

**WRITTEN TESTIMONY OF
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U.S. DEPARTMENT OF LABOR
BEFORE THE HOUSE COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
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Good morning, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify on the work of the Office of Inspector General (OIG), U.S. Department of Labor (DOL), in the Federal Employees' Compensation Act (FECA) program. My name is Elliot Lewis, and I am the Assistant Inspector General for Audit in the OIG. Today I will discuss the OIG's recommendations for improvement in this important program. As you know, the OIG is an independent agency within the Department of Labor, and the views expressed in my testimony are based upon the independent observations and recommendations of the OIG, and are not intended to reflect the Department's position.

DOL administers several programs and statutes designed to provide and protect the benefits of workers. FECA is a comprehensive workers' compensation law covering some three million Federal and Postal workers around the world with work-related injuries or occupational diseases. FECA benefits include payment of medical expenses and compensation for lost wages. In the case of work-related deaths, survivor benefits are payable to family members.

The Office of Workers' Compensation Programs (OWCP) is responsible for administering the FECA program and ensuring that it serves injured workers in an efficient and effective manner. It is important to note that FECA benefits constitute Federal workers' sole remedy for a work-related injury or death, as employees or surviving dependents are not entitled to sue the government to recover damages. Therefore, it is incumbent on OWCP to promptly adjudicate claims, pay medical bills and compensation in accepted cases, and do everything possible to help employees return to work. It is also important to note that the overwhelming majority of injured workers return to work within the first year of injury.

FECA benefits are paid from the Employees' Compensation Fund, which is principally funded through chargebacks to the Federal agency that employs the injured or ill worker. Therefore, the FECA program affects the budgets of all Federal agencies and quasi-Federal agencies such as the United States Postal Service. For the Chargeback Year ending June 30, 2010, the FECA program provided almost \$2.8 billion in compensation to approximately 250,000 workers and survivors for work-related injuries or illnesses.

Over the years, the OIG has conducted numerous audits and investigations related to the FECA program. Our audits have identified opportunities for program administration improvements related to eligibility, determination of reemployment status, and customer service. Moreover, our investigations have focused on FECA claimants who work while continuing to receive benefits, and on medical or other service providers who bill the program for services not rendered. We also process hundreds of complaints through our hotline from dissatisfied claimants. These complaints generally involve disagreements with OWCP's adjudication of claims. As a result of our work and observations, for more than a decade the OIG has been recommending changes to strengthen the FECA program with respect to: the 3-day waiting period, benefit payments beyond the Federal or Social Security retirement age, and access to Federal databases to aid in fraud detection.

Recommendations to Improve the FECA Program

Changing the 3-Day Waiting Period

FECA currently has a provision that allows employees who sustain work-related injuries to receive continuation of pay (COP) for a period not to exceed 45 calendar days. The intent of this provision is to eliminate interruption of the employee's income while OWCP is processing the claim. The FECA legislation provides for a 3-day waiting period which is intended to discourage frivolous claims. However, as currently written, the legislation places the 3-day waiting period at the end of the 45-day COP period; therefore negating the purpose of the 3-day waiting period. In 2006, the legislation was amended to require

that the 3-day waiting period for Postal workers precede the 45-day continuation of pay period. We continue to recommend moving the 3-day waiting period to the beginning of the 45-day continuation of pay period for all injured Federal employees.

Reviewing the Benefit Structure for Retirement Age Beneficiaries

As currently designed, FECA program benefits do not change once a beneficiary reaches the Federal or Social Security retirement age. While the overwhelming majority of FECA beneficiaries return to work within the first couple of years of their injury, a small percentage remain on FECA for life. According to OWCP, tax-free FECA benefits which are set at 66 $\frac{2}{3}$ percent (or 75 percent if the claimant has dependents) are typically more generous than Federal retirement. The OIG recommends that this benefit structure be examined to determine whether a change in benefit rate(s) should occur at some point at or near the normal Federal or Social Security retirement age.

We are aware that the Administration is considering a proposal to reduce tax-free FECA wage loss benefits to 50 percent at the normal Social Security retirement age. As the Department begins to consider a change to the benefit structure, careful consideration is needed to ensure that the percent of benefits ultimately established will have the desired effect while ensuring fairness to injured workers, especially those who have been determined to be permanently impaired and thus unable to return to work.

Accessing Earnings Information

Our third recommendation has been for the Department to be granted statutory authority to access Social Security wage information and the National Directory of New Hires (New Hire Directory), which is maintained by the Department of Health and Human Services. Information from these wage and employment databases would enable the Department of Labor to identify FECA beneficiaries who are working while receiving wage loss benefits. If it is determined that a claimant has unreported outside employment or income, any inappropriately paid benefits can be reduced or withdrawn, and criminal remedies may be pursued. Currently, the Department can only access

Social Security wage information if the claimant gives it permission to do so. Obviously Mr. Chairman, claimants who are defrauding the FECA program are unlikely to willingly grant OWCP or the OIG the authority to access information about their earnings. Likewise, access to the New Hire Directory, which contains employer-reported information on newly hired individuals, is not available to OWCP or the OIG. Congressional action would be required for OWCP and OIG to have access to Social Security data and the New Hire Directory.

As previously indicated, Mr. Chairman, the OIG investigates FECA claimant fraud, as well as fraud committed against the program by medical and other service providers. Whether it is a mechanic for the Navy who receives total disability benefits while operating his own business, or a Smithsonian security guard who fails to disclose his employment with a private security firm, our case work demonstrates the need for OWCP and OIG to have access to these databases.

Related Issues

In addition to our recommendations, Mr. Chairman, there are a couple of related issues under review by the Administration that are of interest to the OIG based on our prior audit work. As you know, currently OWCP requires that claimants receiving payments at the 75 percent rate periodically verify their marital status and the eligibility of dependent children. Beneficiaries in death cases are required to annually submit a report regarding their marital status and continuing eligibility of dependent children. A beneficiary is required to submit proof of continuing eligibility for children over the age of 18 who are students or who are physically or mentally incapable of self support. We are aware that the Department is considering a proposal to set a 70 percent level of benefits for all claimants regardless of whether they have dependents. The Department indicates that this change will reduce overpayments and documentation requirements. While we defer to OWCP as to what the benefit structure and level should be, it is important to note that prior audit work found that obtaining documentation on dependents has been a challenge for OWCP. For example, in 13 percent of FECA

claims we reviewed during our 2007 audit of OWCP's largest FECA district office in Jacksonville, Florida, we found that compensation payments were continued even though claimants had not provided required evidence of their continuing eligibility. We also found that compensation payments had not been reduced on claims for which claimants had provided evidence indicating a reduction was warranted. Therefore, as reforms are considered, it is important to examine the challenges posed by dependent eligibility documentation requirements given that FECA is a wage-loss compensation program.

The Department is also planning improvements in its return-to-work processes and incentives that do not require legislative action. This is another area for which we believe improvements are needed based on our prior-audit findings. Specifically, in 2009 we looked at FECA claimants whose reemployment or wage-earning capacity had not yet been determined. The audit, which examined cases from OWCP's Jacksonville and New York District Offices, found that in 11 percent of the cases reviewed, claims examiners did not perform critical required activities such as referring claimants for nursing and vocational rehabilitation to determine if claimants could return to work in some capacity. We also found lax monitoring of cases. For example, in 34 percent of cases reviewed, claims examiners did not take timely actions on referrals for second opinions or independent medical examinations, and/or had not acted on completed medical examinations. Furthermore, we noted at the time that the reemployment status had not been determined for 37 percent of claimants (20,236 out of 54,674) and that 2,860 claimants had been in this temporary status for 15 years or longer.

Conclusion

In conclusion, Mr. Chairman, our work and recommendations have focused on improving the operation and integrity of the program. Our work continues to this end. For example, we are currently looking at the Department's efforts to comply with recently-enacted improper payments legislation, as well as whether OWCP has adequate controls to prevent improper durable medical equipment and medical travel

payments. Mr. Chairman, this concludes my written statement; I would be pleased to answer any questions you or the other members of the Subcommittee may have.