

**STATEMENT OF SHELBY HALLMARK  
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OFFICE OF WORKERS' COMPENSATION PROGRAMS  
EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
COMMITTEE ON ARMED SERVICES  
U.S. HOUSE OF REPRESENTATIVES**

**September 18, 2007**

Chairman Snyder, Ranking Member Akin, and Members of the Subcommittee:

My name is Shelby Hallmark, and I am the Director of the Office of Workers' Compensation Programs (OWCP) for the Employment Standards Administration of the U.S. Department of Labor.

I appreciate having this opportunity to discuss OWCP's role in providing benefits under the Federal Employees' Compensation Act (FECA) to federal civilian employees of the armed services and overseeing the provision of benefits under the Defense Base Act to civilian contractors injured while working in Iraq and Afghanistan.

Federal Employees' Compensation Act

OWCP's Division of Federal Employees' Compensation (DFEC) administers FECA which provides workers' compensation coverage to three million federal and Postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for all reasonable and necessary medical treatment for work related injury or disease and, where necessary, medical and

vocational rehabilitation assistance in returning to work. The program has 12 district offices nationwide.

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational diseases (medical conditions sustained as a result of injury or exposure occurring over the course of more than one work shift). Benefits are paid from the Employees' Compensation Fund and employing agencies are billed annually for the benefits paid for their employees from the Fund.

The Federal Employees' Compensation program will make payments to the injured worker to: replace lost wages, paid at two-thirds of the employees' salary if there are no dependents or three-fourths if there is at least one dependent; provide monetary award to injured workers for permanent impairment of limbs and other parts of the body; and provide benefits to survivors in the event of a work related death.

Claims for benefits under the FECA are usually filed by the injured worker through their employing agency. Staff in the 12 program district offices are responsible for reviewing the claims and determining whether the circumstances of the case meet the requirements of the FECA for entitlement to benefits. The evidence submitted must establish that the applicant is a federal civilian employee who filed a timely claim for benefits for a medical condition sustained as a result of a work related incident or exposure. If the evidence submitted is not sufficient to establish the claim, DFEC district office claims staff will advise the claimant and employing agency of the deficiencies in the evidence, explain the evidence which is needed to establish the claim and provide additional time for submission of the necessary evidence. If the deficiency is medical in nature, the claims staff may communicate directly with the treating physician or may arrange for the claimant to be seen for a second opinion medical examination.

If the claim is denied or the claimant disagrees with the benefit level awarded, the claimant has several rights of review including an oral hearing; a review of the written

record by an OWCP hearing representative who is outside of the district office making the entitlement determination; or a reconsideration of the case by a senior claims examiner within the district office who was not previously involved in prior entitlement decisions. In these circumstances, the claimant may submit additional evidence in support of the claim. Moreover, a claimant may request review by the Employees' Compensation Appeals Board (ECAB), which is the highest authority in federal workers' compensation claims adjudication. The ECAB's review is based solely upon the case record at the time of the adverse formal decision and new evidence is not considered.

OWCP does not generally track injury claims by country of origin, but we have identified 194 claims filed with DFEC for injuries sustained by federal civilian employees while working in Iraq since 2004. (To ensure that war zone cases are carefully managed, OWCP established a separate numbering sequence for such claims.) About one quarter of these injuries arose directly out of armed conflict and some are the result of routine accidents or exposures. Of that number, there have been 10 death claims filed.

Additionally, there have been 11 claims filed for various emotional conditions and four claims for traumatic brain injuries. A total of \$1,714,119.51 has been paid out in medical benefits, lost wages and death benefits for this group of workers and their families. Of the claims identified, 56 have been denied because they did not meet the requirements for entitlement under the FECA. These claims were denied either because there was no medical evidence establishing that a medical condition was sustained or because the medical evidence failed to establish a causal connection between the work-related event and the diagnosed medical condition. Claimants have multiple opportunities to obtain review of a denial including requests for reconsideration or a hearing where additional evidence may be submitted, or appeal of that decision to the ECAB.

OWCP works closely with the employing agencies to ensure that individuals with serious injuries, especially those wounded in combat zones, receive prompt services. FECA beneficiaries have the right to choose their own physician and all medical costs

associated with the injury are paid in full with no co-payment from the injured worker. Once the beneficiary has recovered from the injury, OWCP works with the employing agency, or if necessary, a new employer, to assist in return to work.

In addition to FECA benefits, federal agencies are authorized to pay the survivors of federal employees who die in the performance of their duties a variety of death gratuities depending on the particular circumstances of each case.

For privacy reasons, I should not discuss the particulars of an individual claimant's case in this hearing. However, to be responsive to the Subcommittee's request, we will provide a separate letter to address the case that was mentioned in the hearing invitation letter. I can state for the record that we do not use separate FECA diagnosis codes for combat injuries because conditions such as traumatic brain injuries, amputations, and Post-Traumatic Stress Disorders can be sustained in non-combat circumstances as well. Medical conditions are coded under the International Classification of Diseases (ICD) coding system, which covers all recognized injuries and physical conditions, and the Diagnostic and Statistical Manual of Mental Disorders (DSM). These codes are related to the individual's medical diagnoses, regardless of the cause or source of injury.

### Defense Base Act

Our mission under the Defense Base Act (DBA), an extension of the Longshore and Harbor Workers' Compensation Act, is to oversee the provision of benefits by private insurance companies and self-insured employers to civilian contractors to federal agencies. We track the delivery of such benefits, maintain limited records concerning the claims, provide informal dispute resolution services, and offer technical assistance to contractors, contracting agencies, insurers and others in the system.

The benefits provided to civilian contractors under the DBA are an extension of those provided in the Longshore Act, and include wage replacement, medical services, and,

under certain limited conditions, rehabilitation services. Claimants are generally entitled to two-thirds of their wages, with an annually adjusted maximum weekly benefit of \$1114 (effective 10/1/06). The DBA, like most other workers' compensation systems, provides benefits for both temporary and permanent disability, and survivor benefits in the case of fatalities.

Benefit levels for the two programs, FECA and DBA, are generally similar in structure, eligibility requirements, and definitions, except that FECA pays most claimants at 75% of their pre-injury salary (due to the availability of adjustment for dependents). Similar to other workers' compensation benefits, both programs' payments are tax-free.

The DBA provides protection to both American civilians and to foreign nationals who work overseas under contract to the federal government. These contracts arise primarily from the Department of Defense, the Department of State, and the United States Agency for International Development. DBA insurance is required under these contracts, and is usually purchased by the contractors from either AIG, CNA, or ACE USA, the three major insurance companies authorized by OWCP to offer DBA policies. Subcontractors are required to provide the same coverage, with the responsibility reverting to the prime contractor if a subcontractor should be found uninsured in case of a claim.

The delivery of DBA benefits, while subject to the array of claims disputes common to any workers' compensation program, has been challenging for some Iraqi nationals' claims. The mere delivery of correspondence from a U.S. federal agency or a U.S. based insurance company may identify the recipient as a 'collaborator' to insurgents in Iraq, placing the claimant or his survivors at great risk of personal attack. Further, language and cultural challenges, the lack of banking and medical services, and simple fear of filing on the part of claimants have made the timely adjustment of some claims to Iraqis difficult.

The insurance industry has, however, improved its handling of these challenging circumstances. The major insurers have established local claims handling resources in the Mideast, in some cases utilizing local, Arabic-speaking private attorneys to assist Iraqi claimants. Their efforts continue, and OWCP monitors their work closely through our case management activities in our district offices and through our ongoing meetings with industry leaders.

As is expected during times of war, the number of claims under the DBA has risen over the years. The annual reported DBA claim total has risen from 804 in 2003, to 5,749 in 2006. For 2007, we expect to receive more than 14,000 DBA claims, primarily from Iraq and Afghanistan.

#### PTSD and Traumatic Brain Injuries

Mr. Chairman, we are aware that the Subcommittee is particularly concerned about individuals who incur war-related head wounds and psychological impacts (generally categorized as Post-Traumatic Stress Disorder or (PTSD)). Both of OWCP's programs have paid special attention to these conditions.

Under the FECA program, any medical condition can be accepted as long as the probative medical evidence establishes the condition was caused, accelerated or aggravated by the employment-related incident or exposure. This includes mental disorders, traumatic brain injuries and any other medical condition that may be a consequence of an injury sustained on the battlefield. Most conditions, including psychiatric disorders, traumatic brain injuries, burns, open wounds, hearing loss, and amputations also occur in non-combat situations and are accepted if the evidence supports that such conditions arose out of the employees' federal employment.

Medical conditions which are accepted as having arisen out of the established work incident or exposure are expressed based on the International Classification of Diseases. These codes have been developed to classify diseases and a wide variety of

signs, symptoms, abnormal findings, complaints, and external causes of injury or disease. Every health condition can be assigned to a unique category and given a code, up to six characters long. The International Classification of Diseases is published by the World Health Organization and is used world-wide for morbidity and mortality statistics, reimbursement systems and automated decision support in medicine.

The injured federal worker is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. The injured worker has the initial choice of physician for treatment. Referrals to other specialists are also permitted so long as the treatment is for a condition that has been accepted as arising out the workers' employment.

As noted above, our records indicate that 11 cases have been filed by civilian federal employees involving emotional or stress conditions arising from service in the Iraq theater, and four involving traumatic brain injuries. All but two of the emotional claims have been accepted, and all of the traumatic brain injury claims have been accepted.

Under DBA, OWCP has been working closely with the contracting agencies, contractors, and the insurance companies providing DBA coverage since the start of federal contracting activities in Afghanistan and Iraq. Our efforts have focused primarily on three areas: first, providing education about the Act to all involved; second, ensuring that coverage is present in all contracts; and, third, making sure that the insurance companies are providing high quality, timely claims management service.

OWCP's compliance assistance efforts include:

- Meeting frequently with the contracting officers from the three major contracting agencies, Defense, State, and USAID to be certain that contracting officers understand the requirement for insurance coverage.

- Convening five well-attended, day-long seminars and half-day 'DBA 101' workshops for the industry to provide general information about the DBA, its requirements, and its implementation.
- Holding many roundtable meetings with insurance industry leadership to address challenges and encourage sharing of best practices used in adjusting the complex claims arising from the war zones, especially those coming from foreign nationals.
- Holding focused meetings with insurance company representatives specifically on PTSD case handling in the war zone context.
- Responding promptly to thousands of inquiries from claimants, employers, insurers, attorneys, and others about requirements under the DBA.

Each of these OWCP initiatives has improved the delivery of benefits to claimants by enhancing understanding, coverage, and claims service.

The insurance company's responsibility includes ensuring that a disease is present and is work-related before providing benefits for it, and scheduling expert medical evaluations and collecting medical information can be time-consuming. For these reasons, identifying, treating, and paying for PTSD claims can take more time than typical traumatic-injury-only claims. Nevertheless, the key DBA insurers involved in Iraq, with intense compliance assistance from OWCP, have improved their handling of these claims, and have shared best practices in addressing the difficult circumstances associated with these claims.

OWCP is sensitive to the hardships endured by federal and contractor employees in the war zone, and seeks to ensure that the best possible service is provided to these individuals. We continue to work closely with our colleagues in the Department of Defense and other agencies to coordinate services to injured federal workers, and with the contracting agencies, insurers and attorneys responsible for handling DBA contractor employees' cases.



Mr. Chairman, I would be pleased to answer any questions that you or the other members of the Committee may have.