at Indogroup United, Inc.?

20 Answer: Yes.

21 2. Did Binh Huynh act on behalf of Shawn Wylde for purposes of making  
22 appropriate investment decisions?

23 Answer: Yes.

24 3. Did Binh Huynh fail to act as a reasonably careful corporate officer would have  
25 acted under the same or similar circumstances?

26 Answer: Yes.

27 4. Was Binh Huynh's conduct a substantial factor in causing Shawn Wylde's  
28 harm?

1 Answer: Yes.

2 **E. STATUTE OF LIMITATIONS**

3 **BREACH OF FIDUCIARY DUTY**

4 1. Did Shawn Wylde's claimed harm for breach of fiduciary duty occur before  
5 September 15, 2014?

6 Answer: Yes.

7 2. Would a reasonable and diligent investigation have disclosed before September  
8 15, 2014 that Binh Huynh committed a breach of fiduciary duty?

9 Answer: Yes.

10 3. Did Binh Huynh say or do something that caused Shawn Wylde to believe that  
11 it would not be necessary to file a lawsuit?

12 Answer: Yes.

13 4. Did Shawn Wylde rely on Binh Huynh's conduct and therefore he did not file  
14 the lawsuit within the time otherwise required?

15 Answer: Yes.

16 5. Would a reasonable person in Shawn Wylde's position rely on Binh Huynh's  
17 conduct?

18 Answer: Yes.

19 6. Did after the limitations period expire, Binh Huynh's words or conduct prove to  
20 be false?

21 Answer: Yes.

22 7. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
23 proceed?

24 Answer: Yes.

25 **F. BREACH OF CONTRACT**

26 1. Did Shawn Wylde and Binh Huynh enter into a contract?

27 Answer: Yes.

28 2. Did Shawn Wylde do all, or substantially all, of the significant things that the

1 contract required him to do?

2 Answer: Yes.

3 3. Did Binh Huynh fail to do something the contract required him to do?

4 Answer: Yes.

5 4. Was Shawn Wylde harmed by Binh Huynh's breach of contract?

6 Answer: Yes.

7 **G. STATUTE OF LIMITATIONS**

8 **BREACH OF CONTRACT**

9 1. Did Shawn Wylde's claimed harm for breach contract occur before September  
10 15, 2013?

11 Answer: Yes.

12 2. Would a reasonable and diligent investigation have disclosed before September  
13 15, 2013 that Binh Huynh committed a breach of contract?

14 Answer: Yes.

15 3. Did Binh Huynh say or do something that caused Shawn Wylde to believe that  
16 it would not be necessary to file a lawsuit?

17 Answer: Yes.

18 4. Did Shawn Wylde rely on Binh Huynh's conduct and therefore he did not file  
19 the lawsuit within the time otherwise required?

20 Answer: Yes.

21 5. Would a reasonable person in Shawn Wylde's position rely on Binh Huynh's  
22 conduct?

23 Answer: Yes.

24 6. Did after the limitations period expire, Binh Huynh's words or conduct prove to  
25 be false?

26 Answer: Yes.

27 7. Did Shawn Wylde proceed diligently to file suit once he discovered the need to  
28 proceed?

1 Answer: Yes.

2 **H. VOIDABLE TRANSFER**

3 1. Did Shawn Wylde have a right to payment from Binh Huynh?

4 Answer: Yes.

5 2. Did Binh Huynh transfer his 1/3 interest in property to Boja, LLC?

6 Answer: Yes.

7 3. Did Binh Huynh fail to receive a reasonably equivalent value from BOJA, LLC  
8 in exchange for the transfer?

9 Answer: Yes.

10 4. Did Binh Huynh believe or should reasonably have believed that he would  
11 incur debts beyond his ability to pay as they became due?

12 Answer: Yes.

13 5. Was Binh Huynh's conduct a substantial factor in causing Shawn Wylde's  
14 harm?

15 Answer: Yes.

16 6. Did Boja, LLC receive the property from Binh Huynh in good faith?

17 Answer: No.

18 **I. STATUTE OF LIMITATIONS**

19 **VOIDABLE TRANSFER**

20 1. Did Shawn Wylde's claimed harm for voidable transfer occur before December  
21 19, 2017?

22 Answer: Yes.

23 2. Would a reasonable and diligent investigation have disclosed before December  
24 19, 2017 that Binh Huynh committed a voidable transfer?

25 Answer: Yes.

26 **J. CONSPIRACY TO COMMIT A VOIDABLE TRANSFER**

27 1. Was BOJA, LLC aware that Binh Huynh planned to commit voidable transfer?

28 Answer: Yes.



1           2.       Did Binh Huynh transfer his 1/3 interest in property to Audrey Huynh through  
2   BOJA, LLC and Carlin Holdings, LLC?

3   Answer: Yes.

4           3.       Did Binh Huynh fail to receive a reasonably equivalent value from Audrey  
5   Huynh, BOJA, LLC, or Carlin Holdings, LLC in exchange for the transfer?

6   Answer: Yes.

7           4.       Did Binh Huynh believe or should reasonably have believed that he would  
8   incur debts beyond his ability to pay as they became due?

9   Answer: Yes.

10          5.       Was Audrey Huynh's conduct a substantial factor in causing Shawn Wylde's  
11   harm?

12   Answer: Yes.

13          6.       Did Boja, LLC receive the property from Binh Huynh in good faith?

14   Answer: No.

15                           **B. STATUTE OF LIMITATIONS**

16   **VOIDABLE TRANSFER**

17          3.       Did Shawn Wylde's claimed harm for voidable transfer occur before December  
18   19, 2017?

19   Answer: Yes.

20          4.       Would a reasonable and diligent investigation have disclosed before December  
21   19, 2017 that Binh Huynh committed a voidable transfer?

22   Answer: Yes.

23                           **C. CONSPIRACY TO COMMIT A VOIDABLE TRANSFER**

24          3.       Was Audrey Huynh aware that Binh Huynh planned to commit voidable  
25   transfer?

26   Answer: Yes.

27          4.       Did Binh Huynh agree with Binh Huynh and intend that the transfer be  
28   committed?

1 Answer: Yes.

2 **D. STATUTE OF LIMITATIONS**

3 **CONSPIRACY TO COMMIT VOIDABLE TRANSFER**

4 3. Did Shawn Wylde's claimed harm for conspiracy to commit voidable transfer  
5 occur before December 19, 2017?

6 Answer: Yes.

7 4. Would a reasonable and diligent investigation have disclosed before December  
8 19, 2017 that Audrey Huynh did agree with Binh Huynh and intend that voidable transfer be  
9 committed?

10 Answer: Yes.

11 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

12 **1. AS TO DEFENDANT DONG DUONG:**

13 Plaintiff SHAWN WYLDE, shall recover judgment on the merits against  
14 Defendant DONG DUONG, in the total amount of \$197,158.00;

15 **2. AS TO DEFENDANT BINH HUYNH:**

16 Plaintiff SHAWN WYLDE, shall recover judgment on the merits against  
17 Defendant BINH HUYNH, in the total amount of \$103,980; and


18 **3. AS TO DEFENDANTS AUDREY HUYNH AND CARLIN HOLDINGS,  
19 LLC:**

20 Plaintiff SHAWN WYLDE take nothing by his complaint.

21 **4. ATTORNEY'S FEES AND COSTS:**

22 Costs Awarded to plaintiff in the amount of \$ \_\_\_\_\_

23 Dated: JAN 07 2020

24   
25 **Hon. Ronald L. Styn**  
26 Judge of the Superior Court



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**


Central  
330 West Broadway  
San Diego, CA 92101

**SHORT TITLE:** Wylde vs Duong [IMAGED]

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2017-00034487-CU-BC-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the Amended Judgment on the Special Verdict of the Jury was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 01/08/2020.

Clerk of the Court, by:  Deputy

OMID REJALI  
8880 RIO SAN DIEGO DRIVE # 800  
SAN DIEGO, CA 92108

DONG DUONG  
9984 SCRIPPS RANCH BOULEVARD # 180  
SAN DIEGO, CA 92131

SCOTT A KRON  
29122 RANCHO VIEJO ROAD # 110  
SAN JUAN CAPISTRANO, CA 92675

Additional names and address attached.