

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### Editorial Notes

#### AMENDMENTS

1966—Subsec. (e). Pub. L. 89-737 inserted reference to premium pay under section 5545(c)(1) of this title.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-737, § 4, Nov. 2, 1966, 80 Stat. 1164, which provided that the amendments made by this Act [amending this section and sections 8331 and 8704 of this title] apply with respect to premium pay payable from and after the first day of the first pay period which begins after the date of enactment of this Act [Nov. 2, 1966], was repealed by Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223.

### § 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 763.	Sept. 7, 1916, ch. 458, § 13, 39 Stat. 746. Oct. 14, 1949, ch. 691, § 204, 63 Stat. 864. Sept. 13, 1960, Pub. L. 86-767, § 204, 74 Stat. 908.

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### § 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.

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(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—

(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. How-



ever, 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542; Pub. L. 90-83, § 1(56), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, § 9(a), Sept. 7, 1974, 88 Stat. 1145; Pub. L. 99-335, title II, § 207(e), June 6, 1986, 100 Stat. 595; Pub. L. 102-54, § 13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 106-398, § 1 [[div. A], title X, § 1087(f)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293.)

#### HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 757.	Sept. 7, 1916, ch. 458, § 7, 39 Stat. 743. July 1, 1944, ch. 373, § 605(a), 58 Stat. 712. Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049. Oct. 14, 1949, ch. 691, § 201, 63 Stat. 861. July 30, 1956, ch. 779, § 3(b), 70 Stat. 721. Sept. 13, 1960, Pub. L. 86-767, § 202, 74 Stat. 907. Sept. 4, 1964, Pub. L. 88-581, § 4(b), 78 Stat. 919.

In subsection (a)(2), “Air Force” is added on authority of the Act of July 26, 1947, ch. 343, § 207(a), (f), 61 Stat. 502, and sections 8010–8013 of title 10, United States Code. This does not affect the operation of this subsection insofar as it concerns members of the Coast Guard whose pension is based in whole or in part on service with the Coast Guard when it operated as a part of the Navy.

In subsection (b), the reference to the definition of “employee” in former section 790 is omitted as unnecessary as the definition is included in section 8101 for the entire subchapter.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

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#### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8116(a) .....	5 App.: 757(a).	July 4, 1966, Pub. L. 89-488, § 5(a), 80 Stat. 253.

The words “another retirement system for employees of the Government” are substituted for “any other Federal Act or program providing retirement benefits for employees”.

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 223 and 224 are classified to sections 423 and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106-398 struck out “, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code” after “uniformed services”.

1991—Subsec. (a)(3). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1986—Subsec. (d). Pub. L. 99-335 added subsec. (d).

1974—Subsec. (a). Pub. L. 93-416 struck out “and” in cl. (1), substituted a semicolon for a period in cl. (2), and added cls. (3) and (4).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

##### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-416, § 9(b), Sept. 7, 1974, 88 Stat. 1145, provided that: “The amendment made by this section [amending this section] shall be effective with respect to disability or death occurring before or after the date of enactment of this Act [Sept. 7, 1974] and without regard to any election under section 8116(b) of the Act [subsec. (b) of this section]; but no payment shall be made by reason of such amendment for any period prior to the date of enactment of this Act.”

##### PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(56) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

#### § 8117. Time of accrual of right

(a) An employee other than a Postal Service 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.

(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93-416, § 10, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 109-435, title IX, § 901(a), Dec. 20, 2006, 120 Stat. 3253.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 752.	Sept. 7, 1916, ch. 458, § 2, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 101(a), 63 Stat. 854.

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