

## **Important Change in the Computations of Death-In-Service Survivor Annuities and Disability Annuities**

### **Introduction**

A series of court cases have changed the way the Office of Personnel Management (OPM) calculates disability annuities and survivor annuities when employees have performed service in Law Enforcement positions and other positions that are usually tied to higher retirement deduction rates and to higher annuity accrual rates. Soon, OPM will issue a Benefits Administration Letter (BAL) which will provide more detailed information and guidance relating to death and disability claims involving employees who have performed service in those positions.

### **Background**

In the case of *Springer v. Adkins*, 525 F.3d 1363 (Fed.Cir. 2008), the United States Court of Appeals for the Federal Circuit (the court) awarded a firefighter retiring on disability under the Federal Employees' Retirement System (FERS) an enhanced annuity even though the firefighter did not meet the age or service requirements to qualify for an enhanced firefighter retirement under 5 U.S.C. 8412(d) at the time of his disability retirement. The court found that the use of the 1.7 percent annuity accrual rate for firefighter service under 5 U.S.C. 8415(d) is not tied to the age and service thresholds in 5 U.S.C. 8412 (d) when an employee retires on a disability retirement. This decision follows a series of other decisions that the court has made relating to the calculations of annuities for disabled law enforcement officers and firefighters under the Civil Service Retirement System (CSRS) (*Pitsker v. Office of Personnel Management*, 234 F.3d 1378 (Fed. Cir. 2000)), and for survivors of law enforcement or firefighters who died in service while covered under CSRS (*Wassenaar v. Office of Personnel Management*, 21 F.3d 1090 (Fed. Cir. 1994), and *Moore v. Office of Personnel Management*, 113 F.3d 216 (Fed. Cir. 1997) - decisions that were extended to FERS by OPM administrative policy). Taken together, these decisions have a broad impact, affecting not only CSRS and FERS law enforcement officers and firefighters and their survivors, but also other employees who have performed service in positions that could qualify for an enhanced annuity computation under CSRS or FERS, and their survivors.

### **Important Points to Note**

CSRS and FERS employees who retire on disability retirement are entitled to have service in any of the following positions applied to the enhanced annuity accrual rate under CSRS or FERS (2.5 percent for CSRS and 1.7 percent for FERS) even if they have not met the age and/or service requirements that would entitle them to an enhanced non-disability annuity:

- Law Enforcement Officer, Firefighter, Nuclear Materials Courier, and Custom and Border Protection Officer that is qualifying for retirement under 5 U.S.C. 8336(c) or 8412(d);
- Member of the Capitol Police;
- Member of the Supreme Court Police;
- Air Traffic Controller that is qualifying for retirement under 5 U.S.C. 8412(e);
- Congressional Employee;
- Member of Congress; and
- Court of Federal Claims Judge, Bankruptcy Judge, and U.S. Magistrate covered under CSRS.

Service in any of the positions listed in the preceding bullets can be applied to the enhanced annuity accrual rate in the computation of a survivor annuity based on the death of an employee even if the deceased employee had not met the age and/or service requirements for an enhanced non-disability annuity.

Currently, for employees who have served in the positions listed below, agencies must prepare a separate letter to certify that the employees qualify for non-disability retirement with an enhanced annuity. **Effective immediately**, when employees retire on disability retirement or die in service, agencies must also certify service the employees performed with their agencies in the positions listed below qualifies for the enhanced computation. After the BAL is issued, agencies will also be required to certify service performed with their agencies in the positions listed below qualifies for the enhanced computation whenever employees separate or transfer to another agency:

- Law Enforcement Officer under 5 U.S.C. 8331(20) and 8401(17);
- Firefighter under 5 U.S.C. 8331(21) and 8401(14);
- Nuclear Materials Courier under 5 U.S.C. 8331(27) and 8401(33);
- Custom and Border Protection Officer under 5 U.S.C. 8331(31) and 8401(36);
- Air Traffic Controller as defined in 5 U.S.C. 2109(1)(A)(i); and
- Air Traffic Controller as defined in 5 U.S.C. 2109 (1)(A)(ii), 2109(1)(B), 8331(30)(B), and 8401(35)(B).