

covered by the higher withholding rate, the agency head's determination that the service was not so covered at the time of the service is presumed to be correct. This presumption may be rebutted by a preponderance of the evidence that the employee was unaware of his or her status or was prevented by cause beyond his or her control from requesting that the official status be changed at the time the service was performed.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32690, July 23, 1992]

**§ 842.805 Withholding and contributions.**

(a) During service covered under the conditions established by § 842.803 (a), (b), or (c), the employing agency will deduct and withhold from the employee's base pay the amounts required under 5 U.S.C. 8422(a)(2)(B) and submit that amount to OPM in accordance with payroll office instructions issued by OPM.

(b) During service described in paragraph (a) of this section, the employing agency must submit to OPM the Government contributions required under 5 U.S.C. 8423(a)(1)(B) in accordance with payroll office instructions issued by OPM.

(c) If the correct withholdings and/or Government contributions are not timely submitted to OPM for any reason whatsoever, including cases in which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the employing agency must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the agency waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM as soon as possible.

(d) Upon proper application from an employee, former employee or eligible survivor of a former employee, an employing agency or former employing agency will pay a refund or erroneous additional withholdings for service

that is found not to have been covered service. If an individual has paid to OPM a deposit or reposit, including the additional amount required for covered service, and the deposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(e) The additional employee withholding and agency contributions for covered service properly made are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8415(d).

(f) While an employee who does not hold a rigorous, secondary, or air traffic controller position is detailed or temporarily promoted to such a position, the additional withholdings and agency contributions will not be made.

(g) While an employee who holds a rigorous, secondary, or air traffic controller position is detailed or temporarily promoted to a position that is not a rigorous, secondary, or air traffic controller position, the additional withholdings and agency contributions will continue to be made.

[52 FR 2069, Jan. 16, 1987, as amended at 57 FR 32690, July 23, 1992; 60 FR 3340, Jan. 17, 1995]

**§ 842.806 Mandatory separation.**

(a) The mandatory separation provisions of 5 U.S.C. 8425 apply to all law enforcement officers and firefighters, including those in secondary positions, and air traffic controllers, with the exception of a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described under 5 U.S.C. 2109(1)(B) (*i.e.*, a second-level supervisor). A mandatory separation under 5 U.S.C. 8425 is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter.

(b) Exemptions from mandatory separation are subject to the conditions set forth under 5 U.S.C. 8425. An exemption may be granted at the sole discretion of the head of the employing agency or by the President in accordance with 5 U.S.C. 8425(c).