

Redeposit Issues Affecting Federal Employee Annuitants

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Occasionally, we encounter federal retirement cases involving former federal employees who have retired prior to having reached their minimum retirement age (MRA) or required length of service. Many of these departing federal employees take withdrawals of their retirement contributions when they leave federal service. Federal employees often do so based on misinformation provided by federal agency officials. A common situation involving agency misinformation can arise when a federal employee is told that he or she can withdraw his or her contributions and can later redeposit retirement contributions after departing federal service and when he or she reaches retirement age.

Redeposit Issues for Federal Employees

It is important for departing federal employees to know that former federal employees can potentially redeposit their retirement contributions, but only if they have taken a partial (as opposed to a full) refund of their retirement contributions. A full refund of retirement contributions generally voids all annuity rights based on the service for which the refund was made. However, there does appear to be a small exception for former federal employees who have received a refund for some, but not all, of his or her retirement contributions. See 5 C.F.R. § 831.112 (a)(2); 5 U.S.C. § 8334 (d)(2).

In these types of cases, the presence of a remaining retirement deposit may entitle a former employee to a reduced annuity and potentially provide the former employee with the ability to redeposit funds. Again, this exception does not appear to apply to a former federal employee who has received a full refund of his or her retirement contributions. In addition, former federal employees can circumvent this issue if they obtain future federal employment that reinstates their retirement rights.

Incorrect Retirement Advice Given by Federal Agencies

Generally speaking, government misinformation is a difficult basis with which to address this issue, especially years after the federal employee has left his or her respective federal agency. We have found that this type of legal argument is unlikely to change the outcome of a retirement case before the Office of Personnel Management (OPM) or the Merit Systems Protection Board (MSPB). In other words, it can be difficult to hold a federal agency liable for its inaccurate retirement advice, except in the instance where such advice was purposefully and maliciously intended to be harmful to the former federal employee.

The MSPB and the courts have been more receptive to federal employee arguments involving a federal agency that has intentionally provided inaccurate advice to harm the federal employee. See *OPM v. Richmond*, 496 U.S. 414, 421 (1990) (Supreme Court leaving open the possibility that a federal employee might have redress against OPM denying benefits). With this, the doctrine of Equitable Estoppel might be raised. Equitable estoppel

in this context is simply a legal argument meaning that the federal agency or OPM should not be permitted, based on their conduct, from avoiding liability.

Other courts and the MSPB have held that affirmative misconduct by a government official can justify the application of equitable estoppel. See *Ramirez Carlo v. United States*, 496 F.3d 41, 49 (1st Cir. 2007) (holding that equitable estoppel can be raised if the misrepresentation of fact was made with the belief that the individual would rely upon it); and *McDonald v. OPM*, 115 M.S.P.R. 236 (2010) (holding that because it was unclear from the record if the government agent was negligent or committed affirmative misconduct, and because the parties were never informed the correct standard for equitable estoppel during the administrative hearing, the appeal should be remanded for further adjudication). However, the burden of proof with this type of argument can be very high, and there is not a significant amount of reported cases on this argument as of yet.

Contact Us

When departing or retired federal employees have federal retirement issues, such as redeposit matters, it is important to obtain the advice of legal counsel, especially with regard to questions concerning whether to withdraw retirement contributions. Our law firm is experienced in federal retirement issues and is available to advise individuals regarding these types of federal retirement matters. Please contact Berry & Berry, PLLC to schedule an initial consultation regarding your redeposit issue. We can be reached at www.berrylegal.com or by telephone at (703) 668-0070.

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