U.S. Department of Labor

Inspector General
Washington. D.C 20210

JUL 2, 1998

MEMORANDUM FOR: BERNARD E. ANDERSON
Assistant Secretary for Employment Standards

FROM: F.M. BROADAWAY
Assistant Inspector General for Analysis, Complaints and Evaluations

SUBJECT: Review of FECA Program Administration
Report No. 15-OACE-98-OWCP

This memorandum report presents the results of a review of the administration of the Federal Employees' Compensation program conducted by the Office of Inspector General (OIG), Office of Analysis, Complaints and Evaluations, to address selective issues raised in a letter to the Assistant Secretary for Employment Standards and forwarded to OIG by the Office of the Secretary. The objective of our review was to evaluate the complainant's concerns with respect to the acceptance of initial claims for benefits filed under the Federal Employees' Compensation Act (FECA), the termination of benefits and the appeals process administered by the Branch of Hearings and Review. Our review did not confirm the existence of a systemic anti-claimant bias in the Office of Workers' Compensation Programs (OWCP) but, instead, found evidence of a balanced commitment by the agency to both improving the quality of service to claimants and ensuring the cost-effective administration of the program. With respect to four specific issues cited by the complainant as illustrative of the program's bias, we did not identify matters requiring corrective action at this time but have deferred evaluation of one issue pending an assessment of a related proposal by ESA's Reinvention Team. This memorandum, therefore, is provided for informational purposes and does not require a response.

I. ***Background***

In response to a referral from the Office of the Secretary, the Office of Inspector General, Office of Analysis, Complaints and Evaluations, Division of Evaluations and Inspections, conducted an evaluation of selective issues raised in a letter to the Assistant Secretary for Employment Standards. The letter, dated September 2, 1997, raised concerns about systemic anti-claimant bias in OWCP and the Office's Division of Federal Employees' Compensation (DFEC) in administering the claims approval, management and appeal processes of FECA and provided various examples as evidence of the systemic bias. The letter also included complaints pertaining to employee relations matters such as the workload of Hearing Representatives assigned to the Branch of Hearings and Review, overtime, and travel policies. However, in keeping with OIG policy, our review was limited to program areas and the complainant was advised to pursue the Fair Labor Standards Act complaints and other personnel matters with the labor relations staff of the Employment Standards Administration (ESA).

II. ***Scope and Methodology***

The overall objective of the review was to evaluate the concerns cited in the letter with respect to the propriety and effectiveness of the acceptance of initial claims for benefits filed under FECA, the termination of benefits and the appeals process administered by the Branch of Hearings and Review. In conducting our evaluation, we reviewed documentation, conducted interviews, and analyzed statistical information provided by OWCP and the Employees' Compensation Appeals Board (ECAB). We reviewed a variety of documents prepared by the complainant, including the September 2, 1997 letter to the Assistant Secretary for Employment Standards, the paper titled *Genesis and Development of DFEC Abuses,* a legal analysis concerning impartial physicians and an analysis of the General Accounting Office (GAO) report, *No Evidence That Labor's Physician Selection Processes Biased Claims Decisions* (GAO/GGD-94-67). In addition to the GAO report cited, we also reviewed the U.S. District Court decisions *Chakios vs. Reich, et. al.,* Civ. A. *No. 95-1763 (W.D. Pa., Aug. 25, 1997*) and *McDougal-Saddler vs. Herman,* Civ. A. No. 97-1908 (E.D. Pa., Dec. 24, 1997), as well as OWCP's Strategic Plan, correspondence and statistical information from OWCP and ECAB. Interviews were conducted with 10 randomly selected Hearing Representatives employed by the Branch of Hearings and Review for over six months and with the complainant. Lastly, we interviewed various OWCP management officials.

Our review was conducted in accordance with the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency.

III. ***Review Results***

The specific issues raised by the complainant fall within the framework of more fundamental, systemic concerns discussed in various documents about changes in the administration of' the FECA program during the past several years, illustrated by the following statement from the September 2, 1997 letter to the Assistant Secretary for Employment Standards:

> "*the program charged with enforcing this humanitarian legislation is permeated by anti-Claimant bias from top to bottom and routinely denies injured employees due process before terminating their benefits."*

In the paper, *Genesis and Development of DFEC Abuses,* which the complainant prepared and provided to us, he cites OWCP's presentations in the agency's Annual Reports to Congress and Congressional testimony about the agency's management initiatives beginning in 1992, including the Periodic Roll Management Project, the short term rolls and Quality Case Management, to support a conclusion that, "DFEC chooses to measure program success by the amount of compensation benefits saved." The paper provides statistics pertaining to changes in the number of long-term disability cases (the periodic roll), increases in the total merit decisions issued by the Branch of Hearings and Review and a 45 percent rate of remands between 1991 and 1996 as further evidence of the program's direction. With respect to the Annual Reports and Congressional testimony, the author of the paper commented, "...none of the OWCP Reports identify the reduction of improper denials as a goal. As noted above, the goal is the reduction of compensation costs."

Our evaluation of OWCP's Strategic Plan, review of the Acting Director's testimony before the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce and analysis of the statistical information pertaining to the Branch of Hearings and Reviews did not confirm the complainant's position regarding the current direction of the FECA program. Rather than an exclusive focus on reducing costs, the documents we reviewed reflect a balanced commitment by OWCP to both improving the quality of service to claimants and ensuring the cost-effective administration of the program. Furthermore, our analysis of the statistical information calls into question the complainant's use of this data to conclude that the management practices instituted since 1992 have been responsible for a deterioration in the quality of decisions adversely impacting claimant's benefits.

In establishing the agency's major goals and the measures to be used to determine success, OWCP's Strategic Plan for the five-year period ending in 2002 emphasizes both customer service and cost-effective program management. Four of the six goals outlined for the Federal Employees' Compensation program address core program performance issues, specifically: (1) return to work; (2) service to injured workers; (3) program integrity; and (4) partnerships with external customers. While the first three goals focus primarily on either service quality or cost-effectiveness, the objective associated with the fourth goal links the two concepts. In fostering partnerships with external customers, OWCP's objective is that, "the program, employing agencies, and Federal unions work as partners to improve the delivery system and ensure a cost-effective Federal employees' benefit program."

The performance measures included in OWCP's Strategic Plan further contradict the contention that the agency has not identified the reduction of improper denials as a goal. In this regard, one of the nine performance measures identified under the plan's goal of service to injured workers is to, "track quality improvement using an indicator based on selected accountability review items." The indicator referenced in the performance measure is comprised of the five accountability review items which form the "quality index" explained in the Director for Federal Employees' Compensation's January 13, 1997 memorandum to Regional and District Directors. The items focus on claims examiner actions which would deny or reduce claimant benefits. The memorandum explains, "We chose these five items because they provide a good measure of decisions and adjudicatory actions, and we hope to correlate findings in these items with remand and reversal rates in cases appealed to the ECAB."

The testimony by the Acting Director, OWCP, on September 30, 1997, before the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce offers a comprehensive historical perspective on the FECA program, discusses significant recent accomplishments in customer service and program cost-effectiveness and explains the agency's goals for future improvements in both areas. OWCP's management initiatives beginning in 1992 to reduce the growth of the periodic rolls received major attention in the testimony, as noted by the complainant. However, the complainant did not recognize in his paper that the growth in the rolls was, in part, a factor of a serious adjudication backlog in the 1980s which prevented OWCP from devoting adequate resources to effective case management for over a decade. In several passages, the Congressional testimony highlights the integration between the claimant service and cost-effectiveness objectives, for example in the following discussion of the involvement of more than 1500 contract rehabilitation nurses in the Quality Case Management initiative.

> *"These nurses intervene in more than 10,000 cases per year, helping in the early days of disability to facilitate communications, ensure effective medical treatment, and aid the employer in finding ways to bring the injured person back to the workplace before the psychology of disability replaces the worker's connection to the job."*

Additional major claimant service accomplishments referenced in the testimony but overlooked in the *Genesis and Development of DFEC Abuses* include OWCP's rapid response to the Oklahoma City bombing and the streamlining of occupational disease case processing, resulting in a reported 29 percent decrease in the average number of days required to adjudicate such cases. Finally, the Congressional testimony also included extensive discussion of OWCP's Strategic Plan with its goals for improving both customer service and cost-effective administration, as described in the paragraphs above.

Our analysis of the statistical data presented by the complainant to support his position that the introduction of the Periodic Roll Management Project and Quality Case Management has resulted in flawed claims examiner decisions with adverse impacts on claimants raised questions about both the data used and the interpretation of that data. The complainant calculated the percentage of total merit decisions (i.e., total hearing dispositions minus dismissals, withdrawals and no-shows) issued by the Branch of Hearings and Review which were remanded to the District Offices for a new decision as a measure of the quality of the claims examiners' original decisions. In various documents, the complainant cites the remand rate as 45 percent of total merit decisions and attributes this high rate to improper claims examiner decisions driven by management's emphasis on reducing costs through the Periodic Roll Management Project and Quality Case Management. OWCP officials noted that the reliability of Hearings and Review decisions as a measure of the accuracy of claims examiners' decisions is somewhat limited since the claimant may and often does introduce new information at a hearing which was not available to the claims examiner at the time of the original decision. While we recognize the cautions on reliability cited by the OWCP officials, we noted that the data presented by the complainant tends more to refute than to support his conclusion that the management initiatives implemented in 1992 were responsible for improper claims examiner decisions to deny benefits, as reflected by the remand rates. Our analysis of a chart prepared by the complainant, showing an average remand rate of 45 percent of total merit decisions for the period 1988 through 1996, determined that the remand rate for the period 1988 through 1992 was 48 percent, whereas the remand rate for 1993 through 1996, after the introduction of the management initiatives, showed a modest improvement to 42 percent. OWCP bases its calculation of the Hearings and Review remand rate on the outcomes of all appeal cases received; the agency's statistics for 1992 through 1997 show remand rates for total hearing actions or dispositions ranging from a high of 33 percent to a low of 27 percent, with the highest remand rate occurring in 1992, prior to the full implementation of the Periodic Roll Management Project and Quality Case Management.

In order to further evaluate the systemic program management concerns raised by the complainant, we analyzed statistical information provided by the Employees' Compensation Appeals Board (ECAB). Since the ECAB appeal process operates independently from OWCP, the disposition of cases appealed to the Board would not be directly influenced by changes in OWCP's management priorities; to the contrary, if OWCP management were pressuring both

claims examiners and Hearing Representatives to improperly deny claimant benefits, an increase in the number of reversals and remands could be expected on cases appealed to ECAB. Furthermore, ECAB does not accept new information from either the claimant or OWCP and its dispositions may, therefore, be more indicative of the validity of claims examiners' decisions and the propriety of OWCP's procedures and program guidance. ECAB data for the period FY 1990 through May 1998 shows a pattern similar to the statistics for the Branch of Hearings and Review, with reversals and remands steadily declining from a high of 43 percent in FY 1990 to a low of 26 percent for FY 1998, to date. We separately analyzed the ECAB statistics for decisions which address policy questions and final orders which focus on procedural matters and, for both types of dispositions, the pattern of steady, gradual decline in the percentages of cases reversed and remanded prevailed.

In addition to the systemic program issues raised by the complainant, we focused our review on four specific issues cited as examples illustrating OWCP's anti-claimant bias. The following sections discuss the results of our reviews of these issues.

A. Examination by an Impartial Third Physician

The complainant's concerns that OWCP has promulgated improper procedures, resulting in the routine termination of FECA benefits without affording claimants their statutory right to an examination by a third physician, have been refuted by two Court decisions. Furthermore, no Hearing Representative we interviewed shared the complainant's reservations on this matter. The FECA statute and regulations require the appointment of a third physician in the event of a disagreement between a second opinion physician under contract to OWCP and the injured employee's physician. The FECA Procedure Manual provides further guidance to assist a claims examiner in determining those circumstances in which a conflict requiring referral to a third physician exists. The complainant prepared an analysis offering four reasons why, in his opinion, FECA's Procedure Manual is improper: the statutory language is clear; the regulatory language is clear; ECAB's analysis of the procedure is flawed; and OWCP failed to adhere to the requirements of the Administrative Procedure Act when the agency promulgated the procedure. However, the U.S. District Courts in both *Chakios vs. Reich, et. al.* and *McDougal-Saddler vs. Herman* upheld the interpretations incorporated in the FECA Procedure Manual.

The Federal Employees' Compensation Act [5 U.S.C., section 8123 (a)] provides that, "If there is disagreement between the physician making an examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The regulation contains virtually identical language (20 CFR § 10.408). The FECA Procedure Manual provision with which the complainant takes issue, PM 2-810.9h provides as follows:

> *"The findings or opinions of an independent specialist will often differ from those of the claimant's attending physician. If of equal weight, the differing opinions would constitute a conflict requiring referral to a third*

> *physician. This is a time-consuming process which is not always necessary. Frequently a decision can be reached by weighing the medical evidence of record without referral to a referee specialist."*

The Procedure Manual provides several examples of situations in which differences of opinion "can in all probability be resolved without impartial referral" by weighing the credentials or opinions of the two physicians. The examples include comparing: (1) the opinion of a general practitioner against an opinion from a Board-certified specialist in the appropriate speciality; (2) the opinions of equally qualified physicians, but one opinion is based upon a complete and accurate history of the injury while the other opinion is not; and (3) the opinions of equally qualified physicians, one of whom submits a fully rationalized opinion supported by objective findings, while the opinion of the other physician is speculative, equivocal and/or unrationalized. The Manual (PM 2-810.11a) continues:

> *"Careful analysis of the medical evidence should allow for resolution of most issues without resorting to a referee or 'impartial' specialist. However, where the analysis of the evidence demonstrates conflicting opinions or conclusions which are supported almost equally, the services of a referee specialist must be utilized."*

The complainant included four reasons why he considers the Procedure Manual's provisions for interpreting a disagreement between the attending physician and a second opinion physician to be improper. First, the complainant concludes that Section 8123(a) is clear on its face and requires referral to a third physician when there is any disagreement between two doctors. Therefore, in his opinion, no interpretation is proper or necessary. Second, the complainant argues that the program regulations are consistent with the plain language of the statute and do not contain any qualification on the requirement to refer claimants to a third, impartial physician. Third, the complainant considers ECAB case law imposing qualifications on this statutory requirement to be flawed. Finally, the complainant argues that OWCP failed to adhere to the Administrative Procedures Act when it promulgated its Procedure Manual because no opportunity was provided for public comment.

Two U.S. District Courts issued unreported opinions during 1997 on civil actions seeking to challenge the termination of claimants' workers' compensation benefits on the basis of a second (or in one case, a third) medical opinion, without recourse to examinations by impartial physicians. In both cases, the use of the FECA Procedure Manual's guidance to determine that no disagreement existed with the opinion of the injured workers' physicians constituted a major issue. While both cases are now on appeal, both uphold the current position of the program expressed in the Manual and in the decisions of ECAB.

The first opinion, *Chaklos vs. Reich, et. al.*, Civ. A. No. 95-1763 (W.D. Pa., Aug.

25, 1997) dismissed the plaintiffs case with prejudice and included the following discussion with respect to the language of the statute and the Procedure Manual's guidance.

> *"There is no dispute that the Secretary did not appoint a third physician, and that a third physician did not examine Chaklos. Yet, it does not necessarily follow that by failing to appoint a third physician, the Secretary violated a clear statutory mandate. I agree that the mandate is clear - a third physician must be appointed where a disagreement between the other physicians exists - but Cha/dos ' position presupposes that the claims examiner found a disagreement to exist between the physicians.*
>
> *The statute does not define 'disagreement,' nor does it provide guidelines for assessing the medical evidence. The OWCF procedures implementing section 8123(a), however, do provide the necessary guidelines... Given the examiner 's determination that no disagreement existed, there was no violation of the mandate to refer Chaklos to a third physician."*

The second case, *McDougal -Saddler vs. Herman*, Civ. A. No. 97-1908 (E.D. Pa., Dec. 24, 1997) dismissed an action challenging an ECAB decision which rested on the procedures for weighing medical evidence, stating:

> *"The Court concludes that FECA PM 2-810 instructs claims examiners in how to determine whether a 'disagreement' between physicians exists, and that defendant's interpretation of 5 US. C., section 8123 (a), using FECA PM 2-810, is plausible. Under that interpretation, it was appropriate for ECAB to decide plaintiffs claim based on the weight of the medical evidence.*
>
> *ECAB did not violate a clear statutory mandate in evaluating plaintiff's claim. The statute did not, under the facts presented, require ECAB to remand the case for the appointment of an independent physician to conduct an examination of plaintiff"*

The McDougal-Saddler opinion also addressed the Administrative Procedure Act argument and found that: "FECA PM 2-810 is an interpretive rule which clarifies the word 'disagreement' in 5 U.S.C. section 8123(a)...As an interpretive rule, FECA PM 2-810 did not require public notice or a public comment period to be valid."

Although the complainant contends that both Court decisions as well as the ECAB decisions are "deeply flawed," our interviews with 10 Hearing Representatives found that none shared the concerns regarding denials of compensation claims based upon the report of a second opinion medical examiner. More importantly, the program's interpretation has been accepted by ECAB and at least two District Courts and it is, therefore, appropriate for the

program to follow the existing provisions of the FECA Procedure Manual in determining whether a referral to a third, impartial physician is required.

B. *Impartiality of Second Opinion Physicians*

We did not identify sufficient evidence that OWCP's procedures have reduced the numbers and objectivity of physicians willing to provide second medical opinions (SECOP) under contract to the agency to warrant an in-depth study of this matter. The complainant indicated that the use of SEC OPs' opinions to deny benefits, the burden of responding to the questions OWCP directs to SECOPs and the perception that the FECA process is of questionable impartiality have caused many doctors to discontinue accepting FECA referrals, thereby reducing the pool of available doctors to those willing to provide the opinions OWCP is seeking. However, a General Accounting Office (GAO) review conducted in 1994 of OWCP's processes for selecting physicians did not identify problems with the agency's practices at that time and the information with respect to conditions since 1994 does not, in our opinion, justify a new study.

The GAO report, *No Evidence That Labor's Physician Selection Processes Biased Claims Decisions* (GAO/GGD-94-67), issued in February 1994, addressed the selection of both second opinion physicians and physicians who conduct impartial medical examinations and stated, "We found no basis to conclude that OWCP was shopping for doctors who would be predisposed against claimants." Among other procedures used to reach this conclusion, the GAO staff visited 5 districts and reviewed 126 randomly selected cases in which claimants' compensation benefits were terminated in the period following their second opinion exams but no impartial medical examination was conducted. In 95 percent of the cases GAO reviewed, termination of benefits was unrelated to the second opinion medical report but, instead, was attributable to the completion of payments due under a schedule award or the claimant's return to work, election of retirement benefits or medical improvement. In only 5 percent of the cases were benefits terminated or not increased because the claims examiners, at least in part, gave more weight to second-opinion physicians' medical reports than to claimants' physicians' reports.

The complainant prepared a brief critique of the GAO report in which he discussed several reasons why he considers the report's conclusions to be no longer valid and potentially not valid at the time. The basis for the complainant's comments about the current validity of the GAO report focused on the increases in the numbers of SECOPs performed since the introduction of the Quality Case Management (QCM) initiative in FY 1994 and the high remand rate he has computed since 1994. GAO's universe and sampling procedures were also questioned since open cases, which would have included terminations overturned on appeal, were not part of GAO's universe. While the number of SECOPs performed has increased since 1994, this does not lead to a conclusion that the *percentage* of cases terminated based upon the weight given to a SECOP's report

has also increased. We recognize the universe and sampling issues cited but we are also cognizant that the sample size necessary to objectively assess the impact of SECOP reports on all FECA cases, both open and closed, could not be justified without credible evidence of a problem.

Notwithstanding the complainant's observation that GAO did not review open cases, his critique does not substantiate that the pool of SECOP physicians has declined and consists primarily of those who will provide medical reports supporting benefit termination. In this regard, OWCP does not maintain information which would permit a comparative analysis for the last several years of the number of physicians available nationwide to perform second opinion examinations, or the number and results of such examinations by physician. The complainant's analysis of the GAO report and other writings suggest that a high proportion of cases is remanded because benefits were improperly terminated based upon SECOP reports, a conclusion which cannot be readily verified since OWCP does not maintain the reasons for remands and reversals in an automated system. However, in the opinion of a majority of the 10 Hearing Representatives we interviewed, inappropriately weighing or relying upon SECOPs' reports was not a major cause for remands or reversals of claims examiners' decisions to terminate FECA benefits. Furthermore, in citing the remand rate, the complainant included pre-hearing remands which accounted for more than half of all remands and would rarely result from the questionable use of a SECOP report.

In response to our request for specific, direct support that OWCP refers injured workers to SECOPs who provide opinions biased against the claimants, the complainant offered only one example, an appealed case with which he was familiar. The claimant cited had been scheduled by the FECA District Office for a second opinion examination with a physician located on the opposite side of a large city from the claimant's residence, with no public transportation available between the two points. The complainant concluded that, to inconvenience the injured worker to that degree, the District Office must either have scheduled the claimant with a physician OWCP was confident would prepare a report supporting benefit termination or have had few physicians willing to accept cases from OWCP. The complainant reported that this case was remanded to the District Office.

An OWCP employee who accompanied the complainant provided clarifying comments regarding the selection procedures for SECOPs and the use of second opinion reports by claims examiners which contradicted, rather than supported, the complainant's concerns. Basing his explanations on his experience as a District Office claims examiner, the accompanying employee advised that SECOPs who consistently prepare medical opinions warranting termination of benefits are the exception and the claims examiners are alert to such patterns. Although SECOPs whose objectivity is suspect may continue, for a time, to receive referrals under OWCP's rotational system for physician referrals, the District Office's prior experience with the physician is carefully considered by the

claims examiner as he/she weighs the information presented in the medical report.

C. Supervision of the Hearings Process

Our review identified minimal evidence supporting the complainant's concern that the Director, DFEC's review of draft decisions prepared by Hearing Representatives of the Branch of Hearings and Review constitutes an organizational conflict of interest or interferes with the issuance of fair decisions in favor of injured employees. The responsibilities of the DFEC Director, in our opinion, do not conflict with his supervision of the hearings function, whereas a direct reporting relationship between the Branch of Hearings and Review and the OWCP Director could validly raise such concerns. While a minority of the Hearing Representatives we interviewed shared the reservations of the complainant about an organizational conflict, the majority either expressed no concerns or supported the DFEC Director's role. More importantly, the allegation that the Director, DFEC's reviews of draft decisions interfere with the issuance of decisions to restore benefits to injured workers was not substantiated by either our interviews or the statistical outcomes of the appeal processes.

The formal management structure of OWCP and the role of the Branch of Hearings and Review do not support, in our opinion, the existence of an organizational conflict of interest resulting from the DFEC Director's review of draft hearings decisions, nor did the majority of the Hearing Representatives we interviewed perceive such a conflict. The Branch of Hearings and Review does not have an independent adjudicatory role and the decisions of the Hearing Representatives are, therefore, appropriately subject to program management's review. The complainant indicated that, since the performance of the District Offices is measured, in part, by the accuracy of the claims examiners' decisions, the DFEC Director has a vested interest in ensuring, that the Districts' decisions are upheld. However, the DFEC Director does not directly supervise the District DFEC Offices but, instead, is responsible for establishing FECA policy and providing guidance to the Districts to ensure the consistent application of the statute; supervising the Branch of Hearings and Review enables the DFEC Director to effectively fulfill these responsibilities. Placing the Branch under the supervision of the Director, OWCP, who has direct line management authority over the District Offices and, therefore, greater responsibility for their performance would give rise to a more significant appearance of organizational conflict. While three of the Hearing Representatives we contacted expressed some reservations about the organizational role of the DFEC Director, the remaining seven were either unconcerned or firmly supported the current structure as essential for the effectiveness of the agency.

Neither our interviews nor our analysis of appeals' results confirmed that the DFEC Director actively interferes in the issuance of decisions favoring injured workers. While the majority of Hearing Representatives indicated that requests for revisions were more likely for draft decisions to remand a case to the District

Office, such requests were infrequent overall and generally involved improving support or presentation. Requests to revise a draft decision from remanding a case to upholding a denial of benefits were exceptional, according to the Hearing Representatives, and the reviewers' reasons in these rare instances did not prompt concerns. The interview of only one Hearing Representative provided limited support for the issue raised by the complainant; this Hearing Representative advised that he/she felt pressured and structured draft decisions before submission to provide the outcome expected to ensure the decisions would be accepted. The 45 percent remand rate for issued decisions cited by the complainant is not indicative of interference by the DFEC Director in decisions favoring claimants and the lower reversal and remand statistics provided by ECAB also dispute that FECA claimants routinely receive unfair decisions from OWCP.

D. Burden of Proof Denials

With respect to the complainant's concerns that OWCP neither permits sufficient time for injured workers to provide the additional evidence necessary to perfect a compensation claim nor expeditiously reviews such information after a "burden of proof" denial, we have deferred potential evaluation of this issue pending an assessment of a related proposal by ESA's Reinvention team. In his September 2, 1997 letter to the Assistant Secretary, Employment Standards Administration and November 19, 1997 proposal to the ESA Reinvention team, the complainant indicated that OWCP's reliance upon the appeal process to address requested evidence submitted by claimants after "burden of proof' denials significantly delays the payment of compensation benefits to the injured worker and contributes to the Branch of Hearings and Review's remand rate. The recent addition of Hearing Examiners in the Branch permits the preliminary screening and expedited remand of appealed cases which do not merit a hearing. However, OWCP management has recognized the potential for further improving service to claimants who did not meet the "burden of proof' by the established deadlines reflected in the complainant's proposal and is supporting a review of this process by the ESA Reinvention Team. Our contacts with the Reinvention team determined that the proposal is under consideration by a Reinvention Committee but a decision has not been reached on how to address the proposal. Therefore, we have postponed additional review of this issue pending action by the Reinvention Team.

In conclusion, our evaluation did not identify evidence of either a systemic anti-claimant bias in the administration of the FECA program or issues warranting corrective actions at this time within the four areas we reviewed. As noted above, we are available to assist the ESA Reinvention Team with studies which could facilitate their review of improving service to injured workers whose claims did not initially meet the burden of proof. Since no recommendations for corrective action are provided in this memorandum, this report is considered closed upon issuance and no response is required. We appreciate the cooperation received from OWCP officials during the course of this review. If you have any questions concerning this report, please contact Veronica M. Campbell at (202) 219-8446, ext. 143.

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