



Benefits Administration Letter

Number: 07- 103

Date: July 2, 2007

Subject: Hatch v OPM: Allowing Full-Time Credit for Employees on Workers Compensation Who Work Part-Time but Have a Full-Time Appointment

The Office of Personnel Management (OPM) is now changing the way we credit service for employees on Workers Compensation (OWCP) who work part-time but have a full-time appointment. Specifically, employees who were given a full-time appointment, but as a result of being in receipt of OWCP worked only part of the day and used leave without pay (LWOP) for part of the day, will now be credited as full-time.

In the case of Hatch v. Office of Personnel Management 100 M.S.P.R. 204 (2005), the Merit Systems Protection Board (MSPB) ruled that the annuitant should have been treated as a full-time employee for retirement purposes for the period of time that he worked four hours a day and received OWCP benefits for the other four hours while in a LWOP status.

OPM's interpretation of 5 USC 8332 (f) and 5 CFR 831.703 (b) has been that these employees are not entitled to full-time credit for time worked when they work, for example, four hours a day and received OWCP benefits for the other four hours. Their service was computed using part-time rules. However, in an appeal by David Hatch to MSPB, the Board invalidated OPM's interpretations and ruled that full-time credit should be allowed since the employee was given a full-time appointment and properly used LWOP under 5 USC 8332. Because the language of the Federal Employees Retirement System (FERS) statute, 5 USC 8411(d), is virtually the same as the Civil Service Retirement System (CSRS) provision, we will interpret it the same way as the Board interpreted 5 USC 8332(f). Therefore, the Hatch decision is extended to cover FERS cases.

Employees with a full-time appointment **and** in receipt of OWCP benefits who works part of the day **and** are on approved LWOP for part of the day will now be given full-time credit. However, if an employee are not under a full-time appointment (e.g., part-time flexible or limited tour), the usual part-time rules apply. Also the MSPB decision does not apply to reemployed annuitants.

It is not possible for OPM to identify every annuitant who fits the Hatch profile with part-time service in their annuity computation that was processed before the Hatch litigation began.

Therefore, we ask that you review your payroll files, as well as any other records you retain, and send us a list of the names, social security numbers, and dates of birth, of current employees whose retirements are pending who may be affected by this decision. The list should include those who may have recently retired, and those former employees, you are aware of, who may fall into the Hatch category. Your correspondence may be sent to Benefit Officers Training and Development Group, 1900 E Street, NW, Room 4351, Washington, DC 200415.

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for Human Resources Produce and Services Division