




DEPARTMENT OF DEFENSE
DCPAS
Defense Civilian Personnel Advisory Service

**Human Resource Issues Impacting
Injury Compensation**

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Objectives



- Discuss the effects LWOP has on benefits and entitlements
- State the reference governing the interaction between FECA and OPM retirement benefits
- Discuss how an approved OPM annuity affects the amount of service time credited to an employee returning to work from the OWCP rolls
- Explain the difference between a redetermined and supplemental annuity



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Question



- You have an employee that is injured at work and files a FECA claim that is accepted. The employee is out of work past the COP period and is placed on LWOP. You do not know when the employee will be able to return to work.
 - Does this affect the employee's benefits and entitlements?
 - Which ones are affected?
 - If you don't know that answer to these questions would you know where to look for the answers?



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LWOP

LWOP can affect a number of benefits

- Service Computation Date (SCD)
- Leave Accrual
- Within Grade Increases (WGI)
- Health Insurance
- Life Insurance
- Thrift Savings Plan (TSP)
- Retirement Eligibility



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Guidance

You can find the guidance regarding personnel actions within the Guide to Processing Personnel Actions.

This Guide can be found on the OPM website at:

<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/>



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Employee A

Employee A was injured on the job. His FECA claim has been accepted. He has been out of work for the past 8 months on LWOP due to the injury?

Would you generate a personnel action for this situation or is one not needed due to the fact that the employee is out of work due to a compensable injury?



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Personnel Action?



In this case a personnel action is required.

“Process a personnel action for leave without pay of 80 hours or more granted because of an on-the-job illness or injury.”
(Reference: Guide to Processing Personnel Actions, Chapter 15, Placement in Non Pay or Non Duty Status, Section 15-4)

Guidance for finding the information to include on the personnel action can be found in the Guide to Processing Personnel Actions, Chapter 15, Placement in Nonpay or Nonduty Status, Rule 26



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Employee A



Employee A was injured on the job. His FECA claim has been accepted. He has been out of work for the past 7 months on LWOP due to the injury?

Will the amount of time Employee A has spent on LWOP affect his Service Computation Date (SCD)?



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LWOP



Service Computation Date

- Typically, periods of LWOP are credited to a maximum of six months per calendar year.
- This limit **does not** apply to employees on LWOP because of compensable injury.
- Therefore the employee’s SCD **should not be adjusted** if LWOP was due to a compensable injury.



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Employee A

Employee A was injured on the job. His FECA claim has been accepted. He has been out of work for the past 8 months on LWOP due to the injury? During this time he went over 15 years time in service?

Does his leave accrual rate change as a result of this or does it stay the same until Employee A returns to work?



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Leave Accrual

- Periods of LWOP due to compensable injury are fully creditable to meet the time in service requirement to accrue 4, 6, or 8 hours of annual leave
- However, no annual or sick leave accumulates while in a LWOP status.



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Within-Grade Increases

- A period of LWOP is creditable when the employee is receiving compensation.
- For employees who are in nonpay status process the following actions when they are due, regardless of whether the employee is in pay or nonpay status on the effective date of the action:
 - within-grade increase for which employee becomes eligible during a period of nonpay status that is creditable for within-range increase purposes.

Reference: Guide to Processing Personnel Actions, Chapter 17, Pay and Step Change, Section 17-5a(1)



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Other effects

- FEHB and FEGLI coverage continues in a LWOP status for claimants with accepted claims receiving wage loss compensation from OWCP.
- OWCP takes out the employee portion of the FEHB and FEGLI premiums.
- OWCP National Office will start deductions for FEDVIP if the employee was enrolled.
- TSP contributions are stopped while in a LWOP status



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LWOP Checklist

<p>Employee placed on LWOP</p> <ul style="list-style-type: none"> ✓ SCD is unaffected ✓ Employee does not accrue leave ✓ Employee does not contribute to TSP ✓ Ensure OWCP knows FEGLI coverage of employee ✓ Ensure OWCP knows FEHB coverage of employee ✓ OWCP administers FEHB for employee ✓ Document LWOP on SF 52 for periods of 80 hours or more 	<p>Employee returns from LWOP</p> <ul style="list-style-type: none"> ✓ Document return on SF52 (<i>Reference: Guide to Processing Personnel Actions, Chapter 16, Return to duty from non pay status</i>) ✓ WGs will have been made effective if appropriate ✓ Leave accrual will occur at the rate as if the employee never left ✓ Inform OWCP of return to work date ✓ Agency administers FEHB for employee ✓ Time spent in LWOP will count toward retirement
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Employee B

Employee B has been out of work and is currently on the OWCP Periodic Roll. She now contacts you stating her physician has released her to work with some minor work restrictions. She states she wants to come back to work at the agency. She provides the supporting medical documentation to you.

What do you do now?

Do you need more information?

What type of information do you need?



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Employee Returning to Work

Returning an employee back to work once they have been on the Periodic Roll is a difficult process. Once the employee returns there are a different set of issues surrounding their time spent on the periodic roll and how that affects their retirement annuity.

There are basic concepts that will help in providing guidance when these questions arise.



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Where do you start?

The reference that you need to be familiar with is the CSRS/FERS Handbook. This publication is available via the OPM website and contains the procedures for CSRS and FERS Retirement.

The entire handbook can be found at the following URL:
www.opm.gov/retirement-services/publications-forms/csrsfers-handbook

The chapter that contains information pertinent to FECA and OPM Retirement is Chapter 102 and can be found at:
<http://www.opm.gov/retirement-services/publications-forms/csrsfers-handbook/c102.pdf>

The chapter that discusses Disability Retirement is Chapter 60 and can be found at:
<http://www.opm.gov/retirement-services/publications-forms/csrsfers-handbook/c060.pdf>



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Scenarios

The following scenarios will illustrate the different factors that can affect an employee when they return to work after collecting wage loss compensation from OWCP.

The scenarios will cover the following:

1. Employee on LWOP, not separated from agency
2. Employee separated from agency, no approved disability retirement
3. Employee separated from agency, approved disability retirement



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Scenarios



In each of these scenarios there are common questions that should be answered to determine how an employee is affected by collecting wage loss benefits under FECA while out of work.

Ask yourself these questions when looking at the scenarios:

1. Was the employee in a LWOP status at the agency or was the employee separated?
2. Does the employee have an approved OPM Disability Retirement?
3. Can the employee be considered to be recovered or restored to earning capacity by OPM?



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**Employee on LWOP
Not separated from agency**



Employee B was injured at work and, as a result, was totally disabled. The employee was subsequently placed on the periodic roll. The employing agency placed the employee on LWOP where she stayed for the next 3 years. After that time, the agency was able to successfully return the employee to work.

This is the most straightforward scenario. The employee was still in a LWOP status on the agency employment roll. The employee did not have an approved OPM disability retirement.

Since the employee was actually in a LWOP status she will be treated as if she never left. Therefore, the time spent on the periodic roll will be considered service time for computing retirement eligibility and annuity amount. The compensation pay rate, however, will not affect the pay rate used to calculate the retirement annuity.

If the employee is CSRS they must work 1 year out of the 2 years preceding their retirement. FERS has no such requirement.



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**Employee separated from agency
No approved disability retirement**



Employee B was injured at work and, as a result, was totally disabled. The employee was subsequently placed on the periodic roll. The employing agency removed the employee due to physical inability to perform the duties of her position. The employee did not apply for disability retirement within the required time period (1 year from the date of separation). After 5 years on the periodic roll, the employing agency successfully returned the employee to work.

In this scenario, the key is the lack of an approved disability retirement. The employee would not be considered to be an annuitant.

So, since she did not have an approved OPM retirement the time in receipt of OWCP benefits will be deemed LWOP, and the employee treated as if she never left. The time spent on the periodic roll will be considered service time for computing retirement eligibility and annuity amount. The compensation pay rate, however, will not affect the pay rate used to calculate the retirement annuity.

If the employee is CSRS they must work 1 year out of the 2 years preceding their retirement. FERS has no such requirement.



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**Employee separated from agency
Approved Disability Retirement**



Employee B was injured at work and, as a result, was totally disabled. The employee was subsequently placed on the periodic roll. The employing agency removed the employee due to physical inability to perform the duties of their position. The employee applied for and was approved for disability retirement within the required time period (1 year from the date of separation). After 5 years on the periodic roll, the employing agency successfully returned the employee to work.

This scenario is the most complex in that there are a number of additional factors that come into play that will determine whether the time spent on the periodic roll will count as time in service for annuity purposes.

The main factors are the age of the employee, how long they work after their return, and whether they are considered to be recovered or restored to earning capacity by OPM.



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**Employee separated from agency
Approved Disability Retirement**



Employee B is considered a reemployed annuitant since her title to annuity continues upon reemployment because she is still unable to perform the duties of their original position even though she has returned to work in another position.

As an annuitant, the time spent collecting FECA benefits will count as time in service if one of three things happens:

1. Employee B establishes title to a new annuity by working the equivalent of 5 years continuous full time employment - OR-
2. She is found to be recovered by OPM -OR-
3. She is found by OPM to be restored to earning capacity

Let's take a look at each one of these conditions.



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Equivalent of 5 Years Full Time Employment



If the employee works the equivalent of 5 years continuous full time employment upon their return to work, their time spent collecting FECA benefits will count as time in service for annuity purposes as they have established title to a new annuity and will be entitled to a **redetermined annuity**.

When the employee becomes eligible for an annuity based on age and time in service, that annuity will now take into account the time spent collecting FECA benefits. It will not, however, take into account the FECA payments themselves to be used in determining High-3.

If the employee returns to part time employment, she will have to work the equivalent of 5 years full time. If the employee returns to work at 20 hours per week, she will have to work 10 years in order to meet the 5 year full time equivalent requirement.



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Equivalent of 5 Years Full Time Employment

If the employee works the equivalent of more than 1 year but less than 5 years of full time employment then she would be entitled to a **supplemental annuity** and not a **redetermined annuity**.

The amount of the supplemental annuity is based upon the time the employee worked after their return to work. The time spent collecting FECA benefits will not count as time in service. The supplemental annuity will be added to the amount of the original annuity when the employee stops working.



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Found Recovered by OPM

There are two ways an employee can have their time spent collecting FECA benefits count in the calculation of their retirement annuity without working the equivalent of 5 years full time.

The first way is if the employee is **found to be recovered by OPM**. OPM will find a disability annuitant recovered from his or her disability if

- (1) medical evidence shows that the medical condition that initially caused the disability has ameliorated to the point that the annuitant is no longer disabled for the position from which he or she retired, **or**
- (2) the annuitant is permanently reemployed, under CSRS or FERS, in a position of the same, or higher, grade or pay level as the position from which he or she retired. For this purpose, pay level means current basic pay, and is the hourly rate times the number of hours in the tour of duty



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Found Recovered by OPM

If an annuitant is over 60 then recovery will only be found if they request it.

Payment of LWEC benefits is considered prima facie evidence that the individual is not fully recovered

If OPM makes a finding of recovery then the time spent on compensation will be creditable toward an annuity without the 5 year requirement.

If OPM does not find a recovery then the employee will have to work 5 years of equivalent full time employment in order to establish title to a new annuity.



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Restored to Earning Capacity by OPM

The second way is if the employee is found to be **restored to earning capacity by OPM**. In order for a finding of restoration, a disability annuitant is deemed restored to earning capacity when, in any calendar year in which the annuitant is under age 60 (on December 31), the annuitant's earnings equal or exceed 80 percent of the current pay of the position from which the annuitant retired. (If an annuitant is over 60 then recovery will only be found if they request it.)

If OPM makes a finding of restoration to earning capacity then the time spent on compensation will be creditable toward an annuity without the 5 year requirement.

If OPM does not find a restoration to earning capacity then the employee will have to work 5 years of equivalent full time employment in order to establish title to a new annuity.



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In Summary

- Know the CSRS/FERS handbook
- If an employee does not have an approved disability retirement then time spent collecting FECA will count toward an annuity upon reemployment
- If an employee has an approved disability retirement then they are subject to rules for reemployed annuitants. They must work 5 years full time to receive credit for time spent collecting FECA benefits
- There are two exceptions to the 5 year requirement. The first is to be found recovered by OPM. The second is to be found restored to earning capacity.



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Questions?

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