

On February 28, 2008 appellant elected to receive retirement benefits from OPM as of March 1, 2008.

By decision dated March 6, 2008, the Office terminated appellant's compensation, finding that she was not entitled to compensation for temporary total disability beginning March 1, 2008. It advised appellant that she could not receive both workers' compensation benefits and OPM annuity benefits at the same time. In addition, the Office stated that appellant had worked light duty from September 7, 2007, until her retirement on March 1, 2008. It noted that the employing establishment had indicated that the light-duty position, which was within her physical restrictions, would have continued to be available to appellant had she not retired.

By letter dated March 9, 2008, appellant, through her attorney, requested an oral hearing, which was held on July 14, 2008. At the hearing, appellant's attorney noted that a prehearing conference had been held in which the parties had discussed the issues in the case and agreed that appellant was not entitled to wage loss or temporary total disability compensation after she elected to receive disability retirement. Counsel stated that he requested a hearing in order to clarify that appellant might still be entitled to medical benefits and a schedule award notwithstanding the termination of her entitlement to temporary total disability compensation. The hearing representative agreed that the instant decision did not have any impact on appellant's entitlement to medical benefits and/or a schedule award; she stated that the decision merely constituted confirmation that appellant was not entitled to compensation for temporary total disability as of March 1, 2008 because she had accepted disability retirement, had been working prior to that date and was capable of working prior to that date.

In a September 29, 2008 decision, an Office hearing representative affirmed the March 3, 2008 decision. She found that appellant's attorney had agreed that appellant was not entitled to compensation for temporary total disability as of March 1, 2008, the effective date of retirement. The hearing representative noted that counsel had indicated that he had requested the hearing to obtain clarification from the Office that appellant might be entitled to medical and schedule award benefits once she reached maximum medical improvement for her accepted conditions, notwithstanding the fact that she was no longer entitled to compensation for wage loss. The hearing representative stated that appellant's entitlement to a schedule award and medical benefits under the Federal Employees' Compensation Act was not affected by election of OPM benefits.¹

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal

¹ The Office's procedure manual allows for receipt of OPM retirement benefits and concurrent payment of FECA medical benefits and schedule award. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000 (Exhibit: *Restrictions on Payment of Benefits under FECA*), I & II (April 1995).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

Section 8116(a) of the Act states that, while an employee is receiving workers' compensation, he or she may not receive salary, pay or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death being compensated for under the Act.⁴ The implementing regulations provide that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity.⁵ The beneficiary must elect the benefit that he or she wishes to receive.⁶

ANALYSIS

On February 28, 2008 appellant elected to receive OPM disability retirement benefits and retire from the employing establishment, effective March 1, 2008. In its March 6, 2008 and September 28, 2008 decisions, the Office confirmed that appellant elected to receive OPM retirement disability benefits effective March 1, 2008. The record reflects that appellant received wage-loss compensation for temporary total disability from the Office from June 26, 2007, when she went off work to undergo left wrist surgery, until September 7, 2007, when she accepted a light duty position. Because appellant elected to receive OPM disability retirement benefits effective March 1, 2008, the Office found that she was no longer entitled to receive wage-loss compensation after that date. Appellant is not eligible to receive wage-loss compensation and disability retirement benefits from OPM for the same time period.⁷ Accordingly, the Board affirms the March 6 and September 28, 2008 Office decisions.

CONCLUSION

The Board finds that the Office properly terminated appellant's entitlement to temporary total disability compensation based on her election to receive disability retirement benefits from OPM.

³ *Id.*

⁴ 5 U.S.C. § 8116(a).

⁵ 20 C.F.R. § 10.421(a).

⁶ *Id.*

⁷ 20 C.F.R. § 10.421(a); *see Franklin L. Bryan*, 56 ECAB 310 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 29 and March 6, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board