

# Coordination of Benefits

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# About the Lesson

- In many instances a claimant will be qualified to receive benefits from government programs in addition to FECA.
- In some situations, the claimant may be prohibited from receiving benefits from more than one program at the same time.
- In other situations, the claimant's benefits may be offset or reduced because they are receiving FECA benefits.
- It is important to understand these rules when counseling employees so that they can make informed decisions regarding their FECA and other benefits.

# Objectives

After the completion of this lesson the learner will be able to:

1. State the circumstances in which the receipt of OPM and FECA benefits would constitute the receipt of prohibited dual benefits.
2. State the circumstances in which the receipt of SSA and FECA benefits would require offset
3. State the circumstances in which the receipt of VA and FECA benefits would constitute the receipt of dual benefits
4. State the circumstances where receiving Severance/Separation pay impacts FECA benefits.
5. Recognize circumstances where elections may be required or where other benefits may be reduced or prohibited because FECA benefits are being provided (Unemployment benefits, entitlement to benefits under certain 9/11 programs).

# Coordination of Benefits

Coordination/Offset: There are many circumstances under which claimants may be eligible to receive benefits from Federal agencies and programs other than from FECA. Since some of these programs include benefits that overlap with those provided by FECA, laws, regulations and rules exist to limit an employee's entitlement to FECA benefits when this occurs. In some situations, ensuring reduction occurs is the responsibility of OWCP, and in other situations it is the responsibility of the other Federal (or State) agency

Election of benefits: Claimants eligible for benefits mutually exclusive of those provided under FECA must be provided the opportunity to make an informed choice, or election, between FECA benefits and those available under the other program(s).

OWCP's duties: OWCP is responsible for determining whether the claimant has qualified for, or is receiving, benefits from another Federal agency. When a claimant is entitled to, or is receiving, a benefit from another agency, the claims examiner must determine if that benefit constitutes a prohibited dual benefit that requires an election; if the FECA benefit must be reduced by OWCP; if the benefit reduction is the responsibility of that other agency; or whether the benefit will not affect the claimant's FECA compensation entitlement.

# OPM Dual Benefits

Employees and/or surviving family members may be eligible for benefits from OPM depending upon the circumstances of their individual cases. The benefits for which they may be eligible will fall into one of three categories:

1. Retirement benefits based upon age and years of service of the employee
2. Retirement benefits based upon the employee's inability to work due to a disabling condition
3. Benefits paid to surviving family members due to the death of an employee.

# Election of benefits-- FECA versus OPM

An employee can change his or her election of FECA disability or OPM retirement benefits without penalty. An employee can elect whichever benefit is more favorable, whenever he or she believes it is advantageous to do so. *See* 20 C.F.R. § 10.421(a). The employee also may choose the effective date of the election as long as he or she is/was eligible for the benefit at that time.

Sections 5 U.S.C. 8337(f) and 8464a(a)(3), for employees under CSRS and employees under FERS respectively, establish that the prohibition against the payment of dual benefits does not bar the right of a claimant to the greater benefit, conferred by OPM or conferred under FECA, for any part of the same period of time.

Neither an election of disability compensation under FECA nor an election of an OPM annuity benefit is irrevocable. 20 C.F.R. § 10.421(a); *see* FECA Procedure Manual 2-1000-4.

# OPM Retirement Benefits

Generally, OPM and FECA disability benefits cannot be paid at the same time. However, the type of OPM and FECA benefits for which an employee, or an employee's family, is eligible will dictate whether an election of benefits is required.

An employee **cannot** collect OPM retirement (annuity) benefits and FECA disability benefits at the same time. An election of benefits is required.

An employee **cannot** collect OPM retirement (annuity) benefits and FECA benefits for Loss of Wage Earning Capacity (LWEC) at the same time. An election of benefits is required.

An employee **cannot** receive Vocational Rehabilitation from OWCP, for a return to work effort, and OPM retirement (annuity) benefits at the same time. See FECA Program Memorandum No. 27. But if a Field Nurse or Rehabilitation Counselor is needed to coordinate housing or vehicle modifications required by the condition for which the employee was found eligible for FECA benefits, these limited services may be authorized. See FECA Procedure Manual 2-1800.

# OPM Retirement Benefits

An employee **cannot** receive an attendant's allowance and OPM retirement benefits at the same time. See 5 U.S.C. 8111(a). However, if an employee is receiving a FECA schedule award while receiving OPM retirement benefits, then an attendant's allowance is payable for the duration of the schedule award. In this specific circumstance the attendant's allowance is considered incidental to the scheduled award. (FECA Program Memorandum No. 72)

An employee **can** collect OPM retirement benefits and a FECA schedule award - for the permanent loss of use of specified members, organs, or functions of the body - at the same time. 5 U.S.C. § 8107. Accordingly, FECA schedule awards are the only FECA monetary compensation benefits payable concurrently with OPM annuities. See 5 U.S.C. § 8116(a). For injuries that occurred prior to September 13, 1957, an election between the two sets of benefits is necessary.

An employee **can** receive FECA medical benefits and OPM retirement benefits at the same time. In fact, any medical treatment needed as a result of the work injury for which the employee was granted entitlement to FECA benefits will continue to be provided under FECA.



# OPM Survivor Benefits

Similarly, there is a prohibition against receiving benefits from FECA and other government programs due to the death of an employee. As with retirement benefits, the specific circumstances will dictate whether an election of benefits is required. For purposes of clarity we will focus on a surviving spouse.

An employee's spouse **cannot** receive FECA death benefits and OPM survivor benefits at the same time. An election of benefits is required. *See* 5 U.S.C. § 8116(b); *see also* CSRS and FERS Handbook, 102A2.1-3 (2013).

An employee's spouse **cannot** receive a lump sum death benefit or other alternate annuity and FECA death benefits at the same time. An election of benefits is required. *See* 5 U.S.C. § 8116(b); *see also* CSRS and FERS Handbook, 102A2.1-3 (2013).

# OPM Survivor Benefits

An employee's spouse can receive FECA death benefits and OPM retirement benefits at the same time if the OPM benefits are based upon the surviving spouse's own years of service.

An employee's spouse can receive Thrift Savings Plan benefits and FECA death benefits at the same time.

An employee's spouse can receive a refund of the employee's retirement contributions and FECA death benefits at the same time.

# OPM Survivor Benefits

An employee's spouse can elect OPM survivor benefits first and then change to FECA death benefits, or elect FECA benefits first and then change to OPM survivor benefits. That is, the employee's spouse can switch his or her benefits election without penalty, as long as there is no period of time where FECA and OPM survivor benefits overlap. *See* 20 C.F.R. § 10.421(a).

# Hypothetical Robert

Robert was injured in the performance of duty while working for a government agency. His claim was accepted and he has been receiving FECA wage loss benefits for total disability. He also applied and was approved for an OPM disability retirement. Robert initially elected FECA benefits because the amount of compensation was more than the OPM annuity. One year later Robert was approved for a schedule award by OWCP. Upon the approval of the schedule award, Robert made the election to receive OPM disability retirement benefits. Robert then started receiving the schedule award from OWCP. He also received the OPM benefits for the duration of the schedule award. When the schedule award ended Robert elected once again to receive FECA benefits for disability.

Could Robert legally change benefits like this or was there an obvious mistake made?

# Answer: Robert

Robert was well within his rights to change his benefits when it proved advantageous to do so. Remember, Robert could not collect OPM retirement benefits and FECA wage loss compensation at the same time, but he could collect a schedule award and OPM retirement benefits. By electing OPM retirement benefits, Robert made it possible to be paid the scheduled award by OWCP because those payments did not constitute dual benefits. Once the scheduled award had been paid it was more advantageous for Robert to again elect FECA benefits, which he did.

Robert could not, however, elect FECA benefits for the time period in which he was paid a scheduled award because a claimant cannot receive wage loss compensation and a scheduled award at the same time.

# Hypothetical Tina

Tina filed for OPM disability retirement benefits due to a disabling medical condition. Her application was approved by OPM and she started receiving annuity payments from OPM. One year later Tina filed a claim with OWCP claiming the disabling condition was caused by her federal employment. Her claim was subsequently approved by OWCP and she was eligible for wage loss compensation. Upon approval of her claim Tina informed OWCP that she would like to elect FECA benefits effective from the date of her disability retirement from OPM.

Is Tina allowed to make a retroactive election of FECA benefits?

# Answer: Tina

Yes, Tina can make a retroactive election of benefits. The process is more complicated than just changing from OPM to FECA benefits or visa versa.

In this case, OWCP needs to coordinate with OPM to calculate the amount of OPM benefits paid to Tina and repayment of those benefits from the FECA benefits Tina is entitled to for this period.

Any excess FECA benefits for this retroactive period left after this reimbursement will be paid to Tina in a lump sum.

# Social Security Act Benefits

When an employee is eligible for both FECA and Social Security Administration (SSA) benefits, an election of benefits is not required because generally, receipt of both FECA and SSA benefits is not prohibited.

BUT, certain SSA benefits based on Federal service are considered dual benefits requiring reduction, or offset, under 5 U.S.C. § 8116(d).

When an employee is in receipt of Social Security Disability (SSD) benefits - benefits SSA pays to disabled individuals who cannot perform any substantial gainful activity for a year or longer – and FECA benefits concurrently, offset/reduction will be performed by SSA. *See* 5 U.S.C. § 8116(d)(1); 42 U.S.C. § 424a(a). In other words, SSD benefits paid shall be reduced by the amount of FECA compensation payable, and that reduction will be made by SSA.



# Social Security Act Benefits

Offset is also required for an employee eligible to receive FECA benefits and SSA benefits paid on the basis of age, or SSA Retirement benefits, that are attributable to the employee's Federal service. In this case, OWCP makes the reduction, which is referred to as a FERS Offset. *See* 5 U.S.C. § 8116(d)(2).

At a Federal employee's Normal Retirement Age or Full Retirement Age, SSA converts disability payments to retirement payments. *See* 42 U.S.C. § 402(a). In cases where the employee has not been approved for SSD, the age for OWCP to start investigating whether FERS Offset is appropriate is age 62 (the age individuals can begin receiving reduced SSA old age/retirement benefits).

A FECA claimant is required to report the receipt of SSA disability benefits on Form CA-1032.

# Social Security Act Benefits

As we noted, SSD, or SSA benefits paid for disability, shall be reduced by the compensation payable under FECA. This reduction is made by the Social Security Administration. OWCP will not make any reduction to compensation based upon SSA disability benefits paid.

**However, when the claimant reaches the Normal Retirement Age or Full Retirement Age, as defined by SSA, the SSD benefits will be changed to old age/retirement benefits.**

It is important to keep in mind then, that for FERS employees who are receiving SSA disability benefits, there will be a time when a FERS Offset should be applied to the employees' FECA benefits.

Note: In death cases, FECA benefits will be reduced by the survivor's benefits paid by SSA that are attributable to the employee's Federal service.

# Hypothetical and Answer Katherine

Katherine was injured in the performance of duty while employed with a government agency. Her injuries were such that she could not work and she started receiving FECA benefits for wage loss. Katherine also applied to the Social Security Administration for SSD benefits. Katherine was subsequently approved for SSD. She continued receiving both benefits for a number of years.

During this time, the Social Security Administration should have reduced Katherine's SSD benefits due to her receipt of FECA benefits. When Katherine reached 66 years of age, her SSA benefits were changed to SSA old age benefits. At this time, OWCP should offset her FECA benefits based upon her receipt of SSA old age/retirement benefits. Documentation of the FERS Offset should be contained in the FECA case file.

# VA Benefits and FECA Generally

Benefits paid by the Department of Veteran's Affairs (VA) may or may not require an election. The type of VA benefit being paid and the reason for the benefit will determine whether an election is required.

The issue of election of benefits will only occur when VA and FECA benefits are based upon the same condition – that is, when the diagnosed injury or medical condition accepted as work-related under FECA is the same covered for benefits by VA. VA regulations also specify that “[t]here is no prohibition against payment of benefits under [FECA] concurrently with other benefits administered by [VA] when such benefits are not based on the same disability or death.” 38 C.F.R. § 3.708(b)(2).

There are 3 general categories of VA benefit scenarios we are going to highlight: pension, disability and death benefits, and disability rating increases.

# VA Pension

The law is generally clear that there is no limitation on a claimant's right to receive FECA compensation while he or she is also receiving a pension for service in the Army, Navy or Air Force. 5 U.S.C. § 8116(a)(2).

One exception to this law: VA regulations clarify that for a claimant entitled to VA pension for service in the Armed Forces who is also entitled to **FECA compensation** “based upon disability or death due to service in the Armed Forces,” that claimant **must “elect which benefit he or she will receive.”** § 3708(a)(1).

In other words, a claimant who is receiving a VA pension for military service may receive **FECA compensation** for Federal civilian employment at the same time, with **no election required**.

# VA Disability Benefits

VA pays disability benefits to eligible Veterans with disabilities that arose or were aggravated during military service – i.e., for eligible Veterans under these circumstances, VA classifies these disabilities as “service-connected.” See 38 C.F.R. §§ 3.303, 3.307, 3.309 (VA regulations generally outlining the requirements for entitlement to service connection).

The prohibition against dual payment of FECA and VA benefits applies to those cases where OWCP has found an employee’s disability resulted from an injury sustained in civilian Federal employment and VA has held that the same disability was caused by his or her military service. See 5 U.S.C. § 8116(b); N.M., Docket 06-1964 (issued December 12, 2006) (citing Adeline N. Etzel (Bernard E. Etzel), 21 ECAB 151 (1969)). It also applies to FECA schedule awards payable under 5 U.S.C. § 8107.

**Remember: If a service-connected disability is for a different part of the body than the FECA injury, or for a disease or condition unrelated to the FECA injury, then there are no dual benefits prohibitions and the claimant does not need to make any election of benefits. See 5 U.S.C. § 8116(a)(3).**

# Hypothetical and Answer: Fred

Fred, a Veteran, suffers from pulmonary tuberculosis. VA finds the disease became manifest after his military service and grants him entitlement to disability benefits on the basis of presumptive service connection. OWCP finds the disability resulting from this disease is related to the claimant's Federal civilian employment and grants FECA benefits.

In this case, because Fred is eligible for both FECA and VA benefits for the same disability, an election of benefits between the two programs is required.

# Hypothetical and Answer Suzanne

Suzanne is a veteran employed by a government agency. She is currently receiving VA benefits for a knee injury she suffered while in military service. While working for her federal employer she suffered a back injury and was eligible for wage loss compensation.

In this case the condition that VA is compensating Suzanne for is not considered by OWCP to be caused by her Federal employment. She can therefore receive both benefits without having to make an election since receipt of these benefits is not considered a dual benefits situation.



# VA Death Benefits

The prohibition against dual payment of FECA and VA benefits applies also to those cases where the employee's death resulted from an injury sustained in civilian employment by the United States and VA has held that the same death was caused by the military service. *See* 5 U.S.C. § 8116(b); *see also* 38 C.F.R. § 3.708(b)(1).

# VA Disability Rating Increases

The prohibition against dual benefits also applies when a Veteran with a previously service-connected disability is granted both an increased disability rating by VA, and FECA disability benefits by OWCP, as a result of an on-the-job injury sustained in Federal civilian employment.

The Veteran/claimant would need to elect:

1. The pre-injury VA benefit level and the FECA benefits - OR-
2. The post-injury increased VA benefit level.

*See Eric E. Toney, Docket No. 05-1984 (issued May 2, 2006) (discussing Louis Teplitsky, 22 ECAB 142 (1971)); France Marie Kral, 24 ECAB 157 (1972).*

# Suzanne--Again

Let's continue to use Suzanne as an example. We will change her circumstances just a little.

Suzanne is currently receiving VA benefits for a left knee injury she suffered while in military service. Her disability level for this injury is being paid at 30%. While working for her federal employer she suffered an injury to her left knee and was eligible for a FECA schedule award as a result of the injury. As a result of the work related injury, Suzanne's VA benefit was increased to 70%. Suzanne would now have to make an election. She would have to elect to keep either her 30% VA benefit and the FECA Schedule Award or the 40% increase in her VA benefits.

If she elects the VA benefit she would keep the 70% VA benefit (30% pre-injury + 40% increase). If she elects the FECA benefit she would receive the pre-injury 30% VA benefit and the Schedule Award.

# VA Benefits - Election

Generally, where an election has to be made between VA and FECA disability benefits that election is irrevocable, regardless of whether the benefits are due to death or disability. *See* 5 U.S.C. § 8116(b); 38 C.F.R. § 3708(b).

The exception to this irrevocability is in the case of an individual who is entitled to a FECA schedule award first, then later becomes eligible for FECA loss of wage-earning capacity (LWEC) benefits, to be determined under 5 U.S.C. § 8115(a). In this case, the individual can make two separate elections. The first election will be between the VA benefits and the FECA schedule award, while the second election will be between VA benefits and the FECA LWEC benefits. *See* FECA Program Memorandum No. 180.

# Severance/Separation Pay

Federal agencies may grant severance pay to their employees who are involuntarily separated from their employment as part of a reduction in force. Agencies may also offer separation pay ("buyouts") to encourage employees to leave Federal employment voluntarily. The receipt of either type of pay may result in a dual benefit situation that requires an election of benefits.

5 U.S.C. § 5595 authorizes severance pay for Federal employees, but excludes a number of employees, including those “who, at the time of separation from the service, [are] receiving [FECA] compensation . . . other than [those] receiving this compensation concurrently with pay or on account of the death of another individual.” § 5595(a)(2)(v), (b).

Separation pay is variable depending upon the agency providing it and the particulars established for it. *See e.g.*, 5 U.S.C. § 5597.

# Severance/Separation Pay

Nevertheless, benefits permitted or offsets required for a claimant receiving FECA compensation are often identical regardless of whether the claimant is eligible for separation or severance pay:

An employee **cannot** collect FECA total disability wage loss compensation and severance/separation pay concurrently. 20 C.F.R. § 10.421(c). For example, if a claimant receives 13 weeks of severance pay, OWCP will not begin total disability wage loss compensation until the fourteenth week.

An employee **can** collect LWEC compensation and severance/separation pay concurrently, since the severance/separation pay is based on the employee's current salary, and does not take into account the payments for LWEC.

An employee **can** collect severance/separation pay and FECA medical benefits concurrently.

# Severance/Separation Pay

An employee can also collect severance/separation pay and a FECA Schedule Award concurrently. 20 C.F.R. § 10.421(c).

The election of severance/separation pay is irrevocable. If the employee elects severance/separation pay he or she cannot change to FECA. Once the period covered by severance/separation pay ends the employee can resume receipt of FECA benefits if he or she is eligible.

# Hypothetical Walter

Walter works for a government agency. Walter was placed in a lower graded position due to an accepted on-the-job injury. He is currently collecting compensation from OWCP for Loss of Wage Earning Capacity. Walter's agency is scheduled to run a Reduction-in-Force. As part of this procedure, a separation incentive was offered to personnel in Walter's department.

Would Walter be required to make an election regarding his benefits in this case?



# Answer: Walter

Actually, in this case Walter would not be required to make an election. Walter would be able to receive separation pay and the FECA compensation based upon LWEC concurrently.

# Coordination of Benefits

## Intergovernmental Personnel Act (IPA)

- Assignment of Federal Employee to State or local government and vice-versa
  - Provides FECA coverage for an injury or death incurred in the performance of duty, and also requires an irrevocable election within one year between FECA benefits and State/local benefits. *See* 5 U.S.C. § 3374(d).
  - The Secretary of Labor has the ability to extend the period for making the election for good cause shown. 5 U.S.C. § 3374(d).
  - 5 U.S.C. § 3373(d)(1) applies to Federal employees assigned to State and local governments, while 5 U.S.C. § 3374(d) outlines some particulars for State or local government employees assigned to the Federal government.

# Coordination of Benefits

## Intergovernmental Personnel Act (continued)

- Under either scenario (Federal employee working for State/local governments, or State/local employees working for the Federal government) it is important that OWCP be provided documentation that the formal appointment was accomplished
    - If documentation is not provided, it may be difficult for OWCP to conclude that individual was in fact an employee covered under FECA.
    - Task force agreements should cite the IPA and agencies should retain documentation.
- See FECA Procedure Manual 4-0200.10 (further discussing the applicability of the IPA).*

# FECA and State Workers' Compensation Benefits

Can an employee receive FECA benefits and State workers' compensation at the same time?

FECA contains no prohibition against such concurrent receipt but the State workers' compensation law may prohibit receipt or require offset.

# Coordination of Benefits – Unemployment Insurance (UI) benefits

Q: How are UI benefits impacted by FECA benefits?

A: FECA does not, in of itself, require an election or offset for a claimant receiving both FECA compensation and unemployment compensation, but because Federal law delegates most development and administration of UI programs – to include the offset of payments –to individual states, many states do prohibit receipt/reduce UI benefits concurrently with Federal workers' compensation benefits. See 5 U.S.C. § 8116(a); 26 U.S.C. § 3304(a)(15); 20 C.F.R. § 609.9(a).

## Examples:

Colorado – COLO. REV. STAT. § 8-73-110(5)

Individuals who receive compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States shall be entitled to receive benefits for a corresponding week, if otherwise eligible, **reduced** by the amount of the temporary disability compensation unless the temporary disability amount has already been reduced by the unemployment insurance benefit amount.

Vermont – VT. STAT. ANN. tit. 21 § 1344(a)(5)(D)

An individual shall be **disqualified** for benefits . . . [f]or any week with respect to which the individual is receiving or has received remuneration in the form of . . . [c]ompensation for temporary partial disability or temporary total disability under the workers' compensation law of any state or under a similar law of the United States.

# Benefits Related to 9/11

All federal employees who have a medical condition or disability causally related to the performance of their duties (including arising out of the 9/11 attacks) are entitled to workers' compensation coverage pursuant to the Federal Employees' Compensation Act (FECA).

**WTC HEALTH PROGRAM** Federal employees may also be eligible for benefits through the World Trade Center (WTC) Health Program (a program created under the James Zadroga 9/11 Health and Compensation Act of 2010 or "Zadroga Act") which is administered by the Department of Health and Human Services (HHS). See <https://www.cdc.gov/wtc/>

**SEPTEMBER 11<sup>TH</sup> VICTIM COMPENSATION FUND** Injured federal employees or survivors of those who died as a result of the September 11<sup>th</sup> attacks or debris removal efforts may also be eligible for compensation from the September 11<sup>th</sup> Victim Compensation Fund (VCF) (a program created in 2001 and reopened under the Zadroga Act), which is administered by the Department of Justice. While Congress required that VCF awards be offset by "collateral source compensation," receipt of such benefits requires no adjustment (offset or election) of FECA benefits. See Title IV, Sec. 405(b)(6) of P.L. 107-42. Information about VCF policies and procedures regarding eligibility criteria, the calculation of awards, and the claims process is available at <https://www.vcf.gov>.

# Benefits Related to 9/11

- 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.
- Due to Federal privacy laws, OWCP cannot require agencies responsible for administering other 9/11 programs to disclose medical records to us.
- Additional information is available on the [Division of Federal Employees' Compensation web site.](#)

# Lesson summary

In this lesson you learned that the interaction between FECA and other government benefit programs is sometimes extremely complicated and requires a detailed knowledge of the specific case details as well as these benefit program interactions.

Depending upon the situation the employee may be prohibited from receiving both benefits.