

# Federal Employees' Compensation Act

## 5 U.S.C. CHAPTER 81 COMPENSATION FOR WORK INJURIES 01/23/00 SUBCHAPTER I - GENERALLY

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**Sec. 8101 Definitions**

For the purpose of this subchapter -

(1) "employee" means -

(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(D) an individual employed by the government of the District of Columbia; and

(E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); but does not include -

(i) a commissioned officer of the Regular Corps of the Public Health Service;

(ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) a commissioned officer of the Environmental Science Services Administration; or

(iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code; and an individual selected pursuant to chapter 121 of title 28, United States Code, and serving as a petit or grand juror;

(2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the

spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(3) "medical, surgical, and hospital services and supplies" includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(4) "monthly pay" means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period;

(5) "injury" includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services;

(6) "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(7) "parent" includes stepparents and parents by adoption;

(8) "brother" and "sister" mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters;

(9) "child" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children;

(10) "grandchild" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support;

(11) "widower" means the husband living with or dependent for support on the decedent at the time of

her death, or living apart for reasonable cause or because of her desertion;

(12) "compensation" includes the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(13) "war-risk hazard" means a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring in the country in which an individual to whom this subchapter applies is serving; from -

(A) the discharge of a missile, including liquids and gas, or the use of a weapon, explosive, or other noxious thing by a hostile force or individual or in combating an attack or an imagined attack by a hostile force or individual;

(B) action of a hostile force or individual, including rebellion or insurrection against the United States or any of its allies;

(C) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or individual;

(D) the collision of vessels on convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(E) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities;

(14) "hostile force or individual" means a nation, a subject of a foreign nation, or an individual serving a foreign nation -

(A) engaged in a war against the United States or any of its allies;

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(C) engaged in a war or armed conflict between military forces of any origin in a country in which an individual to whom this subchapter applies is serving;

(15) "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(16) "war activities" includes activities directly relating to military operations;

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is -

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor. Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(18) "price index" means the Consumer Price Index (all items - United States city average) published monthly by the Bureau of Labor Statistics; and

(19) "organ" means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; and

(20) "United States medical officers and hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor.

**Sec. 8102 Compensation for disability or death of employee**

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is

- (1) caused by willful misconduct of the employee;
- (2) caused by the employee's intention to bring about the injury or death of himself or of another; or
- (3) proximately caused by the intoxication of the injured employee.

(b) Disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States or in Alaska or in the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979), is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual. This subsection does not apply to an individual -

- (1) whose residence is at or in the vicinity of the place of his employment and who was not living there solely because of the exigencies of his employment, unless he was injured or taken while engaged in the course of his employment; or
- (2) who is a prisoner of war or a protected individual under the Geneva Conventions of 1949 and is detained or utilized by the United States. This subsection does not affect the payment of compensation under this subchapter derived otherwise than under this subsection, but compensation for disability or death does not accrue for a period for which pay, other benefit, or gratuity from the United States accrues to the disabled individual or his dependents on account of detention by the enemy or because of the same disability or death, unless that pay, benefit, or gratuity is refunded or renounced.

**Sec. 8103 Medical services and initial medical and other benefits**

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished -

- (1) whether or not disability has arisen;
- (2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and
- (3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

(b) The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Secretary may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury which was accepted by the employing agency as probably compensable under this subchapter. The Secretary shall prescribe the form and content of the certificate.

**Sec. 8104 Vocational rehabilitation**

(a) The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as

practicable, shall use the services or facilities of State agencies and corresponding agencies which cooperate with the Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29, except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation

Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost to the agency reimbursable in full under section 32(b)(1) of title 29 is excluded.

(b) Notwithstanding section 8106, individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title, less the amount of any earnings received from remunerative employment, other than employment undertaken pursuant to such rehabilitation.

#### **Sec. 8105 Total disability**

(a) If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is prima facie permanent total disability.

#### **Sec. 8106 Partial disability**

(a) If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.

(b) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages, which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who

(1) fails to make an affidavit or report when required; or

(2) knowingly omits or understates any part of his earnings;

forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.

(c) A partially disabled employee who

(1) refuses to seek suitable work; or

(2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him;

is not entitled to compensation.

#### **Sec. 8107 Compensation schedule**

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of 66 2/3 percent of his monthly pay. The basic compensation is -

(1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) payable regardless of whether the disability also involves another impairment of the body; and

(3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by -

(1) section 8105 of this title if the disability is total; or

(2) section 8106 of this title if the disability is partial.

(c) The compensation schedule is as follows:

(1) Arm lost, 312 weeks' compensation.

(2) Leg lost, 288 weeks' compensation.

(3) Hand lost, 244 weeks' compensation.

(4) Foot lost, 205 weeks' compensation.

(5) Eye lost, 160 weeks' compensation.

(6) Thumb lost, 75 weeks' compensation.

(7) First finger lost, 46 weeks' compensation.

(8) Great toe lost, 38 weeks' compensation.

(9) Second finger lost, 30 weeks' compensation.

(10) Third finger lost, 25 weeks' compensation.

(11) Toe other than great toe lost, 16 weeks' compensation.

(12) Fourth finger lost, 15 weeks' compensation.

(13) Loss of hearing -

(A) complete loss of hearing of one ear, 52 weeks' compensation; or

(B) complete loss of hearing of both ears, 200 weeks' compensation.

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.

(15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for loss of the entire digit.

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.

(17) Compensation for loss of use of two or more digits, or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member.

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

(20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed

\$3,500 shall be awarded in addition to any other compensation payable under this schedule.

(22) For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks' compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

#### **Sec. 8108            Reduction of compensation for subsequent injury to same member**

The period of compensation payable under the schedule in section 8107(c) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if -

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

(2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability. In such a case, compensation for disability continuing after the scheduled period starts on expiration of that period as reduced under this section.

#### **Sec. 8109            Beneficiaries of awards unpaid at death; order of precedence**

(a) If an individual -

(1) has sustained disability compensable under section 8107(a) of this title;

(2) has filed a valid claim in his lifetime; and

(3) dies from a cause other than the injury before the end of the period specified by the schedule; the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid -

(A) under an award made before or after the death;

(B) for the period specified by the schedule;

(C) to and for the benefit of the persons then in being within the classes and proportions and on the conditions specified by this section; and

(D) in the following order of precedence:

(i) If there is no child, to the widow or widower.

(ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children.

(iii) If there is no widow or widower, to the child or children.

(iv) If there is no survivor in the above classes, to the parent or parents wholly or partly dependent for support on

the decedent, or to other wholly dependent relatives listed by section 8133(a)(5) of this title, or to both in proportions provided by regulation.

(v) If there is no survivor in the above classes and no burial allowance is payable under section 8134 of this title, an

amount not exceeding that which would be expendable under section 8134 of this title if applicable shall be paid to

reimburse a person equitably entitled thereto to the extent and in the proportion that he has paid the burial expenses, but a compensated insurer or other person obligated by law or contract to pay the burial expenses or a State or political subdivision or entity is deemed not equitably entitled.

(b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 8107(a) of this title even if at the time of death the individual was entitled to the augmented rate specified by section 8110 of this title.

(c) A surviving beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), ceases to be entitled to payment on the happening of an event which would terminate his right to compensation for death under section 8133 of this title. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section.

## **Sec. 8110 Augmented compensation for dependents.**

(a) For the purpose of this section, "dependent" means-

(1) a wife, if -

(A) she is member of the same household as the employee;

(B) she is receiving regular contributions from the employee for her support; or

(C) the employee has been ordered by a court to contribute to her support;

(2) a husband, if -

(A) he is a member of the same household as the employee; or

(B) he is receiving regular contributions from the employee for his support; or

(C) the employee has been ordered by a court to contribute to his support;

(3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is -

(A) under 18 years of age; or

(B) over 18 years of age and incapable of self-support because of physical or mental disability; and

(4) a parent, while wholly dependent on and supported by the employee. Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries.

(b) A disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented -

(1) at the rate of 8 1/3 percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title; and

(2) at the rate of 8 1/3 percent of the difference between his monthly pay and his monthly wage-earning capacity if that compensation is payable under section 8106(a) of this title.

**Sec. 8111 Additional compensation for services of attendants or vocational rehabilitation.**

(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$1,500 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance.

(b) The Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for his maintenance, but not to exceed \$200 a month.

**Sec. 8112 Maximum and minimum monthly payments**

(a) Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic

pay for GS-15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.

(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 751(a) of title 18, and was sustained in the performance of duty.

**Sec. 8113 Increase or decrease of basic compensation**

(a) If an individual -

(1) was a minor or employed in a learner's capacity at the time of injury; and

(2) was not physically or mentally handicapped before the injury; the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay

corresponding to the probable increased wage-earning capacity.

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.

**Sec. 8114 Computation of pay**

(a) For the purpose of this section -

(1) "overtime pay" means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of worktime, as observed by the employing establishment; and

(2) "year" means a period of 12 calendar months, or the equivalent thereof as specified by regulations prescribed by the Secretary of Labor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earnings. However, for so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, in the discretion of the Secretary of Labor, may be computed on the basis of the actual daily wage of the employee at the time of injury in which event he may be paid compensation for the days he would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay -

(A) was fixed, the average annual earnings are the annual rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment, or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5 1/2-day week, and 260 if employed on the basis of a 5-day week.

(2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place, as determined under paragraph (1) of this subsection.

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury having regard to the previous earnings of the employee in Federal employment, and of other employees of the United States in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his injury.

(4) If the employee served without pay or at nominal pay, paragraphs (1), (2), and (3) of this subsection apply as far as practicable, but the average annual earnings of the employee may not exceed the minimum rate of basic pay for GS-15. If the average annual earnings cannot be determined reasonably and fairly in the manner

otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money, and premium pay under section 5545(c)(1) of this title are included as part of the pay, but account is not taken of -

- (1) overtime pay;
- (2) additional pay or allowance authorized outside the United States because of differential in cost of living or other special circumstances; or
- (3) bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service in time of war.

#### **Sec. 8115            Determination of wage-earning capacity**

(a) In determining compensation for partial disability, except permanent partial disability compensable under sections 8107-8109 of this title, the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to -

- (1) the nature of his injury;
- (2) the degree of physical impairment;
- (3) his usual employment;
- (4) his age;
- (5) his qualifications for other employment;
- (6) the availability of suitable employment; and
- (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition.

(b) Section 8114(d) of this title is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability.

#### **Sec. 8116            Limitations on right to receive compensation**

(a) 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 -

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the Department of Veterans Affairs 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).

(b) An individual entitled to benefits under this subchapter because of his injury, or because of the death of an employee, who also is entitled to receive from the United States under a provision of statute other than this subchapter payments or benefits for that injury or death (except proceeds of an insurance policy), because of service by him (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Secretary of Labor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

(d) Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 of this title or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that of §8212;

- (1) benefits received under section 223 of the Social Security Act (on account of

disability) shall be subject to reduction on account of benefits paid under this subchapter pursuant to the provisions of section 224 of the Social Security Act; and

(2) in the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under this subchapter based on the Federal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to Federal service of that employee covered by chapter 84 of this title. However, eligibility for or receipt of benefits under chapter 84 of this title, or benefits under title II of the Social Security Act by virtue of service covered by chapter 84 of this title, does not affect the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

#### **Sec. 8117            Time of accrual of right**

An employee is not entitled to compensation for the first 3 days of temporary disability, except -

- (1) when the disability exceeds 14 days;
- (2) when the disability is followed by permanent disability; or
- (3) as provided by sections 8103 and 8104 of this title.

#### **Sec. 8118            Continuation of pay; election to use annual or sick leave**

(a) The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E)), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.

(b) Continuation of pay under this subchapter shall be furnished -

- (1) without a break in time unless controverted under regulations of the Secretary;
- (2) for a period not to exceed 45 days; and
- (3) under accounting procedures and such other regulations as the Secretary may require.

(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do

not begin to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.

(d) If a claim under subsection (a) is denied by the Secretary, payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code.

(e) Payments under this section shall not be considered as compensation as defined by section 8101(12) of this title.

#### **Sec. 8119 Notice of injury or death**

An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 8133 of this title, or someone on his behalf. A notice of injury or death shall -

- (a) be given within 30 days after the injury or death;
- (b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
- (c) be in writing;
- (d) state the name and address of the employee;
- (e) state the year, month, day, and hour when and the particular locality where the injury or death occurred;
- (f) state the cause and nature of the injury, or, in the case of death, the employment factors believed to be the cause; and
- (g) be signed by and contain the address of the individual giving the notice.

#### **Sec. 8120 Report of injury**

Immediately after an injury to an employee, which results in his death or probable disability, his immediate superior shall report to the Secretary of Labor. The Secretary may -

- (1) prescribe the information that the report shall contain;
- (2) require the immediate superior to make supplemental reports; and
- (3) obtain such additional reports and information from employees as are agreed on by the Secretary and the head of the employing agency.

#### **Sec. 8121 Claim**

Compensation under this subchapter may be allowed only if an individual or someone on his behalf makes claim therefor. The claim shall -

(1) be made in writing within the time specified by section 8122 of this title;

(2) be delivered to the office of the Secretary of Labor or to an individual whom the Secretary may designate by regulation, or deposited in the mail properly stamped and addressed to the Secretary or his designee;

(3) be on a form approved by the Secretary;

(4) contain all information required by the Secretary;

(5) be sworn to by the individual entitled to compensation or someone on his behalf; and

(6) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability. The Secretary may waive paragraphs (3)-(6) of this section for reasonable cause shown.

#### **Sec. 8122 Time for making claim**

(a) An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if claim is not filed within that time unless -

(1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or

(2) written notice of injury or death as specified in section 8119 of this title was given within 30 days.

(b) In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not -

(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

- (2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or
- (3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

**Sec. 8123 Physical examinations**

- (a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.
- (b) An employee is entitled to be paid expenses incident to an examination required by the Secretary which in the opinion of the Secretary are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.
- (c) The Secretary shall fix the fees for examinations held under this section by physicians not employed by or under contract to the United States to furnish medical services to employees. The fees, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.
- (d) If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.

**Sec. 8124 Findings and award; hearings**

- (a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after -

- (1) considering the claim presented by the beneficiary and the report furnished by the

immediate superior; and (2) completing such investigation as he considers necessary.

(b)

(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary. At the hearing, the claimant is entitled to present evidence in further support of his claim. Within 30 days after the hearing ends, the Secretary shall notify the claimant in writing of his further decision and any modifications of the award he may make and of the basis of his decision.

(2) In conducting the hearing, the representative of the Secretary is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of this title except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he shall receive such relevant evidence as the claimant adduces and such other evidence as he determines necessary or useful in evaluating the claim.

**Sec. 8125 Misbehavior at proceedings**

If an individual -

(1) disobeys or resists a lawful order or process in proceedings under this subchapter before the Secretary of Labor or his representative; or

(2) misbehaves during a hearing or so near the place of hearing as to obstruct it; the Secretary or his representative shall certify the facts to the district court having jurisdiction in the place where he is sitting. The court, in a summary manner, shall hear the evidence as to the acts complained of and if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court, or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court.

**Sec. 8126 Subpoenas; oaths; examination of witnesses**

The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may -

- (1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;
- (2) administer oaths;
- (3) examine witnesses; and
- (4) require the production of books, papers, documents, and other evidence.

**Sec. 8127 Representation; attorneys' fees**

(a) A claimant may authorize an individual to represent him in any proceeding under this subchapter before the Secretary of Labor.

(b) A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Secretary.

**Sec. 8128 Review of award**

(a) The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may -

- (1) end, decrease, or increase the compensation previously awarded; or
- (2) award compensation previously refused or discontinued.

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is -

- (1) final and conclusive for all purposes and with respect to all questions of law and fact; and
- (2) not subject to review by another official of the United States or by a court by mandamus or otherwise. Credit shall be allowed in the accounts of a certifying or disbursing official for payment in accordance with that action.

**Sec. 8129 Recovery of overpayments**

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is

entitled. If the individual dies before the adjustment is completed, adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when -

- (1) adjustment or recovery of the amount is waived under subsection (b) of this section; or
- (2) adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

**Sec. 8130 Assignment of claim**

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors.

**Sec. 8131 Subrogation of the United States**

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to -

- (1) assign to the United States any right of action he may have to enforce the liability or any right he may have to share in money or other property received in satisfaction of that liability; or
- (2) prosecute the action in his own name. An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to compensation under this subchapter.

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future

payments of compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in the Panama Canal Company to pay damages under the law of a State, a territory or possession of the United States, the District of Columbia, or a foreign country, compensation is not payable until the individual entitled to compensation -

- (1) releases to the Panama Canal Company any right of action he may have to enforce the liability of the Panama Canal Company; or
- (2) assigns to the United States any right he may have to share in money or other property received in satisfaction of the liability of the Panama Canal Company.

**Sec. 8132      Adjustment after recovery from a third person**

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of

such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a

reasonable attorney's fee proportionate to the refund to the United States.

**Sec. 8133      Compensation in case of death**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, 50 percent.

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower, or child, as follows -

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent. If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows -

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike. If

there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until;

(1) a widow, or widower dies or remarries before reaching age 55;

(2) a child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or

(3) a parent or grandparent dies, marries, or ceases to be dependent. Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed -

(1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or

(2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

#### **Sec. 8134            Funeral expenses; transportation of body**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$800, in the discretion of the Secretary of Labor.

(b) The body of an employee whose home is in the United States, in the discretion of the Secretary, may be embalmed and transported in a hermetically sealed casket to his home or last place of residence at the expense of the Employees' Compensation Fund if :

(1) the employee dies from -

(A) the injury while away from his home or official station or outside the United States; or

(B) from other causes while away from his home or official station for the purpose of receiving medical or other services, appliances, supplies, or examination under this subchapter; and

(2) the relatives of the employee request the return of his body. If the relatives do not request the return of the body of the employee, the Secretary may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral, and burial expenses.

#### **Sec. 8135            Lump-sum payment**

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if;

(1) the monthly payment to the beneficiary is less than \$50 a month;

(2) the beneficiary is or is about to become a nonresident of the United States; or

(3) the Secretary of Labor determines that it is for the best interest of the beneficiary. The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage before reaching age 55 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage.

#### **Sec. 8136 Initial payments outside the United States**

If an employee is injured outside the continental United States, the Secretary of Labor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the United States designated by the Secretary for that purpose in the locality in which the employee was employed or the injury incurred.

#### **Sec. 8137 Compensation for noncitizens and nonresidents**

(a) When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by -

(1) the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) establishing special schedules of compensation for injury, death, and loss of use of members and functions of the body for specific classes of employees, areas, and places. Irrespective of the basis adopted, the Secretary may at any time -

(A) modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Secretary or his designee may -

(1) make a lump-sum award in the manner prescribed by section 8135 of this title when he or his designee considers it to be for the best interest of the United States; and

(2) compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law. Compensation paid under this subsection is instead of all other compensation from the United States for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and is satisfaction of all liability of the United States in respect to the particular injury or death.

(c) The Secretary may delegate to an employee or agency of the United States, with such limitations and right of review as he considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise, and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance

with such regulations and instructions as the Secretary considers necessary. For this purpose, the Secretary may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Secretary may waive the application of this subchapter in whole or in part and for such period or periods as he may fix if he finds that -

(1) conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) claimants under this section are alien enemies.

(e) The Secretary may apply this section retrospectively with adjustment of compensation and benefits as he considers necessary and proper.

#### **Sec. 8138 Minimum limit modification for noncitizens and aliens**

(a) Except as provided by subsection (b) of this section, the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title do not apply in the case of a noncitizen employee, or a class or classes of noncitizen employees, who sustain injury outside the continental United States. The Secretary of Labor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees.

(b) The President may remove or modify the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title in the case of an alien employee, or a class or classes of alien employees, of the Canal Zone Government or the Panama Canal Company.

#### **Sec. 8139 Employees of the District of Columbia**

Compensation awarded to an employee of the government of the District of Columbia shall be paid in the manner provided by statute for the payment of the general expenses of the government of the District of Columbia.

#### **Sec. 8140 Members of the Reserve Officers' Training Corps**

(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred, or an illness contracted, in line of duty -

(1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or

(2) during the period of the member's attendance at training or a practice cruise under chapter 103 of title 10, United States Code, beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.

(b) For the purpose of this section, an injury, disability, death, or illness of a member referred to in subsection (a) may be considered as incurred or contracted in line of duty only if the injury, disability, or death is incurred, or the illness is contracted, by the member during a period described in that subsection. Subject to review by the Secretary of Labor, the Secretary of the military department concerned (under regulations prescribed by that Secretary), shall determine whether an injury, disability, or death was incurred, or an illness was contracted.

(c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed \$150.

(d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.

(e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.

(f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees' Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual by a military department in a facility of a military department.

(g) For purposes of this section, the term "applicant for membership" includes a student enrolled, during a semester or other enrollment term, in a course, which is part of Reserve Officers' Training Corps instruction at an educational institution.

**Sec. 8141 Civil Air Patrol volunteers**

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section-

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are -

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) "performance of duty" means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Commissioner of Social Security when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Commissioner of Social Security shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

**Sec. 8142 Peace Corps volunteers**

(a) For the purpose of this section, "volunteer" means -

(1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;

(2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and

(3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.

(b) Subject to the provisions of this section, this subchapter applies to a volunteer, except that entitlement to disability compensation payments does not commence until the day after the date of termination of his service as a volunteer.

(c) For the purpose of this subchapter -

(1) a volunteer is deemed receiving monthly pay at the minimum rate for GS-7;

(2) a volunteer leader referred to by section 2505 of title 22, or a volunteer with one or

more minor children as defined in section 2504 of title 22, is deemed receiving monthly pay at the minimum rate for GS-11; (3) an injury suffered by a volunteer when he is outside the several States and the District of Columbia is deemed proximately caused by his employment, unless the injury or disease is;

(A) caused by willful misconduct of the volunteer;

(B) caused by the volunteer's intention to bring about the injury or death of himself or of another; or

(C) proximately caused by the intoxication of the injured volunteer; and

(4) the period of service of an individual as a volunteer includes:

(A) any period of training under section 2507(a) of title 22 before enrollment as a volunteer; and

(B) the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

#### **Sec. 8143 Job Corps enrollees; volunteers in service to America**

(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection -

(1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2;

(2) section 8113(a) of this title applies to an enrollee; and

(3) "performance of duty" does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.

(b) This subchapter applies to a volunteer in service to America who receives either a living allowance or a stipend under part A of subchapter VIII of chapter 34 of title 42, with respect to that service and training, to the same extent as enrollees of the Job

Corps under subsection (a) of this section. However, for the purpose of the computation described in subsection (a)(1) of this section, the monthly pay of a volunteer is deemed that received at the minimum rate for GS-5 of the General Schedule under section 5332 of title 5, United States Code.

#### **Sec. 8143a Members of the National Teacher Corps**

Subject to the provisions of this section, this subchapter applies to a member of the National Teacher Corps. In administering this subchapter for a member covered by this section -

(1) "performance of duty" does not include an act of a member while -

(A) on authorized leave; or

(B) absent from his assigned post of duty, except while participating in an activity authorized by or under the direction or supervision of the Commissioner of Education; and

(2) In computing compensation for disability or death, the monthly pay of a member is deemed his actual pay or that received at the minimum rate for GS-6, whichever is greater.

#### **Sec. 8144 Student-employees**

A student-employee as defined by section 5351 of this title who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty.

#### **Sec. 8145 Administration**

The Secretary of Labor shall administer, and decide all questions arising under, this subchapter. He may -

(1) appoint employees to administer this subchapter; and

(2) delegate to any employee of the Department of Labor any of the powers conferred on him by this subchapter.

#### **Sec. 8146 Administration for the Panama Canal Commission and The Alaska Railroad**

(a) The President, from time to time, may transfer the administration of this subchapter -

(1) so far as employees of the Panama Canal Commission are concerned to the Commission; and

(2) so far as employees of The Alaska Railroad are concerned to the general manager of The Alaska Railroad.

(b) When administration is transferred under subsection (a) of this section, the expenses incident to physical examinations which are payable under section 8123 of this title shall be paid from appropriations for the Panama Canal Commission or for The Alaska Railroad, as the case may be, instead of from the Employees' Compensation Fund. The President may authorize the Panama Canal Commission and the general manager of The Alaska Railroad to pay the compensation provided by this subchapter, including medical, surgical, and hospital services and supplies under section 8103 of this title and the transportation and burial expenses under sections 8103 and 8134 of this title, from appropriations for the Panama Canal Commission and for The Alaska Railroad, and these appropriations shall be reimbursed for the payments by transfer of funds from the Employees' Compensation Fund.

(c) The President may authorize the Panama Canal Commission to waive, at its discretion, the making of the claim required by section 8121 of this title in the case of compensation to an employee of the Panama Canal Commission for temporary disability, either total or partial.

(d) When administration is transferred under subsection (a) of this section to the general manager of The Alaska Railroad, the Secretary of Labor is not divested of jurisdiction and a claimant is entitled to appeal from the decision of the general manager of The Alaska Railroad to the Secretary of Labor. The Secretary on receipt of an appeal shall, or on his own motion may, review the decision of the general manager of The Alaska Railroad, and in accordance with the facts found on review may proceed under section 8128 of this title. The Secretary shall provide the form and manner of taking an appeal.

(e) The same right of appeal exists with respect to claims filed by employees of the Panama Canal Commission or their dependents in case of death, as is provided with respect to the claims of other employees to whom this subchapter applies, under section 8149 of this title. The Employees' Compensation Appeals Board referred to by section 8149 of this title has jurisdiction, under regulations prescribed by the Secretary, over appeals relating to claims of the employees or their dependents.

#### **Sec. 8146a Cost-of-living adjustment of compensation**

(a) Compensation payable on account of disability or death which occurred more than one year before March 1 of each year shall be annually increased on that date by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.

(b) The regular periodic compensation payments after adjustment under this section shall be fixed at the nearest dollar. However, the regular periodic compensation after adjustment shall reflect an increase of at least \$1.

(c) This section shall be applicable to persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966 (Public Law 89-488) under the following statutes: Act of February 15, 1934 (48 Stat. 351); Act of June 26, 1936 (49 Stat. 2035); Act of April 8, 1935 (49 Stat. 115); Act of July 25, 1942 (56 Stat. 710); Public Law 84-955 (August 3, 1956); Public Law 77-784 (December 2, 1942); Public Law 84-879 (August 1, 1956); Public Law 80-896 (July 3, 1948); Act of September 8, 1959 (73 Stat. 469). Benefit payments to these persons shall initially be increased by the total percentage of the increases in the price index from the base month of July 1966, to the next most recent base month following the effective date of this subsection.

#### **Sec. 8147 Employees' Compensation Fund**

(a) There is in the Treasury of the United States the Employees' Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the Office of Management and Budget estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, "administrative expenses" does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

(b) Before August 15 of each year, the Secretary shall furnish to each agency and instrumentality of the United States having an employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding July 1 through June 30 expense period on account of the injury or death of employees or individuals under the jurisdiction of the agency or instrumentality. Each agency and instrumentality shall include in its annual budget estimates for the fiscal year beginning in the next calendar year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not dependent on an annual appropriation shall make the deposit required by this subsection from funds under its control during the first fifteen days of October following the furnishing of the statement. If an agency or instrumentality (or part or function thereof) is transferred to another agency or instrumentality, the cost of compensation benefits and other expenses paid from the Fund on account of the injury or death of employees of the transferred agency or instrumentality (or part or function) shall be included in costs of the receiving agency or instrumentality.

(c) In addition to the contributions for the maintenance of the Employees' Compensation Fund required by this section, the United States Postal Service, or a mixed ownership corporation as defined by section 9101(2) of title 31, or any other corporation or agency or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by chapter 91 of title 31, shall pay an additional amount for its fair share of the cost of administration of this subchapter as determined by the Secretary. With respect to these corporations, agencies, and instrumentalities, the charges billed by the Secretary under this section shall include an additional amount for these costs, which shall be paid into the Treasury as miscellaneous receipts from the sources authorized and in the manner otherwise provided by this section.

#### **Sec. 8148      Forfeiture of benefits by convicted felons**

(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or

subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.

(b)

(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3)), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's conviction of an offense that constituted a felony under applicable law.

(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends.

(3) If an individual has one or more dependents as defined under section 8110(a), the Secretary of Labor may, during the period of incarceration, pay to such dependents a percentage of the benefits that would have been payable to such individual computed according to the percentages set forth in section 8133(a)(1) through (5).

(c) Notwithstanding the provision of section 552a of this title, or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary of Labor, upon written request, the names and Social Security account numbers of individuals who are confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to such individuals' conviction of an offense that constituted a felony under applicable law, which the Secretary of Labor may require to carry out the provisions of this section.

#### **Sec. 8149      Regulations**

The Secretary of Labor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under section 8124 of this title. The rules and regulations shall provide for an Employee's Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to

applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees. In adjudicating claims under section 8146 of this title, the Secretary may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made.

employee in his former or equivalent position within such department or agency, or within any other department or agency.

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**Sec. 8150            Effect on other statutes**

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9441 of title 10 do not confer military or veteran status on any individual.

**Sec. 8151            Civil service retention rights**

(a) In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management -

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the