

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHLEEN L. ALDER and FEDERAL DEPOSIT INSURANCE CORPORATION, DIVISION OF SUPERVISION, Kansas City, MO

*Docket No. 03-1339; Submitted on the Record;  
Issued August 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant may receive compensation for temporary total disability during the period represented by her separation incentive.

On April 9, 2002 appellant, then a 36-year-old file clerk, filed an occupational disease claim alleging that her throbbing right wrist and tingling fingers were a result of using her computer mouse in the performance of her duties. The Office of Workers' Compensation Programs accepted her claim for right carpal tunnel syndrome and authorized a surgical release, which took place on September 6, 2002. Appellant received compensation for temporary total disability through September 30, 2002 and filed a claim for wage loss for the period October 1 to 30, 2002. On September 30, 2002 her surgeon, Dr. Chris J. Maeda, reported that she was to remain off work.

On September 4, 2002 appellant signed a statement of intent to resign with a buyout from the employing establishment: "I hereby state my intent to resign with a voluntary separation incentive payment (also called a 'Buyout') on October 2002.... My decision to resign is entirely voluntary and has not been coerced." Appellant filed a buyout program payment election request requesting a lump-sum payment in October 2002. Her resignation with separation incentive became effective September 30, 2002.

On October 21, 2002 the employing establishment advised as follows:

"[Appellant] terminated employment with the [employing establishment] under a [v]oluntary [s]eparation [i]ncentive [p]ayment (VSIP) program associated with our recent downsizing efforts. Under VSIP, [appellant] separated on September 30, 2002, and will receive a 50 percent lump-sum buyout of \$12,246[.00], subject to withholding taxes, on or about October 15, 2002."

In a decision dated October 28, 2002, the Office found that appellant was ineligible for additional compensation payments for the period October 1, 2002 to April 1, 2003. The Office

explained that compensation for temporary total disability may not be paid for the period covered by severance pay or separation pay and that separation pay or buyouts would constitute dual benefits.

Appellant disagreed and requested reconsideration. She stated that she waived no rights to compensation under the buyout and that the buyout did not make her ineligible for employment or any loss of income. She also noted that she was under the care of a physician and therefore was not eligible for unemployment benefits while others who received the buyout were eligible. Appellant argued that the buyout and separation pay were not one in the same.

The Office reviewed the merits of appellant's claim and on February 7, 2003 denied modification of its prior decision. The Office noted that appellant's buyout was considered a separation incentive and was therefore subject to dual benefit provisions.

The Board finds that appellant may not receive compensation for temporary total disability during the period represented by her separation incentive.

Section 8116(a) of the Federal Employees' Compensation Act ("Act") provides that "while an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States" except in return for services actually performed or benefits associated with the armed forces.<sup>1</sup>

Section 10.421 of the implementing federal regulations addresses whether a beneficiary under the Act may receive other kinds of payments from the Federal Government concurrently with compensation:

"(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a [f]ederal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable [sic].

"(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the [a]rmed [f]orces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. [§] 5532(b).

"(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member, organ or function with severance pay or separation pay."<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8116(a).

<sup>2</sup> 20 C.F.R. § 10.421 (1999).

Appellant resigned effective September 30, 2002 under a voluntary separation incentive payment program with a 50 percent lump-sum buyout of \$12,246.00, subject to withholding taxes. This separation or severance incentive or buyout represented half a year's salary. The law prohibits appellant from receiving compensation for temporary total disability during that period, as such payment would bestow unto her a dual benefit or double recovery by effectively placing in her pocket twice the salary she was earning before the injury.

The February 7, 2003 and October 28, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
August 1, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member