## Spotlight: Advanced Injury Compensation Training

The Dallas Liaison staff on August 12 & 13 conducted an Advanced Injury Compensation Benefits Training and Workshop at the Civilian Human Resources Agency, (CHRA), Southwest Region, Army Benefits Center for Civilians (ABC-C) at Ft Riley, Kansas. Training such as this is part of the comprehensive technical support and guidance ICUC Liaisons provide to Component Specialists in the field.

The CHRA began a pilot in January of 2013 to study the effectiveness of consolidating FECA management for the Army into one office. The pilot office at Ft Riley currently manages the injury compensation program for a total of 17 installations -- (12) stateside, and (5) overseas. Performing well, Army at the end of the fiscal year, plans to make a determination whether to go forward with centralizing all of Army’s workers’ compensation at Fort Riley.

This two-day advanced training was arranged specifically for the Injury Compensation Specialist group currently piloting a centralized Workers’ Compensation Cell at Fort Riley.

A wide range of advanced topics were presented that included Return to Work and Suitable Job Offers, Long Term Case Management, Complex claims, FECA Fraud, POWER initiative, and the Pipeline Funding Program.

## Injury Compensation Coverage and Fitness Activities

Under 5 U.S.C. §7901, Federal agencies may establish a program to promote and maintain the physical and mental fitness of their employees. Agencies may establish and operate physical fitness programs designed to promote and maintain employee health, and fitness programs should be designed to improve or maintain an employee’s cardiovascular endurance, muscular strength and endurance, flexibility, and body composition, according to OPM guidance at [http://www.opm.gov/policy-data-oversight/worklife/reference-materials/employee-health-services-handbook/](http://www.opm.gov/policy-data-oversight/worklife/reference-materials/employee-health-services-handbook/). Given that such programs exist, questions regarding workers’ compensation coverage for injuries that occur to Federal employees while taking part in formal and informal fitness activities have been raised. The general answer is that there can be coverage under the Federal Employees’ Compensation Act (FECA) for injuries incurred under these circumstances, but FECA coverage is broader for certain fitness activities that for others, depending on such variables as if the activity

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Types of Military Retirements

Generally, when we hear the term “military retirement”, most of us think of either an Active Duty or a Reserve Retirement. There are numerous types of military retirements. Each can affect whether or not an employee must waive military retired pay or may receive dual credit for his or her service as a civilian. This chart provides information on the types of military retirement and general conditions for civilian credit.

<table>
<thead>
<tr>
<th>Type (Description)</th>
<th>Conditions for Credit</th>
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<tbody>
<tr>
<td><strong>Regular (Active Duty)</strong> Service member has completed 20 years of active service</td>
<td>Must waive military retired pay</td>
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<tr>
<td>Reserve Reservist with 20 years of service and has reached age 60 years</td>
<td>May receive dual credit for service, if receiving military retired pay awarded:</td>
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<tr>
<td></td>
<td>Under provisions of 10 U.S.C. 12731-12739 (retired pay under Chapter</td>
</tr>
<tr>
<td><strong>Temporary Disability Retirement List (TDRL)</strong></td>
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<tr>
<td>Service member is assigned a temporary disability rating, placed on retirement rolls by his or her Branch of Service (maximum 5 yrs.)</td>
<td>May receive dual credit for service, if receiving military retired pay awarded:</td>
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<tr>
<td><strong>Permanent Disability Retirement List (PDRL)</strong> Assigned a permanent disability rating, placed on member’s Branch of Service retirement rolls, and rating is based on Disability Determination by the member’s Branch of Service.</td>
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<tr>
<td><strong>Temporary Early Retirement Authority (TERA) (1993-2001)</strong> Service member has at least 15 years of service, but less than 20 years of active service between 1993 and 2001. This program terminated September 2002.</td>
<td>Must waive military retired pay</td>
</tr>
<tr>
<td><strong>Temporary Early Retirement Authority (TERA) (2012-2018)</strong> TERA authorized members with over 15, but less than 20 years of total active duty service to apply for early retirement. The opportunity to retire under this TERA program is expected to end by December 31, 2018. Please note: The Public and Community Service Program allowed under the 1993-2001 TERA is not applicable to</td>
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There has been an increase in contingencies in the last decade; we must ensure that we ask, “What type of military retirement did the employee retire under?” If we ask the right questions, we can ensure that we are properly counselling the employee.

If you are unsure as to whether an employee can waive his or her military retirement pay or benefit; you should research the matter fully prior to submitting his or her military deposit and/or retirement application.

Injury Compensation Coverage and Fitness Activities (cont’d)

(Continued from page 1)

occurred as part of an agency-approved Personal Fitness Plan (PFP), during or after working hours, or on or off the agency premises.

Any final decision about coverage under FECA is made by the U.S. Department of Labor (DOL), as 5 U.S.C. §8145 delegates the decision-making authority for FECA claims solely to DOL. The guidance provided below is found in DOL guidance and precedent decisions issued by the Employees’ Compensation Appeals Board (ECAB), the highest appellate authority for FECA claims. And DOL guidance gives very broad coverage to employees injured while engaged in activities covered by a PFP. FECA Procedure Manual 2-0804.16, issued by DOL, reads as follows: “A number of employing agencies have instituted structured Physical Fitness Programs (PFPs), which typically include agency-appointed fitness coordinators, physical assessment tests and structured exercise while off duty...Considering the degree of agency management, support and encouragement of PFPs, and the expressed benefits to the government anticipated from employee participation, employees enrolled in a PFP are in the performance of duty for FECA purposes while doing authorized PFP exercise, including off-duty exercises performed under the auspices of the fitness program...Participation will not always occur during regular work hours, and not always on the employing establishment's premises.”

If, however, the fitness activity occurs outside of a PFP, FECA coverage is less certain. For example, a case decided by ECAB in 2011 (http://www.dol.gov/ecab/decisions/2011/Jan/10-1174.htm) involved an employee of the Marine Corps Base in Barstow, California who was injured while jogging on the grounds of the base during a 15-minute break (at 2 p.m.) during his normal work hours. The employee, a sandblaster, did not have any job requirements that mandated that he maintain a specific level of physical fitness, participation in the activity was purely voluntary on the part of the employee, and he was not covered by a PFP. The claim was denied by DOL, and the denial of that claim was upheld by ECAB in January of 2011. Even though he was on the premises of his agency, the injury occurred during work hours and was permitted by his employer, the claim was denied. Yet the outcome might have been different if the injured employee was someone – like a special agent for NCIS – who was required to maintain a specific level of physical fitness.

Since some DoD agencies or components allow official time for employees to participate in physical fitness activities, there is an increased likelihood of FECA coverage for employees injured while participating in such activities. But coverage under these circumstances is not guaranteed, and will depend on the variables noted above.
Inquiring Minds Want to Know

Q1) Do you have information on Tennessee Valley Authority (TVA) service - as it pertains to creditability under FERS?

A1) According to the Civil Service Retirement System (CSRS) and Federal Employee Retirement System (FERS) handbook, Chapter 20, section 20B2.1-2, generally, service as a Federal employee performed under another Federal retirement system for government employees is potentially creditable under both CSRS and FERS. However, when there is no CSRS annuity component, credit for service performed under another retirement system after 1988 cannot be transferred, since deposit service after 1988 is not creditable under FERS rules. The only exception to this rule is service creditable under the Foreign Service Pension System (FSPS). Credit for FSPS service can be transferred to FERS, even if the service was performed after 1988. For additional information on this topic, please see chapter 20 of the CSRS and FERS handbook.

Q2) Recently I converted from a Dual Status Military Technician to Non-Dual Status Military Technician with an effective date of April 2014. I have been a FERS employee since 2004; I am in the Army National Guard and have not had a break in service. Since I converted into a new status after 01 January 2014 will I be subject to FERS - FRAE or will I continue as a FERS employee?

A2) Concerning your new appointment as a Non-Dual Status Military Technician under the Federal Employees Retirement System (FERS), you are neither a new or rehired employee with less than 5 years in the FERS retirement system as of your conversion date of 04-20-2014 to a Non-dual status appointment. Having 10 years of federal service under the FERS retirement system, your contribution rate of .8% (the FERS-Regular Employee Contribution rate) should remain the same in your new FERS appointment.

Ref: BAL 14-107

Q3) For a period of USERRA service, an employee was absent from civilian service for 4 years and was eligible for pay increases. I only have the employee’s salary at separation and then when he was restored. Is it ok to just use the salary at separation?

A3) As stated in the BAL 95-101 under the Military Deposit Section "If it is possible to determine what the employee's base pay would have been for the period of absence (including locality pay, premium pay which constitutes basic pay, promotions, annual increases, step increases and other base pay increases to which the individual would have been entitled) then those rates should be used." Also, page 2/3 of the BAL 03-105 provides a similar example of the calculation you are inquiring about. You will probably have to work with payroll to determine the salary.
Awareness and Prevention of Domestic Violence, Sexual Assault, and Stalking in the Workplace

Domestic violence, sexual assault, and stalking are serious problems that can have devastating effects on individuals and families. While most incidents of domestic violence are perpetrated outside of the workplace, the impact of such incidents can spill over to the work environment. It is imperative that we increase awareness among employees and supervisors of the options available to assist victims so that victims can take advantage of options that will suit their needs.

Supervisors and co-workers should recognize the warning signs of this type of violence. Possible signs of domestic abuse may include:

- Changes in behavior and work performance
- Preoccupation or lack of concentration
- Increased or unexplained absences
- Harassing phone calls to the workplace
- Unexplained bruises or injuries

If an employee discloses that he or she is experiencing problems with domestic violence, they may be resistant to letting anyone else know. The Employee Assistance Program (EAP) is a confidential resource that can offer assistance. If the employee does not want anyone to know, including EAP, it is important to respect their request for confidentiality. While it is important that no one ignores the situation, we can continue to offer support to the victim by letting them know where to turn for help in the Federal Workplace:

- Your supervisor can help you implement a safety plan by using a variety of management tools available to Federal employees.
- Your security office can help you implement your safety plan at work and advise you about how to stay safe off-duty.

- Your Employee Assistance Program can offer you short-term counseling and referrals to community resources.
- Your union can be a source of support, advice, information, and referral.
- Your co-workers can help you by screening phone calls and notifying security and/or police if your abuser comes to the workplace.
- Your human resources office can explain the terms of your pay and leave benefits and other workplace flexibilities in place at your agency that you may wish to explore.
- Your health unit can treat minor injuries and can refer you to appropriate resources in your community.

*For immediate crisis intervention, information and referrals, call the National Domestic Violence Hotline at 1-800-799-7233.


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Some Federal service may not be creditable for retirement eligibility and/or annuity computation if an employee does not pay a deposit or redeposit first. This is true for both the Civil Service Retirement System (CSRS) and for the Federal Employees Retirement System (FERS). Paying deposits and redeposits can be quite a lengthy process. Therefore, it is best that an employee find out about them early in order to make an informed decision that will affect their retirement.

A deposit and/or redeposit may be necessary if there is:
- Temporary or Non-Deduction service, or
- A refund of retirement contributions during a break in service, or
- Any period of Peace Corps or VISTA volunteer service

**Exception:** Under FERS, temporary (non-deduction) service performed on and after January 1, 1989 is not creditable for retirement purposes (exception: Peace Corps/VISTA).

### What is a deposit?

A deposit is a payment for creditable service that was not covered by retirement deductions, also called non-deduction service. Generally, this is noncareer time such as temporary or indefinite service. However, it also can be service that was not considered Federal employment at the time it was performed, but for which a change in the law now allows credit for retirement eligibility and or annuity computation purposes.

### What is a redeposit?

A redeposit is the repayment of retirement deductions. It applies when an employee has had a break in Federal service and requested a refund of the retirement contributions previously withheld from their pay. Generally, any unpaid redeposit results in the service period being used for eligibility, but not for annuity computation purposes. However, for CSRS, any unpaid redeposit covering service prior to March 1, 1991 will result in an actuarial reduction.

### Ensure employees are provided information concerning payment of the deposit and/or redeposit

Provide counseling and comparison estimates to assist employees with making an informed decision. Preferably, this is a part of onboarding and retirement counseling processes. In either case, the employee should understand the following:

- Payment of deposits and redeposits are not required
- The results of not paying the deposit or redeposit on eligibility and annuity computation
- The results of paying the deposit or redeposit on eligibility and annuity computation
- The impact of interest accrual on any unpaid balance owed

For more information on deposits and redeposits, refer to the **CSRS FERS Handbook Chapter 21** and **BAL 10-101**.

When reviewing an employee’s service history, the following periods of service may present an opportunity for a deposit:

<table>
<thead>
<tr>
<th>CSRS</th>
<th>Service Before October 1, 1982</th>
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<tbody>
<tr>
<td></td>
<td>If deposit is paid, the employee will not incur a 10% reduction in annuity computation</td>
</tr>
<tr>
<td>Service After October 1, 1982</td>
<td>If deposit is paid, service will count toward eligibility and annuity computation</td>
</tr>
<tr>
<td>FERS</td>
<td>Service Before January 1, 1989</td>
</tr>
<tr>
<td></td>
<td>If deposit is paid, service will count toward eligibility and annuity computation</td>
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Military Retired Pay and Service Credit Scenarios

Within the Department Of Defense (DoD), many civilian employees have earned and are receiving military retired pay. Some of these employees may have a desire to apply the military time used in the computation of their military retirement in the computation of their civilian retirement. Generally, in order to do use military service used in the computation of a military retirement, an employee must first waive their military retired pay. This is a decision that should not be taken lightly. In the following scenarios, points of consideration (points to ponder) are provided to illustrate some of the factors in making such a decision. However, the factors discussed do not represent everything that should be considered, but rather a starting point. Any consideration should include factors that are relevant to the employee.

Scenario 1:
Susan completed 20 years of military service in 1981 and is receiving a military retirement benefit of $12,000 per year. Susan’s earnings from the military would require a deposit of $9,000.00. She was employed for 23 years as a civilian employee under the CSRS retirement system with the Department of Defense.

If Susan makes a deposit, she will have 43 years of service. CSRS provides a maximum benefit, after 41 years and 11 months service, of 80 percent of the high-three average salary.

Points to Ponder:
- By combining military and civilian careers, Susan’s retirement payments will increase by $8,763 per year.
- Susan must pay a $9,000 deposit in order to combine careers, but this will be offset to $4,800 since she will also be entitled to a refund of excess CSRS contributions. She will recover this investment within less than one year of receiving the higher retirement.
- Cost of living adjustments are the same for CSRS and military retirement benefits.
- Spousal survivor benefits are computed at 55 percent of the retirement under both CSRS and military retirement.
- Susan will continue to receive her military retirement until she begins receiving the combined military and civilian career retirement. She does not need to apply to waive her military retirement until 30 days before she retires as a civilian.

Scenario 2:
David completed 20 years of military service in 1985 and is receiving a military retirement benefits of $18,000 per year. He was employed as a civilian employee under the FERS retirement system with the Department of Defense for 23 years of civilian service when he retired in 2008.

Points to Ponder:
- By combining military and civilian careers, David’s retirement will increase by $700 per year.
- Spousal survivor benefits are computed at 55 percent of the retirement under military retirement but at only 50 percent of the FERS retirement benefit.
- Part of David’s military retirement is coming from the Veterans Administration due to a service-connected disability, which means he did not have to waive that benefit. This could possibly sway his decision toward combining the careers after considering the differences in COLA, survivor benefits and military deposit.

Both scenarios provide an option for the employee to buy back their time and receive the combined service credit. Although scenario one required Susan to waive her military retirement, scenario two would not have required David to waive military retirement due to the service connected disability. In Scenario one, Susan recoups her deposit due to the excess retirement benefits in one year and increases her annuity by $8,763.00. Scenario two, will add $700.00 per year to David’s retirement and receives the benefit of enhanced survivor benefits. In each instance, the ability to work through

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Military Retired Pay and Service Credit Scenarios (cont’d)

(Continued from page 7)

the decision of using creditable military service to increase length of service and or gain eligibility for retirement is an important one. It is also the decision of the employee. As a human resource personnel, our ability to provide “points to ponder” to the employee is paramount in our job to assist the employee in making an informed decision.

How to Waive Your Military Retired Pay

Employees wishing to waive their military retired pay to receive credit for military service in the computation of a FERS or CSRS benefit, should write the

Lump Sum Benefit

The Lump Sum Benefit consists of the unrefunded retirement deductions, redeposit, deposits for military and civilian service, and in certain situations, interest earned. If the employee had less than 18 months of creditable civilian service or leaves no survivors eligible for an annuity, a Lump Sum benefit will be paid to the designated beneficiary. If there is no designated beneficiary, the payment will be made according to the order of precedence:

(1) To the widow or widower
(2) If none, to the child or children in equal shares, with share of any deceased child distributed to the descendants of that child
(3) If none, to any surviving parents
(4) If none, to the executor or administrator of the estate

Retired Pay Operations Center at least 60 days before retirement. Send waivers to:

Defense Finance and Accounting Service
U.S. Military Retirement Pay
P.O. Box 7130
London, KY 40742-7130

Fax requests to 1 (800) 469-6559. Suggested wording for request is as follows:

"I (Full Name and Military Serial Number) hereby waive my military retired pay for Civil Service Retirement or Federal Employees Retirement System purposes effective (The day before your annuity begins). I hereby authorize the U.S. Office of Personnel management to withhold from my (CSRS or FERS) annuity any amount of military retired pay granted beyond the effective date of this waiver due to any delay in receiving or processing this request."

(5) If none, to the next of kin who is entitled under the laws of the state in which the deceased employee was domiciled on the date of death.

A former spouse may be entitled to survivor benefits if provided in a qualified court order. The former spouse must have been married for at least 9 months to the employee and the employee must have performed at least 18 months of creditable civilian service covered by CSRS and the marriage must have ended prior to the employee’s death. Entitlement terminates upon the death of the former spouse, remarriage of the former spouse before age 55, or as established by the court order.