

**THE**  
**MILITARY RETIREE MEDICAL CARE**  
**BROKEN PROMISE ISSUE**

Briefing

22 Jan 2003



**This briefing is designed to educate the Congress,  
the News Media, and the American people concerning**

**~ The greatest swindle of all time ~**  
**A broken contract with America's military retirees**

For additional information e-mail [fsears@bellsouth.net](mailto:fsears@bellsouth.net)  
This briefing, which is a series of web pages, starts at <http://mrgrg-ms.org/brief00.html>  
(this page).

The Military Retiree Medical Care Broken Promise Issue

**MILITARY VETERAN and MILITARY RETIREE**

# **THE DIFFERENCE:**

- **NOT ALL VETERANS ARE THE SAME:**

In order to understand the *military retiree medical care broken promise issue* it must be understood that not all veterans are the same, in reference to **medical** care promised at the end of their service to their country.

- **MILITARY VETERANS - MILITARY RETIREES:**

Since all veterans are not the same, for this discussion, one group of veterans will be referred to as *military veterans* and another group of veterans as *military retirees*.

- **MILITARY VETERAN:**

A *military veteran* is a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. See United States Code, TITLE 38 - VETERANS' BENEFITS, PART I, CHAPTER 1, Sec. 101, Definitions, paragraph (2) at <http://www4.law.cornell.edu/uscode/unframed/38/101.html>

- **MILITARY RETIREE:**

A *military retiree* is any former member of the uniformed services who is entitled, under statute, to retired, retirement, or retainer pay. Examples include, but are not necessarily limited to, spending 20 or more years in the military or permanent retirement by reasons of physical disability.

- **All military retirees are veterans, but not all veterans are military retirees**

**MILITARY VETERAN and MILITARY RETIREE**

# **THE MISUNDERSTANDING:**

- Many members of the Congress, their staff members, the news media, and the American people don't realize that there is a difference between a veteran that spends less than 20 years in the military and is discharged and a veteran that spends 20 to 30 years in the military and retires. They don't seem to understand that **medical care promises** were made to both groups, but the promises are different.

**Military Retirees were promised free medical care for themselves and their eligible dependents for life at **military treatment facilities**.**



I am a military retiree.

I spent 20 years in the military and retired.

I was promised free medical care for myself and my eligible dependents at a military treatment facility.

Since I am also a military veteran I can get medical care at a VA Hospital, or Clinic, but it is not free.

**However, I can not get medical care for my eligible dependents at a VA Hospital, or Clinic.**

**Military Veterans were promised medical care at a **VA Hospital or Clinic** basically for service connected disabilities or medical conditions.**



I am a military veteran.

I spent 4 years in the military and was discharged.

I was promised medical care at a VA Hospital or Clinic.

**MILITARY VETERAN and MILITARY RETIREE**

# **THE CONFUSION FACTOR:**

- **Some people get confused, concerning this discussion, since a distinction is made between the military veteran and the military retiree.**
- **This distinction is necessary to avoid the confusion that always results when military retiree issues are being discussed and the Congress respond by talking about veterans issues instead of military retiree issues.**
- **In the United States the veterans community numbers about 26.5 million. The military retirees (a subset of the veterans community) number about 1.8 million.**
- **In fairness to all veterans, the Congress, Congressional Staff Members, the News Media, and the American People, must understand that there is a difference between the military retiree and the military veteran in reference to medical care that was promised after service to their country.**

*The promise (the contract offer) that was made to entice military personnel to re-enlist and remain in the military until retirement.*

- **Serve for 20 years in the military, and retire, and you will receive free medical care for yourself and your eligible dependents, at military treatment facilities, for as long as you and your eligible dependents live.**
- **This promise was made initially by Recruiters, then over a 20 to 30 year period by, Basic Training Instructors, line level Supervisors, 1st Sergeants, Commanding Officers, and Reenlistment Counselors, all agents of the United States government, as directed by the military hierarchy.**
- **The medical care promise was made to entice the trained and experienced military personnel to remain in the military. The prime reason for making the medical care promise was to save the American taxpayers BILLIONS of dollars by not having to train replacements every two to four years. Making the promise was all about money then and keeping the promise is all about money now.**



**THE LAW WAS CHANGED AFTER THE MEDICAL CARE PROMISE (CONTRACT OF-FER) WAS MADE.**

- **The US Code prior to 7 June 1956.** TITLE 10, Subtitle A, PART II, CHAPTER 55, Sec. 1074, (b) of the U.S. Code - Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay **shall**, upon request, be given medical and dental care in any facility of any uniformed service. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.
- **The US Code after the 7 June 1956 change.** TITLE 10, Subtitle A, PART II, CHAPTER 55, Sec. 1074, (b) of the U.S. Code - Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay **may**, upon request, be given medical and dental care in any facility of any uniformed service, **subject to the availability of space and facilities and the capabilities of the medical and dental staff.** The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.
- **Congress altered the US Code to change the word "shall" to "may" and added the words subject to the availability of space and facilities and the capabilities of the medical and dental staff; which set the stage for military base closures and the breaking of the medical care promise.**
- **There was no fanfare or warning given in reference to this major change to the law that would later impact the lives of millions of military retirees and their families.**

**· THE MEDICAL CARE PROMISE (CONTRACT OFFER) WAS BROKEN WHEN MILITARY BASES AND MILITARY TREATMENT FACILITIES WERE CLOSED!**

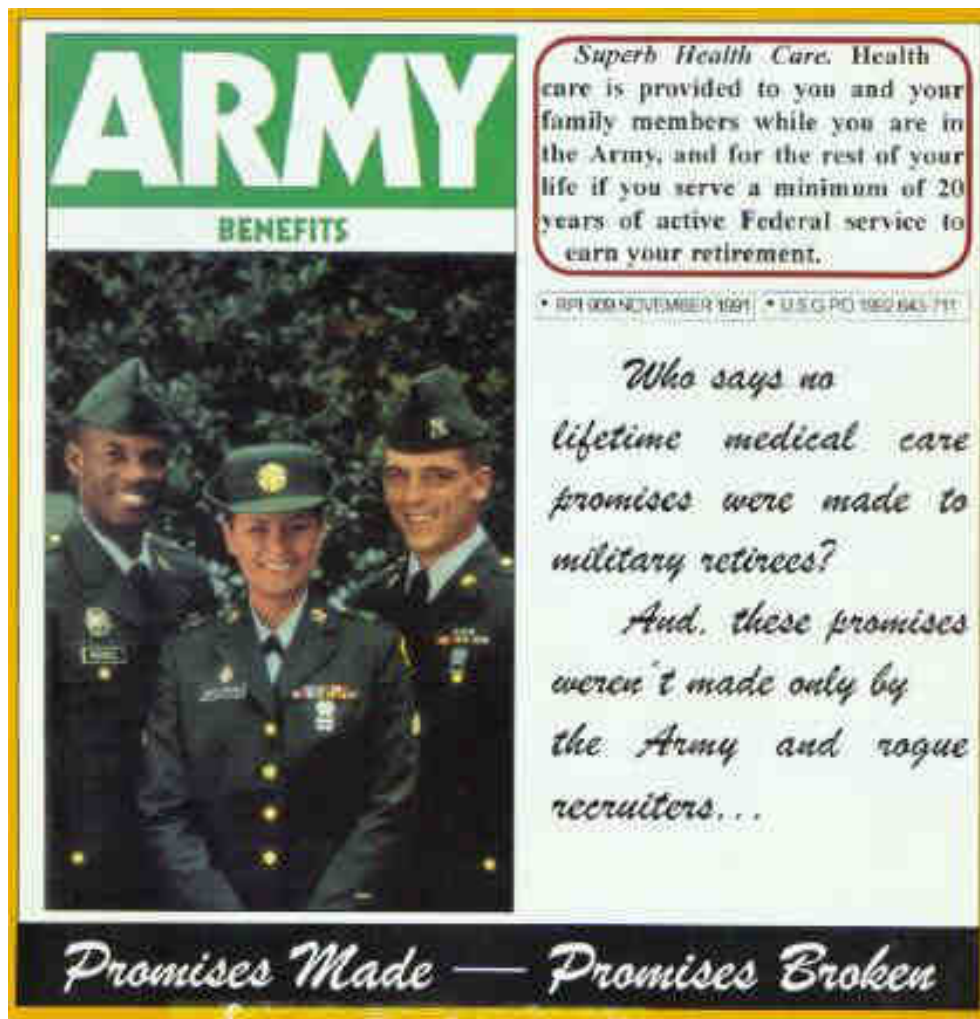
**· In the late 1980s, Congress and the Department of Defense started the process of closing military bases and medical facilities where the medical care promise was supposed to be kept. The space, facilities, and the capabilities of the medical staff were substantially reduced. As a result the Military Health Care System had to change and in 1995 TRICARE was born.**

**· In 1995, when TRICARE started, Medicare eligible military retirees and dependents were not eligible to enroll in Tricare Prime. As a result they had to leave the Military Health Care System (Military Treatment Facilities) go on Medicare and pay for their Medicare Supplement. The medical care promise was broken.**

**The government reneged on their promise.**

## The US Code was changed in 1956, but the medical care promise was still being made as late as 1991.

Superb Health Care. Health care is provided to you and your family members while you are in the Army, and for the rest of your life if you serve a minimum of 20 years of Federal service to earn your retirement.



Extracted from September/October 1997 NAUS  
Uniformed Services Journal, Volume 21, No. 5

Take a close look at the health care promise that was being made as late as 1991. Not only does it promise health care, but it promises "superb health care". It clearly indicates that health care is promised to you (the service member), and also to your family members while in the Army and for the rest of your life if you earn retirement. Note the numbers in the boxes. Note that the poster was printed in the United States Government Printing Office (U.S.G.P.O.1992 643-711) and the date is (RPI 909 NOVEMBER 1991).

# *The acceptance of the offer*



**Floyd Sears, and millions like him, accepted the contract offer (believed the promise and took a similar oath) and committed to a military career.**

**I do solemnly swear that I will bear true faith and allegiance to the United States of America; that I will serve honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice.**

**I kept my promise.**

**I would have died if necessary to keep my promise.**

**The fact is I had no choice.**

# *The acceptance of the offer*

- It must be understood that military personnel must believe what they are told, when it comes from an official source. They have no choice. It's required by military law. I had to believe what I was being told. I had to believe the medical care promise.
- The military person is trained, from day one, to trust their leaders and believe what they are being told. In the military, believing what one is told is the first step in obeying orders. If a military person is told that they *must kill the enemy* in combat and is also told that if they serves for 20 years in the military and retires they *will receive free medical care* for themselves and their eligible dependents at military treatment facilities for as long as they and their eligible dependents live, *then should they believe the one thing they are told and disbelieve the other?*
- I trusted and respected my military and elected leaders. I believed what I was told and I believed what I was promised. They, my leaders, could and did depend on me. I never let them down.

**I never reneged on my promise.**

## THE COURT RULED THAT WE HAD A CONTRACT

· The retirees entered active duty in the armed forces and completed at least twenty years service on the good faith belief that the government would fulfill its promises. The terms of the contract were set when the retirees entered the service and fulfilled their obligation. The government cannot unilaterally amend the contract terms now. In contracts involving the government, as with all contractual relationships, rights vest and contract terms become binding when, after arms length negotiation, all parties to the contract agree to exchange real obligations for real benefits. •Winstar, 64 F.3d at 1546. Because failure to perform a contractual duty when it is due is a breach, see Restatement (Second) of Contracts § 235(2) (1981), the government breached its implied-in-fact contract with the retirees when it failed to provide them with health care benefits at no cost.[3] The district court therefore erred in granting summary judgment to the government and, on the record before us, abused its discretion in denying the retirees motion for summary judgment of liability.

[3] In light of Sebastain, we decline to address the retirees claim under the Fifth Amendment of the Constitution.

- Conclusion
- Accordingly, the judgment of the United States District Court for the Northern District of Florida is reversed and the case is remanded for determination of damages.
- See <http://mrgrg-ms.org/d99-1402.html>
- **This 8 Feb 2001 decision was appealed by the Government.**

## **THE COURT THEN RULED THAT CONGRESS DID NOT AUTHORIZE THE CONTRACT**

- We cannot readily imagine more sympathetic plaintiffs than the retired officers of the World War II and Korean War era involved in this case. They served their country for at least 20 years with the understanding that when they retired they and their dependents would receive full free health care for life. The promise of such health care was made in good faith and relied upon. Again, however, because no authority existed to make such promises in the first place, and because Congress has never ratified or acquiesced to this promise, we have no alternative but to uphold the judgment against the retirees' breach-of-contract claim.
- Federal judges have a duty to uphold the Constitution and the laws, even if that means making unpleasant or unpopular decisions. Congress, on the other hand, has the power to make law, not simply to interpret and apply it. As our predecessor court said:
- Congress has the power and authority under the Constitution to establish a system for the payment of retired pay [for military service members] and to change the system from time to time. . . . We understand and appreciate the dissatisfaction of the plaintiffs with the change in the retirement pay system, as they have rendered long and faithful service to our country in time of peace and war. However, if they are to get any relief, it must come from Congress, as this is not within [a court's] jurisdiction.
- See <http://mrgrg-ms.org/f99-1402.html>
- **This decision has been appealed to the Supreme Court.**

2 June 2003

**THE UNITED STATES SUPREME COURT  
REFUSES TO HEAR  
THE COL BUD DAYS WWII/KOREA ERA  
MILITARY RETIREE MEDICAL CARE CASE.**

[Click here](#) to see a Class Act Group press release

*This fight for justice is not over  
it has simply shifted to another battlefield,  
the United States Congress.*

### Additional information.....

- **Supreme Court: No Help for World War II, Korean Vets, By Gina Holland Associated Press Writer**  
Published: Jun 2, 2003, at: <http://ap.tbo.com/ap/breaking/MGA2NCGKGGD.html>
- **No free health care, high court says, By DALE EISMAN, The Virginian-Pilot © June 3, 2003**  
at: <http://home.hamptonroads.com/stories/story.cfm?story=54953&ran=138193>
- **BRIEF FOR THE UNITED STATES IN OPPOSITION**  
<http://www.usdoj.gov/osg/briefs/2002/0responses/2002-1226.resp.html>  
<http://www.usdoj.gov/osg/briefs/2002/0responses/2002-1226.resp.pdf>
- **McCain, Deeply Concerned by Supreme Court Action on Veterans Health Care.**  
See: <http://mrgrg-ms.org/cag-mccain.html>
- **Justices refuse to hear veterans' benefits case**  
By Frank J. Murray  
THE WASHINGTON TIMES  
See: <http://www.washingtontimes.com/national/20030603-122038-3038r.htm>
- **Military retirees take on Congress**  
By Bill Kaczor  
THE ASSOCIATED PRESS  
See: <http://www.intellisearchnow.com/branding/150/contentreader.html?http://www.tallahassee.com/mld/democrat/news/local/6007570.htm>
- **High court ends challenge by military retirees**  
Posted on Sat, Jun. 07, 2003 by The Sun Herald  
See: <http://www.sunherald.com/mld/thesunherald/6034203.htm>
- **High Court Ends Retirees' 7-Year Quest For `Free` Care**  
Military Update by Tom Philpott, June 5, 2003  
See: <https://www.fra.org/mil-up/milup-archive/06-05-03-milup.html>
- **MOAA Files Amicus Brief in Support of Class Act Group.**  
See: <http://www.moaa.org/Legislative/HealthCare/AmicusBrief.pdf>

- **Military Retirees Seek Promised Medical Care**  
By **GEORGE CORYELL** [gcoryell@tampatrib.com](mailto:gcoryell@tampatrib.com)  
Published: Jun 9, 2003  
See: <http://www.tampatrib.com/News/MGACU0HZPGD.html>
  
- **Veterans set for benefits battle**  
**Retirees want health care for life**  
By **John McCarthy**  
**FLORIDA TODAY**  
See: <http://www.floridatoday.com/!NEWSROOM/localstoryA1990A.htm>
  
- **The Virginian-Pilot**  
© June 9, 2003  
**Keep health promises to military retirees**  
See: <http://home.hamptonroads.com/stories/story.cfm?story=55213&ran=118196>

**END OF BRIEFING SUMMARY**

- **Not all veterans are the same. Some are military veterans and some are both military veterans and military retirees.**
- **Those veterans that spent less than 20 years in the military and were discharged were promised medical care at VA Facilities.**
- **Those veterans that spent 20 or more years in the military and retired were promised free medical care at Military Treatment Facilities.**
- **There are approximately 26.5 million military veterans. About 1.8 million of the military veterans are also military retirees.**
- **Military retirees had a medical care contract that was established by the US Code. The US Code was changed after the contract was made. Military Treatment Facilities were closed and the contract was broken. The medical care promise continued even though the US Code had changed.**
- **Millions accepted the contract offer and committed to a career in the military.**
- **The Court ruled that we had a contract. Then the Court ruled that the Congress did not authorize the contract. *The Supreme Court refused to hear the case.***