

Broken Promises

Injured firefighters, law enforcement officers forced out of their retirement system

Robert, 28 years old, had just been hired as a Federal firefighter (FF). During orientation, he learned that FFs were in a special retirement system (called “6c” after the US Code subsection 8336 under which it is authorized). Employees covered under 6c include FFs and Law Enforcement Officers (LEOs) who, because of the arduous nature of their jobs, are eligible to retire with full benefits at age 50 with 20 years of service.

Many years later, at age 44 with 16 years of service, Robert was seriously injured in the line of duty. His injuries left him physically unable to perform his duties as a FF. Upon his recovery and return to work, he was placed in a job doing public affairs work. The Office of Personnel Management (OPM) considers this position to be “equivalent” to the one he lost because it pays the same. However, unlike his FF position, it is not under the 6c retirement system. For full retirement benefits, Robert must now accrue 30 years of service instead of the 20 years he was promised would be enough.

This is the reality faced by FFs and LEOs. Their jobs are hazardous as well as strenuous; there is a very real potential for debilitating injury every day of their working lives. They put their lives and health on the line year after year. In return, their employer, the United States government, has promised them an enhanced 6c retirement program as part of their compensation. Tragically, after they’ve given their health in the service of their country and need it most, the government takes it away.

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Because firefighting and law enforcement are strenuous jobs, they require a young and able-bodied workforce. Congress has acknowledged this need by establishing a mandatory retirement age of 57. Consistent with this shorter career, entitlement to an annuity is after 20 years of service and reaching age 50. They pay a greater percentage of their salary into their retirement system than do 30-year employees and their annuity amount is calculated at a higher rate.

If a FF or LEO is injured or disabled and no longer able work in any capacity, they are eligible to receive a disability retirement benefit. This benefit would be calculated based on the 6c retirement system into which they were hired and the payments they have made into that system.

The situation is much different in cases in which the same FF or LEO is disabled and no longer able to complete the essential functions of their job, but is still able to work in a non-arduous position. In this case, upon their return to work their employing agency is required to place them in an “equivalent position (5 USC 8151(b)).” Unfortunately, even though a pension benefit is considered to be “deferred compensation,” it does not enter into the equation. Such an employee may be reassigned by the employing agency to a non-6c-covered position. The adverse financial ramifications of such a reassignment are huge. They lose their 6c retirement.

Adding insult to injury, there is in such a case no reimbursement provided to the FF or LEO for the higher contributions s/he made into the 6c retirement system. Their 6c years of service are credited as if they had been in the normal 30-year system. The Federal government simply pockets the overpayments. This theft, however, is small compared to the broken promise of a retirement commensurate with the requirements of the job – which requirements in such cases are the very things that laid these heroes low.

This disparity in treatment of those who return to work as compared to those who take disability retirement, in addition to being patently unfair, provides a financial disincentive for injured employees to return to work. They are penalized financially for doing so. In spite of this, many do. For example:

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- Greg, a disabled veteran, got his first appointment with Forest Service in 2001 as a Recreation Technician. In 2004, he applied for and received a Law Enforcement Officer position. He was injured in the line of duty. In 2013, he was deemed unable to perform the duties of his position. He was assigned to a fleet management position. He lost his 6c retirement and 9 years of extra contributions into the 6c system.
- Bob, a smoke jumper, was assigned to fires in the Selway Bitterroot Wilderness area. After he jumped, the wind suddenly changed and he was taken into the top of a 120-foot tall Grand Fir. As trained, Bob started to rappel down the tree, but the top broke off of the tree. Bob fell 80 feet to the ground, with the broken top landing on top of him. It took 5 hours to get him to emergency medical help. His back was broken in 5 places. He was told he might never walk again. Bob eventually recovered and was placed in an engineering technician position. He lost his 6c retirement and 12 years of extra contributions into the 6c system.
- Lana was just 5 years old when she decided she wanted to be a fire fighter. She got a position with the Forest Service in 2005 and she was on her way. During the 2009 season, Lana sustained a serious leg injury that left her unable to carry weight over 10 pounds. This ended her dream career, but she could still work. Lana was placed in an administrative support clerk position. She lost her 6c retirement and extra contributions.
- Walt was born and raised in a logging family living on the Klamath National Forest. Forest Service FFs were the heroes of his childhood. Much to the dismay of his parents, he always knew he was going to be a firefighter. Walt got out of the Army in 1978 and started in a temporary firefighting position with the Forest Service in 1980. In 1987 he got a permanent position in fire. He had achieved his dream. While working with the Lassen Hotshots in 1991, he was injured while fighting a fire in Alaska. As Walt says:

“My firefighting career was over. I was devastated, my life was over. I have talked to many employees who know what happens when they get hurt. They hide injuries that could have been treatable so as to not lose their jobs. I knew an engine captain that was given a job as a GS/4 mail room clerk. I know for a fact that he was considering suicide when he finally just quit the agency.”

Walt was placed in timber contracting position, losing his 6c retirement and his extra contributions into that system. After 7 years he worked his way back to a position in fire dispatch, but it had taken too long; he was no longer eligible for firefighter retirement in the secondary position because of his break in service in a 6c position.

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The practice of placing injured FFs and LEOs in positions that are not equivalent with regard to their deferred compensation attributes does not conform with the 5 USC 8151(b) requirement to place them in “equivalent positions” upon their return to work. Deferred compensation is, by definition, compensation. Taking away their 6c retirement after a FF or LEO has given their all to the service of their country is unconscionable. Further, it disincentivizes injured employees from returning to work, in which case they take valuable experience with them when they go.

Under current OPM guidance, employing agencies are not authorized to keep injured Federal LEOs and FFs from losing their 6c retirement if they are placed in a non-6c position. We respectfully request that Congress intervene to require that the term “equivalent position” in 5 USC 8151(b) will truly come to mean equivalent, *i.e.* that employees who were in the 6c retirement system prior to their injury be left in that system regardless of the job into which they are placed after debilitating injury.

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