

**U.S. Department of Justice**

September 11th Victim Compensation Fund of 2001

April 28, 2004

P.O. Box 18698
Washington, DC 20036-8698**VIA FACSIMILE AND FIRST CLASS MAIL**The Honorable Carolyn B. Maloney
United States House of Representatives
2331 Rayburn House Office Building
Washington, DC 20515-3214

Dear Representative Maloney:

Thank you for your letter concerning injury claims with the September 11th Victim Compensation Fund of 2001. As Special Master of the Fund, I very much appreciate you writing concerning this important program.

Your letter raises questions regarding the Fund's processing of claims submitted by volunteers, first responders, and construction workers – both as a general matter and in regards to specific examples – and also seeks statistical information relating to the processing of injury claims by the Fund. Given the complexity of the issues raised, and the seriousness with which I take this matter, I will try and address each of them below.

The Fund's Eligibility Rules

As you are aware, the purpose of the Fund is to provide a no-fault based alternative to potential tort lawsuits by offering compensation to eligible individuals who were killed or physically harmed as a result of the terrorist-related aircraft crashes of September 11, 2001. This program was created as part of broader legislation (the Air Transportation Safety and System Stabilization Act) passed by Congress and signed into law by the President on September 22, 2001.

With respect to those victims who were injured, the Statute provides that eligible individuals include those who were (i) *present* at the World Trade Center; (ii) at the time, or in the *immediate aftermath*, of the terrorist-related aircraft crashes of September 11th and (iii) suffered *physical harm* as a result of such air crash.

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With respect to the first requirement, the regulations provide, *inter alia*, that “present at the site” means physically present at the time of the crashes or in the immediate aftermath either in the buildings that were destroyed or in “any area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (generally, the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons).”

The Regulations provide that “immediate aftermath” means “for purposes of all claimants other than rescue workers, the period of time from the crashes until 12 hours after the crashes. With respect to rescue workers who assisted in efforts to search for and recover victims, the immediate aftermath shall include the period from the crashes until 96 hours after the crashes.”

The Regulations further provide, *inter alia*, that physical harm means:

- (i) a physical injury to the body;
- (ii) that was treated by a medical professional within 24 hours of the injury having been sustained, or within 24 hours of rescue, or within 72 hours of injury or rescue for those victims who were unable to realize immediately the extent of their injuries or for whom treatment by a medical professional was not available on September 11, or within such time as I may determine for rescue personnel who did not or could not obtain treatment by a medical professional within 72 hours; and that
- (iii) required hospitalization as an inpatient for at least 24 hours or caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement.

See 28 C.F.R. §104.2(c)(1).

The focus of your letter is on the many volunteers, first responders and construction workers who went to Ground Zero after the attacks. Of course, those volunteers, responders and rescue workers who submit claims demonstrating that they qualify under the rules set forth above will be found eligible to recover, as many indeed already have. However, I take very seriously the concern you express that “applicants who provided sufficient evidence of their work at Ground Zero” may be “rejected on the grounds that they did not provide sufficient evidence of being at the site.” Please be assured that where sufficient evidence is provided that a claimant was “present” at the site, such applications are not – and would not – be rejected on those

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grounds. I have made every effort to find "present at the site" when it comes to individual claimant representations in specific Fund applications. There may, however, be several reasons why a claimant who was working at Ground Zero may have received an initial ineligibility determination.

First, everyone who made a submission to the Fund claiming they worked at Ground Zero did not necessarily provide "sufficient evidence of their work at Ground Zero." Indeed, many provided no evidence, at times giving us little more than their name and alleged injury. Obviously, the Fund must require some evidence (in the form of testimony, documentary records, etc.) to substantiate the claim in order to ensure that only eligible claims are being paid and to prevent fraudulent claims from being processed. Where a claimant will not provide us with the necessary information, we have no choice but to issue an initial denial letter. However, the Fund's rules also provide that claimants who were initially found to be ineligible (often for lack of information or documentation in their submission) have the right to appeal that initial determination and submit any additional information that would establish their eligibility for an award.

Second, a finding that a claimant has provided "sufficient evidence that [he or she] worked at Ground Zero" is, in and of itself, insufficient to demonstrate eligibility. For example, the victim may not have gone to Ground Zero until the month *after* September 11 (and thus may not have been present at the site "in the immediate aftermath" of the attacks) or may not have been treated by a medical professional in the time specified in the rules or may have suffered only emotional harm (and thus may not have suffered a qualifying "physical" harm). On this last point, you are correct to note that I have publicly stated that I will use my discretion where appropriate to extend the 72 hour deadline by which victims must have sought treatment in cases of claims submitted by rescue workers. That authority was provided to me in the Regulations, and I have exercised, and will continue to exercise, my discretion where appropriate to accept claims from such rescue workers who may not have sought medical treatment in the days immediately following September 11.

I should also state – and I believe this gets to the heart of your concerns – that I apply this same discretion in appropriate cases submitted by *non-uniformed* rescue workers (such as Ground Zero volunteers and other first responders) as I do to cases submitted by uniformed rescue workers (such as those in the NYPD or FDNY). In fact, we have accepted claims from numerous volunteer, non-uniformed rescue workers who did not seek medical treatment within 72 hours but who otherwise met the eligibility requirements, and I have every expectation that we will continue to do so.

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Statistics On Claims

With that background in mind, I also want to respond to your requests for statistical information on the claims submitted and processed by the Fund. First, to the extent you are seeking "updated statistical information" of the general type reported in the New York Times on December 23, our office publishes much of that basic statistical information on our website, www.usdoj.gov/victimcompensation. Those latest statistics show that as of April 26th, 7,387 applications have been filed with the Fund (which includes over 4,400 injury claims), that the average award for deceased victims is currently \$1,877,084 and that awards for injured claimants has ranged from \$500 to over \$7.9 million. In total, the Fund has paid out approximately \$3.2 billion to-date.

The difficulty, however, is in our ability to generate accurate statistical information related specifically to claims submitted by "volunteer workers" or other personnel who went to Ground Zero in the days and months after September 11th particularly when we are still in the middle of our claims review process. Nevertheless, I do want to provide as much information as we can, so set forth below are responses to your seven specific requests for statistical information that you raise in your letter.

Question(s): (1) The number of Ground Zero volunteers who have become sick or injured as a result of their work at the site and who have since sought assistance through the VCF and (2) of that group, how many of these applicants have been approved by the VCF and how many have been rejected to date.

Response: Since we do not keep statistical information on who was a "volunteer" at Ground Zero (claimants do not necessarily identify themselves as such) we cannot accurately respond to this exact question with our available data. Nevertheless, our claim form did ask claimants to indicate if they were a "rescue worker," and over 2,700 claimants indicated that they considered themselves a "rescue worker" by checking that box on the form. The following provides a summary of the *current* claims processing status of those claims:

Eligible:	
(includes 523 found eligible after appeal)	1,879
Undetermined:	14
Initial Denial And On Appeal:	38
Initial Denial Not Appealed:	632
Initial Denial Affirmed After Appeal:	87
Withdrawn:	66
Total:	2,716

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Again, please note that this data is based on information *self-reported* by the claimants and thus reflects only what claimants themselves asserted (or failed to assert) in response to the specific question on their claim form. Indeed, we have classified claimants as "rescue workers" for purposes of giving them the benefits of the broader eligibility criteria even in cases where the claimant did not claim on the form that they were a rescue worker but where they performed that function.

Question: (3) How many applicants were rejected because you determined there was not a causal link between their reported injury and their work on recovery.

Response: Of the 2,716 submissions by claimants describing themselves as "rescue workers," the following summarizes the status of those whose *current* claims status is a denial where *one of the grounds* for denial was insufficient evidence to establish that *one of the harms* for which they sought compensation was a direct result of the terrorist related aircraft crashes of September 11th:

Initial Denial And On Appeal:	21
Initial Denial Not Appealed:	532
Initial Denial Affirmed After Appeal:	58
 Total:	 611

Again, please note that in most of these cases there were usually additional reasons that the claim was denied, and often one of those other reasons may have been the critical obstacle that precluded recovery from the Fund (*i.e.*, claimant first went to Ground Zero weeks after September 11th and was therefore not present in the "immediate aftermath" of the attacks and could not qualify regardless of the link between his or her injury and work at Ground Zero). In fact, among the 532 of these claims where an initial denial has not been appealed, 97% had at least two other reasons that precluded a finding of eligibility.

Question(s): (4) How many construction workers applied for VCF assistance who worked on recovery and cleanup operations at Ground Zero and at Fresh Kills landfills; and (5) How many of this group were accepted or rejected.

Response: Since we do not keep specific statistical information on who is a "construction worker" who worked on recovery and cleanup operations, please see the response to Questions 1 and 2 above on this issue. To the extent claimants allege that they were injured at Fresh Kills landfill, we would ordinarily have to deny those claims because under the statute only those who were present at the site (*i.e.*, at the

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World Trade Center for those injured in New York) are eligible to recover.

Question: (6) Of those who have received awards, what has been the average size of the award for those injured?

Response: Award letters have been issued for 2,308 injury claims, with awards ranging from \$500 to over \$7.9 million. The average and median awards for those claims currently stands at \$279,160 and \$65,000, respectively.

Question: (7) How many applications are pending appeal and how many have been finally decided?

Response: The following provides a summary of the current claims processing status of *all* injury claims submitted to the Fund:

Eligible	
(includes 772 found eligible after appeal):	2,619
Undetermined:	25
Initial Denial And On Appeal:	85
Initial Denial Not Appealed:	1,275
Initial Denial Affirmed After Appeal:	320
Withdrawn/Other:	95
Total:	4,419

Particular Examples

Finally, you raise concerns with respect to several specific examples where volunteer rescue workers have been denied assistance. While I am not at liberty to comment on the details of specific claims, I can tell you that the cases you cite reference "initial" eligibility determinations, which, as mentioned, were all subject to appeal. Indeed, we are in the process of holding appeals and hearings with the law firm you referenced as having reported that it has received over 100 denials on claims. As often occurs – and as has already been the case in some of the cases you mention – we are able to find that claimants are eligible and reverse initial ineligibility findings at these hearings, where claimants and their counsel can provide us with the necessary evidence to demonstrate their eligibility even where their initial submissions failed to do so and/or were incomplete. If you or you constituents would like to speak further about these specific matters directly with me, I would be happy to do so.

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I hope that this information is helpful in responding to your questions and alleviating your concerns, and gives you an understanding of the various and difficult issues we face in addressing these claims. If you would like to discuss these matters further, I would be pleased to meet personally with you and/or your staff. You have been extremely supportive of my efforts in administering this unprecedented Fund and I want to make sure you are satisfied with the administration of the Program. As Special Master of the Fund, I am committed to ensuring that the program be administered expeditiously, fairly and in a manner that is sensitive to the needs of those who have suffered as a result of the attacks of September 11th. I am grateful for your input and interest.

Sincerely,



Kenneth R. Feinberg

Special Master

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