

Position Classification Standard for Workers' Compensation Claims Examining Series, GS-0991

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SERIES DEFINITION

This series includes quasi-legal positions concerned with work involving the examination, development, and adjudication of claims for compensation (monies and medical services) under the Federal Employees' Compensation Act, and/or the Longshoremen's and Harbor Workers' Compensation Act, and their statutory extensions. Such work requires a comprehensive knowledge of the workers' compensation program, and an extensive lay medical knowledge of impairments and diseases.

EXCLUSIONS

1. Classify two-grade interval positions the duties of which are to answer inquiries from claimants, beneficiaries, employers, to the [General Legal and Kindred Administration Series, GS-0901](#). Contact representative duties require knowledge of the pertinent laws, regulations, and agency practices; and extensive ability to deal with persons on a face-to-face basis. In contrast, workers' compensation claims examiners are required to make decisions as to eligibility based on a more intensive knowledge of the pertinent laws, regulations, and agency practices; a layman's knowledge of the medical factors in disability and death cases; and an understanding and evaluation of the specific facts and circumstances in individual cases.
2. Positions concerned with clerical claims examining functions. Such positions are classified in the [Job Family Position Classification Standard for Assistance Work in the Legal and Kindred Group, GS-0900](#).
3. Positions the duties of which are to examine legal documents, other than claims. When such work requires a general knowledge of the pertinent laws, regulations, precedents and agency practices, the positions are classified in the [Job Family Position Classification Standard for Assistance Work in the Legal and Kindred Group, GS-0900](#).

TITLES

Authorized titles for positions in this series are: *Workers' Compensation Claims Examiner* and, when appropriate, *Supervisory Workers' Compensation Claims Examiner*. This standard does not, however, contain [grade-level criteria for supervisory positions](#) which belong in this series.

OCCUPATIONAL INFORMATION

This occupation in the Federal Government is unique to the Department of Labor's Bureau of Employees' Compensation. The Bureau has two distinct programs that parallel two basic enabling enactments: (1) the Federal Employees' Compensation (Act) program, and (2) the Longshoremen's and Harbor Workers' Compensation (Act) program. The coverage of both of these programs has been extended from time to time by other legislation. One extension of the Longshoremen's and Harbor Workers' Compensation Act is the District of Columbia Compensation Act which covers employees in private industry in the District of Columbia. Because the coverage of this extension is geographically circumscribed -- in a nonport or harbor area -- the Bureau has established a separate office concerned only with claims under this Act. But except for coverage differences (that is, the type of occupation of the claimant), positions involved with claims under this Act are identical to those in the basic Longshore and Harbor Workers' Compensation program. This standard, then, when discussing the Longshore and Harbor Workers' Compensation program, is applicable also to the positions in the District of Columbia compensation office.

Federal Employees' Compensation Program

This program was established by the Federal Employees' Compensation Act of 1916 to provide compensation for disability and death, and medical care, to civilian officers and employees of the U.S. Government who suffer injuries in the performance of their duties or who contract diseases proximately caused by their employment.

When an employee covered by this program sustains an injury in the performance of duty, the employee gives written notice of such to an official superior. The superior, in turn, secures signed statements of witnesses to the injury, if practicable, and forwards a report, along with the employee's notice, to the Bureau. In the case of death, the official superior submits both the notice and the report. The posting of report and notice establishes the filing date and protects the employee, but no compensation will be paid until a written claim is made by the employee. In the case of death, the proper descendants must make claim.

The claim is developed, as necessary, and adjudicated by Bureau examiners in this series. They develop the claim through correspondence with the claimant, the claimant's representative, agency superiors, coworkers, witnesses, medical practitioners, and Bureau investigators.

Formal appeals of Bureau decisions by claimants or beneficiaries are made with the Employees' Compensation Appeals Board. This Board holds hearings and makes the final decision on claims related to this program. The Board has jurisdiction with regard to findings of fact and award; Bureau determinations involving the exercise of discretion cannot be appealed except when the appellant alleges that the Bureau has abused its discretionary authority or that the Bureau has refused to exercise it.

Longshore and Harbor Workers' Compensation Program

This program was established by the Longshoremen's and Harbor Workers' Compensation Act of 1927 to provide compensation for disability and death of employees working in maritime employment upon the navigable waters of the United States (including any dry dock) because recovery through workmen's compensation cannot be validly provided by State law.

The employers under this program are private -- not governmental -- and are required to insure their employees with authorized carriers of insurance, or through a "self-insured" plan. The Bureau authorizes carriers of insurance and approves "self-insured" plans.

When an injury or death of an employee who is covered by this program occurs the employer submits a notice and report to the Bureau. It is the responsibility of the employer or the employer's insurance carrier to initially determine the compensation due and make payments and/or furnish medical care. In essence, the claims for compensation in this program are against the employer and the employer's insurance carrier. The claims examiners in this program function as auditors, advisors and referees.

The examiners serve as auditors of the determinations made by the insurance companies as to the payments of compensation and necessary medical treatment. They review the reports from the employers and insurance companies and determine if they have taken what seems to be proper and correct action. If they have not, the examiner takes the matter up with the carrier or employer, the claimant and the claimant's representative. If these discussions with the parties -- usually held individually -- cannot resolve the issues, the examiner schedules a conference at which both parties appear.

Examiners act as referees at these informal adversary proceedings. They guide the discussions during the conference in order to amicably resolve the controversies, narrow the issues, and simplify the subsequent methods of proof. The agreements reached at the conference are put into writing by the examiner in the form of stipulations for the signature of the two parties. If issues remain unresolved, the examiner recommends in writing a course of action to the adversaries. The parties can either agree to this action or request a formal hearing with the Deputy Commissioner of the Bureau.

The examiner in all functions acts to advise and inform all parties of their rights and obligations under the law. One of the essential purposes of the examiner's function is to see that the claimant receives what is due under the law.

Nature and purpose of workers' compensation

Workers' compensation does not compensate the employees for what they have suffered; there is no compensation for damages on account of pain or suffering, however dreadful they may be. Under workers' compensation, the only injuries compensated are those which cause disability, and thereby presumably affect the injured employee's wage-earning capacity.

Nature of claims

The two programs in this occupation -- Federal Employees' Compensation, and Longshore and Harbor Workers' Compensation (including the District of Columbia Compensation Office) -- involve the same kind of issues, and personnel are reassigned and promoted between programs. Substantial differences exist between the programs in terms of their occupational coverage, the fact that the Longshore program involves commercial insurance carriers, and in the stage of the overall claims adjudicative process at which employees in this series become involved. The Longshore program, additionally, requires certain personal characteristics, namely, ability to take charge of and direct a conference of adversative parties; and ability to mediate and negotiate settlement of the differences between such parties while maintaining smooth relations with and between them. However, these additional requirements do not warrant separate classification specializations. The following discussion covers both programs. Where significant differences exist, they are pointed out.

Various issues typical of these programs and the complexities surrounding them are:

1. *Establishment of entitlement to claim compensation.* -- This is the issue of establishing that the claimant is "covered" under the program. In addition to the coverage of the basic Acts, each program has been extended by other legislation. The Federal Employees' Compensation Act, for example, has been extended by the War Risk Hazards Act and the War Claims Act; the Longshoremen's and Harbor Workers' Compensation Act, for example, by the Nonappropriated Fund Instrumentalities Act, the Outer Continental Shelf Lands Act, and the Defense Base Act. These extensions bring forth additional complexities because of the additional occupations and employees covered.

The claims examiners, then, must know the specific coverage of all these laws, and apply them to a myriad of circumstances. In the Federal Employees' Compensation program the question of coverage for the examiners is essentially, who is the claimant's employer? For examiners in the Longshore and Harbor Workers' program the question is essentially, where did the injury occur? To illustrate: The Federal Employees' Compensation Act covers persons employed by the U.S. Government, including employees of wholly owned U.S. instrumentalities, and persons rendering personal services of a kind similar to those rendered by Federal employees. But, the Longshoremen's and Harbor Workers' Compensation act covers any and all persons who suffer disability or death while employed upon the navigable waters of the United States. Claims arising under any of the several extensions of the Longshoremen's and Harbor Workers' Compensation Act require coverage determinations similar to those under the Federal Employees' Compensation Act. That is, on the basis of "who is the Claimant's employer?"

2. *Establishment of relationship of employment to injury, disease or death.* -- This issue refers to all compensable injuries, diseases or deaths which must have been caused by or be the result of the claimant's occupation. These determinations can range from the relatively simple to the extremely difficult, depending upon the circumstances. For example, these determinations include accidental injuries sustained in the performance of duty; disease or infection which arose from the employment, or resulted from an injury; death which arose

from an injury or from a disease; or injury or death caused by the act of a third party against the employee.

This issue of causal relationship between employment and injury requires examiners to be skillful in development and judicious in their determinations. The issue of cause is simple to state, difficult to determine. Such issues are often complicated by the lapse of time between cause and effect. For example, an employee who sustains a minor foot injury which later activates an underlying dormant diabetic condition necessitating amputation of a leg, and after amputation dies from a coronary occlusion: Can it be shown that the death was directly attributable to the minor foot injury? A heart attack, for example, suffered by an employee in an arduous occupation: Can it be traced to the stress and strain of the work? Or, determining whether a disease was the result of an earlier infection or injury; whether the death of an employee can be reasonably shown to have been hastened by the nature of the work; whether such injuries as loss of hearing or vision were caused by some condition of employment; etc. These issues become extremely difficult and complex in cases involving bodily disorders such as liver and stomach ailments, heart disease, brain damage, malfunctioning glands, etc.

Examiners must also consider whether an employee's intoxication was the cause of the injury, disease or death, because if intoxication was the cause, the employee is not entitled to compensation. Evidence that proves an employee was intoxicated at the time of the injury does not necessarily prove that the injury was caused by an inebriated condition. The claims examiner must determine whether the injury probably would have occurred even if the employee had not been intoxicated. If it is likely that a sober employee probably would have been injured under the same circumstances, the injury is compensable.

Another disqualifying condition the examiners must consider is the intent of the injured employee. Employees are not entitled to compensation, if their injury or death was caused by their willful intent to harm or kill themselves or another. Such an issue might arise, for example, when an employee working alone was found dead after working hours. Did the person commit suicide?

3. *Establishment of relationship of injury or disease to disability and capacity to earn wages.*
-- The term disability means the incapacity to earn the wages earned before disability. Compensation under these programs is provided for disability, not for injury. Claims examiners, then, must determine the extent of the employee's disability, and, in combination with other nonmedical factors, the extent to which the employee's capacity to earn equivalent wages has diminished.

This determination must be made on the basis of two balanced factors: (a) the medical evidence of disability, and (b) the de facto inability of the employee to earn wages. In regard to the first factor, the examiners must evaluate the medical evidence -- different parts of which can be diametrically opposed -- and based upon their extensive lay medical knowledges, determine the medically discernible extent of the disability. At the same time, the examiners must balance this judgment with the actual ability of the employee to obtain

work, considering important nonmedical factors such as age, education, special skill or training, experience, attitude, and so forth.

For compensation purposes, disabilities are classified four ways:

- (1) *Permanent total disability*: In this classification are those cases in which the examiners have determined that the employee has a total loss of earning capacity or has specific disabilities that are spelled out in the law as constituting permanent total disability (e.g., loss of both hands, arms, feet, legs, eyes, etc.) Even in these latter cases, however, examiners must consider evidence which would indicate less than total disability. A person with a great deal of courage and initiative, for example, can often overcome partially the loss of both legs.
- (2) *Temporary total disability*: Under this classification employees are paid compensation for a temporary period of total disability. Examiners keep such cases current and the employees are required to submit to a medical examination when directed by the examiners.
- (3) *Permanent partial disability*: This classification includes those cases referred to as schedule award cases, plus loss of wage earning capacity determinations, and also frequently flow from category (2) above. The pertinent laws specify the number of weeks that compensation will be paid for a variety of loss, or loss of use, of bodily members, i.e., arm, leg, foot, eye, hand, finger, toe, etc. Some of these provisions, however, leave room for a great deal of discretion by the examiners.

Compensation for head, neck or facial disfigurement, for example, is not to exceed a maximum amount. The examiners must consider the facts and determine what is proper and equitable compensation. Additionally, not all possible circumstances are specified by law, and the examiners must use their judgment in determining the extent of the employee's disability.

If an employee receiving a schedule award dies from causes other than the injury before the expiration of compensation, the examiners must determine the distribution of the remaining compensation as prescribed by law.

- (4) *Temporary partial disability*: This classification includes those disabilities which result in a decrease of earning capacity for a temporary period of time.

It is important to note that practically no disability claim is ever "finished" or "completed" by the examiner's adjudication. The examiners keep these claims active, evaluate them periodically, and direct the employees to a medical examination when warranted. Such action reveals how the disability is progressing (whether the claimant's condition is getting better or worse) and the examiner adjusts the compensation accordingly. In effect, examiners re-adjudicate the claims on the basis of more current medical and nonmedical evidence. Especially in the Federal Employees' Compensation program, examiners must also develop information about the current work activities and earnings of the employee, and determine if such information affects the right

to continued compensation. In the Longshore and Harbor Workers' Compensation program much of the responsibility for policing the work activities of beneficiaries is left to the employers and their insurance carriers.

4. *Entitlement to augmented compensation for dependents.* -- The Federal Employees' Compensation program provides additional compensation to employees for certain dependents under certain conditions of entitlement. The claims examiner must determine who are valid dependents under the law. Eligible dependents are the wife or husband, children and parents. Examples of issues that the examiner must resolve are: (a) whether a wife was a member of the employee's household; (b) whether a husband was wholly dependent upon the employee because of his physical or mental disability; (c) whether a child is unmarried, under age 18 (or, if over 18, incapable of self-support because of a physical or mental disability), and is living with the employee or receiving regular support; (d) whether a child over 18 is a student and other questions pertaining to student eligibility; and (e) whether a parent is wholly dependent upon and supported by the employee.
5. *Entitlement to medical services.* -- Medical and surgical services, hospital service, medicine, supplies and appliances are available to injured employees under these programs. Required services are usually recommended by the employee's or employer's physician, and reviewed and approved by the claims examiners when, based upon their extensive lay medical knowledge and experience, such services appear necessary and reasonable and are likely to cure or give relief, reduce the degree or the period of disability, or aid in lessening the amount of compensation. Such medical services can range from the usual periodic check on an employee's health to such rare services as unusual surgery, hypnotism, and so forth. Examiners secure the opinion of staff medical officers in instances of unusual or questionable requests for medical services or treatment.

Vocational rehabilitation -- The claims examiners in this occupation cooperate with the Bureau of Employees' Compensation vocational rehabilitation experts in directing permanently disabled employees to undergo vocational rehabilitation. Claims examiners in the Federal Employees' Compensation program may penalize individuals who, without good cause, fail to report for vocational rehabilitation when directed by reducing their monthly compensation by the amount of the probable gain in their wage earning capacity had they undergone rehabilitation. ^{9 10/76}

6. *Entitlement to lump-sum compensation.* -- Upon the request of either party, and/or when the examiners determine it to be in the best interest of the beneficiary, they may recommend that the Government's or employer's responsibility -- as the case may be -- be discharged by the payment of a lump-sum to the beneficiary. In such cases, the examiners must consider the amount of the employee's monthly payment, the employee's ability to wisely and conservatively make use of a relatively large sum of money and, in fact, what the employee intends to do with the money. A case may typically involve an employee whose compensable disability is a severe back injury, and who wants the compensation in a lump-sum in order to open a small business. The examiner must explore such elements as (a) Does this person possess the ability to successfully operate an enterprise? (b) Will the back injury permit standing for the long hours the business may require? Will this person be able

to stretch to the top shelves and carry merchandise from the basement? (c) Does the proposed location of the store -- based on their best knowledge -- augur good business or severe competition?

7. *Compensation for death.* -- Certain descendants of deceased workers are paid compensation depending upon their relationship to and/ or dependence upon the deceased. Just to enumerate them: widows, widowers, children, parents, brothers, sisters, grandparents, and grandchildren. Typical of the questions which confront examiners in this field of relationship and dependence are:

(a) *Spouse* -- Is the claiming widow the legal spouse? Common-law marriage contracts, contesting widows, divorce, etc., often complicate the issue. Was the claiming widower wholly dependent upon his wife because of a physical or mental disability?

(b) *Children* -- Are the claiming children the deceased's children? The examiners must determine how a child was related to the deceased. This includes adopted and stepchildren; the Longshore's and Harbor Workers' Compensation program includes acknowledged illegitimate children. Are the children under age 18; if not, were they dependent upon the deceased and incapable of self-support because of a physical or mental disability? If the children are over 18, are they students and other questions pertaining to entitlement of educational benefits under the FECA.

Claims examiners in this occupation must be familiar with and apply the appropriate State laws to resolve these domestic relations questions. Similar questions arise with respect to other dependents.

Burial and other expenses. -- These programs provide for the payment of burial expenses up to a maximum amount set by law. Examiners are responsible for reviewing claims for such expenses and allowing payment for reasonable expenses. Claims examiners in the Federal Employees' Compensation program also adjudicate claims for embalming and transportation expenses for deceased employees whose death occurred away from their duty station, or outside the United States.

CLASSIFICATION FACTORS

Criteria have been developed for evaluating those variables which, in light of the foregoing discussion of this occupation, appear to be indispensable to the classification of positions in this series. These variables or factors are two: the first pertains to the nature of claims which are adjudicated; the second pertains to the level of responsibility in the various positions.

In regard to the nature of claims, each grade level specifies the difficulty of the issues or types of claims adjudicated. The GS-5 and GS-7 levels are described as essentially training levels where claims are assigned on a selective basis in order to train the incumbents for the full performance levels. The GS-9 level includes the initial adjudication of a broad range of claims. The GS-11 level includes adjudication, authorization, and review of a full range of claims including those

with difficult and controversial issues; and/or limited responsibility for conducting pre-hearing conferences. The GS-12 level includes positions in the Longshore and Harbor Workers' Compensation program and the District of Columbia Compensation program which adjudicate difficult controversial and contested claims through the medium of pre-hearing conferences with claimants and their representatives, and with employer and the insurance carrier representatives.

In regard to the level of responsibility of positions, this factor discusses two elements: *supervision received* and *commitment authority*. Supervision received embraces the amount of direction given by the supervisor; whether the examiner is a trainee; whether direct, specific instructions are given; whether the examiner normally works independently in adjudicating the claims, seeking the advice of the supervisor only when a troublesome situation arises; whether the examiner operates with freedom from supervision. Commitment authority measures the final authority vested in the examiner; whether all features of the work are reviewed; whether authority has been given to make decisions for only certain types of claims or under certain conditions; or whether the examiner has full authority to commit the agency on all claims adjudicated.

GRADE-LEVEL COVERAGE

The grade-level criteria cover grades GS-5, GS-7, GS-9, GS-11 and GS-12. However, this does not preclude the classification of positions in either program at any level that is appropriate -- including the GS-6, GS-8 and GS-10 levels -- when the duties or responsibilities are significantly different from those described at the grade levels. For example, the nature of the claims work or the extent of final authority may greatly exceed that described at the GS-11 level and, consequently, the position may be classifiable at a higher level. Or, the variety of claims may be significantly lesser or the work may be performed under closer supervision than is described at GS-9, and a lower grade may then be appropriate.

QUALIFICATION REQUIREMENTS FOR POSITIONS IN THIS SERIES

Positions in this series require that incumbent's possess a high degree of analytical ability and judgment. Incumbents must have the ability to examine a claim or case and break it down into its constituent parts; to identify the issues or problems; to develop sufficient and valid evidence; and, to make a quasi-judicial determination on complex factual, legal and medical situations, based upon the Bureau of Employees' Compensation general policies and principles, rules and regulations, and precedents, which, in turn, embody that specialized branch of the law generally referred to as "workmen's compensation." This branch of the law has its own particular principles which apply to workers' compensation statutes (State and Federal), and these statutes have certain common or underlying similarity with respect to the meaning of terms and phrases, and with respect to the scope, jurisdiction, and general basic concepts of employers' liability. Incumbents must also have knowledge of such other legal matters as domestic relations and descent and distribution of property.

Additionally, incumbents must possess the ability to acquire (and, at the higher levels, to apply) an extensive lay medical knowledge of the various physical and mental impairments, the etiology of diseases, the remediability of impairments, the physical requirements for a wide variety of occupations, and the relationship of occupational hazards to injury, disease and death, and of injury or disease to disability.

The qualification requirements for the positions in this series are reflected in both of the classification criteria at the grade levels.

WORKERS' COMPENSATION CLAIMS EXAMINER, GS-0991-05

Nature of claims

GS-5 examiners familiarize themselves with the laws, regulations, and other guides basic to the claims program. Claims requiring the minimum of development are adjudicated. These claims are carefully selected and assigned to examiners at this level with the intention of familiarizing them ultimately with the full range of workers' compensation claims.

Examiners at this level must possess the ability to acquire a knowledge of the laws and regulations which relate to this occupation; the ability to learn to interpret and apply these laws and regulations to diverse situations; the ability to learn how to develop and to evaluate the sufficiency and validity of evidence; and, moreover, the ability to acquire the extensive lay medical knowledges indispensable to this occupation.

Level of responsibility

All actions are carefully reviewed by higher level employees. Appropriate explanations are provided before, during, and after analysis and adjudication. The examiners do not normally make authoritative decisions of any kind independently.

WORKERS' COMPENSATION CLAIMS EXAMINER, GS-0991-07

Nature of claims

GS-7 examiners adjudicate certain selected or less difficult claims; or, they adjudicate a variety of increasingly difficult claims as a continuation of their development for work of the GS-9 level. In the latter work situation, claims are assigned to provide training (a) in developing facts and evidence to support the claim; (b) in lay medical knowledge of various physical and mental impairments and the physical requirements for a wide variety of jobs; and (c) in the application of workmen's compensation statutes, regulations, precedents and guides.

Less difficult cases adjudicated by the GS-7 examiner typically involve new claims for traumatic injuries, such as fractures or contusions, which occurred on the job. The examiner must determine that the case meets compliance with time requirements, that the claimant is an employee entitled to coverage under the Act, and that the injury occurred in performance of duties. The examiner also determines the amount of compensation, the extent of disability, and the length of time compensation is to be paid. Various issues may arise requiring development of facts and evidence to support the claim. For example, if there were no witnesses to the accident, the examiner must secure some proof that the injury occurred on the job.

For development purposes, the GS-7 examiner may be assigned disease cases for which there are adequate medical guidelines and established precedents (e.g., tuberculosis contracted during employment in a hospital where the disease is a known occupational hazard).

Level of responsibility

GS-7 examiners are not expected to have the scope of knowledge and judgment needed to adjudicate a broad range of cases. Consequently, some cases are assigned beyond the limits of their experience for training purposes. In adjudicating these cases, they are given instructions and guidance on how to analyze the case, what evidence is needed, and what laws, regulations or guidelines are applicable.

In adjudicating the less difficult cases assigned, GS-7 examiners use their own initiative and judgment in developing the claims. They prepare correspondence to claimants, witnesses, doctors, employers, etc., seeking information and evidence. When necessary, they initiate a field investigation outlining the information needed, and request the opinion of the Bureau's medical staff. GS-7 examiners have authority to accept and allow those claims which are supported by the evidence, and well covered by internal precedents or guides.

Completed work at this level is subject to review and approval by personnel in higher grades.

WORKERS' COMPENSATION CLAIMS EXAMINER, GS-0991-09

Nature of claims

GS-9 examiners adjudicate a broad range of disability and death claims assigned on an unscreened basis. By contrast, the GS-7 examiners are assigned responsibility for adjudicating the less difficult cases, or they are assigned selected kinds of cases for training and developmental purposes.

GS-9 examiners are assigned compensation claims which include controversial factual and medical issues. There is a need for ingenuity in developing facts and evidence, and for analyzing and evaluating conflicting statements or allegations. Considerable judgment and discretion in applying a substantive knowledge of the workers' compensation program, plus a lay medical

knowledge of physical impairments, are required to make equitable decisions. In adjudicating claims for compensation, GS-9 examiners are expected to make determinations on most nonmedical issues which arise (e.g., issues regarding time requirements, coverage of employee under the Act, injury during performance of duty, wage-earning capacity, dependents, etc.) They also make determinations on medical issues (e.g., extent of disability) for which there are established precedents, or where medical opinion clearly supports the claim. The supervisor or examiner in higher grade provides specific advice and guidance in the development and adjudication of highly controversial issues, e.g., where there are contrary medical opinions and few medical guidelines in determining causal relationship between employment and disease or death, or the relationship of current disabilities to previous injuries or physical impairments.

The following examples illustrate issues which are developed and resolved by the GS-9 examiner (see also discussion under level of responsibility):

- (1) *Determining whether the injury or death occurred while the employee was under performance of duty:* For example, in assault cases, the examiner must establish whether assault was accidental, arose out of an activity directly related to the work environment, or arose out of a personal matter having no connection with the employment; under diversions from duty (e.g., when a worker briefly steps outside the sphere of assigned duties such as to assist in extinguishing a fire or to assist a person who is injured), the examiner must establish whether the act was one which is regarded as a normal incident of the job, or extraneous to the job, and the extent to which the employee stepped outside his job; in willful misconduct cases, the examiner must establish whether the disobedience is deliberate and intentional, as distinguished from careless and heedless; when intoxication is involved, it is not enough to show the employee was intoxicated but the Bureau has the burden to prove the intoxication caused the injury.
- (2) *Determining monetary compensation for disability or death upon the basis of average annual earnings:* For example, the examiner determines compensation for partial or total disability on the basis of the actual earnings of the injured employee when they fairly and reasonably represent wage-earning capacity. When the employee has no actual earnings or when actual earnings do not fairly and reasonably represent wage-earning capacity, the examiner must determine wage-earning capacity considering the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment, and other factors of circumstances in the case which may affect the employee's capacity to earn wages in the disabled condition.

Level of responsibility

GS-9 examiners use initiative and judgment in developing facts and evidence and in making initial determinations on a broad range of claims for compensation. By contrast, GS-7 examiners are limited to developing and adjudicating the less difficult claims; they are not expected to have the scope of knowledge and judgment needed to adjudicate a broad range of cases assigned on an unscreened basis.

The supervisor provides advice and guidance to GS-9 examiners on highly controversial issues, e.g., where there are few medical guidelines to assure validity and sufficiency of documentation and accuracy of determinations. The supervisor, medical officer, or higher-level specialists are available for whatever consultation and advice the GS-9 examiner needs.

The actions on less difficult claims adjudicated at this level are final unless, when reviewed by another examiner, there is disagreement as to correctness of the determination. Cases involving difficult or controversial issues are subject to complete review for adequacy of facts and evidence, accuracy of determinations, and authorization for payment by a supervisor or an examiner in a higher grade.

WORKERS' COMPENSATION CLAIMS EXAMINER, GS-0991-11

Nature of claims

The following work situations typically are found at the GS-11 level:

1. Some GS-11 examiners adjudicate and authorize for payment the full range of disability and death claims under the Federal Employees' Compensation Act assigned on an unscreened basis. On their own initiative and judgment, GS-11 examiners develop, adjudicate, and authorize claims with highly controversial medical and factual issues (e.g., in relating disease to occupation where etiology is not yet certain, or where symptoms are largely subjective). The supervisor, medical officer, or technical specialists are available for consultation, as needed, on novel or precedent issues or unusual medical problems.

(In comparison, the GS-9 examiner is assigned a broad range of claims, but receives advice and guidance in developing and adjudicating the highly controversial issues; and the initial determinations made by the GS-9 examiner on the more difficult and controversial issues are subject to review and authorization by a higher-grade examiner.)

2. Other GS-11 examiners under the Longshoremen's and Harbor Workers' Act or the District of Columbia Compensation Act (a) review for acceptability and approve the initial determinations made by insurance carriers on the full range of claims for disability and death compensation; and (2) under guidance of a supervisor or higher-grade examiner, they conduct pre-hearing conferences to decide controversial issues which cannot be resolved by correspondence or discussion with the claimant and his representative, or with the employer or insurance carrier representatives. During the conferences, they have responsibility for negotiating and mediating with the opposing parties (who may be represented by legal counsel) and for recommending actions which are clearly consistent with the law, regulations, practices and court decisions. On the more difficult cases or highly controversial issues, a recommendation is made in writing for both parties after the conference.

(The GS-11 level exceeds the GS-9 level in the authority to review and approve the initial claims determinations made by numerous employers and insurance companies, and in the

negotiating and mediating skill required to reach acceptable solutions on cases covered by guidelines during the pre-hearing conferences.)

Unlike GS-9 examiners who receive guidance in developing and adjudicating highly controversial medical and factual issues, GS-11 examiners are in full control of the development and adjudication of all FECA claims, or the review of all LHWA or DCCA claims assigned. On their own initiative, they develop all necessary evidence on difficult or highly controversial issues through correspondence, directed investigations, and the consideration of expert medical reports. Controversial issues are encountered typically where evidence is nonexistent or fragmentary; where there are contrary opinions, testimonies, or allegations relating to the circumstances; or where general guidelines do not apply.

In adjudicating, authorizing, and reviewing claims, GS-11 examiners make determinations on the full range of medical and nonmedical issues encountered. They must resolve claims involving the most difficult disease cases where there are contrary medical opinions and few medical guidelines. Such determinations exceed the GS-9 level in that they require an extensive lay medical knowledge of the various physical and mental ailments, the etiology of diseases, and the relationship of disabilities to employment; and they call for greater judgment and discretion in applying workers' compensation statutes, regulations, and guidelines, particularly where it is highly arguable which precedents apply because of the complexity of the issues.

To cite an example, one of the kinds of difficult problems to be resolved by the GS-11 examiner involves:

- *Establishing a causal relationship between employment and disease in claims involving illnesses where etiology is not certain or symptoms are subjective and it is difficult to prove that the illness or death was "proximately" caused, or "aggravated," or "accelerated" by the employment (such as heart disease, neurosis, rheumatoid arthritis, Hodgkin's disease, low back pain, partial or gradual loss of hearing or vision, etc.).*

The examiner must develop and make determinations on highly controversial issues encountered when it is difficult to get positive medical testimony on whether an illness or death was caused by employment; when the medical opinion does not reflect sufficient medical findings or a proper history; or when the medical opinion is without sufficient rationale or conflicts with other medical opinion in the record.

In these cases, the examiner must carefully weigh innumerable variables and judge whether the disease was directly caused, precipitated, or materially aggravated by the claimant's employment. Nonmedical circumstances may outweigh medical opinion in some cases. The examiner must develop and carefully evaluate all conditions, events, circumstances, and incidents, and determine whether the preponderance of evidence points toward a causal relationship, notwithstanding contrary medical opinion.

Level of responsibility

1. GS-11 examiners under the FECA program operate with considerable freedom from supervision. They independently develop and adjudicate the full range of compensation claims without prior instructions or guidance from the supervisor. However, the GS-11 examiner may confer with the supervisor or higher level examiner on novel or precedent issues, highly controversial interpretations of law or regulations, or unusual medical problems. (At the GS-9 level, the supervisor provides advice and guidance on developing and resolving highly controversial issues to assure accuracy of determinations. Determinations on such claims are subject to a complete review.)

Claims initially adjudicated by an FECA examiner at GS-11 are authorized for payment by another examiner at the GS-11 level. Authorization involves a review for legal and factual sufficiency. Action taken by the GS-11 examiner is final unless there is a disagreement by the authorizing examiner as to the correctness of the determination. If so, the contested decision is referred to the supervisor or an examiner in a higher grade for resolution.

2. GS-11 examiners under the LHWA and DCCA programs operate with considerable freedom in reviewing the compensation determinations made by employers and insurance carriers, and in endeavoring to resolve questionable actions and controversial issues with the individual parties concerned before the hearing. In scheduling and conducting pre-hearing conferences on contested issues, however, the GS-11 examiner receives advice and guidance from a supervisor or higher level examiner. This includes, for example: advice on how to narrow or resolve the unusually difficult or complex issues, and review of letters or memorandums recommending action as a result of the conference.

WORKERS' COMPENSATION CLAIMS EXAMINER, GS-0991-12

Nature of claims

Characteristic of the GS-12 level are assignments that require the examiner to resolve controversial and contested compensation claims through the medium of pre-hearing conferences under programs such as the Longshoremen's and Harbor Workers' Act or the District of Columbia Compensation Act.

In reviewing, developing, and making determinations on the full range of disability and death claims, GS-12 examiners are distinguished from GS-11 examiners under the LHWA and DCCA programs by (1) their freedom from supervision in the scheduling and conducting of pre-hearing conferences; (2) their complete responsibility for negotiating and mediating with the claimant and the claimant's representative and the employer and insurance carrier representatives during the conference; and (3) their authority to make decisions on the controversial issues encountered during the pre-hearing conferences. These distinctions are discussed under level of responsibility.

Level of responsibility

GS-12 examiners under the Longshoremen's Harbor Workers' Act and District of Columbia Compensation Act programs perform the kinds of duties described above independently without advice and guidance of the supervisor. They have commitment authority to make claims determinations on highly controversial issues during the pre-hearing conferences, and to prepare and sign letters of agreements reached on these types of issues during the conference or recommendations made after the conference.

Under the Longshoremen's and Harbor Workers' Act and District of Columbia Compensation Act programs, the GS-12 level exceeds the GS-11 level in the following respects:

- In the freedom from supervision and independence with which the examiner schedules and conducts pre-hearing conferences. On their own initiative and judgment, GS-12 examiners determine the need for, schedule and conduct pre-hearing conferences. Conferences are scheduled after a review of the correctness of the compensation determinations made by the employers and insurance carriers; and a determination that controversial issues cannot be resolved through correspondence or discussion with the claimant, employer or insurance carrier.
- In the complete responsibility the examiner has for negotiating and mediating with claimants and their representatives and with employers and insurance carrier representatives during pre-hearing conferences. GS-12 examiners are in complete charge of the pre-hearing conference. They state the issues which are the basis for the conference and have the adversative parties outline their positions. They guide the discussion during the conference in order to resolve amicably the controversies, narrow the issues, and identify methods of proof.
- In the unreviewed commitment authority the examiner has for making determinations on highly controversial issues during the conference. GS-12 examiners, as a regular and recurring responsibility, make determinations during the conference on contested and controversial issues which range from moderately difficult to the very difficult (e.g., establishing a causal relationship between employment and disease or death where positive expert medical testimony on whether the illness or death was caused by employment is impossible to obtain). In resolving these contested and highly controversial issues, GS-12 examiners have unreviewed commitment authority during the conference (1) to develop and evaluate all evidence, facts, circumstances, or other incidents relating to the claim; (2) to make determinations that are within the requirements of law, court decisions, agency practices and regulations, and medical standards; and (3) to put into writing, and sign, agreements reached or recommendations made as a result of the conference.

GS-12 examiners are responsible for the accuracy and technical sufficiency of claims determinations. Control over the work of these examiners is carried out primarily through the review of cases that come up for formal hearings or Compensation Order. The supervisor, at his discretion, may spot check letters outlining agreements reached or recommendations made as a result of the pre-hearing conference. In addition, the examiners may confer with a supervisor on

cases having unusual and complicated questions which may have office or Bureau policy implications, or when interpretations or judicial precedents have not been established.