



Benefits Administration Letter

Number 14 - 104

Date: February 04, 2014

Subject: Dual Entitlement to Disability and Immediate Optional Retirement

Purpose

The purpose of this Benefits Administration Letter is to notify Agency Benefits Officers and Human Resource Specialists of the established guidelines for handling Dual entitlement to disability and Immediate Optional Retirement.

Background

Occasionally, OPM receives a retirement case where the person who has applied for a disability retirement is also eligible for an immediate optional retirement. A recent retiree retired under the FERS disability provisions. Although she met the age and service requirements for eligibility to an immediate retirement, OPM processed her retirement as a FERS disability case and computed her annuity at the "earned annuity" using the optional retirement formula set out at 5 U.S.C. 8452(c)(2). Subsequently, OPM determined that she had been overpaid. The retiree went through several appeal processes and it was determined by the Board that she had been counseled incorrectly regarding her options regarding her retirement. The Board determined that for reasons of judicial efficiency and economy, it would be appropriate to resolve the appeal in a manner similar to *Lessard vs. Office of Personnel Management*, 43 M.S.P.R. 371 (1990), by ordering OPM to convert her disability annuity to an immediate optional retirement and then recompute the overpayment.

Disability retirement versus Immediate Optional retirement

Most retiring employees assume their annuity, when processed under the disability benefit rule, will result in a higher annuity than the immediate optional annuity. However, retiring under the disability provision when age and service requirements are met will result in an earned rate annuity, which produces the same basic annuity as the immediate optional annuity, if refunded service is not involved.

Note: MRA + 10 retirements do not apply as this annuity is reduced for age.

There are disadvantages of retiring under the disability provision instead of the immediate optional provision. Under FERS disability rules, the annuity supplement is not payable. Also, for a FERS disability retirement with a CSRS component, the actuarial reduction provision for pre 3-1-1991 refunds of CSRS contributions is not available. Since the retired provisions provide different benefits, the annuitant must be

given the right to choose the annuity that is more advantageous. However, each retiree is unique and there may be a good reason for the individual to choose a disability retirement over the immediate optional retirement (i.e., state benefits or taxes).

The agency must inform employees in this situation at retirement of their dual eligibility and provide them with estimates outlining both types of retirement. Adjudication of the retirement benefit, OPM will notify the retiree of his/her retirement options before final adjudication by sending an election letter.

OPM procedures for handling cases in which it is discovered during initial adjudication that the annuitant is entitled to both a disability and immediate unreduced optional retirement are as follows:

- Compute the benefit under both the disability and optional provisions.
- Send the election letter shown in Attachment A, along with applicable information sheet (Attachment B - CSRS or Attachment C - FERS).
- If deposit/redeposit is involved, send appropriate deposit/redeposit election letter along with this election letter to annuitant.
- Hold the case file for 30 days for a reply.
- If no reply from the annuitant after 30 days, continue to process the case under disability provisions.

Kenneth J. Zawodny Jr.
Associate Director,
Retirement Services
Office of Personnel Management

ATTACHMENT A

Date
Enter Claim Number

Enter Annuitant's Name
Enter Annuitant's Address
Enter Annuitant's City, State and Zip

Dear <enter Annuitant's name>:

This concerns benefits that are to be paid to you as an annuitant under the Federal Employees Retirement System (FERS)/Civil Service Retirement System (CSRS).

The Office of Personnel Management is currently in receipt of your application for disability retirement. However, we have determined that you are also eligible for a regular unreduced retirement under <state applicable other type of retirement such as voluntary, MRA + 30, ATC, LEO, etc.> provisions. We have suspended processing your retirement application pending clarification of the type of retirement benefit you want. To assist you in making your decision, below are the annuities you would receive under both a disability and an immediate optional retirement. After reviewing our information, please complete the enclosed sheet, sign and date your election, and return this form within 30 days of the date of this letter.

DISABILITY RETIREMENT:

CSRS: Your annuity will be \$ _____/month effective _____. This rate is based on:

- _____ 40% of your Hi-3 average salary
- _____ Rate as projected to age 60
- _____ Your earned rate
- _____ Your election of a maximum survivor benefit
- _____ Your election of a partial survivor benefit
- _____ Your election of the life rate (no survivor benefit)
- _____ This takes into account your reduction for a court order we have on file

FERS: Your annuity will be \$ _____/month effective _____. This rate is based on:

- _____ 60% of your Hi-3 average salary (minus 100% of SSA benefit if eligible)
- _____ 40% of your Hi-3 average salary (minus 60% of SSA benefit if eligible)
- _____ Your earned rate
- _____ Your election of a maximum survivor benefit
- _____ Your election of a partial survivor benefit
- _____ Your election of the life rate (no survivor benefit)
- _____ This takes into account your reduction for a court order we have on file

FERS annuitants, please be advised that if you are eligible for social security benefits, your annuity will be offset by 100% of the SSA benefit for the first year and 60% of your

annuity thereafter until age 62. In addition, your benefit will change to 40% of your Hi-3 average salary beginning the second year from your annuity commencing date. At age 62, your benefit will be recomputed. The benefit will essentially represent the annuity payable to you if you had continued to work until the day before your 62nd birthday and retired under the FERS non-disability provisions. (The total service used in the computation includes the time you received disability. The average salary is increased by FERS cost-of-living allowances granted during the same period. The basic annuity formula is then applied, using this adjusted time base and average salary.)

You may be subject to having your medical condition reviewed every few years to determine your status with medical recovery. If you are determined to be recovered from your medical condition before age 60, your disability benefit will terminate. Until age 60, you will also be subject to an earnings test whereby you may have your disability benefit terminated due to earning over 80% of the salary amount you had upon separation from your agency.

OPTIONAL RETIREMENT:

CSRS: Your annuity will be \$_____/month effective _____. This rate is based on the CSRS general formula.

FERS: Your annuity will be \$_____/month. This rate is based on the FERS general formula.

FERS w/a CSRS Component: Your annuity will be \$_____/month. This rate is based on the FERS general formula, as well as the CSRS general formula for the portion of your service that you performed under CSRS provisions.

Optional text for FERS if applicable: If you elect this option, you will also be eligible to receive an annuity supplement in the amount of \$_____/month until you reach age 62.

Optional text for both CSRS and FERS if deposit/redeposit is involved: Please refer to the enclosed deposit/redeposit letter which provides further details regarding your annuity.

Please complete the enclosed sheet, sign and date it, and return it within 30 days from the date of this letter. If we do not receive your election within the 30 day time period, we will continue to process your case as a disability retirement.

Name: _____ <Enter Annuitant's Name> _____
CSA #: _____ <Enter Claim Number> _____

I direct that processing of my retirement application proceed under the immediate optional retirement provisions. I understand that this election is irrevocable.

(Signature) (Date)

I direct that processing of my disability retirement application proceed. I understand that, as a disability retiree, if under 60, I will be subject to an earnings cap and may be subject to a medical recovery until age 60. I understand that this election is irrevocable.

(Signature) (Date)

Optional Retirement vs. Disability Retirement

There are concerns important to disability annuitants both before and after retirement of which the employee should be aware.

- Even if eligible for optional retirement, an applicant for disability retirement must prove eligibility through medical and other evidence.
- A disability annuitant under age 60 must provide annual earnings reports, and the annuity is subject to termination if the annuitant is restored to earning capacity.
- A disability annuitant under age 60 must provide medical evidence at his or her own expense, and the annuity is subject to termination if the annuitant is found to be recovered.
- A disability annuitant who was also eligible for optional retirement would generally be entitled to an immediate annuity if found recovered or restored to earning capacity; however, the new annuity would be computed based upon the same average salary used in computing the disability annuity with no adjustments for increases in the cost of living for the period after the individual originally retired on disability.
- Unless an individual is permanently and totally disabled for all work, Federal income tax provisions no longer offer preferential treatment for disability retirement over optional retirement. Any employee having questions related to Federal tax treatment of retirement benefits should be directed to consult with the Internal Revenue Service.
- Disability retirees are not eligible to elect the alternative annuity.
- Disability retirees may not elect an insurable interest annuity.
- A disability annuitant must make a redeposit of refunded contributions plus interest to receive credit in a CSRS annuity computation for the service covered by the refund. In contrast, an optional retiree who fails to redeposit a refund for a period of service ending before March 1, 1991, will receive credit for the service (subject to a reduction in the annuity based upon the amount of the redeposit due).

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- Unless an individual is permanently and totally disabled for all work, Federal income tax provisions no longer offer preferential treatment for disability retirement over optional retirement. Any employee having questions related to Federal tax treatment of retirement benefits should be directed to consult with the Internal Revenue Service.
- Disability retirees are not eligible to elect the alternative annuity.
- Disability retirees are not eligible for the retiree annuity supplement.
- Disability retirees may not elect an insurable interest annuity.
- A FERS disability annuitant who has a CSRS component must make a redeposit of refunded contributions plus interest to receive credit in a CSRS annuity computation for the service covered by the refund. In contrast, an optional retiree who fails to redeposit a refund for a period of service ending before March 1, 1991, will receive credit for the service (subject to a reduction in the annuity based upon the amount of the redeposit due).

- A deposit for creditable non-deduction service or redeposit for refunded service must be paid before final adjudication of the disability annuity.
- If for any reason the application for SSA disability benefits is withdrawn, OPM will dismiss the FERS disability retirement application upon notification by SSA.

