

RETIREMENT AND WORKERS' COMPENSATION



Heather Nichol

Program Analyst, U.S. Department of Veterans Affairs

Chatt Golden

Program Analyst, Veteran Benefits Administration

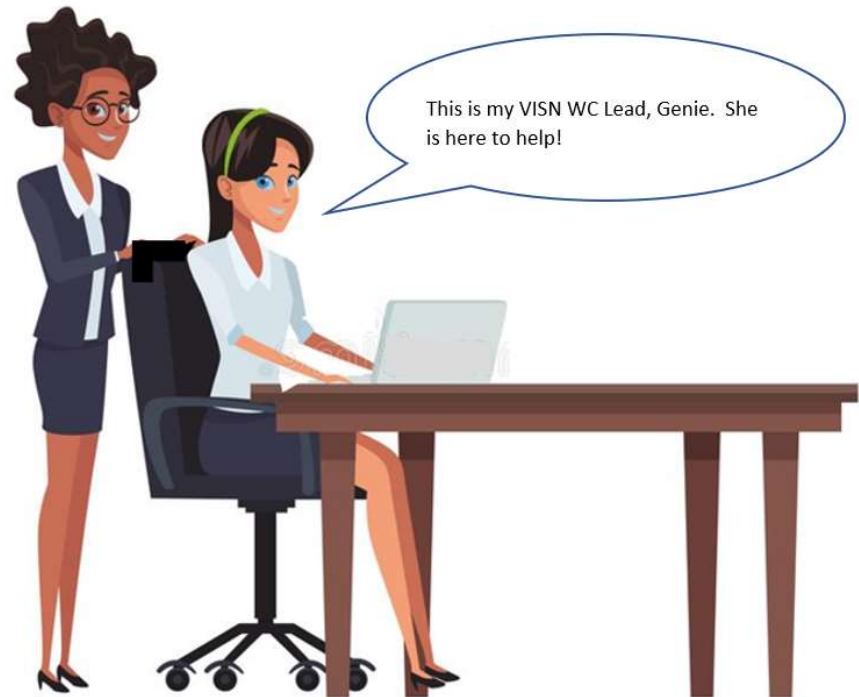


Hi. My name is Elise and this is my injured worker, Jim. Jim has a lot of questions about the difference between OWCP benefits and OPM retirement.



Objectives

- Discuss the differences between workers' compensation benefits and OPM retirement benefits
- Address actions workers' compensation personnel may need to take when an injured worker is entitled benefits under both programs.
- Discuss actions injured workers should/should not take to protect their survivor benefits.



Potential Benefits

FECA

- Medical Benefits
- Wage Loss Benefits
- Schedule Award for Permanent Impairment
- Death Benefits– Survivor, Funeral
- Other Benefits
 - Attendant Allowance
 - Vocational Rehabilitation
 - Nurse Services
- Eligible to continue FEHB
- Eligible for FEVIP
- Eligible for continuation of FEGLI, if eligible as a compensationner

OPM

- Annuity Payments
- Eligible to continue FEHB, if coverage requirements are met
- Eligible for FEDVIP
- Eligible for continuation of FEGLI, if coverage requirements are met
- Survivor benefits for spouse or another individual who is financially dependent on the employee. Survivor benefits elected at retirement*

*Waiver of full spouse benefit requires spousal consent.



Eligibility

FECA

- Federal Employees injured in the performance of duty

OPM

- Federal Employees who meet the required combinations of age and years of creditable service to be eligible for a federal annuity.



Eligibility (continued)

• FERS Voluntary

Age	Years of Service
62	5
60	20
MRA	30
MRA	10

• FERS Disability

Age	Years of Service
Any Age	18 months

• CSRS Voluntary

Age	Years of Service
62	5
60	20
55	30

• CSRS Disability

Age	Years of Service
Any Age	5



Payment Calculations

FECA Compensation Rate

- 66.6% tax-free, without dependents
- 75% tax-free, with a single eligible dependent

OPM Annuity Payments

- FERS Disability Retirement
 - 1st Year – 60% of high-3, minus 100% of any Social Security payable
 - Year 2 – 40% of high 3, minus 60% of any Social Security payable
 - Age 62 – Converts to voluntary
- CSRS Disability Retirement
 - Smaller of 40% of high-3 or regular annuity after increasing service by the time until the employee's 60th birthday.
- Voluntary Retirements
 - Based Length of Service as a multiplier to the high-3



FERS and CSRS Voluntary Retirement Formulas

FERS

Age	Formula
Under Age 62 at Separation for Retirement, OR Age 62 or Older With Less Than 20 Years of Service	1 percent of your high-3 average salary for each year of service
Age 62 or Older at Separation With 20 or More Years of Service	1.1 percent of your high-3 average salary for each year of service

CSRS

Duration	Formula
First 5 years of CSRS service	1.5% of your high-3 average salary for each year of service
Second 5 years of CSRS service	1.75% of your high-3 average salary for each year of service
All years of CSRS service over 10	2% of your high-3 average salary for each year of service





Enhanced Annuity

- Annuity enhancement for certain FERS employees receiving FECA benefits to make up for FERS beneficiaries' inability to participate in SSA or TSP during a period of disability.
- FERS employees receive enhanced annuity computation if qualifying periods of absence totals 2 months or more.

Federal Employees Health Benefit (FEHB)

FECA

- Eligible to keep FEHB while on Periodic Rolls
- Benefits “transferred in” to the OWCP when an injured worker is placed on the Periodic Rolls from information which appears on CA-7 Forms.
- Employee portion taken directly from PR payments
- Must make sure that SF-50 is entered to stop payments at employing Agency

OPM

- Eligible to keep FEHB benefit in both voluntary or disability retirement, if the employee has coverage for the five years immediately preceding retirement or, if less than 5 years of service enrolled at the earliest eligibility.
- Employee FEHB will automatically transfer into retirement. Retirement is not a Qualifying Life Event. Coverage can be cancelled or changed during Open Season.
- Employee portion taken directly from annuity payments
- Benefits will remain in effect while adjudication is pending



Federal Employees Group Life Insurance (FEGLI) Benefits

FECA

- Eligible to keep FEGLI while on Periodic Rolls
- Benefits “transferred in” to the OWCP when an injured worker is placed on the Periodic Rolls
- Employee portion taken directly from PR payments

OPM

- Eligible to keep FEGLI in in both voluntary or disability retirement, up to the amount the employee had in the five years immediately preceding retirement or, if less than 5 years of service enrolled at the earliest eligibility.
- Employee will have the ability to reduce coverage during the completion of retirement paperwork.
- Employee portion taken directly from annuity payments
- If an employee is not eligible to continue life insurance coverage after retirement, then there is an option to change coverage to an individual policy.



Applying for Benefits

FECA

- Traumatic Injury – DOL Form CA-1
- Occupational Illness / Disease - DOL Form CA-2
- Medical and other documentation supporting basic elements of the claim

POC:

Workers' Compensation Program personnel

DOL/OWCP



OPM

- Disability Retirement
 - SF-3112, Documentation in Support of Disability Retirement Application and either:
 - SF-2801 Application for Immediate Retirement (CSRS); or
 - SF 3107 Application for Immediate Retirement (FERS)
 - Medical documentation supporting disability
- Voluntary Retirement
 - SF-2801 Application for Immediate Retirement (CSRS); or
 - SF 3107 Application for Immediate Retirement (FERS)

POC:

Agency Retirement Specialist

Office of Personnel Management

Standard for Initial Coverage

- Acceptance of a claim under one program does not automatically guarantee acceptance of a claim and entitlement to benefits under other programs. The programs are governed by distinct laws and the standards of proof and benefits vary between programs.
- The standards for approval are very different:
 - An employee receiving OPM Voluntary Retirement need only provide he or she has met the age and years of service requirement.
 - An employee receiving OPM Disability Benefits need only prove they have been physically disqualified from their date of injury (DOI) position.
 - An employee in receipt of OWCP Periodic Roll payments should have no work capacity of any kind.



Standard for Continuing Coverage

FECA

- Requires medical documentation substantiating ongoing disability
- No maximum benefit or age limitation

OPM

- Disability Retirement
 - OPM may require proof of ongoing disability
- Voluntary Retirement
 - Lifetime Annuity



Adjudication

FECA

- Benefits adjudicated by the U.S. Department of Labor, Office of Workers' Compensation
- Expenses are billed back to the date of injury facility through the OWCP chargeback
- Up to 180 days

OPM

- Benefits are determined by Retirement Specialists at the Office of Personnel Management (OPM)
- Benefits are paid from employee and employing agency contributions to the retirement system
- Voluntary - interim payments in 6-8 weeks. 3-5 Months Total.
- Disability – Up to 1 year but backpay applies, if approved



Approved OPM Retirement, Pending FECA Claim

When an employee applies for both benefits:

- OPM will begin annuity payments if OWCP has not been awarded benefits by the time the retirement claim is finalized.
- If OWCP subsequently awards benefits, the annuitant must reimburse OPM for annuity that has been paid. Normally, OWCP withholds the amount of annuity to be repaid from workers' compensation benefits to reimburse OPM.



If Both FECA and OPM Benefits are Approved

- Employee must make an election between workers' compensation and retirement benefits.
 - Election is made through OWCP.
 - OWCP notifies OPM of the election.
 - Revocable at any time
- Many employees who are eligible for both workers' compensation and retirement benefits initially elect to receive workers' compensation because it generally is the higher benefit.



If Both FECA and OPM Benefits are Approved (continued)

- When workers' compensation benefits are elected, OPM suspends payment of the annuity.
- If the compensation benefits end for any reason, OPM will reinstate the annuity.
- When OPM benefits are elected, the employee is still entitled to have medical expenses for treatment of the accepted condition(s).



Exceptions

Concurrent payment of FERS annuity and FECA benefits for the same period of time can be received only if the injured worker is:

- Receiving a schedule award
- Receiving FECA benefits due to the death of another person and annuity based on his/her own Federal service
- FECA payments are suspended because the employee is receiving a third-party settlement



Potential Dual Benefit Issues

Social Security

FECA

Social Security Administration (SSA) benefits are payable concurrently with FECA benefits.

- If an employee receives SSA old age benefits based on federal service, his or her compensation benefits must be reduced by the amount of SSA benefits attributable to his or her Federal service. (5 USC 8116 (d))
- This reduction is calculated and deducted by the Social Security Administration, not OWCP.

OPM

- CSRS
 - Most CSRS employees are not eligible for Social Security, unless they have outside earnings.
- FERS Voluntary
 - Social Security Administration (SSA) benefits are payable concurrently with FERS retirement benefits.
- FERS Disability
 - FERS annuity are offset by 100% of the Social Security disability the first year and 60% in any years following.



Potential Dual Benefit Issues

VA Benefits

The prohibition against dual payment of FECA and veterans' benefits applies also to those cases where the employee's death, which resulted from an injury sustained in civilian employment, was also determined to be military service connected.



Potential Dual Benefit Issues

VA Benefits (continued)

FECA

- Benefits paid by the Department of Veteran's Affairs (DVA) may or may not require an election
- Election of benefits will only occur when the DVA and FECA benefits are based upon the same condition
- No election is required in cases where the individual is receiving DVA benefits for a nonwork-related condition

OPM Benefits

- There is no prohibition from receiving both DVA benefits and OPM disability benefits for the same condition



Federal Retirement and RTW

During the job offer process, or other OWCP actions to reduce compensation, the claimant may elect OPM benefits.

- Election of either OPM voluntary or disability retirement benefits ***should not stop the return-to-work process.***
- Agency workers' compensation specialist should pursue the job offer and termination of compensation under 5 USC 8106.
- If the injured worker chooses to remain on retirement benefits, he/she can indicate that on the job offer refusal.



Federal Retirement and RTW (Continued)

If the Agency does not continue the job offer process and terminate benefits, the claimant may return to FECA benefits at any time.

- When a claimant declines the job offer and benefits are terminated by OWCP, schedule awards are also forfeited.
- The claimant may also return to FECA benefits and receive retroactive benefits minus any OPM benefits received - if termination of benefits has not been issued by OWCP.



Closing the Loop

- The agency Workers' Compensation Specialist should request a final decision by DOL.
- The Agency should document the agency's return to work effort in the ECOMP case file.
- Absent a final decision by OWCP, the claimant can switch back to FECA benefits.
- Final LWEC determination by OWCP reduces the claimant's compensation benefits in the event that the claimant, when opting OPM benefits, decides to switch back to FECA benefits.



When FECA Benefits Stop

- Many former employees who are eligible for both workers' compensation and retirement benefits initially elect to receive workers' compensation because it is generally the higher dollar amount.
- Separated employees should apply for retirement benefits to preserve their rights under CSRS or FERS.
- Disability retirement application must be received within one year of the date of separation.
- If workers' compensation benefits later end or are reduced, the former employee may elect to receive the annuity.



Reverting to Annuity

In computing the disability annuity (or annuity based on age and service, if applicable):

- OPM will not allow credit for any period of workers' compensation or Federal service that occurred after the individual separated.
- The annuity will be based on his/her service and high-3 average salary as of the date of separation from employment, plus all applicable cost-of-living adjustments.



Accepting a Refund of Retirement Funds

- A separated employee, who is not entitled to receive an annuity, including an individual who elected to receive workers' compensation benefits in lieu of a disability annuity, may receive a refund of his or her retirement contributions.
- If a separated employee receives a refund, he or she forfeits all annuity rights based on the service covered by the refund (including survivor benefits) unless the individual is later reemployed in a position subject to retirement coverage and makes a redeposit with interest.



Survivor Benefits

The surviving spouse, children, and other eligible dependents of an individual who dies as a result of a job-related injury or occupational illness may be eligible for FECA death benefits or CSRS or FERS survivor benefits.



Survivor Benefits (continued)

FECA

- Continuing Payments
 - Spouse – 50%
 - Spouse and Children* – 45% + 15% for each eligible child up to 75%
 - Eligible Children (only) 40% + 15% for each additional child, up to 75%

*Children eligible to age 18 unless enrolled in full-time college. Benefits will continue until college is completed, or until the child is 23 years of age.

OPM

- Monthly Annuity or Lump Sum Credit
- FERS Basic Employee Death Benefit



Survivor Benefits (continued)

- The law prohibits concurrent payment of workers' compensation death benefits and a survivor annuity.
- Like the employee, the survivor must elect which of the two benefits he or she wishes to receive.
- The election is made with OWCP.





Survivor Benefits (continued)

When the surviving spouse elects workers' compensation death benefits, he or she is not eligible for the FERS basic employee death benefit.

- The surviving spouse may elect to take a refund of the decedent's retirement contributions.
- If workers' compensation death benefits terminate, receipt of the lump sum payment of the decedent's retirement contributions terminate any further survivor annuity entitlement.



Survivor Benefits (continued)

- An employee's spouse can elect OPM survivor benefits first and then change to FECA death benefits because OWCP views the election as revocable. That is, the recipient can change the benefits election.
- An employee's spouse cannot elect FECA benefits first and then change to OPM survivor benefits because OPM views the election of these benefits as irrevocable. Once the recipient has elected FECA death benefits they cannot receive OPM survivor benefits. In this case the surviving spouse can request a refund of retirement contributions and can receive this refund concurrently with FECA death benefits.

Survivor Benefits (continued)

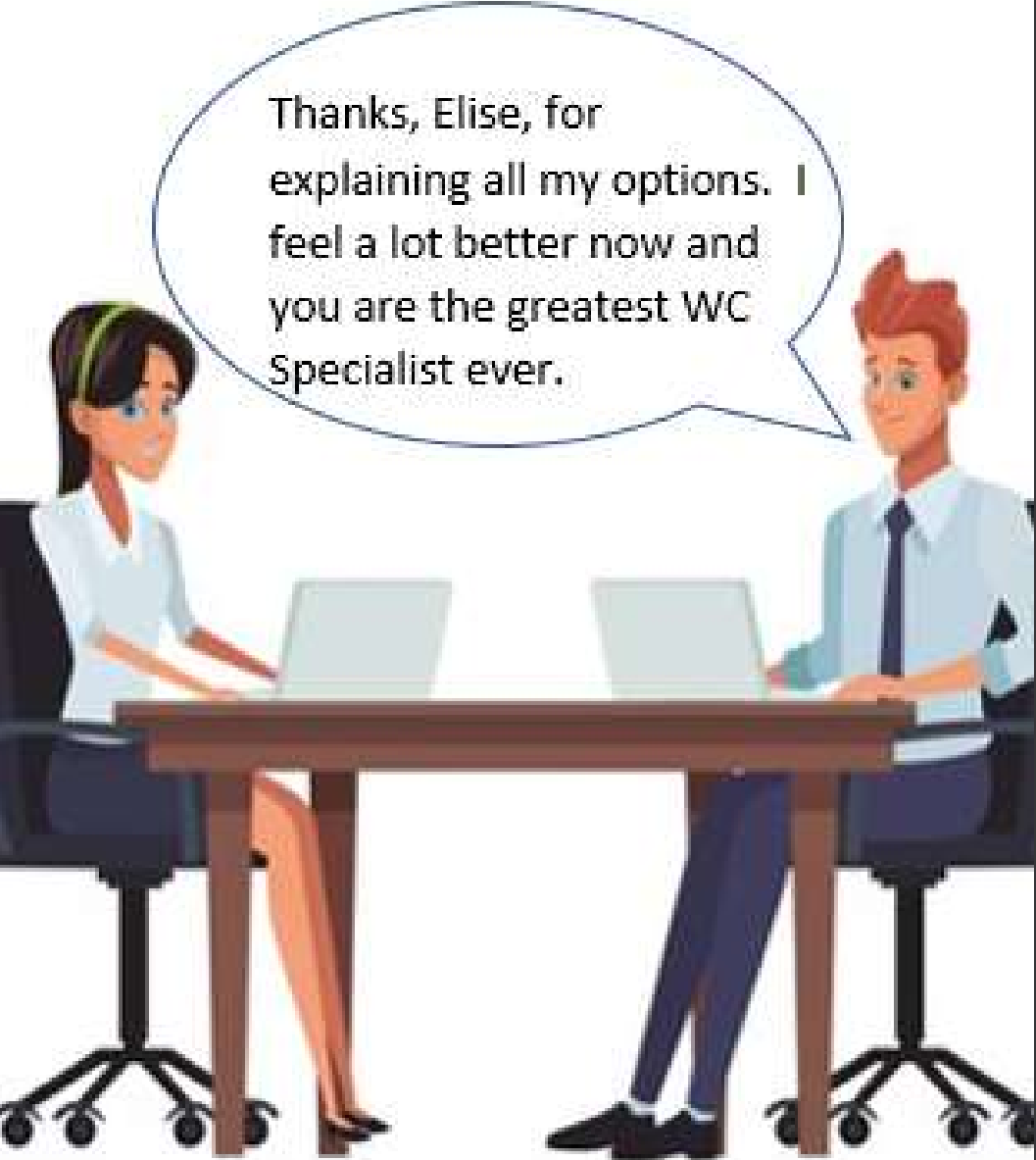


- The spouse will be required to sign a statement that he/she understands that receipt of the lump sum payment will irrevocably waive future survivor rights.
- If the survivor elects a settlement from a third party deemed responsible for the death, the waiver will be void and the survivor allowed to repay the lump sum (or have it withheld from the retroactive payments).
- FECA death benefits will be reduced by the survivor's benefits paid under SSA attributable to the employee's Federal service.

Why Choose OPM?

- Avoid periodic medical evaluations.
- During job offer process, or other OWCP actions to reduce compensation, the claimant may elect OPM benefits
- Compensation and/or medical benefits under FECA can be terminated at any time
- Survivor benefits are limited under the FECA.
- Ongoing legislation proposed to cease FECA benefits past Social Security retirement age
- Employee still entitled to have medical expenses paid for treatment of the accepted conditions.





Thanks, Elise, for explaining all my options. I feel a lot better now and you are the greatest WC Specialist ever.

Questions?

References

- [CSRS and FERS Handbook, Chapter 102, Relationship Between Retirement Annuity and Compensation for Work-Related Injuries and Disease](#)
- Federal Employees' Compensation Act (FECA) Procedure Manual [2-1000, Dual Benefits](#)

