

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH G. BALL and DEPARTMENT OF THE ARMY,
Fort McPherson, GA

*Docket No. 98-534; Submitted on the Record;
Issued October 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to receipt of Federal Employees' Compensation Act loss of wage-earning capacity compensation benefits and concurrent civil service retirement benefits from the Office of Personnel Management.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, then a 44-year-old heavy mobile equipment mechanic, sustained a fracture of the left tibia, burns to the face and temporary aggravation of preexisting degenerative lesion at L5-S1, with acceleration of a herniated disc at L5-S1, as a result of a September 12, 1990 employment injury. Appellant returned to a light-duty position on January 14, 1991. On the date of injury appellant was a dual status employee and was required to serve in the Army Reserve as a condition of his employment. The Office commenced payment of loss of wage-earning capacity compensation based upon appellant's loss of drill pay, as of November 14, 1993, the date appellant became disqualified from the military reserve due to his accepted employment injury. Appellant received loss of wage-earning capacity compensation at the rate of \$550.00 every four weeks. Appellant retired from his employment on January 3, 1996 and was in receipt of the civil service retirement benefits from OPM. By decision dated April 30, 1997, the Office advised appellant that he was not entitled to concurrently receive compensation for injury-related wage loss from the Office and retirement benefits from OPM and would have to make an election of benefits. An Office hearing representative affirmed the Office's decision, after review of the written record, on September 10, 1997.

The Board has duly reviewed the case record and finds that appellant is not entitled to receipt of concurrent wage-loss compensation benefits under the Act and civil service retirement benefits from OPM.

In the present case, as of November 14, 1993, appellant no longer received Army Reserve drill pay, but rather received Office compensation benefits due to his loss of wage-earning capacity as a civil employee. The Act provides for payment of compensation for loss of wages

to civil employees injured in the performance of duty,¹ but does not provide for loss of wages for Armed Forces servicemen injured in the line of duty. Appellant was only entitled to loss of wage-earning capacity compensation under the Act because his civil employment required that he complete Army Reserve duties, and because his injury occurred in the performance of his civilian employment. As of November 14, 1993, appellant no longer received drill pay, but rather received compensation benefits arising from his loss of wage-earning capacity as a civilian employee under the Act.

The limitations on the right to receive compensation benefits under the Act while in receipt of concurrent salary, pay or remuneration are set for in section 8116 of the Act.² The Act provides in pertinent part as follows:

“(a) While an employee is receiving compensation under this subchapter, ... he may not receive salary, pay, or remuneration of any type from the United States, except --

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the Veterans’ Administration unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.”

This provision of the Act would allow for continued receipt of compensation benefits, while also in receipt of pension or retirement benefits for service in the Armed Forces. No allowance is made, however, for receipt of compensation benefits and civil service retirement benefits.

Appellant’s civil service retirement benefits in this case were not based upon his service in the Armed Forces, but rather upon his civilian employment. The Act does not allow any appellant to receive compensation benefits arising from injury in civilian employment concurrently with civil service retirement benefits, arising from civilian employment.

¹ 5 U.S.C. § 8101(1)(A).

² 5 U.S.C. § 8116.

The decisions of the Office of Workers' Compensation Programs dated September 10 and April 30, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 22, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member