

Federal Supervisory Training - Helpful Tips to Manage Your Staff

**4th Annual Federal Workers'
Compensation Conference
Dallas, Texas**

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Supervisors have a critical role to play in the management of the Federal Workers' Compensation Program

Workers' Compensation Specialists / Safety Managers / Employee Health Staff cannot be fully effective, by themselves, in managing the program!

July 2, 1999

**MEMORANDUM FOR THE HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES
THE WHITE HOUSE
Office of the Press Secretary**

For Immediate Release

(Excerpt)

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Worker 2000 Presidential Initiative

- **reducing the overall occurrence of injuries by 3 percent per year, while improving the timeliness of reporting of injuries and illnesses by agencies to the Department of Labor by 5 percent per year;**
- **for those work sites with the highest rates of serious injuries, reducing the occurrence of such injuries by 10 percent per year; and**
- **reducing the rate of lost production days (i.e. the number of days employees spend away from work) by 2 percent per year.**

I also direct the Secretary to report to me each year on the progress made to reduce work-related injuries and illnesses, to provide timely services, and to reduce the number of days injured workers are away from their jobs.

WHITE HOUSE TO TACKLE FECA PROGRAM

“The Bush administration has said it will propose reforms in the Federal Employees Compensation Act. The administration’s budget proposal says the Labor Department Office of Workers Compensation Policy will continue efforts to review claimants periodically to determine if they still are unable to work, prevent overpayments to individuals and medical providers and review the appropriateness of medical services. “

Excerpt from Fed Week 3/11/02

WHITE HOUSE TO TACKLE FECA PROGRAM

(Continued)

OTHER FECA CHANGES PROPOSED

- Add an administrative surcharge to the amount billed to federal agencies for FECA compensation costs related to their employees, “bolstering their incentive to improve workplace safety”**
- Amend FECA to move the waiting period for benefits to immediately following an injury, and apply it to all claims in line with state workers’ compensation systems in order to “deter illegitimate claims”**

Excerpt from Fed Week 3/11/02

WHITE HOUSE TO TACKLE FECA PROGRAM

(Continued)

OTHER FECA CHANGES PROPOSED

•For future beneficiaries only, change the program so that individuals over age 65 receive the same benefits as are available under federal retirement programs. The budget says that because FECA benefits are tax-free, they are on average about 25 percent more generous than an individual could receive under retirement benefits, “possibly providing an incentive for individuals to remain on the FECA rolls past when they would otherwise have retired.”

Excerpt from Fed Week 3/11/02

DVA Medical Network CHARGEBACK ANALYSIS

- **661 individual claims for 2001**
- **Total annual cost \$5,891,349 (increase of \$282,635)**
- **163 cases, costing \$1,677,179 in compensation, had a grand total of only \$6,031 in annual medical bills.**
- **76 cases costing \$1,365,027 had ZERO annual medical bills.**
- **217 cases costing \$714,435 in compensation had less than \$300 in annual medical bills, some as low as \$10.**
- **49% (\$2,079,462) of the total 2001 compensation costs were paid to 44% (293) of the 661 individuals on the list who had little or no annual medical bills associated with their claims.**

PURPOSE OF WORKERS' COMPENSATION

- **To provide compensation and medical benefits to civilian employees of the Federal Government for personal injury or illness sustained while in the performance of duty.**

Traumatic Injury

A traumatic injury is a wound or other condition of the body caused by external force, including stress or strain.

The injury must occur at a specific time and place, and it must affect a specific member(s) or function(s) of the body

Must be caused by a specific event or incident, or a series of events or incidents, within a single day or work shift

Traumatic Injury

(Examples)

On August 23, 2001 at 11:00 am

**Employee A fractured his knee when he fell
down the steps as a result of a spill**

Employee B hurt his back lifting boxes

Occupational Illness

Is a condition produced by the work environment over a period longer than one work day or shift. The condition may result from infection, repeated stress or strain, or repeated exposure to toxins, poisons, fumes or other continuing conditions of the work environment.

The length of exposure, not the cause of the injury or the medical condition which results, determines whether an injury is traumatic or occupational.

Traumatic Injury Vs. Occupational Illness

- **When an employee is exposed to toxic fumes for one day, the incident is considered a traumatic injury.**
- **If the employee is exposed to toxic fumes for two or more days-more than one shift, the incident is occupational illness.**

TYPES OF CLAIMS

- **TRAUMATIC INJURIES**

Form CA-1: OWCP must receive the claim within 14 days after Supervisor receives the written, signed notice.

***Wage loss-COP authorized for up to 45 calendar days if not able to perform light duty. Use CA-7 for continued disability.**

TYPES OF CLAIMS

- **OCCUPATIONAL Illness**

Form CA-2: Agency must submit to OWCP within 14 days after Supervisor receives the written notice.*

***COP IS NOT AUTHORIZED**

IF claim is accepted, use CA-7 for compensation.

TYPES OF CLAIMS

- **RECURRENCES** (Form CA-2a)

Definition: Spontaneous return of disability without any external force.

Considered non-job related by OWCP until claim is adjudicated (could take up to 6 months).

Employee responsible for medical costs until claim is adjudicated.

CONTINUATION OF PAY (COP)

Traumatic injuries only

Computation

- 1. 45 calendar days**
- 2. Leave will not extend the 45 days**
- 3. Disability begins within 45 days of injury**
- 4. No further eligibility beyond 45 days from first date returned to duty.**
- 5. First day of disability is the first day of medical treatment**
- 6. One hour counts as one day of COP.**

7. If employee is brought to day shift, the Night Differential will be charged to COP. No ND paid after the 45th day of COP. This is a Supervisory decision based on staffing.

**MEDICAL DOCUMENTATION OF
TEMPORARY TOTAL DISABILITY IS
REQUIRED**

Termination of COP

- 1. Medical Evidence not submitted in 10 days.**
- 2. The employee is no longer disabled.**
- 3. OWCP notifies agency that COP should be terminated.**
- 4. The 45 calendar day period expires.**

CONTROVERSION OF COP

Only Nine valid reasons

- An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:
 - (a) The disability is a result of an occupational disease or illness;
 - (b) The employee is excluded by law (serving without pay, etc.)
 - (c) The employee is not a citizen of the United States or Canada;

CONTROVERSION OF COP

(continued)

(d) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;

(e) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs;

(f) The injury was not reported within 30 days following the injury;

CONTROVERSION OF COP

(continued)

- (g) Work stoppage first occurred more than 45 days following the injury.**
- (h) The employee initially reported the injury after employment was terminated.**
- (i) The employee is enrolled in the Civil Air Patrol, Peace Corps or other group covered by special legislation.**

IN ALL CASES, OWCP
HAS FINAL AUTHORITY ON
CONTINUATION OF PAY.

FUNDAMENTAL CONSIDERATIONS

ECAB Decisions

- A claimant has the burden of proof of establishing by the weight of reliable, probative, and substantial evidence that the claimed medical condition and the disability was caused, aggravated, or adversely affected by the claimant's Federal Employment.
- In filing a claim, the claimant must specify the incident or conditions of employment which caused the injury, disease, or disability.
- The claimant must submit rationalized medical opinion evidence, based upon a complete, accurate and factual medical background, identifying the causal relationship between the claimed condition and the Federal employment.

FUNDAMENTAL CONSIDERATIONS

(continued)

- The fact that a condition or disease manifests itself during a period of Federal employment does NOT, by itself, automatically mean that there is a causal relationship between the work and the medical condition.
- The BELIEF of the claimant that the condition or disease was caused or aggravated by employment conditions, is NOT sufficient, in and of itself, to establish a causal relationship.”

SUPERVISORY

RESPONSIBILITY

- **Employing agency is responsible for the investigation and submission of evidence when an employee claims an on-the-job injury.**
- **Investigate accident to include:**
 - **Employee statement**
 - **Witness statements**
 - **Medical notes**
 - **Supervisor's statement**
 - **Any other relevant information**
 - **All evidence must go to OWCP with the claim.**

Supervisory Evidence:

- **Identification of particular safety rule/order violated**
- **How, when and how often the employee and co-workers were informed of the rule/order**
- **How has the rule/order been enforced -
Disciplinary Action?**
- **Was injury caused by factors which are barred for coverage?**

INVESTIGATE INJURIES WITH QUESTIONABLE ISSUES

Was the injury caused by:

- **Willful misconduct**
- **Intoxication by drugs or alcohol**
- **Intent to injure self or others**
- **These are BARS TO COVERAGE**

WILLFUL MISCONDUCT

**At the Time of Injury was the
Employee:**

- **Violating a Safety Rule**
- **Disobeying Other Orders of the
employer**

WILLFUL MISCONDUCT

(continued)

- **Is not simple negligent disregard; willful disregard requires intent.**
- **Disobedience of orders may negate the right to compensation only if the disobedience is deliberate and intentional, as distinguished from careless and heedless**

INTENT

- **One's mental attitude, including purpose, will, determination, etc., at the time of doing an act.**
- **Intent must be derived inferentially from circumstantial evidence, and all of the evidence must be considered.**

Violating a Safety Rule or Disobeying other Orders of the Employer

- **Supervisory evidence**
- **Statement from the employee**
- **Statements from coworkers,
witnesses**

EMPLOYEE AWARENESS

- Was the employee aware of safety rule/order
- How was s/he informed of the safety rule/order
- Reason, if any, for violating the rule/order
- What was the employee doing at the time of injury - part of assigned duties?
- Previous violations and Supervisory awareness of violations

EMPLOYEE'S STATEMENT

- **Full account of activities preceding the injury**
- **Were intoxicants consumed - how much**
- **Full description of how injury occurred**
- **Explanation of whether injury was caused by intoxication**

STATEMENTS FROM WITNESSES

**Description of employee's activities
preceding the injury**

- **Conduct and outward symptoms**
- **Belief whether the injury was caused by
the employee's intoxication**
- **Explanation for this belief**

STATEMENTS FROM CO- WORKERS

- **What do they know about the injury?**
 - **How was the injury sustained?**
 - **In what activity was employee engaged?**
 - **How did they acquire this knowledge?**

INVESTIGATION OF INJURIES

- **CONCLUSIONS - Can you prove the injury was caused by:**
 - **Willful Misconduct?**
 - **Deliberate intent to injure?**
 - **Intoxication?**

(Or was it plain everyday carelessness or negligence?)

ASSAULT

- 1. Willful attempt to inflict bodily injury upon another**
- 2. An apparent ability to do so; and**
- 3. An intentional display of force which gives the victim reason to fear bodily harm**

INTOXICATION

- **Extent to which employee was intoxicated at time of injury**
- **The manner in which the intoxication caused the injury**

EVIDENCE OF INTOXICATION

- **Description of employee's activities preceding the injury**
 - **conduct and outward symptoms**
 - **Belief that injury was caused by employee's intoxication**
 - **Detailed explanation for this belief**

Supervisory Checklists

- **Potential Signs of Chronic Impairment**
- **Potential Symptoms of Acute Impairment**

**Courtesy of Sally Foster-Chang, Employee Health
Nurse Practitioner, Philadelphia VAMC**

Absenteeism Checklist (Chronic)

**___ Multiple instances of
unauthorized leave**

___ Excessive sick leave

**___ Frequent Monday and/or Friday
absences**

**___ Repeated absences, particularly
if they follow a pattern**

Absenteeism Checklist (Continued)

___ Excessive tardiness, especially on Monday mornings or in returning from lunch

___ Peculiar and increasingly improbably excuses for absences

___ Higher absenteeism rate than other employees for colds, flu, gastritis, etc.

___ Frequent unscheduled short-term absences (with or without medical explanation)

“On the Job” Absenteeism Checklist (Chronic)

**___ Continued absences from duty
station more than job requires**

**___ Frequent trips to water fountain
or rest room**

___ Long coffee breaks

___ Physical illness on the job

Confusion Checklist (Chronic)

___ Difficulty in recalling instructions, details, etc.

___ Jobs take more time

___ Difficulty in recalling own mistakes

Generally Lowered Job Efficiency (Chronic)

- ___ Misses deadlines
- ___ Mistakes due to inattention or poor judgement
- ___ Wasting materials
- ___ Making bad decisions
- ___ Complaints from co-workers
- ___ Improbably excuses for poor performance
- ___ Resistance to change

Poor Employee Relationships on the Job (Chronic)

- ___ Overreaction to real or imagined criticism
- ___ Wide swings in morale and mood
- ___ Borrowing money from co-workers
- ___ Unreasonable resentments
- ___ Avoids co-workers

Observed Behaviors (Acute)

___ Cooperative

___ Confused

___ Agitated

___ Drowsy

___ Inappropriate euphoria (too happy)

___ Teary

___ Wide swings in emotions

Observed Behaviors (Acute)

Alertness and Affect (Continued):

- ___ Unusual flare-ups or outbreaks of anger
- ___ Combative without provocation
- ___ Seems unable to respond rationally to simple questions
- ___ Overreaction to real or imagined criticism
- ___ Difficulty concentrating
- ___ Improbable excuses for behavior

Speech Patterns (Acute)

___Slurring

___Inability to form words

___Incoherent speech

___Repeating nonsense words/phrases

___Other (describe)

Speech Patterns (Acute)

Breath:

- Garlicky
- Sweet
- Alcohol like
- within normal limits

Eyes:

- "Blood shot"
- Glazed over, "Glassy eyed"
- Very large pupils
- Very small pupils

EMOTIONAL REACTIONS

- **When are they covered?**
 - **Carrying out assigned duties**
 - **Error or abuse in an administrative matter.**

- **When are they self-generated?**
 - **Personnel or administrative actions.**
 - **Outside the scope of employment.**

STRESSES NOT COVERED

- **Fear of a reduction in force**
- **Frustration from not being allowed to work in a particular environment or job**
- **Feeling of job insecurity**
- **Desire for a different job**
- **Any personnel or administrative action**

STRESSES NOT COVERED

(continued)

- **Performance evaluations**
- **Any grievance or EEO claim/process**
- **Reassignment**
- **Sick Leave**
- **Union matters**

STRESSES THAT MAY BE COVERED

- **Emotional reaction to assigned duties if in error or abusive**
- **Emotional reaction to requirements imposed by management if in error or abusive**
- **Performance evaluations**
 - **if stress is due to an error**
 - **if stress is due to abuse**
- **Erroneous Personnel Actions**

STRESSES THAT ARE QUESTIONABLE

- **Harassment and Discrimination**
 - **Must have factual evidence**
 - **No decision on harassment or discrimination is made by OWCP**
 - **Mere perception is not compensable**
 - **What are the facts involved**

MEDICAL BENEFITS

- **Benefits cover all services requested by treating physician for accepted injured body part.**
- **Employees have statutory right to choose medical care from a physician of their choice.**

MEDICAL BENEFITS

(continued)

- **Change in physicians must be approved by OWCP. Treatment by other than DOL-approved physician will not be paid.**
- **Non-invasive procedures do not need OWCP approval, but physicians must notify Workers Compensation Specialist**
- **Non-emergency surgery must be approved by DOL. Physician must supply request in writing.**

Return to Work Issues

- Return injured employees to work as soon as the treating physician releases the employee**
- The longer an injured worker remains off work, the more difficult it is to return to work**
- Establish regular contact with your injured employees immediately following an injury to see how he/she is doing and to discuss returning to work**

LIMITED/ALTERNATE DUTY

(for work-related injuries)

- **Physical restrictions must be provided by attending physician (use Form OWCP 5 or CA-17)**
- **To be effective in controlling unnecessary costs, Agencies MUST provide limited duty, if medically feasible**
- **An employee MUST accept any light duty, offered by the Agency, that meets the attending physician's statement of physical limitations or the employee may lose eligibility for compensation benefits.**

Suitable Employment

(Continued)

- **Returning employees to gainful employment requires close cooperation between agencies and OWCP.**
- **Early notification of job offers and complete information about the offers help OWCP in making its decisions**

Re-employment With the Agency

To make a job offer, the agency will need medical evidence describing the employee's medical limitations)

Medical reports which address current limitations will usually suffice for this purpose. If the employee refuses to provide sufficient medical information for the agency to evaluate whether a job offer is proper, the agency should so indicate to OWCP

Make Written Job Offers

A description of the duties to be performed;

The specific physical requirements of the position and any special demands of the workload or unusual working conditions;

The organizational and geographical location of the job;

The date on which the job will be available;

The date by which a response to the job offer is required

Accept Job Offer

Notify OWCP of the date of return to duty as soon as possible (via phone/fax/email).

This helps avoid overpayments of compensation.

Compensation will be:

**-Terminated if no loss of pay has resulted,
or**

**-Reduced if the new job pays less than the
Old, effective the date of return to duty**

Refuse Job Offer

No response:

OWCP will terminate benefits and issue a formal decision on the basis that the employee has refused suitable work.

REFUSAL WITH NO EXPLANATION:

If the employee refuses the offer without explanation, OWCP will terminate benefits and issue a formal decision

OTHER CONSIDERATIONS

Possible Disciplinary Action

“If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.”

20 CFR 10.515 (c)

OTHER CONSIDERATIONS

Possible Disciplinary Action

“If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.”

20 CFR 10.515 (d)

REASONABLE ACCOMMODATION

Kevin Clark

v.

USPS

[Merit Systems Protection Board]

[NY-0752-95-0155-I-1]

**Example of consequences of failing to
follow regulations pertaining to
Reasonable Accommodation issues.**

Kevin Clark

v.

USPS

“In cases involving direct evidence, the burden of proof remains with the appellant until he or she proves that the suggested accommodation would enable the appellant to perform the essential functions of the job; at that time the burden then shifts to the agency to demonstrate, through some objective evidence, that the accommodation would cause an undue hardship on the agency.”

Kevin Clark

v.

USPS

“In this case, the Board found that the appellant met his burden of making a prima facie case of disability discrimination. The medical evidence supported a substantial limitation in the major life activities of lifting, sitting, standing and bending and the record is clear that the removal action was based on the medical condition. Further, the Board noted the numerous suggestions for accommodation which the appellant brought forward prior to and after receiving his proposed notice.”

Kevin Clark

v.

USPS

“With the burden of proof shifted back to the agency, the Board found that the agency’s analysis of the suggested accommodations was weak and the agency was unable to demonstrate that it had investigated thoroughly any of the suggestions prior to removing the employee.”

Vocational Rehabilitation

Last resort, OWCP should be notified when your agency is unable to provide light duty to a partially disabled employee. OWCP will start rehabilitation services

Since vocational rehabilitation is often a long and expensive process, employing agencies are encouraged to provide light duty whenever possible

If an agency cannot offer a modified version of the pre-injury/illness job or a new job, then the OWCP will consider alternate employment with a new employer. This may include wage replacement costs or re-training costs. This is a expensive route that is not as cost effective as bringing your employees back to work

EEO COMPLAINTS

- **“A claimant may not use the EEO process to launch a collateral attack on the workers compensation process.” Story v USPS, EEOC 05960314 (10/18/96)**
- **“The Commission has recognized that an agency has the right to represent its position and interest in the OWCP Forum, and will not review decisions, which would require it to judge the merits of a workers compensation claim.” Hogan EEOC 05940407**
- **The Commission stated: “...it is well established that an Agency has an obligation to controvert an employee’s workers compensation claim where there is a dispute as to the employee’s entitlement.”
Andel v. USPS EEOC 01975337**

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