



Workers' compensation vs. forced retirement

Sen. Susan Collins (R-ME), ranking member of the Senate Homeland Security and Governmental Affairs Committee, has introduced legislation to address the escalating cost of the federal workers' compensation system.

According to recent reports, the Department of Labor pays monthly benefits under the Federal Employee Compensation Act (FECA) to about 49,000 federal employees who are on its "periodic roll." From July 1, 2009, to June 30, 2010, the cost was \$2.78 billion. Of that dollar amount, nearly half—or \$1.1 billion—went to U.S. Postal Service employees.

The Collins bill (S. 261) is intended to reduce work-force-related costs governmentwide by converting retirement-eligible postal and federal employees on workers' compensation to retirement when they reach retirement age.

At face value, moving disabled workers from FECA compensation benefits to their retirement benefits might not sound too terribly unreasonable. But once you analyze the facts of this forced retirement, you quickly realize how devastating an impact it could have.

Let's take a look at a hypothetical case. John is currently 62 years old and was hired as a letter carrier in 1987, which means he is covered by the Federal Employee Retirement System (FERS). In 1996, John was struck by a car while delivering his route. John's back was broken and he has been unable to perform any work since the injury. In 1997, after 12 consecutive months in an LWOP status, John was administratively separated from the Postal Service. John continues to draw compensation on the periodic rolls of OWCP to this day.

For the sake of this hypothetical analysis, let's take a brief look at the basic retirement system. FERS was designed by Congress with these three components: the FERS annuity, the Thrift Savings Plan (TSP) and Social Security benefits (SS).

The FERS annuity portion is based on age and years of creditable service. An employee who is on total disability and in a leave-without-pay (LWOP) status, while in receipt of FECA benefits, will receive credit for the LWOP period in the computation of the annuity and for high-3 average

salary purposes. Periods of separation are not creditable service except in reinstatement cases.

The TSP portion of the FERS retirement system is like a 401(k) plan and is based on the employee's contributions and the agency's matching funds. Employee who are on total disability and receiving FECA benefits are not able to contribute to their TSP fund and they also do not receive any agency contributions.

Social Security benefits are based on earnings and credits for quarters during which FICA taxes are paid. An employee who is on total disability and receiving FECA benefits is not paying into Social Security and also is not earning credits.

With those basic principles in mind, under the Collins bill, Carrier John would be forced off of OWCP wage-loss compensation benefits and required to take his FERS retirement benefits. But remember, John had only 10 years of creditable service, and if his high-3 average were about \$36,000, then John's FERS annuity would be around \$3,600 per year.

Since John could not make contributions to his Thrift Savings Plan fund for the past 13 years, his TSP fund will do very little to supplement his retirement.

The same holds true for John's Social Security benefits. Because John had no Social Security earnings over the past 13 years, his benefits will be based on his earnings prior to 1997.

Far too many disabled workers have had to endure horrific on-the-job injuries. Their lives and their family's lives have been forever changed. They could not sue for compensable damages to cover their pain and suffering or the loss of their quality of life, but they were required by law to accept wage-loss compensation under FECA.

Injured federal workers should not be forced to take a reduced level of retirement benefits, especially when their on-the-job injury has left them incapable of seeking any other work to supplement their retirement benefits. Are there other solutions? Maybe, but Sen. Collins' bill in its current form is definitely not the answer. If disabled workers are going to be forced to change over to retirement, there will have to be a fair and equitable way to make up for their reduced retirement benefits. ☒