OWCP
Annual Report to Congress FY 2002

Submitted to Congress 2005
U.S. Department of Labor
Employment Standards Administration

Office of Workers' Compensation Programs

2002

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OWCP Annual Report to Congress FY 2002

Submitted to Congress 2005

U.S. Department of Labor
Elaine L. Chao, Secretary

Employment Standards Administration
Victoria A. Lipnic, Assistant Secretary

Office of Workers' Compensation Programs
Shelby Hallmark, Director

SECRETARY OF LABOR
WASHINGTON

THE HONORABLE PRESIDENT OF THE SENATE
THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Gentlemen:

I have enclosed the Department of Labor's annual report to Congress on the FY 2002 operations of the Office of Workers' Compensation Programs. The report covers administration of the Federal Employees' Compensation Act as required by Section 8152 of that Act, the Black Lung Benefits Act as required by Section 426(b) of that Act, the Longshore and Harbor Workers' Compensation Act (LHWCA) as required by Section 42 of that Act, and the Energy Employees Occupational Illness Compensation Program Act, for the period October 1, 2001, through September 30, 2002.

Separate enclosures contain reports on annual audits of the Longshore and Harbor Workers' Compensation Act Special Fund and the District of Columbia Workmen's Compensation Act Special Fund accounts as required by Section 44(j) of LHWCA.

I trust that this report both fulfills the requirements of the respective laws and is useful to Congress and other interested parties as a comprehensive source of information on the administration and operation of Federal workers' compensation programs..

Sincerely,

Elaine L. Chao

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Assistant Secretary's Message

I am very pleased to forward the Office of Workers' Compensation Programs' (OWCP) Annual Report for Fiscal Year (FY) 2002 to the Secretary, to be transmitted to the Congress.

In FY 2002, OWCP experienced the first full year of administering its new compensation statute, the Energy Employees Occupational Illness Compensation Program Act. The Division of Energy Employees Occupational Illness Compensation, which was established in July 2001, performed extremely well in launching this benefit program for Department of Energy employees and their contractors who suffer from radiation-related cancer and other diseases as the result of their work in producing or testing nuclear weapons.

All of the OWCP workers' compensation programs continued to find new ways to improve current services to workers and employers with many new initiatives in compliance assistance, early intervention to reduce disability, and technological support for timelier outcomes and enhanced customer service.

I am very proud of OWCP's accomplishments and of its hard working and dedicated staff, who have made the accomplishments reflected in this report possible.

Victoria A. Lipnic
Assistant Secretary
for Employment Standards

Director's Message

Fiscal Year (FY) 2002 saw the Division of Energy Employees Occupational Illness Compensation (DEEOIC) complete its first full year of operation. Over 4,800 claims were approved and $351 million in benefits paid. Nearly four million dollars in medical benefits also were paid. Ten Resource Centers, located throughout the nation, generated 13,273 claims while a series of Traveling Resource Centers generated another 1,288 claims. The DEEOIC staff demonstrated a commitment to ensuring that nuclear weapons workers who became ill as a result of their employment receive timely compensation and medical care.

During FY 2002, the Division of Federal Employees' Compensation (DFEC) continued to seek ways to improve the claims development and communications processes. DFEC increased its utilization of online access and electronic data interface systems such as "real-time" electronic processing of pharmacy bill and the centralized Interactive Voice Response system to provide prompt and efficient delivery of customer services. The FEC program also continued to produce savings through its Periodic Roll Management project and medical cost containment initiatives. Additionally, the FEC program created a "Pledge to Our Customers" outlining the service quality and responsiveness FEC clients can expect. Based on feedback from telephone surveys, it appears the pledge is being taken seriously by DFEC staff, as indicated by a 21 percent increase in customer satisfaction over FY 2001 results.

As a result of the revised Black Lung regulations which became effective January 19, 2001, the Division of Coal Mine Workers' Compensation (DCMWC) saw an increase in claim filings in FY 2001 which continued into FY 2002. DCMWC has met this challenge by reallocating resources to the most critical workloads and is working diligently to reduce its backlog of claims.

FY 2002 also was a challenging year for the Division of Longshore and Harbor Workers' Compensation (DLHWC) as the insurance industry suffered through a number of insolvencies and declining stability ratings. DLHWC responded by taking positive steps to secure the financial integrity and security of the Longshore program.

OWCP staff worked very hard to accomplish the important missions of its four programs. Their efforts resulted in continued improvement in the services delivered to OWCP's customers and stakeholders in FY 2002.

Shelby Hallmark
Director, Office of Workers'
Compensation Programs

OWCP Accomplishments in FY 2002

In a Performance Assessment Rating Tool review conducted in FY 2002, the Federal Employees' Compensation (FEC) program was rated "Moderately Effective."

FEC was noted for having clear, ambitious, outcome-oriented goals, properly aimed at assisting injury recovery and return to work, promptly delivering benefits, and containing Federal costs.

FEC Program Government Performance And Results Act Accomplishments In FY 2002

Average Lost Production In 1st Year of Disability Was 164 Days; Average Time Away From Work Has Decreased By 25 Days Since Baseline Year FY1997.

Periodic Roll Management Project Saved $25.6 Million in Compensation Benefit Costs.

Total Medical Cost Savings From Fee Schedules On Physician, Hospital, And Pharmacy Charges And The Correct Coding Initiative Review Were $243 Million.

Under the Periodic Roll Management project, over 4,200 long-term cases were reevaluated by FEC program teams. In addition to making sure that the injured workers continue to receive appropriate medical care, the reviews resulted in compensation cost savings of $26 million.

FECA medical costs were reduced by $175.2 million using fee schedules developed for outpatient hospital and physician services. The ongoing Correct Coding Initiative (CCI) bill review saved an additional $12.7 million. When combined with fee schedule savings for inpatient and pharmacy services, total medical savings from fee schedules and the CCI were $242.5 million, or 26.4 percent of all medical charges in FY 2002.

FEC developed a "Pledge to Our Customers" which is posted on its website to share specific expectations for customer service with program stakeholders. A Communications Specialist position was created in each office to take the next step in communications redesign.

The OASIS imaging project was expanded to include all new incoming mail, allowing FEC to centralize its mail operations with a single vendor.

In its first full year of operation, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) provided benefit payments of approximately $351 million to over 4,800 Department of Energy (DOE) employees and employees of private companies that worked under contract to DOE, or the survivors of the employees, who suffer from radiation-related cancer, beryllium-related disease, or chronic silicosis as a result of their work in producing or testing nuclear weapons.

The Energy Case Management System was enhanced with the addition of several new features and subsystems. The Telephone Management System was installed in DEEOIC district offices to log and track incoming calls received on Energy Employees Occupational Illness Compensation Program Act cases. A transaction processing module, the Compensation Payment System, was implemented to enable authorized users to create, verify, and authorize compensation payments on accepted claims. Also, the Energy Payment System was developed to pay expenses associated with the treatment of accepted medical conditions.

During FY 2002, the insurance industry suffered a number of insolvencies as well as declining financial stability ratings for a number of companies. The Division of Longshore and Harbor Workers' Compensation (DLHWC) responded by taking steps to secure the integrity and security of its insurance compliance program and systems. DLHWC improved the process for handling insolvencies to ensure seamless benefit delivery to claimants, and strengthened rules and procedures governing security deposit requirements and the review of insurance authorization applications.

A study of the Longshore rehabilitation system was completed whereby claimants, service providers, and program staff were surveyed to provide suggestions for service improvements. Proposed changes and enhancements that resulted from the study include improved client recruitment using timely and clearer communications, automation of referrals, increased focus on job placement outcomes, and development of a Government Performance and Results Act outcome measure.

Federal Employees' Compensation Act

2002

Introduction

In 1916, President Wilson signed the first comprehensive law protecting Federal workers from the effects of work injuries. In the years following, the Federal Employees' Compensation (FEC) program continually has changed to meet its commitment to provide high quality service to employees and their employing agencies while also minimizing the human, social and financial costs of work-related injuries.

Benefit Outlays Under FECA FY 2002

TOTAL BENEFITS*: $2,308 MILLION

Long Term Disability (Wage Loss) 52.6% $1,214 Million

Medical Benefits 28.6% $660 Million

Temporary Disability (Wage Loss) 12.8% $295 Million

Death Benefits 5.7% $131 Million

Vocational Rehabilitation 0.3% $8 million

*Actual Obligations

During Fiscal Year (FY) 2002, the program provided workers' compensation coverage for approximately 2.7 million Federal workers. Peace Corps and VISTA volunteers, Federal petit and grand jurors, volunteer members of the Civil Air Patrol, Reserve Officer Training Corps Cadets, Job Corps, Youth Conservation Corps enrollees, and non-Federal law enforcement officers when injured under certain circumstances involving crimes against the United States also are covered.

Benefits and Services

The primary goal of the FEC program is assisting Federal employees who have sustained work-related injuries or disease by providing both appropriate financial benefits and help in returning to work. Benefits provided to employees covered by the Federal Employees' Compensation Act (FECA) include payment for all reasonable and necessary medical treatment for work-related injury or disease. In timely-filed traumatic injury claims, the FECA requires the employer to continue the injured worker's regular pay during the first 45 calendar days of disability. If the disability continues after 45 calendar days, or in cases of occupational disease, the FEC program will make payments to replace lost income. Compensation for wage loss is paid at two-thirds of the employee's salary if there are no dependents, or three-fourths if there is at least one dependent. The FEC program compensates injured workers for permanent impairment of limbs and

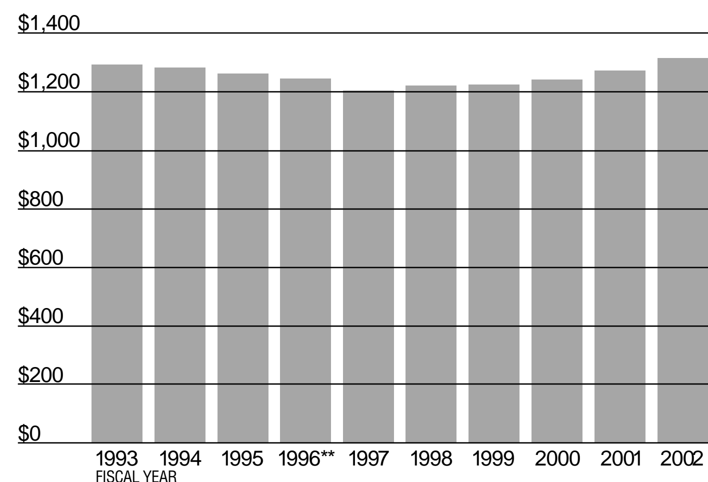
other parts of the body. Benefits to survivors in the event of work-related death also are payable. The FECA provides training and job placement assistance to help injured workers return to gainful employment. Monetary benefits (with the exception of continuation of pay) are paid directly by the FEC program to injured employees, their dependents or survivors, and to service providers.

During FY 2002, 158,118 new cases were created and the FEC program provided over 283,000 workers more than $2.3 billion in benefits for work-related injuries or illnesses. Of these benefit payments, over $1.5 billion were for wage-loss compensation, $668 million for medical and rehabilitation services, and $131 million in death benefit payments to surviving dependents.

The FECA is the exclusive remedy by which Federal employees may obtain disability, medical, and/or survivor benefits from the United States for workplace injuries.

FECA Benefit Expenditures

IN MILLIONS OF CONSTANT DOLLARS*



*Actual Obligations in current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

**FY 1996 excludes one-time (upward) adjustment of $85.5 million to implement accrual-based accounting for benefit liabilities.

Funding

Benefit payments made by the program come from the Employees' Compensation Fund. Fund outlays are billed to employing agencies who each year replenish the Fund through a mechanism known as chargeback.

Most agencies, except the U.S. Postal Service and other non-appropriated fund agencies, include those chargeback costs in their next annual appropriation requests to Congress. Remittances to the Employees' Compensation Fund are not made until the first month of the subsequent fiscal year. This means that there is at least 15 months between the dates of the chargeback "bill" and when the payment to the fund is completed. Given cost-of-living increases in wage-loss benefits and inflation affecting medical costs, by the time remittance is made it usually is insufficient to cover current outlays. The annual Department of Labor (DOL) appropriation makes up any difference.

Expenses for a small number of cases are not charged back to employing agencies but also are covered by the DOL appropriation. For FY 2002, these non-chargeback expenses were approximately $33 million. Non-chargeable costs are attributable to injuries that occurred before December 1, 1960, when the chargeback system was enacted, to employees of agencies that are no longer in existence, or to injuries which have FECA coverage under various "Fringe Acts" such as the Contract Marine Observers Act, Law Enforcement Officers Act, and the War Hazards Act, that did not contain mechanisms for billing employers.

For FY 2002, FEC program administrative expenditures totaled $119.9 million, about 4.9 percent of total program costs. Of this amount, $110.4 million was in direct appropriations to the Office of Workers' Compensation Programs (OWCP), including $81.2 million in salaries and expenses and $29.2 million in "fair share" expenditures out of the FECA Special Benefits account. These latter funds are specifically earmarked for OWCP capital investments for the development and operation of automated data management and operations support systems, periodic roll case management, and medical bill cost control. Another approximately $9.5 million are for legal, investigative, and other support from the Employees' Compensation Appeals Board (ECAB), Office of the Solicitor, and the Office of the Inspector General.

Case Adjudication and Management

Timely Decision-Making

Approximately 158,000 injury and illness claims were filed under FECA in FY 2002. Eighty-four percent were for traumatic injuries, such as those caused by slips and falls, and 16 percent were for occupational illness arising from exposure or exertion over a longer period. For traumatic injury claims, 96 percent were adjudicated within 45 days of the day the OWCP received notice of the injury. A high rate of timeliness also was achieved for deciding non-traumatic injury claims. For "basic" occupational disease requiring only limited development of the facts and medical evidence, 91 percent were adjudicated within 90 days. Seventy-six percent of the more complex "extended" occupational disease cases were adjudicated within 180 days. The average time for adjudication of all occupational disease cases was 85 days.

Disability extended beyond the 45-day continuation-of-pay period in 14 percent of all cases. The FEC program strives each year to meet a high standard of timeliness and accuracy in adjudication and payment of claims. In FY 2002, 84 percent of wage-loss claims were paid within 14 days of receipt and 95 percent within 60 days.

Management of Disability Cases

OWCP's primary Government Performance and Results Act goal, reduction of the rate of Lost Production Days (LPD), guides its case management strategy. The goal is based on measuring the duration of disability for cases in the first year of lost time from work, including continuation of pay and compensation, and calculating a rate of disability days per 100 employees for each agency.

The government-wide LPD was 74.3 days in FY 2001 and 78.3 days in FY 2002. U.S. Postal Service (USPS) cases account for roughly half of the annual total of approximately two million LPD days for Federal employees. Employment reductions in USPS have resulted in losses of light duty and other reemployment

opportunities for injured postal workers. As a result, USPS's LPD in FY 2002 was 131 days, a 12 percent increase over FY 2001. At the same time, LPD for all non-postal government held steady at 53.8 days in both FY 2001 and FY 2002.

The elements of the FEC strategy to improve this rate had these components in FY 2002:

Federal Safety and Health Initiative. OWCP regional directors worked with Federal facilities in their regions to meet the government-wide goals initially established in the Federal Worker 2000 initiative: injury and illness prevention and timely reporting of injuries. Both of these factors have a direct effect on the LPD rate.

Early Nurse Intervention.

Quality Case Management.

Periodic Roll Management.

Early Nurse Intervention

Under the FECA, an employee who files notice of a traumatic injury within 30 days may receive continued pay from the employer at no charge to leave for up to 45 days of disability. While this is an extremely important benefit for the employee, it means that OWCP frequently does not receive information about the level of disability until many days or weeks have elapsed. To obtain earlier information and intervene more quickly in these cases, nurses are assigned to contact claimants by telephone within 30 days after a notice of injury is filed. The nurse obtains information, evaluates the level of disability, and notifies the district office of pending surgery or prolonged recovery. Continuation-of-Pay (COP) nurse intervention is limited to 30 days and is a relatively low-cost form of intervention that gives a head start to case management. OWCP telephonic nurses intervened in 15,105 cases during FY 2002.

FECA Benefits Charged To Employing Agencies

CHARGEBACK YEAR 2002

Chargeback Total: $2,219 Million

Postal Service $785 million

Defense $619 million*

Veterans Affairs $152 million

Transportation $102 million

Justice $96 million

Treasury $88 million

Agriculture $70 million

All Other $308 million

*Defense includes Navy ($248M), Army ($175M), Air Force ($133M), and Dept. of Defense ($64M).

Note: The sum of individual agencies may not equal total due to rounding.

Quality Case Management

Quality Case Management (QCM) was implemented in the FEC program in FY 1993 as another means of reducing the number of days an injured worker was out of work. Every injury case with a wage-loss claim filed and no return-to-work date is reviewed for assignment to an early intervention nurse contracted by the FEC program. From the very earliest stages after the injury the nurse meets with the injured worker and serves as the human face of OWCP. Coordinating medical care and return-to-work issues, the nurse works not only with the injured employee but also the attending physician and the employing agency. If it seems that the injured worker will not return to work soon, the nurse coordinates the transfer of the case for vocational rehabilitation services and/or more aggressive medical intervention.

In FY 2002, nurses intervened in 15,645 lost time claims and 2,137 workers were referred for vocational rehabilitation services. Nearly 8,800 injured workers returned to work in FY 2002 with the assistance of contract nurses or rehabilitation counselors. Eighty-four percent of the cases with resolutions during FY 2002 were resolved within 30 months of the date disability began. The average length of disability measured for cases that had begun wage-loss payments in the previous year was 164 days.

Periodic Roll Management Project

In addition to stressing early intervention, the FEC program dedicated resources to thoroughly reviewing long-term disability cases. Periodic Roll Management (PRM) claims examiners review longer term cases to verify continuing eligibility, schedule medical examinations if work capability is unclear or treatment is inappropriate, and consider vocational rehabilitation and placement assistance, with a view toward reemployment of injured workers. PRM has proven to be hugely successful, with outcomes exceeding OWCP's original estimates. In FY 2002, staff reduced compensation costs by $25.6 million. Over 4,200 cases were screened, and benefits were adjusted or terminated in over 2,500 cases where beneficiaries' disability had either resolved or lessened to the point that return to work was possible.

Quality Case Management Results For FY 2002

Nearly 16,000 Injured Workers Were Referred To Nurses For Early Intervention.

8,796 Injured Workers Returned To Work v. 8,175 in 2001.

84% of QCM Cases Resolved Within 30 Months From Start of Disability.

Given the low administrative costs ($10 million in FY 2002), PRM continues to be a most cost-effective means of reducing overall compensation costs and ensuring appropriate medical intervention for injured workers.

OWCP Automated System for Imaging Services (OASIS)

In FY 2001, the FEC program successfully completed the OASIS project, wherein all new workers' compensation claims are imaged and managed in a paperless environment. The project was expanded in FY 2002 to include the imaging of all incoming documents. This allowed the program to move to a central mailroom through a contractor where mail is scanned and transmitted to DFEC district offices. The OASIS project has minimized the loss of case documents, and allows rapid access to any case document.

Hearings and Review

In FY 2002, the Branch of Hearings and Review experienced a setback in its efforts to reduce the number of cases pending review and scheduling, as well as the average time from request for a hearing to issuance of a decision. The backlog of cases pending assignment increased from 918 on October1, 2001, to 1,245 as of October 1, 2002.

In FY 2002, it took 266 days from receipt of the case to a decision on a request for hearing, up from 241 days in FY 2001. The time lapse from receipt of case to remand/reversal before hearing rose from 100 days in FY 2001 to 133 days in FY 2002. The amount of time cases remained in the Branch from their receipt to issuance of a decision based upon a review of the written record increased to 135 days in FY 2002 from 125 days in FY 2001.

The major reason for the increase in cases pending review and the time it takes to issue decisions was staffing shortages. DFEC lost several hearing representatives to OWCP's new Energy program and several claims examiners received promotions to other branches within DFEC. A period of time was needed to advertise, hire and train the staffing replacements. While the hiring and training process was underway, case backlogs increased substantially and the timeliness of decisions was greatly affected.

As the process of imaging new cases and mail was implemented, hearing representatives became able to do their work from locations outside the national office. The Branch took advantage of this enormous technical step to recruit hearing representatives from outside the Washington, D.C. metropolitan area. This method of hiring greatly increased interest in the hearing representative position among experienced claims examiners in the field, and should improve the Branch's performance.

Correct Coding Initiative

The FEC program cost containment efforts initiated in 1999 continued to reduce medical costs in FY 2002. The Centers for Medicare and Medicaid Services of the Department of Health and Human Services developed the National Correct Coding Initiative to promote national correct coding methodologies and to control improper coding that leads to inappropriate payment for outpatient services. In addition to applying the Correct Coding Initiative (CCI), OWCP uses the Diagnostic Related Group methodology to reduce impatient costs and a pharmacy fee schedule. The CCI produced $12.7 million in savings against amounts billed in FY 2002. Combined with $229.8 million saved from application of the fee schedule, total medical billings were reduced by 26.4 percent in FY 2002.

Services to Claimants and Beneficiaries

During FY 2002, the FEC program continued its focus on improving customer service and satisfaction with significant changes in the way business is conducted.

Communications Redesign Initiatives

Improvements to customer service through a comprehensive redesign of FEC communications, including equipment, procedures, goals and measures continued during FY 2002. The Communications Steering Committee provided a strategic emphasis on systematic changes and measurable outcomes for the wide array of communications and customer service issues.

On the recommendation of the Committee, a Communications Specialist position was filled in each district office. Charged with directing and coordinating all communications initiatives within a district office, the specialists focused on addressing communications goals, measures, and additional standardization during FY 2002. Specific quantitative and qualitative goals and standard means for measuring district office performance were adopted to fulfill the "Pledge to Our Customers." Posted on the FEC website, this pledge commits to levels of customer service in a variety of areas, including telephone wait times, timeliness in response to phone messages, use of clear language, courtesy and professionalism, and accuracy of response.

During FY 2002, the communications specialists began using standardized telephone surveys, based on the 2001 National Customer Satisfaction Survey, as a means to assess telephone service. Over 81 percent of callers surveyed in FY 2002 reported they received a call back in less than three days – the response time detailed in the Pledge. More than 96 percent of callers surveyed reported the language used by the district office was clear and understandable. Ninety-four percent of respondents indicated they were somewhat or very satisfied by the level of courtesy and professionalism demonstrated by the district office. Over 83 percent of callers surveyed were somewhat or very satisfied with the accuracy of the response received. Nearly 59 percent of respondents reported they were somewhat or very satisfied by the district office's performance. This marks a 21 percent increase over the FY 2001 baseline. To help continue this trend, every employee with regular telephone interaction with FEC program customers completed advanced telephone customer service training.

District offices now have telephonic reporting capacity to capture real-time and historical data on call volumes and average wait times, as well as other call-related information. During FY 2002, 3,027,757 calls were received in the 12 district offices. Each district office averages over 21,000 calls each month. The average wait time was 2 minutes and 52 seconds, well within the pledged goal of an average of less than five minutes.

The National Call Center answered basic inquiries from claimants and was used during Health Benefits Open Season to answer requests for health plan materials and enrollment forms. The Interactive Voice Response (IVR) system, which provides automated entitlement information to callers, was enhanced to handle requests for non-invasive medical treatment, expanded to handle twice the initial volume, and streamlined to one toll-free number available throughout the country.

Performance Assessment

A FY 2002 Performance Assessment Rating Tool (PART) review gave the FEC program a score of "Moderately Effective". FEC was noted for having clear, ambitious, outcome-oriented goals, properly aimed at assisting injury recovery and return to work,

promptly delivering benefits, and containing Federal costs. OWCP began implementing the following reforms to address the PART recommendations:

Contracted with an outside consultant for an evaluation of FECA disability management and wage-loss compensation payment strategies and a comparison to state/industry best practices.

Changed the method used to estimate Federal agencies' liability under FECA to ensure timely submission of financial reporting data.

Began work to develop a Managerial Cost Accounting system to permit cost-effectiveness assessments.

Developed a customer service strategic goal focused on FEC program communications.

Services to Employing Agencies

During FY 2002, the FEC program continued to provide a variety of technical assistance and other services to employing agencies.

Timely Submission of Notices and Claims

The FEC program emphasizes timely submission of notices of injury and occupational illness (Forms CA-1 and CA-2) and claims for wage loss (Form CA-7). There has been an increase in the timeliness of submissions of notices, from 56.6 percent in FY 2001 to 57 percent in FY 2002. Timeliness of submission of claims for wage loss also increased during FY 2002 to 42.9 percent from 42.3 percent in FY 2001.

FEC program regulations require employing agencies to submit a Notice of Injury (Form CA-1) or a Notice of Occupational Illness (Form CA-2) within 10 working days (or 14 calendar days) of receipt from an employee if lost time or medical expenses are claimed or expected. In addition, the employer is required to submit the initial wage-loss claim (Form CA-7) no more than five working days (or seven calendar days) after receipt from the employee.

OWCP's ability to act promptly on medical bills and prevent any interruption of income is directly and critically related to the early submission of these forms. In return for timely submission and in keeping with the long-standing emphasis OWCP has placed on it, OWCP has promised and delivered even earlier interventions. The result has been continued improvement in timely filing by many employing agencies and an overall reduction in lost production days.

The Federal Employees' Safety and Injury Initiative includes goals for timely submission of notices and lost production days. Ongoing emphasis by the FEC program on the need for improvement in these areas continues to drive outreach programs and activities with other Federal employing agencies. While all agencies are provided with data on their timeliness and lost production days performance, the FEC program continues to post data on the performance of the largest Federal agencies on the OWCP/DFEC web site (www.dol-esa.gov/fesii/).

Online Access and Electronic Data Interface

Use of the Agency Query System, a vital tool by which agencies can access benefit entitlement information to answer inquires, continued to grow during FY 2002. The system now is being utilized by numerous Federal agencies and Congressional offices.

The FEC program's electronic receipt of pharmacy bills is a "real-time" service that offers on-line adjudication of pharmacy bills. This provides a higher degree of customer service to both the pharmacy and the injured worker as the pharmacy knows immediately whether or not the program will pay for a service. Pharmacies are more likely to bill the program on behalf of the injured worker if they know that they will be reimbursed for the services provided. The program also has in place a real-time authorization system so pharmacies can get certain prescriptions reviewed and approved over the telephone. The percentage of bills submitted electronically represented 47 percent of the total pharmacy bills received.

FEC continues to expand the use of Electronic Data Interchange to receive notices of injury and occupational illness (Forms CA-1 and CA-2) electronically in an effort to expedite entitlement determinations. Several new agencies were brought up into production and became operational in FY 2002.

Federal Employees' Compensation Act

	FY 2001	FY 2002
Number of Employees (FTE Staffing Used)	930	1,000
Administrative Expenditures*	$ 109.3 M	$ 110.4 M
Cases Created	165,915	158,118
Wage-Loss Claims Initiated	23,386	23,193
Total Compensation and Benefit Payments (Actual Obligations)**	$2,199.3 M	$2,307.9 M
Number of Medical Bills Processed	3,189,233	3,425,810

*OWCP expenditures; excludes DOL support costs, but includes "fair share" capital investment costs of 30.3 million in FY 2001 and 29.2 million in FY 2002, respectively.

**Compensation, medical, and survivor benefits.

Black Lung Benefits Act

2002

Introduction

In 2002, OWCP's Division of Coal Mine Workers' Compensation (DCMWC) completed its twenty-ninth year administering Part C of the Black Lung program. The initial Black Lung benefits program was enacted as part of the Coal Mine Health and Safety Act of 1969, the first comprehensive Federal legislation to regulate health and safety conditions in the coal industry. This law created a temporary system to compensate past victims of dust exposure in the mines with public funds administered by the Social Security Administration (SSA).

The number of claims filed in the early 1970's far exceeded pre-enactment estimates. The Act was amended by the Black Lung Benefits Act of 1972 (BLBA) to require the use of simplified interim eligibility criteria for all claims filed with SSA, and to transfer the receipt of new claims to the Department of Labor (DOL) in 1973. OWCP assumed responsibility for processing and paying new claims on July 1, 1973.

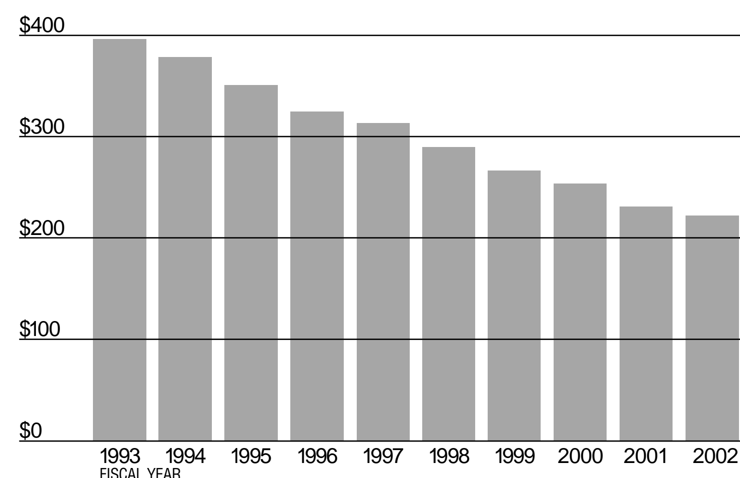
Most of the claims filed prior to that date remained until recently within the jurisdiction of SSA. As of September 30, 2002, approximately 65,000 active Part B beneficiaries were receiving total monthly cash benefits of $36 million from SSA.

On September 26, 1997, officials from SSA and DOL signed a Memorandum of Understanding transferring responsibility for managing currently active SSA Black Lung claims to DOL. This change was aimed at ending confusion about which Federal agency handles the claims and enhancing customer service to all Black Lung beneficiaries. In FY 2002, DOL managed all Federal black lung claims. However, formal appeals on Part B claims were referred to SSA.

Early in 1978, Congress enacted two new statutes that further amended the Act. The Black Lung Benefits Reform Act of 1977 (Public Law 95-239) again mandated the use of interim criteria based on the use of presumptions to resolve old unapproved claims. Public Law 95-227, the Black Lung Benefits Revenue Act of 1977, created the Black Lung Disability Trust Fund (Trust Fund), financed by an excise tax on coal mined and sold in the United States. The law authorized the Trust Fund to pay benefits in cases where no responsible coal mine operator could be located and transferred liability for all claims filed with DOL based on employment in the coal industry before 1970 from individual employers to the Trust Fund. These amendments made the Federal program permanent, although state benefits would continue to offset Federal compensation wherever they were available.

Current administration of the Black Lung Part C program is governed by 1981 legislation: Title I is the Black Lung Benefits Revenue Act of 1981, and Title II is the Black Lung Benefits Amendments of 1981. The 1981 Amendments tightened eligibility standards, eliminated certain burden of proof presumptions, and temporarily increased the excise tax on coal to address the problem of a mounting insolvency of the Trust Fund, which was by then indebted to the U.S. Treasury by over $1.5 billion.

The 1981 amendments slowed but did not stop the growth of the Trust Fund debt, which by the end of 1985 had surpassed $2.8 billion. The Consolidated Omnibus Budget Reconciliation Act of 1985, enacted in 1986, increased the excise tax by an additional 10 percent through December 31, 1995, and put into effect a five-year moratorium on the interest charges due the Treasury on the Trust Fund's accumulated debt. In late 1987, Public Law 100-203 extended the duration of the increased tax rates through December 31, 2013. These budget-related legislative actions made no further changes in the Act's eligibility criteria and adjudication procedures.



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

Benefits and Services

The Black Lung Part C program provides two types of benefits, monthly wage replacement and medical services. The program pays a standard monthly benefit (income replacement) to miners determined to be totally disabled from black lung disease, and to certain eligible survivors of deceased miners. The monthly rate of benefits is adjusted upward to provide additional compensation for up to three eligible dependents.

The program provides two types of medical services related to pneumoconiosis (black lung disease): diagnostic testing for all miner claimants to determine the presence or absence of black lung disease, and the degree of associated disability; and medical coverage for treatment of black lung disease and directly related conditions for miners entitled to monthly benefits.

Total DOL Black Lung program expenditures for these benefits in Fiscal Year (FY) 2002 were $384.2 million, a decrease of $12.7 million from FY 2001. In FY 2002, benefits were provided from the Trust Fund to approximately 47,000 beneficiaries each month. The Trust Fund had a balance of $38.8 million at the end of FY 2002, with an outstanding debt to the Treasury of $7.7 billion.

In FY 2002, the United Mine Workers of America (UMWA) Health and Retirement Funds were reimbursed $4.9 million from the Trust Fund for black lung-related medical care provided by them to UMWA/DCMWC joint beneficiaries.

As an additional benefit to claimants, the law provides for payment of attorneys' fees and legal costs incurred in connection with approved benefit claims. The fees must be approved by adjudication officers. During the past year DCMWC processed 132 fee petitions and paid approximately $0.5 million in attorneys' fees from the Trust Fund.

In FY 2002, 977 claims were forwarded for formal hearings before the Office of Administrative Law Judges (OALJ) and 481 claims were forwarded for appeals to the Benefits Review Board (BRB). At the end of FY 2002, the OALJ had 1,252 claims pending while 415 were pending before the BRB.

Medical Services

The Black Lung Part C program provides both diagnostic and medical treatment services. Diagnostic testing is provided for all miner claimants to determine the presence or absence of black lung disease, and the degree of associated disability. These tests include a chest x-ray, pulmonary function study (breathing test), arterial blood gas study, and a physical examination.

Medical coverage for treatment of black lung disease and directly related conditions is provided for miner beneficiaries. This coverage includes prescription drugs, office visits, and hospitalizations. Also provided, with specific approval, are items of durable medical equipment, like hospital beds, home oxygen, and nebulizers; outpatient pulmonary rehabilitation therapy; and home nursing visits.

Total medical expenditures under the Black Lung Part C program during FY 2002 were $64.2 million. This includes payments of $5.1 million for diagnostic services, $54.2 million for medical treatment, and $4.9 million in reimbursements to the UMWA Health and Retirement Funds for costs of treating Black Lung beneficiaries. Approximately 446,000 bills were processed during the year.

Accomplishments

Implementation of New Program Regulations

On August 9, 2001, Judge Emmett Sullivan ruled against a challenge to the regulations developed in accordance with the provisions of Executive Order 12866 that was filed by the National Mining Association and others. In upholding DOL's regulations, Judge Sullivan found in favor of the Government on every count. Judge Sullivan also lifted his partial stay order and the Black Lung program began issuing schedules for the submission of additional evidence. On June 14, 2002, the District of Columbia Circuit issued a decision upholding all but one of the revised regulations. *National Mining Ass'n v. Chao,* 292 F.3d 849 (D.C. Cir. 2002).

DCMWC believes that the new regulations have fostered a more streamlined claims review process while being fairer to miners and other claimants. As a result of the new rules, receipts of new claims during FY 2001 were 45.5 percent higher than in FY 2000 (up from 5,065 to 7,824) and this high level of new claims continued in FY 2002, with 6,998 filings. The approval rate at the first level of administrative review increased slightly from 8.2 percent to 8.5 percent.

Claimant Diagnostic Testing

When a miner files a black lung claim, one of the first actions is to schedule the claimant for a series of four diagnostic tests (chest x-ray, pulmonary function study, arterial blood gas study, and physical examination) at the expense of the Trust Fund. As required by the new program regulations effective after January 19, 2001, DCMWC implemented improved procedures for this testing:

After conducting an extensive survey of pulmonary physicians during FY 2000, a list of authorized qualified providers was developed and published in the DCMWC Program Manual. The list is updated on a quarterly basis and contains approximately 240 providers.

A miner can choose the physician or facility which will provide the tests, but the choice must be from the list of qualified providers.

The provider must practice within the miner's state of residence or a contiguous state.

To prevent possible fraud or abuse, the miner may not choose any physician who has examined or treated him within one year prior to the date of filing, nor may he choose a physician who is a close relative.

All pulmonary function studies must be done using a flow-volume loop, which ensures greater accuracy in recording the results of the maneuvers performed by the patient.

DCMWC believes that these revised procedures have improved the quality of the evidence submitted in Black Lung claims, making the entire claims review process fairer to all parties.

Initial Claims Processing

The revised Black Lung program regulations became effective January 19, 2001, and pertain to claims filed after that date. With certain exceptions, the revised regulations also apply to claims that were pending on January 19, 2001. Representatives of the coal mine industry filed a suit in Federal court challenging these regulations shortly after they were published. The judge assigned to review the suit issued an injunction barring decisions based on the new regulations until after he had reviewed them.

The injunction lasted six months and created a severe backlog of claims awaiting preliminary decision, especially when coupled with the large number of claims that were filed. On September 30, 2001, over 5,000 claims were pending. During the year ending September 30, 2002, nearly 7,000 additional claims were filed. Although thousands of decisions had been issued, DCMWC had a backlog of approximately 6,000 claims.

DCMWC addressed this backlog by setting realistic performance goals to lower the average processing time per claim, concentrating efforts on the oldest claims, and reallocating resources to the most critical workloads.

Operation and Maintenance of Automated Support Package

DCMWC's contract with Computer Science Corporation provides the resources to operate and maintain the Black Lung program's Automated Support Package (ASP). The ASP includes the client-server computer system, data processing operations, medical bill processing, telecommunications support, and certain administrative functions. During FY 2002, innovations were made in several areas:

The DCMWC network was successfully integrated into the Employment Standards Administration (ESA) network.

The desktops of DCMWC employees were upgraded to the Windows-XP® operating platform.

DCMWC's automated correspondence system, CORS, was upgraded in two ways: (1) standardized forms and letters were revised for the processing of claims under the revised regulations; and (2) the system itself was upgraded to use WORD-2002®.

The DCMWC automated policy data base, Black Lung Web, was made available to all employees. The Web has a user-friendly opening page and a powerful search engine that provides ready-access to more than 1,300 documents, including the DCMWC Procedure Manual and routine policy-related directives, memorandums, and all-point E-mails.

Management Of SSA Part B Black Lung Claims In FY 2002

Professional And Timely Claims Maintenance Services Provided To Part B Claimants By DCMWC Included:

Completing More Than 10,000 Maintenance Actions, With Average Completion Time Of Less Than One Week From Notification

Managing The Expenditure Of More Than $453 Million In Benefits

DCMWC Was Responsible For Over 65,000 Active Part B Cases.

DCMWC's E-mail system was converted from Novell GroupWise® to Microsoft Exchange ®, to make it more compatible with other government E-mail systems.

A new adjudication level, Proposed Decision and Order, was added to the ASP in accordance with the revised regulations.

Part B Implementation and Operations

The Division of Coal Mine Workers' Compensation has been responsible for maintenance actions on Part B (originally SSA) Black Lung claims since the fall of 1997. A Memorandum of Understanding between SSA and DOL was signed on September 26, 1997, transferring the responsibility. The transfer was aimed at ending confusion as to which Federal agency handles Part B claims and enhancing the services provided to beneficiaries. The Black Lung claimant population now deals with a single agency with more efficient use of government resources.

To make this change permanent, the Administration proposed legislation ("The Black Lung Consolidation of Administrative Responsibilities Act") which was introduced in the Congress as H.R. 5542. The proposed legislation was passed by the Congress and enacted as Public Law 107-275 upon receipt of President Bush's signature on November 2, 2002. The transfer of responsibility for Part B of the program from the Social Security Administration to the Department of Labor became effective on October 1, 2003.

A joint audit report by both DOL and SSA found that DCMWC had improved claims maintenance services and overall customer satisfaction. Significant accomplishments related to the Part B transition and operations during FY 2002 include:

Completing more than 10,000 maintenance actions, on average less than one week from notification.

Managing the expenditure of more than $453 million in Part B benefits.

At the end of FY 2002, DCMWC offices were responsible for 65,274 active Part B claims.

Black Lung Disability Trust Fund

The Trust Fund is administered jointly by the Secretaries of Labor, Treasury, and Health and Human Services. The Trust Fund was established by the Black Lung Benefits Revenue Act of 1977, to shift the responsibility for the payment of black lung benefit claims from the Federal Government to the coal industry. Those claims approved by SSA, under Part B of the BLBA, continue to be paid from the Federal Government's general revenues.

Trust Fund revenues consist of monies collected from the coal mine industry, under the provisions of the Black Lung Benefits Revenue Act of 1977, as amended, in the form of an excise tax on mined coal that is sold or used by producers; funds collected from responsible mine operators (RMOs) for monies they owe the Trust Fund; payments from various fines, penalties, and interest; refunds collected from claimants and beneficiaries for overpayments; and repayable advances obtained from Treasury's general fund when Trust Fund expenses exceed revenues. Total receipts of the Trust Fund in FY 2002 were over $1.0 billion.

The major source of revenue to the Trust Fund is an excise tax on mined coal sold or used by producers. The tax is collected by the Internal Revenue Service (IRS), U.S. Department of the Treasury, and transferred to the Trust Fund on a monthly basis. In 1981, as an amendment to the IRS Code of 1954, the Black Lung Benefits Revenue Provisions added a temporary special tax, increasing the previous excise tax to $1.00 per ton for underground coal and $0.50 per ton on surface mined coal, with a cap of four percent of sales price.

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act of 1985, which further increased excise tax rates by 10 percent and imposed a five-year moratorium on the accrual of interest on all repayable advances, which expired on September 30, 1990. The rates (per ton) for underground and surface mined coal were raised to $1.10 and $0.55 respectively, and the cap was increased to 4.4 percent of the sales price, for the period October 1, 1985, through December 31, 1995. In December 1987, Public Law 100-203 lengthened the duration of these increased tax rates to December 31, 2013, after which the rates will revert to their original levels of $0.50 underground, $0.25 surface, and a limit of two percent of sales price.

In FY 2002, the Trust Fund received a total of $566.6 million in tax revenues. In comparison, the revenue levels in FY 2001 and FY 2000 were $522.2 million and $518.5 million, respectively.

An additional $3.2 million was collected from RMOs in interim benefits, fines, penalties, and interest during FY 2002. These funds directly contribute to reducing the amount of repayable advances needed by the Trust Fund.

Trust Fund expenditures are made for:

Monthly and medical benefits to eligible miners and/or their families for approved claims involving miners whose mine employment ended before 1970, or for claims in which no operator liability can be determined.

Administrative costs incurred in the operation of the Black Lung program.

Accrued interest on repayable advances from the Treasury.

Repayable advances are obtained from the U.S. Treasury when Trust Fund resources are not sufficient to meet program obligations. These advances are to be repaid to Treasury's General Fund with interest. Growth in the Fund's debt (advances outstanding) slowed considerably during 1986-90 due to a legislated moratorium on the accrual of interest on advances and larger than expected increases in tax revenues. Interest payments resumed in 1991, and by the end of FY 2002, the Trust Fund's cumulative debt to the U.S. Treasury was $7.719 billion. While tax receipts to the Trust Fund were sufficient to cover everyday operating costs and approximately $130 million of interest charges, repayable advances from the Treasury in the amount of $465 million were required to fund the remainder of the interest payments due on this debt for FY 2002.

For several years now the annual interest charges on the debt alone have exceeded benefit payments made by the Trust Fund. Without any action to restructure the existing debt, the Trust Fund will continue to borrow funds from the Treasury to make interest payments to service this growing debt and the Trust Fund is projected to never reach solvency. To address the continuing solvency issues, the Departments of Labor and Treasury jointly developed a proposed legislative package to retire the Trust Fund's indebtedness, which was transmitted to the Congress on September 26, 2002; however, the Congress took no action on the proposed legislation prior to its adjournment.

Total Trust Fund disbursements during FY 2002 were $1.0 billion. These expenditures included $384.2 million for benefits (income benefits of $320.0 million and medical benefits of $64.2 million), $595.6 million for interest payments, and $54.3 million to administer the program ($31.3 million in OWCP direct costs and $23.0 million for legal adjudication and various financial management and investigative support provided by the Office of the Solicitor, Office of Administrative Law Judges, Benefits Review Board (BRB), Office of the Inspector General, and the Department of the Treasury).

Insurance/Self-Insurance

Section 423 of BLBA requires that each coal mine operator subject to the Act secure payment of any benefits liability by either qualifying as a self-insurer or insuring the risk with a stock or mutual company, an association, or a qualified fund or individual. Any coal mine operator failing to secure payment is subject to a civil penalty of up to $1,000 for each day of noncompliance. State workers' compensation laws also require coal mine operators to obtain insurance or qualify as a self-insured employer to cover employee benefit liabilities incurred due to occupational diseases that are covered by state law. If state workers' compensation is paid for pneumoconiosis, any Federal black lung benefit received for that disease would be offset or reduced by the amount of the state benefit on a dollar-for-dollar basis. As of September 30, 2002, there were 1,920 Federal black lung claims being offset due to concurrent state benefits.

Regulation of insurance carriers and the premium rates they charge has been and continues to be the responsibility of the states where they operate. Twenty-six states set occupational disease premium rates for underground coal mine exposure. The rates vary on a state-by-state basis due to such factors as the population of miners in the state, the number of claims filed, and the cost of benefits.

According to FY 2002 estimates by DOL's Mine Safety and Health Administration (MSHA), there were 976 active coal mine operators subject to the requirements of the Act. The Secretary of Labor authorized approximately 360 coal mine operators and subsidiaries and/or affiliates to self-insure their obligations under the Act, with 78 operators currently self-insured.

The revised program regulations require DCMWC to provide insurance policy numbers to coal mine operators named in each claim, whenever possible. The purpose of this requirement is to reduce the exposure of the Trust Fund to liability when operators or insurers are liable. DCMWC initiated a project in May 2001 to add coverage information to its data base of 30,000 active and former coal mine operators, and this project was completed in April 2002.

Litigation

Courts of Appeals

During FY 2002, the courts of appeals issued 68 decisions in cases arising under the Black Lung Benefits Act. Eighty-seven new appeals were filed. The following summarizes the most significant appellate decisions.

Upholding the Department's Revised Regulations. The Department promulgated revisions to the Black Lung program regulations that went into effect on January 19, 2001. The National Mining Association (and others) challenged the revisions by filing suit in district court. The district court upheld all of the regulations (*Nat'l. Mining Ass'n. v. Chao,* 160 F.Supp.2d 47 (D.D.C. 2001), and the National Mining Association appealed. With the exception of one part of one regulation, the D.C. Circuit Court of Appeals upheld the revised regulations as valid for claims filed on or after the effective date of the revisions. *Nat'l. Mining Ass'n. v. DOL,* 292 F.3d 8439 (D.C. 2002). The regulations held valid include: those placing limitations on the amount of medical evidence each party may submit; the definition of pneumoconiosis; the standards for determining total disability and death due to pneumoconiosis; the treating physician rule; subsequent claim rules; and presumptions governing payment of medical benefits and establishing operator liability. The Court held, however, that certain of the revised regulations, most notably those governing disability-causation and payment of medical benefits, were impermissibly retroactive when applied to claims filed prior to the effective date of the rules.

Modification: 30 U.S.C. § 932(a) incorporating 33 U.S.C. § 922. In *Old Ben Coal Co. v. Director, OWCP,* 292 F.3d 533 (7th Cir. 2002), the Seventh Circuit held that a modification request cannot be denied solely because it is based on evidence that could have been developed and presented at an earlier stage in the proceedings. Drawing upon case precedent broadly construing section 22's availability and use, the court reasoned that the statute articulates a preference for accuracy over finality in the decision reached. Thus, "whether requested by a miner or an employer, a modification request cannot be denied out of hand based solely on the number of times modification has been requested or on the basis that the evidence may have been available at an earlier stage in the proceeding." The court noted, however, that some circumstances—such as an employer's abuse of the adjudicatory process—may be sufficient to overcome "the preference for accuracy" and justify an ALJ's refusal to modify.

Weighing Treating Physicians' Opinions. In a series of three decisions, the Sixth Circuit rejected the coal companies' contention that the court had created an automatic presumption giving absolute deference to a miner's treating physician's opinion. *Jericol Mining, Inc. v. Napier,* 301 F.3d 703 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP,* 298 F.3d 511 (6th Cir. 2002); *Peabody Coal Co. v. Groves,* 277 F.3d 829 (6th Cir. 2002). Instead, the court held that a treating physician's opinion must be credited and weighed against the remaining evidence of record. While acknowledging that the Department's recently promulgated rule addressing the proper weight to be given a treating physician's opinion (codified at 20 C.F.R. § 718.104(d)(2001)) did not apply to the facts of these cases, the court nevertheless found the rule instructive in determining the level of deference such opinions should be accorded. The rule states, in relevant part, that a treating physician's opinion "may" be given "controlling weight" in "appropriate cases" depending on the opinion's "credibility. . . in light of its reasoning and documentation, other relevant evidence and the record as a whole."

Weighing CT scans. In *Consolidation Coal Co. v. Director, OWCP [Stein]*, 294 F.3d 885 (7th Cir. 2002), the Seventh Circuit rejected the employer's argument that because a computerized tomography (CT) scan is the most sophisticated test for pneumoconiosis, a negative CT scan necessarily prohibits a finding of pneumoconiosis. The court held instead that even if a CT scan is negative, an ALJ may conclude from other evidence that a miner has pneumoconiosis. In reaching its conclusion, the court deferred to the Department's determination during recent rulemaking proceedings that "no single test or procedure, standing alone, is entitled to controlling weight as a matter of law." The *Stein* decision is particularly noteworthy because it is the first to examine in depth the role of CT scans in black lung benefits adjudications.

Calculating Length of Coal Mine Employment, 20 C.F.R. § 725.101(a)(32) (2002); 20 C.F.R. § 725.493(b) (1999). Three courts addressed calculation of the length of a miner's coal mine employment for purposes of determining the proper responsible operator or qualifying for an entitlement-related presumption. *Kentland Elkhorn Coal Corp. v. Hall*, 287 F.3d 555 (6th Cir. 2002); *Armco, Inc. v. Martin*, 277 F.3d 468 (4th Cir. 2002); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473 (7th Cir. 2001). Whether applying the revised regulations (Summers) or the older version (Martin and Hall), the courts consistently agreed that a year of coal mine employment is established by showing two facts: 1) the duration of the miner's employment with the operator spanned one calendar year (or partial periods totaling a year); and 2) the miner's employment during that year included at least 125 working days (i.e. any day or part thereof the miner was paid for work as a miner). Applying this analysis, Hall held that an operator for whom the miner actually worked fewer than 124 days (even assuming his employment spanned one calendar year) could not be held liable for benefits; Martin held that a coal mine operator who employed the miner for only six months (even though he actually worked more than 125 days) could not be the responsible operator; and *Summers* affirmed an ALJ's determination that the miner had established 15 years of employment and was thus entitled to a favorable presumption.

Obstructive Lung Disease Related to Coal Mine Employment, 20 C.F.R. § 718.201. In *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473 (7th Cir. 2001), the Seventh Circuit upheld the ALJ's rejection of a physician's opinion that Summers' chronic obstructive lung disease did not arise out of coal mine employment. The Court noted that the Department had rejected that physician's underlying assumptions regarding the relationship between obstructive lung disease and coal mining in recent rulemaking proceedings. The court also upheld the ALJ's reliance on a different physician's opinion linking the disease with the miner's employment despite the fact that the physician refused to quantify, in percentage terms, the relative contributions of coal mine dust exposure, asthma and cigarette smoking to Summers' impairment. The court held "that doctors need not make such particularized findings. The ALJ needs only to be persuaded, on the basis of all available evidence, that pneumoconiosis is a contributing cause of the miner's disability."

Successor Operators, 30 U.S.C. § 932(i). In *Kentland Elkhorn Coal Corp. v. Hall*, 287 F.3d 555 (6th Cir. 2002), the Sixth Circuit imposed liability for benefits on the Trust Fund rather than the designated responsible operator because the Director had not developed sufficient evidence to show that the miner's more recent coal mine employers could not be held liable as responsible operators themselves. In reaching its conclusion, the court rejected the Director's argument that neither a predecessor coal company nor its successor could be held liable where neither employed the miner for at least one year. Because "[t]he Act contemplates that the successor's identity will merge with that of its predecessor," the court held that the successor is liable if the aggregate time the miner worked for both companies totaled one year.

Benefits Review Board

During FY 2002, DOL filed over 490 pleadings with the Benefits Review Board. The Board issued several decisions that significantly affect the Secretary's administration of the benefits program.

Statute of Limitations. The Act's statute of limitations bars any claim filed more than three years after a medical determination of total disability due to pneumoconiosis is communicated to the miner. The

Board has long held that the limitations provision applies only to a miner's initial claim, and not to any subsequent claim. In *Furgerson v. Jericol Mining, Inc.*, 22 Black Lung Rep. 1-216 (2002), the Board interpreted the Sixth Circuit's decision in *Tennessee Consolidated Coal Company v. Kirk*, 264 F.3d 602 (6th Cir. 2001), as holding that a medical determination of totally disabling pneumoconiosis developed in connection with a miner's prior, unsuccessful claim for benefits may be sufficient to commence the limitations period, and thus preclude any claim filed more than three years after that determination. The Director had argued that the language in *Kirk* upon which the Board relied is non-controlling *dicta*.

Withdrawal of Claims. In *Clevenger v. Mary Helen Coal Company*, 22 Black Lung Rep. 1-193 (2002), the Benefits Review Board held unanimously that a black lung claimant may not withdraw his application for benefits after an effective decision has been issued. Withdrawal, if approved, results in the application being treated as if it were never filed. The Board adopted the Director's view and held that terminating a claimant's right to withdraw after issuance of an effective decision protects all parties' rights. It protects the rights and defenses gained by a coal mine operator that successfully defended the claim as well as the right of a claimant to withdraw a premature claim without penalty early in the litigation process.

Settlement of Claims. The Act incorporates numerous provisions from the Longshore and Harbor Workers' Compensation Act. Because the Longshore Act provision that authorizes settlement of claims was not incorporated, the Board has long held that settlement of black lung claims is prohibited under the Act. In *Ramey v. Triple R Coal Company*, 22 BLR 1-122 (2002), *aff'd*, 326 F. 3d 474 (4th cir. 2003), the Board held that an incorporated provision of the Longshore Act that bars "assignment, release or commutation" of benefits "except as provided by this chapter" does not incorporate by reference the Longshore Act's settlement provision. The Board accepted the Director's view that the phrase "this chapter" referred to the chapter containing the Black Lung Act and not that containing the Longshore Act.

Discovery – Requests for Admissions. The OALJ rules governing pre-trial discovery apply to black lung claims unless inconsistent with a program regulation. Under a discovery method known as a request for admissions, one party may ask another to admit the truth of any factual matter involved in the litigation. A request not specifically denied is deemed admitted. In *Johnson v. Royal Coal Company*, 22 Black Lung Rep. 1-132 (2002), *rev'd*, 326 F. 3d 421 (4th cir. 2003), the claimant argued that the responsible coal mine operator conceded his entitlement to benefits when it failed to answer a request to admit the claimant met the Act's eligibility requirements. A majority of the Board held that the operator's inadvertent discovery admissions were not enforceable because the operator had properly contested the claimant's entitlement pursuant to the black lung program regulations, which govern when in conflict with the OALJ rules.

Enforcement

The Department received a decision in the first case ever brought to enforce the Black Lung Benefits Act's civil money penalty for operating a coal mine without federal black lung insurance. *Director, OWCP v. Alabama Land and Mineral Corp.*, 2001-BCP-1 (June 21, 2002) (unpublished). The administrative law judge found that the Alabama Land and Mineral Corporation operated coal mines without insurance for over three years. The judge declined to impose any penalty against the company, however, because he found "mitigating circumstances" under 20 C.F.R. § 725.495(d) (2000). He concluded that the company no longer operated coal mines, was being liquidated under Chapter 7 of the Bankruptcy Code, and numbered some of its former employees among its creditors. The judge did not find "mitigating circumstances" present with respect to the corporate officers, however, who may also be held liable for a civil money penalty under the Act. Finding that the president and secretary had served for two years during which the company operated coal mines without insurance, the ALJ imposed the maximum penalty of $1,000 per day against them jointly, totaling $730,000.

Black Lung Benefits Act*

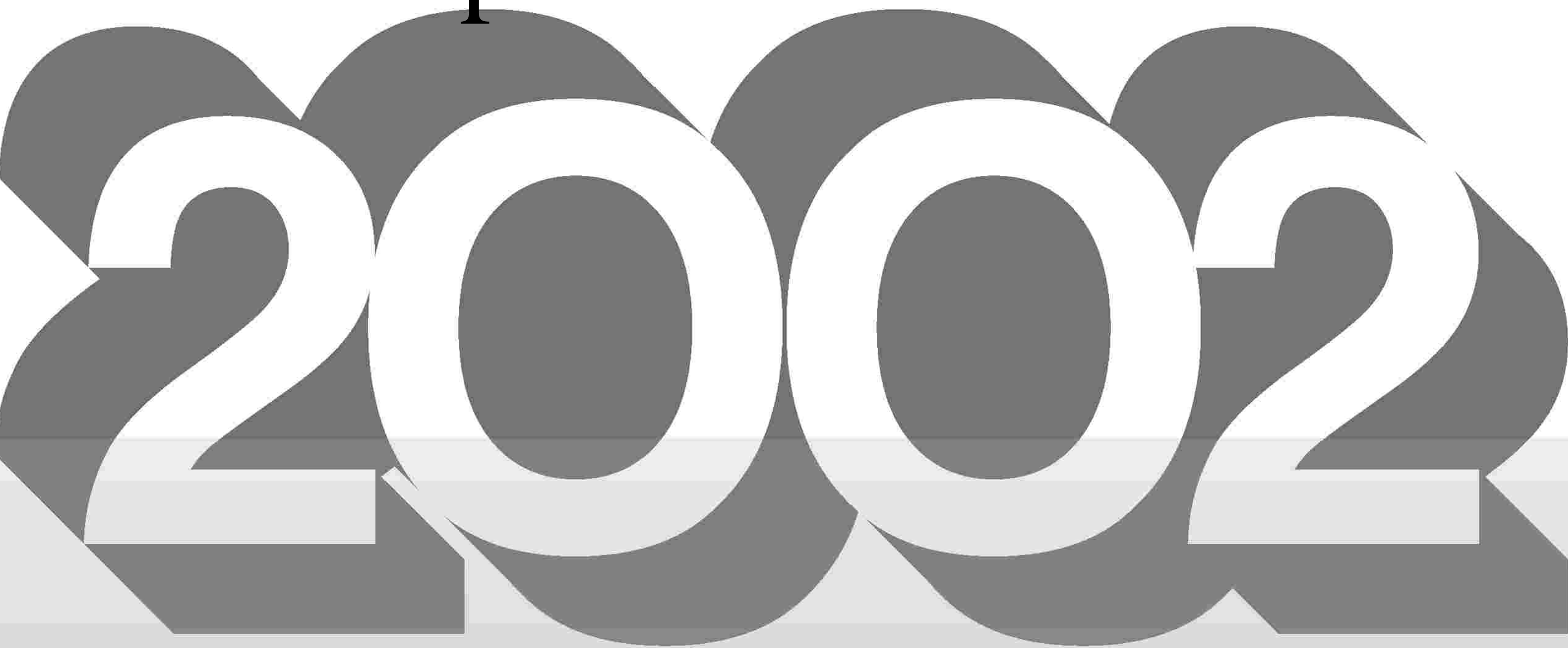
	FY 2001	FY 2002
Number of Employees (FTE Staffing Used)	208	212
Administrative Expenditures**	$ 30.3 M	$ 31.3 M
Total Compensation and Benefit Payments***	$ 396.9 M	$ 384.2 M
Trust Fund Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	48,342	44,964
Medical Benefits Only	7,976	6,300
Responsible Coal Mine Operator Beneficiaries in Pay Status at End of Fiscal Year		
Monthly	6,463	6,226
Medical Benefits Only	1,960	1,733

*Reflects expenditures for Part C claims only; Part B data is published in the Social Security Administration Bulletin.

**Direct administrative costs to OWCP only; excludes DOL support costs of $22.0 million in FY 2001 and $23.0 million in FY 2002, respectively.

***Excludes collections from responsible coal mine operators for benefits paid by Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements.

Longshore and Harbor Workers' Compensation Act



Introduction

Enacted in 1927, the Longshore and Harbor Workers' Compensation Act (LHWCA) compensates for lost wages, medical benefits, and rehabilitation services to longshore, harbor and other maritime workers who are injured during their employment or who contract an occupational disease related to employment. Survivor benefits also are provided if the work-related injury or disease causes the employee's death. These benefits are paid directly by an authorized self-insured employer, through an authorized insurance carrier, or in particular circumstances, by an industry financed Special Fund.

In addition, LHWCA covers a variety of other employees through the following extensions to the Act:

The Defense Base Act of August 16, 1941, provided the benefits of LHWCA to employees on overseas military, air, or naval bases or other areas under a public works contract performed by contractors with agencies of the United States Government.

The Nonappropriated Fund Instrumentalities Act of June 19, 1952, covers civilian employees in post exchanges, service clubs, etc. of the Armed Forces.

The Outer Continental Shelf Lands Act of August 7, 1953, extended Longshore benefits to employees of firms working on the outer continental shelf of the United States engaged in exploration for and development of natural resources, such as off-shore drilling enterprises.

The District of Columbia Workmen's Compensation Act (DCCA), passed by Congress on May 17, 1928, extended the coverage provided by the Longshore Act to private employment in the District of Columbia. Since the District of Columbia passed its own workers' compensation act effective July 26, 1982, OWCP handles claims only for injuries prior to that date.

The original law, entitled the Longshoremen's and Harbor Workers' Compensation Act, provided coverage to certain maritime employees injured while working over navigable waters. These workers had been held excluded from state workers' compensation coverage by the Supreme Court (*Southern Pacific Co. v. Jensen,* 244 U.S. 205, 1917).

Disability compensation and medical benefits paid by insurers and self-insurers under LHWCA and its extensions totaled approximately $544.4 million in Calendar Year (CY) 2001, a 3.0 percent increase compared to CY 2000.

Operations

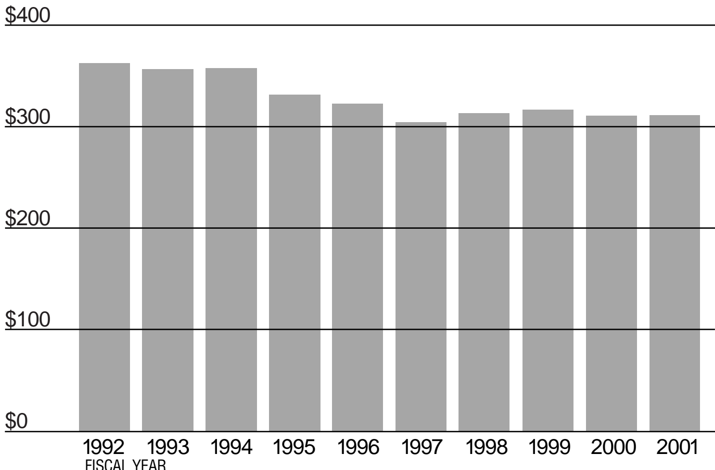
In Fiscal Year (FY) 2002, total expenditures for program operations and the overall administration of LHWCA were $24.8 million, of which $9.9 million were the direct costs of OWCP. The remaining $14.9 million were the costs of legal, audit, and investigative support provided by the Office of Administrative Law Judges (OALJ), Benefits Review Board (BRB), Office of the Solicitor, and the Office of the Inspector General.

At year's end, the Division of Longshore and Harbor Workers' Compensation (DLHWC) employed 105 people in the national office and 11 district offices.

During FY 2002, 22,293 lost-time injuries were reported under the Act by approximately 330 self-insured employers and 410 insurance carriers. At year's end, 14,020 maritime and other workers were in compensation payment status.

Longshore Benefit Expenditures

IN MILLIONS OF CONSTANT DOLLARS*



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

**Includes total industry compensation and benefit payments under LHWCA and its extensions as reported on a calendar year basis.

Conferences and Appeals

A major function of the Longshore claims examiner is the resolution of disputed issues that arise in claims. While not a judge or hearing officer, a claims examiner does function as a mediator in informal proceedings designed to help the parties involved reach amicable agreements and thereby avoid the time and expense involved in formal litigation. In FY 2002, the district offices conducted 2,957 informal conferences that were designed to establish the facts in each case, define the disputed issues and the positions of the parties in respect of those issues, and encourage the voluntary resolution of those issues by means of agreement and/or compromise. At the conclusion of each informal conference, a recommendation for resolving the issues and disposing of the claim is made by the claims examiner. If either the claimant or the employer (or insurance carrier) does not agree with the recommendations made and requests a formal hearing, the case is referred by the Longshore district director to the OALJ. Decisions issued by administrative law judges are appealable to the BRB whose final decisions (except for those involving the Defense Base Act (DBA)) are then subject to review by the appropriate United States Court of Appeals. Initial review of BRB decisions involving the DBA should be filed in the appropriate United States District Court.

Constituent Services

DLHWC provides technical assistance to the maritime industry and the workers whom the law is designed to serve. Since the passage of the original Act, administrative personnel have helped claimants file and process injury reports and claims. DLHWC carries on this tradition with program staff helping covered workers and their dependents process claims and required reports and get information on medical and vocational rehabilitation. This aid is not a monetary benefit to the claimant, but it is a valuable asset to an injured worker attempting to seek compensation for an injury.

Longshore district offices also conduct seminars for union members and officials, and for organizations representing industry management. The offices regularly schedule several seminars each year to which employer and employee representatives are invited.

Numbered notices are used by the national office to disseminate information to 740 insurance carriers and self-insured employers.

Accomplishments

ADP Systems/Automation

In FY 2002, the Longshore program implemented several enhancements to its automated Longshore Case Management System (LCMS) including:

Finalizing the LCMS Centralization Project. The 12 separate regional LCMS databases will be centralized into one database in November and December, 2002. This change will allow faster access, easier ad-hoc reporting, advanced back-up security, and better performance reporting along with enhanced security and recovery ability.

Enhancing the Longshore program's internet site. DLHWC has added significant new information to its website, including on-line access to its revised Procedures Manual, general advice about the coverage requirement with links to each district office, lists of authorized insurers and self-insured employers, and briefs addressing the Director's position in case law.

Improving the automation of Longshore performance measures. The Longshore program's outcome performance measure for the Government Performance and Results Act (GPRA) was automated, utilizing the LCMS as the basis for entering and reporting data. New codes were developed for claims examiners to measure the time it takes for dispute resolution in the program, allowing detailed case review and performance monitoring.

Claims Management Initiatives

During FY 2002, DLHWC focused on improving its claims management and dispute resolution services.

The primary focus of these efforts was on developing a GPRA outcome measure and setting a baseline for performance improvement. This has been accomplished, although data clean-up has briefly set back the baseline development.

The district offices, utilizing Mediation Training provided to all claims examiners, promoted the use of mediation services for resolving disputes informally, and applied specific mediation skills and techniques during informal dispute resolution interventions.

Compliance Assistance Plan

Since DLHWC has regulatory responsibility, a plan to assist employers in understanding and complying with the obligation to acquire Longshore coverage when appropriate was initiated during FY 2002. The plan provides for ongoing regional needs assessments, and targeted educational seminars and technical assistance provided from the DLHWC district offices.

Customer Survey Redesign

Until recently, the DLHWC conducted written surveys of its program participants to measure customer satisfaction with Longshore program services. The response to the mailed surveys was not helpful, as the return rate was very low and the individual responses were frequently contradictory and unclear. To provide the program with more reliable, insightful, and useful feedback, DLHWC has contracted with the University of Michigan to participate in the American Customer Satisfaction Index. This standardized survey instrument is used by many public and private organizations to measure customer satisfaction, and allows not only individual programmatic assessment, but also inter-programmatic comparisons. The results of the first survey will serve as a baseline for future improvements and measures.

Insurance Industry Oversight

During FY 2002, the insurance industry experienced serious economic impacts resulting from a series of negative influences. Included among these was insufficient premium revenues dating from the early to mid-1990s, recession impacts on investments, higher than anticipated claims arising from old policies covering asbestosis and other industrial illnesses, and the costs of the September 11, 2001 terrorism attacks. The result of these financial pressures has been a number of insolvencies as well as declining financial stability ratings in the industry. In response to these impacts, the Longshore program initiated steps to secure the financial integrity and security of the system by:

Initiating the rule promulgation process to address insurance company security deposit requirements.

Improving DLHWC processes for handling insolvencies to ensure seamless benefit delivery to claimants.

Strengthening the review process of applications for authorization to participate in the Longshore program.

Increasing the security deposit requirements for authorized companies that exhibit indications of weakened financial security.

Rehabilitation Reforms

Completion of a major rehabilitation system study in FY 2002 was the prelude to planning for specific programmatic enhancements. The study surveyed participating claimants, service providers, and DLHWC staff to obtain insight and suggestions for improving this important service. The proposed changes include:

Improved client recruitment efforts.

Earlier and clearer communications to promote the program.

Automated referrals.

A sharper focus on job placement outcomes.

A GPRA outcome measure.

These improvements to the Longshore rehabilitation program will be implemented during fiscal 2003.

Management of the Special Fund

The Special Fund under the Longshore Act was established in the Treasury of the United States pursuant to section 44 of the Act and is administered by the national office of DLHWC.

Proceeds of the fund are used for payments under section 10(h) of the Act for annual adjustments in compensation for permanent total disability or death that occurred prior to the effective date of the 1972 amendments, under section 8(f) for second injury claims, under section 18(b) for cases involving employer insolvency, under sections 39(c) and 8(g) for providing rehabilitation assistance to persons covered under the Act, and under section 7(e) to pay the cost of medical examinations.

The Special Fund is financed through fines and penalties levied under the Act; payment by employers of $5,000 for each death case when it is determined that there are no survivors eligible for the benefits; interest payments on Fund investments; and payment of annual assessments by authorized insurance carriers and self-insurers. Fines, penalties, and death benefit levies constitute a small portion of the total amount paid into the Special Fund each year. The largest single source of money for the fund is the annual assessment.

Under section 44(c)(2) of the Act, the expenses of the fund are estimated at the beginning of each CY and each carrier and self-insurer makes prorated payments into the fund. Payments are based on a comparison of the total compensation payments each made on risks covered by the Act and the total of such payments made by all carriers and self-insurers under the Act in the prior year, and a comparison of payments under section 8(f) attributable to the carrier/self-insurer and the total of such payments during the preceding CY. There is a separate fund under the District of Columbia Workmen's Compensation Act that also is administered by OWCP. Payments to and from this fund apply only to the DCCA.

The LHWCA Fund paid $131.7 million in benefits in FY 2002, of which $119.7 million went for second injury (section 8(f)) claims. FY 2002 expenditures of the DCCA Special Fund totaled $11.4 million, of which $10.2 million went for second injury cases.

Litigation

The following summarizes the significant decisions issued in the Courts of Appeals during FY 2002 involving provisions of the LHWCA and its extensions.

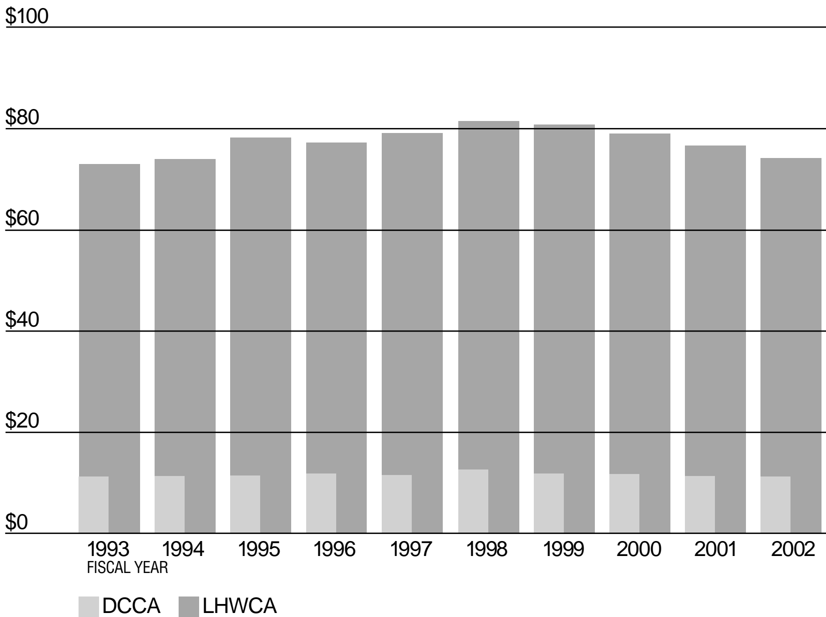
Attorneys' Fees: Fee Shifting. In *Weaver v. Ingalls Shipbuilding, Inc.*, 282 F.3d 357 (5th Cir. 2002), the Fifth Circuit Court of Appeals held that section 28's fee-shifting provision of the LHWCA entitles a successful claimant's counsel to a reasonable fee against the liable employer, for services performed after the employer's timely declination to pay (within thirty days of the employer's receipt of formal notice of the claim). While the panel rejected the employer's argument that it was only responsible for the claimant's attorney's fees incurred after the thirty day period lapsed, the panel, believing itself bound by prior precedent, also rejected the Director's position that the employer was liable for all of a successful litigant's reasonable attorney's fees regardless of when the claimant's attorney incurred the fees.

Average Weekly Wage: Per Diem. In *Custom Ship Interiors v. Roberts,* 300 F.3d 510 (4th Cir. 2002), the Fourth Circuit Court of Appeals agreed with the Director's position that per diem amounts paid to claimant for food and lodging was nothing more than a disguised wage, and therefore should be included in the calculation of claimant's average weekly wage for purposes of determining claimant's disability benefits under the LHWCA.

Coverage: Situs. The United States Court of Appeals for the Eleventh Circuit in *Bianco v. Georgia Pacific Corp.*, 304 F.3d 1053 (11th Cir. 2002), affirmed the finding that the claimant was not injured on a covered situs and rejected the Director's argument in favor of coverage. Claimant was injured in an area (the knife-operating department of Georgia Pacific's sheetrock manufacturing plant) that the ALJ found had no maritime function. Thus, the court held it was not a covered situs within the meaning of section 3(a) of the LHWCA. The Eleventh Circuit disagreed with the Director's position that because the plant is separated from a river by only slivers of city and county property, and unloads gypsum directly from ships, the entire plant should be deemed a covered "adjoining area" within the meaning of the LHWCA, even if portions of the plant are not used for maritime activity. While the Eleventh Circuit panel acknowledged the Director's concern about workers "walking in and out of coverage," it held that adoption of the Director's view of situs would read out of the LHWCA the requirement that the adjoining area "be customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel."

LHWCA and DCCA Special Funds' Expenditures, FY 1993-FY 2002

IN MILLIONS OF CONSTANT DOLLARS*



*Current dollars deflated by CPI-W (urban wage earners and clerical workers, U.S. city average, all items), 1982-1984=100.

Credit Doctrine: Settlements. The Ninth Circuit Court of Appeals, in *Alexander v. Triple A Machine Shop*, 297 F.3d 805 (9th Cir. 2002), reversed the Board and agreed with the Director that one of the several potentially liable employers under the LHWCA is not entitled to a credit for amounts received by the claimant in settlements with other potentially liable employers. The court agreed that the Director's argument was supported by the plain language of the statute, as well as by policy considerations similar to those relied on by the unanimous Supreme Court in rejecting such credit in the context of joint maritime tortfeasors in *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994). The non-settling defendant has no cause to complain, since it is required to pay exactly what it would have if no settlements had been reached with the others. Furthermore, the allowance of credit would virtually foreclose settlements.

Last Employer Doctrine: Merger of Hearing Loss Claims. The Ninth Circuit in *Stevedoring Services of America v. Benjamin*, 297 F.3d 797 (9th Cir. 2002), held that the "last employer doctrine" did not provide a basis for treating claims for hearing loss that were based on two valid audiograms performed at different times and demonstrating a measurable deterioration in hearing ability, as one, undifferentiated injury. Under the "last employer doctrine," the employer during the last employment in which the claimant was exposed to injurious stimuli, prior to the date claimant became aware he was suffering from an occupational disease arising out of his employment, is liable for the full amount. The Court agreed with the Director that an

employer who is liable under the application of the "last employer doctrine" should not be able to escape liability just because a second employer also can be assigned liability under the same doctrine, for a later, separate injury.

Post-Injury Wage Earning Capacity: Unscheduled Awards. The Ninth Circuit Court of Appeals agreed with the Director's position in *Sestich v. Long Beach Container Terminal*, 289 F.3d 1157 (9th Cir. 2002), and rejected the petitioner's contention that his compensation should be calculated based on the difference between his current actual earnings and the hypothetical amount he could be earning absent his injury. The Ninth Circuit agreed that claimant's post-injury "wage-earning capacity" under the LHWCA is equal to his **actual** post-injury earnings, not a hypothetical "wage-earning capacity" absent the injury, (i.e., what he would have received in a tort recovery), and that he is entitled to two-thirds of the difference between his "wage-earning capacity" and his pre-injury "average weekly wage." Because his post-injury "wage earning capacity" exceeded his pre-injury "average weekly wages," the Ninth Circuit held that he was not entitled to any compensation.

Reimbursement Pursuant to Section 14(j). The United States Court of Appeals for the Fifth Circuit agreed with the Director's position in *Cooper/T. Smith Stevedoring Co. v. Liuzza*, 293 F.3d 741 (5th Cir. 2002). The issue before the Court was one of first impression: whether 33 U.S.C. § 914(j) entitles an employer to be reimbursed for an overpayment made on a deceased worker's disability claim by collecting out of unpaid installments of compensation due to his widow on her death benefits claim. The Director argued that neither the explicit terms of section 14(j) nor the spirit of the Act or the equities of the circumstances warranted reimbursement to the employer. In light of Fifth Circuit precedent addressing similar issues and the deference owed to the Director's interpretations of the Act's provisions, the court held that the employer was liable for the full amount of the widow's death benefits.

Special Fund Liability: Multiple Injuries. In *Matson Terminals, Inc. v. Berg*, 279 F.3d 694 (9th Cir. 2001), the Ninth Circuit Court of Appeals agreed with the Director's position that an employee who injured both knees as a result of work-related cumulative injuries was considered to have suffered two discrete injuries under the LHWCA. The court, therefore, concluded that an employer who was granted section 8(f) relief from its liability for each of those injuries was liable for two separate 104-week periods of disability payments before the Special Fund assumed liability for the remainder of the payment on the awards. The court rejected the employer's argument that if multiple injuries arise from a single traumatic accident or event, they should be considered a single injury, observing that the statute provides for separate compensation awards in the event of injury to both knees without regard to the events giving rise to their occurrence.

Statute of Limitations: Protective Filing. The United States Court of Appeals for the Fifth Circuit in *Pool Co. v. Cooper*, 274 F.3d 173 (5th Cir. 2002), agreed with arguments presented on behalf of the Director and rejected the employer's argument that the claim was time-barred. Noting that the claim related to a specific injury for which the employee was undergoing continuing treatment, the court held that the claim properly sought compensation for anticipated future wage loss as a result of the injury. The court also held that the Board erred in holding that statements made at the hearing by claimant's attorney did not amount to a withdrawal of the claim for a specified period because the ALJ did not remand the case to the district director to determine whether the regulatory requirements for withdrawal of a claim had been met. Furthermore, the court held it was an error to award attorney's fees under section 28(b) of the LHWCA because no informal conference was held before a district director, but upheld the award on the alternate theory advanced by the Director, that attorney's fees were appropriate under section 28(a) since the employer refused to pay compensation following the claim filed in February 1995, and that voluntary payments made before the claim was filed were irrelevant to the issue.

Third-Party Settlements: Calculation of Offset Under Section 33(f). In *Gilliland v. E.J. Bartells Co.*, 270 F.3d 1259 (9th Cir. 2002), the Ninth Circuit Court of Appeals held that where a claimant entered into a third-party settlement that was structured to include an annuity, the employer's offset should be equal to the actual value of the monthly payments received from the annuity and arise periodically as the payments are actually made. In other words, the employer's offset is not a one-time credit for the purchase price of an annuity discounted to present value, that a third party defendant purchased to fund their obligations to make monthly payments. The Director's argument that a claimant's entitlement to LHWCA compensation should not be offset unless and until such payments are, in fact, received from an alternative source was based on the statutory language as well as policy considerations. The court ruled that the Director was entitled to full deference for his interpretation because it had been presented in the administrative proceedings below and was thus not a *post hoc* rationale for agency action, but was instead, itself agency action.

Longshore and Harbor Workers' Compensation Act

	FY 2001	FY 2002
Number of Employees (FTE Staffing Used)	106	105
Administrative Expenditures*	$ 9.8 M	$ 9.9 M
Lost-Time Injuries Reported	23,480	22,293
Total Compensation Paid**	$675.2 M	$692.2 M
Wage-Loss and Survivor Benefits	$511.1 M	$523.9 M
Medical Benefits	$164.0 M	$168.3 M
Sources of Compensation Paid		
Insurance Companies**	$249.7 M	$236.7 M
Self-Insured Employers**	$279.0 M	$307.7 M
LHWCA Special Fund	$133.4 M	$131.7 M
DCCA Special Fund	$ 11.3 M	$ 11.4 M
DOL Appropriation	$ 3.0 M	$ 2.9 M

*Direct administrative costs to OWCP only; excludes DOL support costs of $15.2 million in FY 2001 and $14.9 million in FY 2002.

**Figures are for CY 2000 and CY 2001, respectively. Note: Total compensation paid does not equal the sum of the sources of compensation due to the different time periods (CY v. FY) by which the various data are reported. For Special Fund assessment billing purposes as required by section 44 of LHWCA, compensation and medical benefit payments made by insurance carriers and self-insured employers under the Act are reported to DOL for the previous calendar year.

Energy Employees Occupational Illness Compensation Program Act

2002

Introduction

From the early 1940's to the present, over 350 facilities have been linked to the production of atomic weapons. The process of building atomic weapons touched almost every facet of industrial production from mining to weapon assembly and involves some of the most dangerous materials known. Over the past year, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has committed to ensuring that workers from these facilities who became ill as a result of their employment receive timely compensation and medical care.

During Fiscal Year (FY) 2002, the DEEOIC provided over 4,800 employees or their families with benefit payments totaling approximately $351 million. In addition, the program paid bills covering $3.8 million in medical expenses associated with treatment of accepted medical conditions.

Funding

For FY 2002, the Department of Labor (DOL) spent $35.1 million to administer EEOICPA, which supported 191 full-time equivalent staff. Additional funding ($37.5 million) was transferred to support the activities of the Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH).

The DOL costs covered various activities including direct expenses by DEEOIC for administration, and contribution to the operation of ten Resource Centers. The NIOSH portion included funding for the dose reconstruction process, development of regulations, and support of the Advisory Board on Radiation and Worker Health.

Benefits and Services

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. § 7384 *et seq.,* is administered by four Federal agencies, as mandated by Executive Order 13179. As the primary administrative agency, DOL administers the claims adjudication and compensation program as provided under Part B of the EEOICPA. The Department of Health and Human Services (HHS) is tasked with calculation of radiation dose estimates that are then used to determine the probability that a cancer was caused by radiation exposure. The Department of Energy (DOE) is responsible for assisting DOL and HHS by providing relevant documentation on worker employment history and exposure data. In addition, DOE is responsible under Part D of EEOICPA for the administration of a program designed to assist DOE contractor employees in state workers' compensation proceedings for conditions caused by exposure to toxic substances during their employment. The Department of Justice (DOJ) provides information needed by DOL to process claims for the Radiation Exposure Compensation Act (RECA) Section 5 award recipients seeking supplemental benefits under EEOICPA.

The goal of DEEOIC is to deliver benefits to eligible workers of DOE, its contractors and subcontractors, or to certain survivors of such individuals. This includes delivering benefits to certain beneficiaries of Section 5 of RECA. The EEOICPA provides for lump-sum compensation payments of up to $150,000 and medical benefits to covered workers who became seriously ill as a result of exposure to radiation, beryllium or silica in the production or testing of nuclear weapons and, where applicable, survivors of such workers. For individuals found eligible for benefits for illnesses covered under Section 5 of the RECA and, where applicable, their survivors, the EEOICPA provides a supplemental payment of $50,000 and medical benefits.

Under EEOICPA, there are two distinct groups of claimants: living employees and survivors of deceased employees. Case files are created based on the name of a living or deceased employee. For each employee case file, there must be at least one registered claimant. This can be either the employee filing a claim on his/her own behalf or a survivor filing on behalf of a deceased employee. In some instances, there can be multiple survivor claimants for a single deceased employee. In FY 2002, a total of 18,267 case files were created for living or deceased employees. From that total of employee case files, the DEEOIC has registered 23,674 claims from either an employee filing on his/her own behalf or survivors of a deceased employee.

Operations

The DEEOIC has four District Offices that process incoming claims. These offices are located in Cleveland, Ohio; Denver, Colorado; Jacksonville, Florida; and Seattle, Washington. The principle function of the district office is to review claims to determine eligibility for benefits. Once the district office receives a claim, the claims examiner (CE) reviews the evidence submitted. In certain situations, it is necessary to send a case file to NIOSH to undergo a dose reconstruction. A dose reconstruction is a process by which NIOSH determines the level of exposure to radiation an individual worker received during the course of his/her employment at a covered facility. The outcome of the dose reconstruction is then used to determine the probability that a diagnosed cancer was as likely as not caused by exposure to radiation in the performance of duty. In FY 2002, the district offices forwarded 8,236 cases to NIOSH for dose reconstruction.

Once appropriate development of a case file has been completed, a recommended decision is issued. The recommended decision is a preliminary finding of the district office, and includes a discussion of the evidence, factual findings and conclusions of law. Each claimant also is given the ability to challenge the findings contained in the recommended decision before the Final Adjudication Branch (FAB). In FY 2002, district offices issued 12,825 claim-level recommended decisions.

The FAB maintains a central office in Washington D.C., as well as offices collocated with each district office. The function of the FAB is to review each recommended decision to ensure it adheres to the legal requirements enumerated under the EEOICPA and that it was issued with proper regard to established program policy and procedure. Challenges brought forth by claimants also are considered by way of review of the written record or oral hearings. Oral hearings are scheduled by FAB and are conducted at public locations near the claimant. After due consideration of any argument or evidence presented by the claimant, the FAB issues a final decision. The final decision is a written document that discusses the finding of FAB and addresses any specific challenge brought forth by a claimant. Subsequent to the issuance of a final decision, the claimant may request that the decision be reopened or reconsidered. After exhausting these administrative review opportunities, the claimant may then seek judicial review through district court.

For FY 2002, FAB issued 8,358 claim-level final decisions. Of that total, 5,199 were approvals and 3,159 were denials. A case may be denied for various reasons. The most common reason for denial is that a claimant makes a claim for a condition that is not covered under Part B of EEOICPA. Examples of commonly claimed non-covered conditions include the following: lung conditions other than cancer or chronic beryllium disease; heart failure; asbestosis; chronic obstructive pulmonary disease; emphysema; renal conditions; benign tumors; and hearing loss. Other reasons for denial of coverage under the EEOICPA include: the employee did not work at a covered DOE facility, atomic weapons employer or beryllium vendor during a covered time period; the claimed condition (other than cancer) is unrelated to employment; the alleged survivor is not an eligible beneficiary; it has been determined (through dose reconstruction) that the probability that the cancer is related to employment is less than 50 percent and thus there is no eligibility; or the medical evidence is insufficient to establish entitlement.

Services to Claimants

In FY 2002, DEEOIC continued its outreach efforts to advise individuals and families of the benefits provided under the EEOICPA. Business processes were developed to increase customer satisfaction and streamline administration of the program.

DEEOIC and DOE jointly sponsor ten Resource Centers located near large nuclear weapon production and testing facilities. These centers assist employees and survivors in applying for benefits under the EEOICPA. Not only do these centers provide valuable information about the claims process to claimants, they also assist the claimant in completing the necessary forms and transmitting documents to the DEEOIC district offices. In FY 2002, claims filed through Resource Centers generated 13,273 claims.

To reach potential claimants who do not reside close to a Resource Center, the DEEOIC continued to schedule traveling resource center meetings. Meeting locations are determined based on factors such as proximity to large DOE production sites and public inquiries to the DEEOIC. In FY 2002, traveling resource centers conducted one to three day meetings at twelve locations around the country. Prior to each meeting, various media outlets such as radio and newspaper are utilized to advertise the scheduling of a traveling resource center. The DEEOIC also uses trade group organizations and group mailings to advise local residents of the traveling resource center schedules. For FY 2002, claims filed through the traveling resource centers generated 1,288 claims.

In FY 2002, the DEEOIC website was updated and expanded. This website provides Energy employees, claimants, potential claimants, and other interested parties with up-to-date information on the DEEOIC, including its mission, the regulations governing the program, policy and procedures, claim reporting forms, intake center locations and hours, town hall meeting locations and times, a list of covered work sites prepared by DOE, press releases and news links about the program, and toll free hot-line numbers where additional information and assistance can be obtained. Weekly content updates to the site were established with the posting of medical and compensation benefit statistics along with data on the status of the program's claims processing activities.

In September 2002, the Telephone Management System (TMS) was installed in DEEOIC district offices. TMS enables users to log and track all incoming and outgoing calls received on EEOICPA cases. TMS is fully integrated into the Energy Case Management System (ECMS). When users log into ECMS, their pending calls due for that day automatically pop up for review and action. The system also allows phone call update, reassignment for workload distribution, and on-line management and reporting of pending and completed calls. The reporting functionality, in particular, allows for proactive management of calls to ensure calls are returned within the required two-day standard.

Interagency Cooperation

Given that the administration of the EEOICPA is shared jointly among several agencies including the Departments of Labor, Energy, Health and Human Services and Justice, regular meetings and discussions are held to coordinate claim adjudication and processing.

In FY 2002, the following interagency meetings were conducted regularly:

Monthly or bimonthly meetings and discussions between the Deputy Secretaries of Labor, HHS and DOE. The purpose of these meetings is to coordinate agency-level activities related to the administration of the EEOICPA, such as sharing of electronic data; employment verification processes; work-flow between DOL and NIOSH, NIOSH and DOE, DOL and DOE; joint congressional responses; potential statutory amendments; and publishing of new regulations.

Weekly Interagency Teleconferences. Participants include the directors of the DEEOIC (DOL), Office of Worker Advocacy (DOE), National Institute for Occupational Safety and Health (NIOSH - HHS) and RECA (DOJ). The purpose of this call is to discuss inter-office claims issues, such as streamlining claims processes, data sharing, and outreach activities.

Monthly Records Teleconferences. These teleconferences are held monthly and participants include representatives of DOL, DOE and NIOSH. The purpose of these calls is to coordinate the collection and dissemination of documents and other evidence necessary to the claims adjudication process. These calls have led to more streamlined processes and increased adjudication timeliness.

In FY 2002, DOL and NIOSH continued their close interagency relationship. Working cooperatively, the agencies developed procedures for referral of case files to NIOSH for dose reconstruction, determining probability of causation, establishing the necessary evidence for a case to undergo dose reconstruction and handling case transfers. Representatives of DOL and NIOSH met on several occasions to resolve complex policy and operational issues. In addition, NIOSH personnel provided specialized training on using the Interactive Radioepidemiological Program (IREP) used to calculate the probability that a cancer was at least as likely as not related to radiation exposure to DEEOIC staff in each district and FAB office, and the National Office.

On March 11, 2002, DEEOIC implemented changes to the employment verification process based on cooperation and discussion between DOL and DOE. As part of the claims adjudication process, DOE must affirm the factual accuracy of claimed employment. However, in some instances, DOE does not have access to personnel records that will enable it to provide necessary verification. Either the records are unavailable or under the possession of a non-government entity. Working jointly, DOL and DOE categorized facilities according to whether or not DOE had access to identified corporate entities and contacts to which DOL could refer for additional employment information. DOE also identified facilities for which no records were available. DOL was able to use this information to either request information directly from the claimant or from a corporate entity identified by DOE. The implementation of this process improved efficiency and timeliness in establishing the accuracy of claimed employment.

DOL and DOE jointly established internet-based access to a database maintained by the Oak Ridge Institute for Science and Education (ORISE). This database contains a large subset of employment history data, which authorized claims processors may now search on-line to verify employment reported on EEOICPA claims. Authorized claims staff now is able to refer directly to the database as a first step in the employment verification process. This has assisted DOL in expediting the adjudication of claims.

In FY 2002, DOL coordinated closely with DOJ in an effort to identify those cases in which claimants jointly filed for benefits under RECA and under EEOICPA. These efforts led to the ability to process claims from RECA recipients in a more timely and efficient manner.

In a further effort to collect relevant employment documentation, in FY 2002, DOL contracted with the Social Security Administration (SSA) to obtain employer and wage information. The information obtained from SSA could then be used by DEEOIC district offices to verify employment. For FY 2002, SSA provided employer and wage information for over 400 case files.

Accomplishments

Significant new tracking features were added to the ECMS. These new features have enhanced the ability to maintain and organize claims within DEEOIC district offices, and have increased reporting capabilities. The district offices now are able to maintain comprehensive status histories on each claim received, track the progress of each claim in the adjudication process, log and manage notes and call-ups designed to document development activity and ensure timely adjudication of claims. Due to the strides in reporting capabilities, DOL now is able to provide more detailed statistics, including the number of claims received, claims referred to DOE and NIOSH, numbers of recommended decisions and final decisions rendered, the types of conditions being claimed, and the number of cases where payments were issued and medical benefits authorized.

The ECMS Compensation Payment System (CPS) was implemented in all DEEOIC offices in March 2002. CPS is a transaction processing module that enables authorized users to create, certify, verify, and authorize compensation payment transactions on accepted claims. A four-signature on-line review by users in authorized roles provides a secure process for creating lump-sum payment transactions. A Compensation Payment Interface was installed at the same time, enabling payment transactions to be transmitted daily to DEEOIC's payment processing site. ECMS also was enhanced to capture and maintain audit histories of all ECMS payment processing activity. Upon implementation of the system, each district office received technical training in the application of the payment process. The implementation of the CPS has improved the processing time greatly for lump-sum payments to eligible claimants.

In October 2001, in cooperation with its medical bill contractor, Computer Science Corporation (CSC), DEEOIC developed a medical bill pay system called the Energy Payment System (EPS). EPS is an application operated by the contractor to pay medical expenses associated with treatment of accepted medical conditions. In FY 2002, an electronic interface was developed between the EPS and the ECMS to identify conditions that the district office has accepted as work related. This interface automatically sweeps the ECMS database every 24 hours to find, format and transmit new eligibility data to the EPS site and allow for payment of authorized medical expenses.

Prompt and accurate medical payments are issued to eligible medical providers, and reimbursements for out of pocket expenses also are issued to claimants through the automated medical reimbursement payment system. Various reference materials, such as a Medical Provider Manual and Medical Benefit Q&A Booklet, were prepared to provide guidance on the new bill pay processing system. For FY 2002, 4,104 medical bills were paid with an average receipt to payment time of seven days.

In FY 2002, a major focus in managing cases was placed on the timeliness of the decision process. Ad hoc reports were developed to assist in defining and refining timeliness and workload goals. Other reports were then developed to identify progress toward meeting these goals at the district, FAB, and national levels. Timeliness workload queries were implemented, allowing claims processing staff to set priorities for claims actions in order to meet division-wide goals. The program gained enormously in its ability to classify and prioritize its work, measure performance against goals, audit financial transactions, and measure quality of work.

FY 2002 saw the continuing development of various policies and procedures intended to provide guidance to the district office staff. In July 2002, the final DEEOIC procedure manual was published. This document provides detailed guidance for program claims processing. In addition, the DEEOIC issued over 20 policy bulletins clarifying procedures for claims-related activities. Any policy or procedure directive issued by DEEOIC is distributed to the four district offices and is available upon request by any member of the public. The procedure manual and all bulletins issued for FY 2002 are available through the DEEOIC web page.

From May through August of 2002, DEEOIC conducted accountability reviews of each of the four district offices. A team of approximately ten members visited each district office and reviewed a large sample of case files. Each team assessed the selected case files to determine how well the district office was meeting various program standards and goals, such as timeliness of processing, appropriateness of case development, data integrity, quality of written decisions and responsiveness to customer inquiries.

Energy Employees Occupational Illness Compensation Program Act

	FY 2001	FY 2002
Number of Employees (FTE staffing used)	20	191
Administrative Expenditures*	$ 16.0 M	$ 35.1 M
Claims Created	10,123	23,674
Recommended Decisions (Claims)	457	12,825
Final Decisions (Claims)	180	8,358
Number of Claims Approved	35	5,199
Total Lump Sum Compensation Payments	$ 3.5 M	$351.0 M
Number of Medical Bill Payments	3	4,104
Total Medical Payments	$ 2,718	$ 3.8 M

*Includes Department of Labor expenditures only; excludes funds transferred to the Department of Health and Human Services for that agency's responsibilities under EEOICPA ($10.0 million in FY 2001 and $37.5 million in FY 2002, respectively).

Medical and Vocational Rehabilitation Programs

2002

Injured Employees Back to Work

Under the direction of OWCP staff nurses and rehabilitation specialists in Division of Federal Employees' Compensation (DFEC) and DLHWC district offices, private sector registered nurses and vocational rehabilitation counselors provide assistance to injured workers in their recovery and return-to-work process. During Fiscal Year (FY) 2002, OWCP's medical and vocational rehabilitation program returned 9,052 injured employees to work, an increase of 7.3 percent over FY 2001. The continued increase in the number of injured employees going back to work is largely the result of OWCP's commitment to its nurse intervention program and its ongoing emphasis on the reduction of lost production days, a key Government Performance and Results Act performance goal.

During FY 2002, approximately 23,000 injured Federal and longshore employees received some form of medical or vocational rehabilitation service from OWCP. Nurses returned 8,088 employees to work under the Federal Employees' Compensation Act (FECA) while vocational rehabilitation counselors placed 708 Federal and 256 longshore workers. Costs for vocational rehabilitation service and maintenance allowances were $7.9 million for FECA and $4.8 million for Longshore, while FECA nurse services were $21.8 million.

Fee Schedules and Correct Coding of Medical Bills

The FECA regulations (63FR 65284-345) permit the application of fee schedules to three different types of medical services paid by the Federal Employees' Compensation (FEC) program on behalf of injured Federal workers.

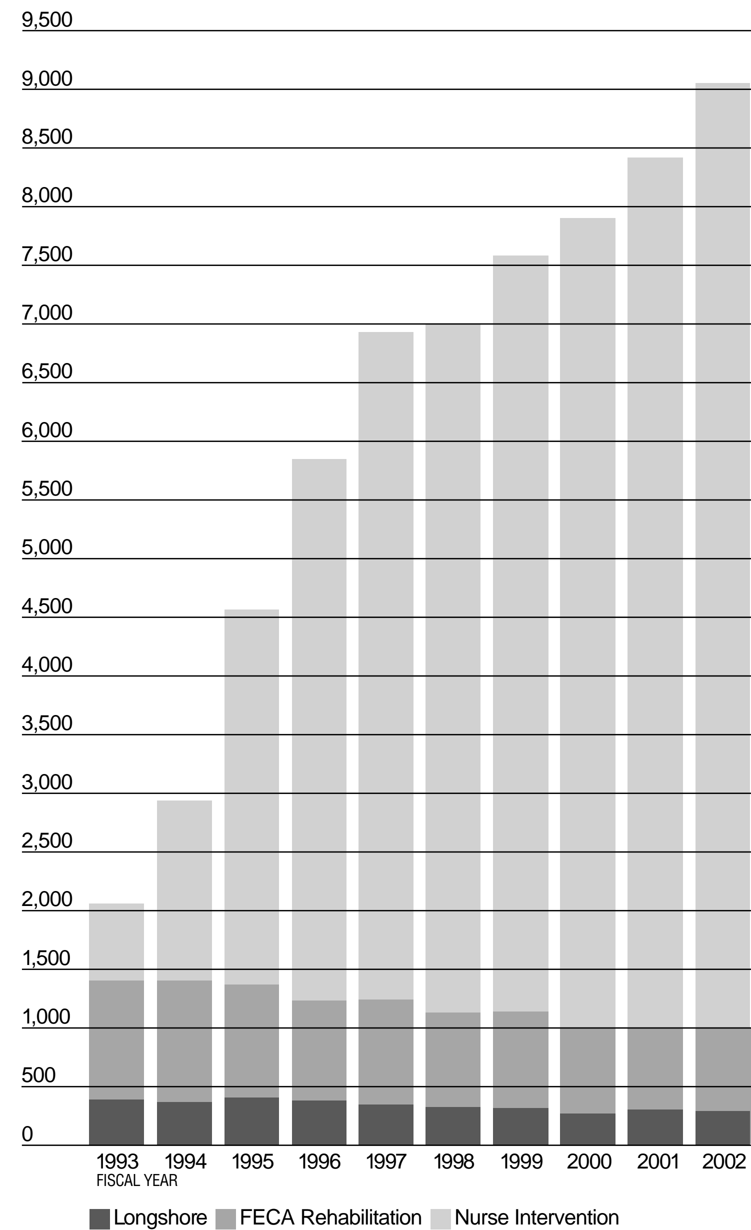
During FY 2002, the total charges for medical services for the FEC program subject to the fee schedules were reduced by 26 percent, or $229.8 million. The application of the professional fee schedule, which is based on the Centers for Medicare and Medicaid Services' (CMS), formerly the Health Care Financing Administration, relative value scale, resulted in savings of $175.2 million, while the use of the inpatient fee schedule produced $42.5 million in savings and savings of $12.1 million were attributed to the pharmacy fee schedule.

The Correct Coding Initiative (CCI) is a system of algorithms developed by CMS to detect incorrect billing practices for the Medicare program. CCI was first implemented by OWCP for the FEC program during FY 2000 and has reduced medical costs ever since. The CCI produced savings of $12.7 million during FY 2002.

Contracts for Medical Second Opinion Services

Medical second opinions are an important component of the claims adjudication and management process, and they play a critical role in assuring that medical and wage-loss compensation benefits are paid appropriately. Medical second opinions help claims examiners determine the causal relationship between work factors

OWCP Vocational Rehabilitation Programs Return People To Work



and the injury or disease, assess the extent and duration of a physical impairment or disability, determine the appropriateness of therapy, and determine when recovery has occurred and a return to work is feasible.

During FY 2002, OWCP awarded two new contracts for the provision of medical second opinion services in support of FEC programs at the National Operations Office in Washington, D.C. and the District Office in San Francisco. OWCP also renewed contracts in support of the District Offices in Boston, New York, Philadelphia, Jacksonville, Cleveland, Chicago, Kansas City, Denver, Seattle and Dallas. During the year, contractors provided more than 12,000 second opinions at an estimated saving to the program of $2.6 million. The overall quality of reports provided by contractors has been good. Reports are clearly written, comprehensive, and responsive to claims examiners' questions, and the average time for delivery of reports continues to be significantly shorter compared to the period before these contracts were in place.

Appendix

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Note: Unless otherwise stated, the financial information in the appendix tables that follow may differ from what is reported in the Department of Labor's Consolidated Financial Statement. These differences are due to accrual versus cash basis financial reporting requirements and adjustments made during statement compilation.

Table A—1

Federal Employees' Compensation Rolls

FY 1993—FY 2002

(Cases at End-of-Year)

	Fiscal Year									
Roll Type	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Periodic Roll	59,551	60,136	59,605	58,329	55,484	56,159	54,897	54,709	56,133	**56,751**
% change v. prior yr.	-	1.0%	-0.9%	-2.1%	-4.9%	1.2%	-2.2%	-0.3%	2.6%	**1.1%**
Long-Term Disability	50,312	50,538	50,685	50,021	49,319	50,105	48,957	48,870	50,409	**51,092**
% change v. prior yr.	-	0.4%	0.3%	-1.3%	-1.4%	1.6%	-2.3%	-0.2%	3.1%	**1.4%**
Death	6,623	6,589	6,537	6,353	6,165	6,054	5,940	5,839	5,724	**5,659**
Short-term[1]	2,616	3,009	2,383	1,955	0	0	0	0	0	**0**

[1] Beginning in FY 1997, short-term periodic roll cases are no longer tracked separately.

Table A—2

Federal Employees' Compensation Program Summary of Claims Activity

FY 1993—FY 2002

	Fiscal Year									
Claim Activity	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Incoming Cases										
Cases Created	**179,357**	**185,927**	**180,350**	**175,052**	**173,319**	**165,135**	**166,544**	**174,471**	**165,915**	**158,118**
Traumatic	154,424	160,560	154,250	150,204	146,489	138,975	140,383	145,915	137,877	**132,250**
No Lost Time	71,987	71,999	74,602	75,829	78,642	75,321	83,472	91,620	86,402	**80,439**
Lost Time	82,437	88,561	79,648	74,375	67,847	63,654	56,911	54,295	51,475	**51,811**
Occupational Disease	24,730	25,161	25,835	24,689	26,680	25,954	25,999	28,406	27,869	**25,739**
Fatal Cases	203	206	265	159	150	206	162	150	169	**129**
Wage-Loss Claims Initiated	**20,735**	**21,402**	**21,755**	**20,392**	**19,181**	19,315	**19,759**	**21,899**	**23,386**	**23,193**
Hearings and Review[1]										
Total Requests for Hearing	6,673	6,607	7,357	7,951	7,642	7,496	7,164	6,992	6,875	**6,820**
Total Hearing Dispositions	5,431	6,571	7,019	7,101	7,525	8,087	7,926	7,418	6,599	**6,272**
Pre-Hearing Remands	823	847	742	970	1,036	1,056	723	678	704	**543**
Dismissals	863	1,216	1,184	1,375	1,227	1,191	992	944	1,003	**980**
Affirmations	1,879	2,399	2,686	2,474	2,604	2,965	3,178	2,945	2,266	**2,170**
Post-Hearing Remands	696	807	906	876	958	910	958	1,068	944	**848**
Reviews of the Written Record	544	583	806	806	1,022	1,179	1,253	1,167	1,118	**1,209**
Withdrawals/No-Shows	626	719	695	600	678	786	822	616	564	**522**

[1] As a result of an internal audit conducted by DFEC, various hearings and review data were revised for the years 1993-1996. Management reports were compared with automated system data that began in 1992, and corrections were made to reconcile differences between the two sources.

Table A—3

Federal Employees' Compensation Program Obligations

FY 1993—FY 2002

($ thousands)

Type of Obligation	Fiscal Year 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total Obligations	$1,884,094	$1,922,707	$1,953,952	$2,062,325	$1,968,256	$2,024,494	$2,076,475	$2,170,247	$2,308,595	**$2,418,364**
Total Benefits	1,822,338	1,859,349	1,880,754	1,984,209	1,887,363	1,944,259	1,989,050	2,078,715	2,199,276	**2,307,942**
Compensation Benefits	1,236,927	1,284,380	1,309,562	1,375,808	1,314,603	1,343,879	1,370,206	1,403,154	1,453,740	**1,509,275**
Medical Benefits	472,257	459,312	453,208	481,833	450,206	476,167	492,835	548,596	617,414	**667,797**
Survivor Benefits	113,154	115,657	117,984	126,568	122,554	124,213	126,009	126,965	128,122	**130,870**
Total Administrative Expenditures	61,756	63,358	73,198	78,116	80,893	80,235	87,425	91,532	109,319	**110,422**
Salaries and Expenses	61,756	63,358	67,914	65,145	67,303	69,207	67,567	70,634	78,971	**81,210**
Fair Share	0	0	5,284	12,971	13,590	11,028	19,858	20,898	30,348	**29,212**

Table A—4

Federal Employees' Compensation Program Chargeback Costs, by Major Federal Agency

CBY 1993—CBY 2002

($ thousands)

Federal Agency	Chargeback Year[1] 1993	1994	1995	1996	1997	1998	1999	2000	2001	**2002**
Total Costs	$1,756,837	$1,813,931	$1,835,129	$1,840,811	$1,833,926	$1,887,980	$1,908,256	$2,024,634	$2,129,097	**$2,219,448**
U.S. Postal Service	508,881	521,456	536,643	547,141	551,142	577,159	594,503	666,310	720,518	**785,199**
Department of the Navy	250,522	262,274	256,816	256,210	247,488	243,938	240,492	241,585	246,881	**248,250**
Department of the Army	164,179	168,350	165,461	163,986	159,781	162,152	163,127	166,989	169,219	**174,832**
Department of Veterans Affairs	142,486	145,471	143,047	140,729	136,607	140,118	137,865	143,221	145,909	**151,612**
Department of the Air Force	114,196	115,993	119,184	116,141	117,242	124,302	123,349	128,134	134,106	**132,538**
Department of Transportation	87,722	90,171	89,308	89,407	89,369	95,823	97,155	96,936	99,556	**101,716**
Department of Justice	47,332	51,605	55,757	58,136	63,878	67,875	76,319	83,873	91,197	**95,620**
Department of the Treasury	64,072	69,620	72,835	72,269	72,547	73,953	75,125	78,921	83,367	**88,073**
Department of Agriculture	59,220	60,085	59,332	58,926	59,230	60,348	59,851	64,882	66,750	**69,563**
Department of Defense	52,644	59,113	62,096	61,069	61,360	62,729	63,563	64,797	64,761	**63,888**
All Other Agencies	265,583	269,793	274,650	276,797	275,282	279,583	276,908	288,987	306,834	**308,156**

[1] A year for chargeback purposes is from July 1 through June 30.

Table B—1

Part C Black Lung Claims Adjudication at the Initial Level

FY 2002

Type of Claim	SSAE's Issued[1]	Approval Rate	PDO's Issued[2]	Approval Rate
Trust Fund			895	
Approved			146	**16.31%**
Denied			749	
Responsible Operators	6,531		3,199	
Approved	640	**9.80%**	222	**6.94%**
Denied	5,891		2,977	
Total Findings	6,531		4,094	
Total Approved	640	**9.80%**	368	**8.99%**
Total Denied	5,891		3,726	

[1] SSAE is "Schedule for the Submission of Additional Evidence" (under the revised regulations, replaces the former "Initial Finding").

[2] PDO is "Proposed Decision and Order" (under the revised regulations, corresponds roughly to the former "Reconsideration").

Note: FY 2002 was the first year Proposed Decisions and Orders were issued under the revised Black Lung regulations. Data reported in previous years is not comparable.

Table B—2

Distribution of Part C Black Lung Claims and Disbursements, by State

FY 2002

State	Total Claims Received[1]	MBO Claims[2]	In Payment[3]	Total Benefits ($ 000)[4]
Alabama	32,189	173	1,376	$9,938
Alaska	149	1	14	96
Arizona	1,987	14	200	1,373
Arkansas	3,781	42	276	2,040
California	6,408	37	412	2,881
Colorado	6,914	46	623	4,292
Connecticut	989	5	109	731
Delaware	761	6	94	642
District of Columbia	285	2	25	173
Florida	11,630	179	1,148	8,514
Georgia	1,571	27	201	1,463
Hawaii	16	0	1	6
Idaho	239	2	22	154
Illinois	30,377	157	1,861	12,948
Indiana	17,444	100	1,074	7,533
Iowa	5,093	27	361	2,489
Kansas	2,159	5	109	731
Kentucky	85,579	1,586	5,738	46,992
Louisiana	338	3	24	173
Maine	43	0	7	45
Maryland	6,564	57	509	3,631
Massachusetts	228	2	23	160
Michigan	10,386	47	663	4,556
Minnesota	141	0	12	77
Mississippi	348	5	37	269
Missouri	4,588	8	318	2,092
Montana	851	4	55	379
Nebraska	125	0	15	96
Nevada	407	3	56	379
New Hampshire	26	0	5	32
New Jersey	4,250	29	420	2,881
New Mexico	2,313	7	168	1,123
New York	3,968	22	323	2,232
North Carolina	3,237	50	396	2,862
North Dakota	157	0	9	58
Ohio	52,559	316	4,026	27,857
Oklahoma	3,754	35	237	1,745
Oregon	621	5	58	404
Pennsylvania	134,158	1,813	14,650	105,626
Rhode Island	41	0	4	26
South Carolina	839	14	131	930
South Dakota	48	0	6	38
Tennessee	20,070	283	1,377	10,650
Texas	1,657	12	166	1,141
Utah	3,967	37	341	2,425
Vermont	45	0	6	38
Virginia	40,738	888	4,168	32,438
Washington	1,575	8	113	776
West Virginia	106,260	1,963	9,581	74,065
Wisconsin	440	3	44	302
Wyoming	2,531	7	228	1,508
All Other	447	3	32	225
Total	**615,291**	**8,033**	**51,852**	**$384,235**

[1] All filings since July 1, 1973, including terminated and nonapproved claims.

[2] Active MBO claims as of 9/30/02.

[3] Active claims currently in payment status, excluding MBO claims, as of 9/30/02.

[4] Disbursements of income and medical benefits for all claims, including claims paid by the Trust Fund and claims in interim pay status.

Note: Data in column no. 1 may not be consistent with changes from previous years due to a change in computer systems.

Table B—3

Black Lung Claims, by Class of Beneficiary

FY 1993—FY 2002[1]

	Number of Beneficiaries[2]									
Class of Beneficiary	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Primary Beneficiaries:										
Miners	40,866	37,970	35,220	32,452	29,839	27,340	24,838	22,568	18,248	**16,395**
Widows	44,103	44,073	43,688	43,155	42,468	41,585	40,517	39,053	35,660	**34,236**
Others	1,280	1,332	1,362	1,393	1,444	1,476	1,508	1,497	1,467	**1,221**
Total Primary Beneficiaries	86,249	83,375	80,270	77,000	73,751	70,401	66,863	63,118	55,375	**51,852**
Dependents of Primary Beneficiaries:										
Dependents of Miners	34,758	32,013	29,377	26,845	24,599	22,158	19,953	17,978	13,924	**12,432**
Dependents of Widows	1,710	1,668	1,614	1,558	1,491	1,417	1,384	1,306	1,123	**1,077**
Dependents of Others	496	513	508	520	511	512	516	508	108	**386**
Total Dependents	36,964	34,194	31,499	28,923	26,601	24,087	21,853	19,792	15,155	**13,895**
Total, All Beneficiaries	**123,213**	**117,569**	**111,769**	**105,923**	**100,352**	**94,488**	**88,716**	**82,910**	**70,530**	**65,747**

[1] As of September 30 of each year.

[2] Active claims, including those paid by a RMO, cases paid by the Trust Fund, cases in interim pay status, cases that are being offset due to concurrent Federal or state benefits, and cases that have been temporarily suspended. Does not include MBO beneficiaries.

Table B—4

Department of Labor Black Lung Benefits Program Obligations

FY 1993—FY 2002

($ thousands)

	Fiscal Year									
Type of Obligation	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Total Obligations	$984,666	$994,655	$995,722	$992,128	$1,004,672	$999,822	$1,005,246	$1,013,593	$1,016,994	**$1,034,096**
Total Benefits[1]	562,035	554,349	525,563	499,622	487,910	459,061	439,442	422,656	396,928	**384,234**
Income Benefits[2]	448,395	444,276	423,736	404,623	392,546	376,985	363,871	350,266	336,813	**320,039**
Medical Benefits[3]	113,640	110,073	101,827	95,000	95,363	82,076	75,571	72,390	60,116	**64,196**
Administrative Costs[4]	56,016	52,550	51,502	47,314	46,128	46,035	50,788	49,820	52,252	**54,273**
Interest Charges[5]	366,616	387,756	418,656	445,192	470,635	494,726	515,016	541,117	567,814	**595,589**
Repayable Advances[6]	343,000	413,925	375,100	373,500	375,000	370,000	402,000	490,000	505,000	**465,000**
Cumulative Debt[7]	**$3,949,032**	**$4,362,957**	**$4,738,057**	**$5,111,557**	**$5,486,557**	**$5,856,557**	**$6,258,557**	**$6,748,557**	**$7,253,557**	**$7,718,557**

[1] Excludes collections from responsible mine operators for benefits paid by Trust Fund on an interim basis, refunds for OWCP administrative costs paid, and other miscellaneous reimbursements.

[2] Monthly and retroactive benefit payments.

[3] Includes diagnostic and treatment costs, and reimbursements to the Centers for Medicare & Medicaid Services of the Department of Health and Human Services and the Health and Retirement Funds of the UMWA.

[4] Administrative expenses include reimbursements to SSA.

[5] Starting in 1979, the Trust Fund had to borrow funds from the Treasury Department to pay operating costs not covered by revenues. Interest charges reflect the cost to the Trust Fund for those advances from the Treasury.

[6] Reflects advances from the Treasury Department during the fiscal year.

[7] Shows the cumulative debt of the Trust Fund to the Treasury.

Note: Detail may not add to totals due to rounding.

Table B—5

Monthly Part C Black Lung Benefit Rates

1973—2002

	Benefit Rates by Type of Beneficiary			
Period	Claimant	Claimant and 1 Dependent	Claimant and 2 Dependents	Claimant and 3 or More Dependents
7/1/73-9/30/73	$169.80	$254.70	$297.10	$339.50
10/1/73-9/30/74	177.60	266.40	310.80	355.20
10/1/74-9/30/75	187.40	281.10	328.00	374.80
10/1/75-9/30/76	196.80	295.20	344.40	393.50
10/1/76-9/30/77	205.40	308.10	359.50	410.80
10/1/77-9/30/78	219.90	329.80	384.80	439.70
10/1/78-9/30/79	232.00	348.00	405.90	463.90
10/1/79-9/30/80	254.00	381.00	444.50	508.00
10/1/80-9/30/81	279.80	419.60	489.60	559.50
10/1/81-9/30/82	293.20	439.80	513.10	586.40
10/1/82-12/31/83	304.90	457.30	533.60	609.80
1/1/84-12/31/84[1]	317.10	475.60	554.90	634.20
1/1/85-12/31/86	328.20	492.30	574.30	656.40
1/1/87-12/31/87	338.00	507.00	591.50	676.00
1/1/88-12/31/88	344.80	517.20	603.40	689.60
1/1/89-12/31/89	358.90	538.30	628.10	717.80
1/1/90-12/31/90	371.80	557.70	650.60	743.60
1/1/91-12/31/91	387.10	580.60	677.40	774.10
1/1/92-12/31/92	403.30	605.00	705.80	806.60
1/1/93-12/31/93	418.20	627.30	731.90	836.40
1/1/94-12/31/94	427.40	641.10	748.00	854.80
1/1/95-12/31/95	427.40	641.10	748.00	854.80
1/1/96-12/31/96	435.10	652.70	761.50	870.20
1/1/97-12/31/97	445.10	667.70	779.00	890.20
1/1/98-12/31/98	455.40	683.10	796.90	910.70
1/1/99-12/31/99	469.50	704.30	821.60	939.00
1/1/00-12/31/00	487.40	731.00	852.80	974.70
1/1/01-12/31/01	500.50	750.80	875.90	1,001.00
1/1/02-12/31/02	**518.50**	**777.80**	**907.40**	**1,037.00**

[1]These benefit rates include tbe additional one - half percent increase that was granted retroactive to January 1, 1984. The rates in effect prior to the retroactive payments (1/l/84 through 6/30/84) were: $315.60 for a claimant only; $473.30 for a claimant and 1 dependent; $552.20 for a claimant and 2 dependents; and, $631.10 for a claimant and 3 or more dependents.

Table B—6

Funding and Disbursements of the Black Lung Disability Trust Fund

FY 2002

($ thousands)

	Funding				Disbursements						
						Medical Benefits					
Month	Coal Excise Tax Revenue	Treasury Advances	Reimburse[1]	**Total**	Income Benefits[2]	Diagnostic	Treatment[3]	Total Benefits	Admin. Costs	Interest on Advances	**Total**
October 2001	$7,524	$0	$147	**$7,671**	$27,354	$513	$5,427	$33,294	$1,772	$0	**$35,066**
November 2001	48,521	0	121	**48,642**	26,775	374	3,957	31,106	2,681	0	**33,786**
December 2001	47,521	0	267	**47,788**	26,742	441	3,105	30,334	1,580	0	**31,913**
January 2002	42,611	0	144	**42,755**	26,348	499	5,080	31,926	4,550	0	**36,476**
February 2002	48,834	0	82	**48,916**	27,293	276	4,876	32,445	5,657	0	**38,103**
March 2002	47,657	0	268	**47,925**	27,110	573	5,573	33,256	5,484	0	**38,740**
April 2002	44,017	0	442	**44,459**	26,753	345	5,762	32,860	5,464	0	**38,325**
May 2002	53,497	0	276	**53,773**	26,694	484	6,470	33,649	5,421	0	**39,069**
June 2002	50,647	0	299	**50,946**	26,434	287	4,651	31,372	5,420	0	**36,791**
July 2002	46,884	0	639	**47,523**	26,232	426	5,144	31,801	5,464	0	**37,265**
August 2002	51,344	0	301	**51,645**	26,070	481	5,406	31,957	5,419	0	**37,376**
September 2002	77,588	465,000	227	**542,815**	26,234	438	3,564	30,235	5,363	595,589	**631,187**
Totals	**$566,645**	**$465,000**	**$3,213**	**$1,034,858**	**$320,039**	**5,136**	**$59,060**	**$384,234**	**$54,273**	**$595,589**	**$1,034,096**

[1] Reimbursements include collections from RMOs, and fines, penalties, and interest.

[2] Includes monthly and retroactive benefit payments.

[3] Treatment expenditures include reimbursements to the United Mine Workers' Health and Retirement Funds.

Table B—7

Comparison of Benefit Payments Under the Black Lung Benefits Act (BLBA) With Payments for Permanent Total Disability Under Selected State Workers' Compensation Laws

(As of September 30, 2002)

Benefit Under:	Maximum Monthly Benefit (Miners Only)	Maximum Monthly Benefit (Incl. Dependents)	Minimum Monthly Benefit (Miners Only)
BLBA	**$ 518.50**	**$1,037.00**	**$ 518.50**
Alabama	2,463.77	2,463.77	675.48[1]
Alaska	3,299.46	3,299.46	476.30[2]
Arizona	1,619.46	1,619.46	N/A
Arkansas	1,840.25	1,840.25	86.60
Colorado	2,853.99	2,853.99	N/A
Illinois	4,209.28	4,209.28	1,578.50
Indiana	2,199.64	2,199.64	216.50[1]
Iowa	4,775.99	4,775.99	835.69[1]
Kansas	1,870.56	1,870.56	108.25
Kentucky	2,384.36	2,384.36	476.86
Maryland	2,892.44	2,892.44	216.50[1]
Missouri	2,811.56	2,811.56	173.20
Montana	2,048.09	2,048.09	N/A
New Mexico	2,238.13	2,238.13	155.88[1]
North Dakota	2,234.28	2,234.28[3]	1,221.06[1]
Ohio	2,719.24	2,719.24	1,359.62[1]
Oklahoma	2,048.09	2,048.09	129.90[1]
Pennsylvania	2,866.46	2,866.46	1,592.44[1]
Tennessee	2,593.67	2,593.67	389.05
Texas	2,325.21	2,325.21	350.73
Utah	2,433.46	2,433.46[3]	194.85
Virginia	2,948.73	2,984.73	737.18[1]
Washington	3,722.90	3,722.90	185.00[4]
West Virginia	2,289.11	2,289.11	763.02
Wyoming	2,281.91	2,281.91	N/A

[1] Actual wage paid if less than monthly minimum.

[2] Minimum is $476.30, or $731.77 if employee shows proof of wages, or worker's spendable weekly wage if less.

[3] Additional weekly compensation is paid for each dependent, not to exceed the worker's net wage in North Dakota, and 85 percent of the state average weekly wage in Utah.

[4] Minimum compensation benefit ranges from $185.00 to $352.00, according to marital status and number of dependents.

N/A=Not Applicable

Table C—1

Total Industry Compensation and Benefit Payments Under LHWCA[1]

CY 1992—CY 2001[2]

($ thousands)

Payments By:	Calendar Year 1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Self-Insured Employers	$267,078	$265,700	$273,667	$257,895	$272,688	$263,255	$261,559	$283,991	$278,952	**$307,708**
Insurance Carriers	235,251	240,449	247,157	238,474	226,592	219,352	238,464	232,778	249,671	**236,726**
Total Payments	**$502,329**	**$506,149**	**$520,824**	**$496,369**	**$499,280**	**$482,607**	**$500,023**	**$516,769**	**$528,623**	**$544,434**

[1] Includes disability compensation and medical benefit payments under LHWCA, DCCA, and all other extensions to the Act.

[2] Industry payments are reported to the Department of Labor on a calendar year basis.

Table C—2

National Average Weekly Wage (NAWW) and Corresponding Maximum and Minimum Compensation Rates and Annual Adjustments Pursuant to Sections 6(b), 9(e), and 10(f) of LHWCA

Period	NAWW	Maximum Payable	Minimum Payable	Annual Adjustment (% Increase in NAWW)
11/26/72-9/30/73	$ 131.80	$ 167.00	$ 65.90	—
10/01/73-9/30/74	140.26	210.54	70.18	6.49
10/01/74-9/30/75	149.10	261.00	74.57	6.26
10/01/75-9/30/76	159.20	318.38	79.60	6.74
10/01/76-9/30/77	171.28	342.54	85.64	7.59
10/01/77-9/30/78	183.61	367.22	91.81	7.21
10/01/78-9/30/79	198.39	396.78	99.20	8.05
10/01/79-9/30/80	213.13	426.26	106.57	7.43
10/01/80-9/30/81	228.12	456.24	114.06	7.03
10/01/81-9/30/82	248.35	496.70	124.18	8.87
10/01/82-9/30/83	262.35	524.70	131.18	5.64
10/01/83-9/30/84	274.17	548.34[1]	137.09	4.51
10/01/84-9/30/85	289.83	579.66	144.92	5.71[2]
10/01/85-9/30/86	297.62	595.24	148.81	2.69
10/01/86-9/30/87	302.66	605.32	151.33	1.69
10/01/87-9/30/88	308.48	616.96	154.24	1.92
10/01/88-9/30/89	318.12	636.24	159.06	3.13
10/01/89-9/30/90	330.31	660.62	165.16	3.83
10/01/90-9/30/91	341.07	682.14	170.54	3.26
10/01/91-9/30/92	349.98	699.96	174.99	2.61
10/01/92-9/30/93	360.57	721.14	180.29	3.03
10/01/93-9/30/94	369.15	738.30	184.58	2.38
10/01/94-9/30/95	380.46	760.92	190.23	3.06
10/01/95-9/30/96	391.22	782.44	195.61	2.83
10/01/96-9/30/97	400.53	801.06	200.27	2.38
10/01/97-9/30/98	417.87	835.74	208.94	4.33
10/01/98-9/30/99	435.88	871.76	217.94	4.31
10/01/99-9/30/00	450.64	901.28	225.32	3.39
10/01/00-9/30/01	466.91	933.82	233.46	3.61
10/01/01-9/30/02	**483.04**	**966.08**	**241.52**	**3.45**

[1] Maximum became applicable in death cases (for any death after September 28, 1984) pursuant to LHWCA Amendments of 1984. Section 9(e)(1) provides that the total weekly death benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefits which the deceased would have been eligible to receive under section 6(b)(1). Maximum in death cases not applicable to DCCA cases *(Keener v. Washington Metropolitan Area Transit Authority, 800 F.2d 1173 (D.C. Cir. (1986)).*

[2] Five percent statutory maximum increase applicable in FY 1985 under section 10(f) of LHWCA, as amended. Maximum increase not applicable to DCCA cases (see note[1], above).

Table C—3

LHWCA and DCCA Special Funds' Expenditures[1]

FY 1993—FY 2002

($ thousands)

FY	LHWCA Expenditures ($) Total	LHWCA Second Injury Cases[2]	LHWCA Pre Amend. Cases[3]	LHWCA Rehab.[4]	LHWCA Other[5]	LHWCA Number of Second Injury Cases	DCCA Expenditures ($) Total	DCCA Second Injury Cases[2]	DCCA Pre Amend. Cases[3]	DCCA Rehab.[4]	DCCA Other[5]	DCCA Number of Second Injury Cases
1993	**$103,321**	$90,860	$2,887	$4,804	$4,770	4,652	**$11,330**	$9,984	$903	$6	$437	698
1994	**107,611**	95,856	2,829	4,228	4,699	4,842	**11,382**	10,318	872	0	193	683
1995	**116,656**	104,317	2,738	4,328	5,272	5,023	**11,435**	10,284	845	0	305	641
1996	**118,260**	106,536	2,627	4,110	4,987	5,126	**11,868**	10,266	819	0	783	659
1997	**123,772**	111,732	2,570	4,170	5,300	5,209	**11,548**	10,375	807	1	366	651
1998	**129,777**	118,496	2,699	3,718	4,864	5,208	**12,521**	10,810	802	4	904	638
1999	**131,152**	117,574	2,439	4,888	6,251	5,145	**11,879**	10,748	747	6	377	617
2000	**131,564**	119,198	2,459	4,595	5,313	5,025	**11,804**	10,521	728	0	555	612
2001	133,374	119,952	2,295	5,121	6,006	4,953	**11,341**	10,368	708	0	265	601
2002	**131,715**	**119,661**	**2,240**	**4,801**	**5,013**	**4,880**	**11,386**	**10,214**	**702**	**0**	**469**	**585**

[1] Special Fund expenditures shown in this table are reported on a cash basis, i.e., expenses are recognized when paid.

[2] Section 8(f) payments to employees who sustain second injuries which, superimposed on a pre-existing injury, results in the employee's permanent disability or death.

[3] Section 10(h) of the Act requires that compensation payments to permanent total disabilily and death cases, when the injury or death is caused by an employment event which occurred prior to enactment of the 1972 amendments, be adjusted to conform with the weekly wage computation methods and compensation rates put into effect by the 1972 amendments. Fifty percent of any additional compensation or death benefit paid as a result of these adjustments are to be paid out of the Special Fund accounts.

[4] In cases where vocational or medical rehabilitation services for permanently disabled employees are not available otherwise, and for maintenance allowances for employees undergoing vocational rehabilitation, sections 39(c) and 8(g) of the Act authorize the cost of these services to be paid by the Special Fund.

[5] For cases where impartial medical exams or reviews are ordered by the Department of Labor (section 7(e) of Act) and where a compensation award cannot be paid due to employer default (section 18(b)), the expenses or payments resulting from these actions may be covered by the Special Fund. Also included as "Other" expenditures of the Funds are disbursements under section 44(d) to refund assessment overpayments in FY 1991 - FY 1993, and FY1995 - FY 2002. Excluded are disbursements from proceeds of employer securities redeemed under section 32 of the Act. These monies are exclusively for payment of compensation and medical benefits to employees of companies in default.

Note: Special Fund expenditure totals for some years as shown above may differ from those reported to Congress in the Appendix to the President's budget. The figures here are from year-end Status of Funds reports while the President's budget reflects total outlays as reported to the Department of Treasury and may include technical adjustments made by Treasury or the Office of Management and Budget.

Table C—4

LHWCA and DCCA Special Funds' Assessments[1]

CY 1993—CY 2002

($ thousands)

CY	LHWCA			DCCA		
	Total Industry Assessments[2]	Preceding Year Total Industry Payments[3]	Assessment Base Year	Total Industry Assessments[2]	Preceding Year Total Industry Payments	Assessment Base Year
1993	$102,500	$336,379	CY 1992	$11,500	$7,665	CY 1992
1994	116,000	346,490	CY 1993	11,500	9,970	CY 1993
1995	118,000	360,566	CY 1994	12,000	6,787	CY 1994
1996	113,000	344,103	CY 1995	11,300	6,754	CY 1995
1997	110,000	350,711	CY 1996	11,300	6,361	CY 1996
1998	111,000	334,339	CY 1997	11,000	5,911	CY 1997
1999	130,000	343,146	CY 1998	11,300	6,232	CY 1998
2000	133,000	353,462	CY 1999	12,700	5,179	CY 1999
2001	133,000	361,549	CY 2000	12,000	5,103	CY 2000
2002	**125,000**	**372,376**	**CY 2001**	**11,000**	**5,552**	**CY 2001**

[1] Annual assessments of employers and insurance carriers are the largest single source of receipts to the Special Funds. Other receipts to the Funds include fines and penalties, payments for death cases where there is no person entitled under the act to the benefit payments, interest earned on Fund investments, overpayment and third party recoveries, and monies received from redemption of securities under section 32 of the Act to pay compensation due employees of companies in default. These payments constitute a small portion of the total receipts of the Special Funds.

[2] Assessments as shown here are not receipts to the Fund which were received during a given calendar year, but total assessments which are receivable from employers and insurance carriers based on the Special Fund assessment formula as prescribed under section 44(c) of the Act.

[3] Annual industry assessments prior to CY1985 were based on each employer's or insurance carrier's total disability compensation and medical benefit payments under the Act during the preceding calendar year. The LHWCA Amendments of 1984 revised the method for computing assessments in two ways. Effective in CY1985, assessments are based on disability compensation payments only, thereby excluding medical benefits from the computation. Also, a factor for section 8(f) payments attributable to each employer/carrier was added to the assessment base.

Table C—5

Summary of Case Processing Activities Under LHWCA[1]

FY 1993—FY 2002

Adjudication Level and Case Status	Fiscal Year 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
District Offices										
Pending Inventory of Cases	5,309	5,720	5,401	6,207	7,759	6,974	9,006	8,675	6,489	7,391
OALJ										
Carryover from Previous FY	4,040	7,197	3,957	4,141[7]	4,909	3,849[12]	3,862	3,668	3,562	3,388
New Cases	6,911[2]	3,878	3,324	4,107	3,520[10]	3,579	3,462	3,566	3,500	3,276
Total Docket	10,951	11,075	7,281	8,248	8,429	7,428	7,324	7,234	7,062	6,664
(Dispositions)	3,754	7,118	3,527	3,339	3,557	3,566	3,656	3,672	3,674	3,529
Pending Inventory	7,197	3,957	3,754	4,909	4,872	3,862[13]	3,668	3,562	3,388	2,980[16]
BRB										
Carryover from Previous FY	1,786[3]	1,781	3,745	1,661[8]	399	348	318	326	295	248
New Cases	782	2,772[4]	885	481	457	419	421	423	317	260
Total Docket	2,568	4,553	4,630	2,142	856	767	739	749	612	508
(Dispositions)	683	800	1,397	1,721[8]	539	464	438	467	384	319
Pending Inventory	1,781	3,745[5]	3,250[6]	399[9]	348[11]	318[14]	326[15]	295[15]	248[15]	208[15]

[1] Beginning in FY 1988, DCCA cases are excluded from DLHWC's District Offices' inventory as administration of these cases was delegated to the District of Columbia government effective July 18, 1988. Case processing and adjudication activities at the OALJ and BRB levels continue to include both LHWCA and DCCA cases.

[2] Includes 3,093 cases received on the basis of the Supreme Court's decision in *Estate of Cowart vs. Nicklos Drilling Co.,* 112 S.Ct. 2589 (1992).

[3] The differences between the carryover in FY 1993 and pending inventory at the end of FY 1992 and between the sum of activity in FY 1993 and that year's pending inventory at year-end are due to data adjustments made by the BRB.

[4] Includes 2,066 appeals filed in the so-called Ingalls Shipbuilding, Inc. cases, and involve various issues arising under section 33 of LHWCA.

[5] This figure, as adjusted by BRB, excludes eight cases previously classified as new appeals.

[6] Data adjustments by the BRB account for the difference between the sum of activity in FY 1995 and that year's pending inventory at year-end.

[7] The difference between the carryover in FY1996 and pending inventory at the end of FY1995 is due to data adjustments made by the OALJ.

[8] 3,250 total appeals were carried over, but figures were adjusted by BRB to take into account 1,636 separate appeals which were consolidated and disposed of by 5 decisions.

[9] Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

[10] Excludes 116 new "33(g)" cases and 1,496 "33(g)" cases remanded from BRB being held in abeyance.

[11] Number adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

[12] The difference between the carryover in FY 1998 and pending inventory at the end of FY 1997 is due to data modifications and corrections made by the OALJ.

[13] The FY 1998 numbers do not include 2,877 section 33(g) cases that were pending at the beginning of the year, or the 30 dispositions that occurred in such cases.

[14] Data adjustments by the BRB account for the difference between the sum of activity in FY 1998 and that year's pending inventory at year-end.

[15] Data adjusted by BRB to account for misfiled, duplicate, or reinstated appeals.

[16] Includes dispositions of Boone 33(g) cases.

Table D—1

Status of All EEOICPA Applications at the End of FY 2002[1]

Case Status/Claims Activity	Case[2]	Claim[3]
Total Received-Program Inception Through 9/30/2002	27,622	34,394
Final Decisions Completed by Final Adjudication Branch (FAB)[4]	6,831	8,431
Final Approved	4,041	5,312
Final Denied	2,790	3,119
Recommended Decisions by District Offices[5]	3,990	4,570
Recommended Decisions Only, to Approve	492	652
Recommended Decisions Only, to Deny	3,498	3,918
Completed Initial Processing- Referred to NIOSH	8,245	9,958
Pending Initial Processing In District Office	8,556	11,435

[1] Statistics show the status of all applications filed from program inception through September 30, 2002.

[2] "Case" counts are limited to numbers of employees who filed for EEOICPA benefits.

[3] "Claim" counts are greater than case counts because they include numbers of employees and employees' survivors who filed for benefits.

[4] Each case or claim also received recommended decision by district office.

[5] Each case or claim still pending final decision by FAB.

Table D—2

Processing Activity During FY 2002 on All EEOICPA Cases/Claims Received Since Program Inception[1]

Processing Activity	Case[2]	Claim[3]
Total Cases/Claims Received-FY 2002	18,267	24,873
Final Decisions by FAB Offices in FY 2002	6,654	8,251
Final Approved	3,864	5,132
Final Denied	2,790	3,119
Modification Orders in FY 2002	17	23
Recommended Decisions by District Offices in FY 2002	10,366[4]	12,541[5]
Recommended Decisions Only, to Approve	4,077	5,505
Recommended Decisions Only, to Deny	6,289	7,036
Case Referrals to NIOSH in FY 2002	8,236	see case statistics
Lump Sum Compensation Payments in FY 2002	see claim statistics	4,803

[1] Activity statistics capture actions made during FY 2002 only, therefore the number of activities reported do not add up to the total number of cases/claims received during FY 2002. (Many activities recorded occurred on cases/claims received prior to FY 2002).

[2] "Case" counts are limited to numbers of employees who filed for EEOICPA benefits.

[3] "Claim" counts are greater than case counts because they include numbers of employees and employees' survivors who filed for benefits.

[4] Of this total, 6,654 also received a final decision by FAB.

[5] Of this total, 8,251 also received a final decision by FAB.

Table D—3

EEOICPA Cases With Approved Decisions and Payments, by Category, Program Inception Through September 30, 2002

Category	Number of Approved Cases[1]	Percentage of Total Final Approvals	Number of Paid Claimants[1]	Total Compensation Paid[2] ($ thousands)	Percentage of Total Compensation Paid
Radiation Exposure Comp. Act (RECA)[3]	1,885	46.6%	2,826	$90,472	25.5%
Special Exposure Cohort Cancer (CN)	1,386	34.3%	1,521	194,800	54.9%
Dose Reconstructed Cancer (CN)	6	0.1%	4	600	0.2%
Beryllium Disease (CBD)[4]	458	11.3%	419	59,637	16.8%
Beryllium Sensitivity-Only (BS)	238	5.9%	N/A	N/A	N/A
Silicosis (CS)	32	0.8%	30	4,500	1.3%
Multiple Conditions[5]	36	0.9%	38	4,550	1.3%
Total	**4,041**	**100.0%**	**4,838**	**$354,559**	**100.0%**

[1] There is not a direct correlation between number of approved cases and number of paid claimants for two reasons: (1) more than one claimant can receive payment on a single approved case, and (2) some cases were approved prior to 9/30/2002, but payments were not issued.

[2] Represents total lump sum compensation payments from EEOIC program inception to September 30, 2002.

[3] RECA cases are not counted in any other category of this table.

[4] Cases approved for both CBD and BS are counted in the CBD category, only.

[5] Cases counted in the Multiple Conditions category were approved for CN and CBD, or CN and CS, or CBD and CS, or CN and BS, or CS and BS.

Table D—4

EEOICPA Cases With Final Decision To Deny, Program Inception Through September 30, 2002

Reason for Denial	Number of Cases
Employee Did Not Work at a Covered DOE Facility, Atomic Weapons Employer, or Beryllium Vendor During a Covered Time Period	273
Claimed Condition Unrelated to Employment	36
Alleged Survivor Not an Eligible Beneficiary	46
Claimed Condition Not Covered Under Part B of EEOICPA	1,881
Dose Reconstruction Reveals the Probability That the Cancer is Related to Employment is Less Than 50 Percent	3
Medical Evidence is Insufficient to Establish Entitlement	551
Total	**2,790**

Table D—5

Most Prevalent Non-Covered Medical Conditions, EEOIC Program Inception Through September 30, 2002

Non-Covered Medical Condition	Percentage of All Denials For This Condition[1]
Other Lung Conditions	22
Heart Failure/Heart Attacks/Hypertension	11
Asbestosis	9
Chronic Obstructive Pulmonary Disease; Emphysema	8
Renal Conditions (Kidney Failure; Kidney Stones)	5
Benign Tumors, Polyps, and Skin Spots	5
Hearing Loss	5
Neurological Disorder	2
Diabetes	2
Thyroid Conditions (e.g., Hypothyroidism)	2
All Other Non-Covered Conditions	21
No Condition Reported on Claim Form	7

[1] Based on 1,881 cases that were denied because claimed condition was not covered under Part B of EEOICPA. Note: The sum of individual items may not equal 100 percent due to rounding.

Table E—1

OWCP Reemployment and Rehabilitation

FY 1993— FY 2002

(Cost in $ thousands)

	FECA Nurse			FECA Rehabilitation			Longshore Rehabilitation		
FY	Cases[1]	Reemployments	Cost	Cases[1]	Rehabilitations	Cost	Cases[1]	Rehabilitations	Cost
1993	9,883[2]	691	$1,541	9,883[2]	1,000	$14,662	2,201	364	$4,810
1994	5,530	1,541	5,680	7,778	1,018	13,500	2,028	352	4,228
1995	10,574	3,275	10,136	6,465	893	13,163	1,815	408	4,328
1996	14,235	4,623	13,041	6,049	842	12,672	1,535	357	4,110
1997	15,515	5,735	14,484	5,628	888	11,827	1,606	309	4,171
1998	15,261	5,884	14,575	5,812	819	11,399	1,444	298	3,722
1999	16,304	6,449	14,783	5,441	907	11,814	1,464	273	4,895
2000	18,293	6,885	18,085[3]	4,835	747	10,119	1,469	245	4,595
2001	18,825	7,439	20,413	4,633	736	9,568	1,446	265	5,121
2002	**17,186**	**8,088**	**21,769**	**4,431**	**708**	**7,860**	**1,384**	**256**	**4,801**

[1] Number of Federal and longshore cases that received counseling, placement assistance, and training services during the Fiscal Year.

[2] Total FECA cases for FY 1993; a breakdown by nurse and rehabilitation specialist, other than reemployments and rehabilitations that return to work, is not available.

[3] FY 2000 revised to include continuation-of-pay, costs of which are also included in all later years.

Office Directory

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202-693-0031
www.dol.gov/esa/owcp_org.htm

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Division of Coal Mine Workers' Compensation
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James L. DeMarce, Director

Division of Longshore and Harbor Workers' Compensation
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Michael Niss, Director

Division of Energy Employees Occupational Illness Compensation
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Johnstown Black Lung District Office
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Wilkes-Barre Black Lung District Office
Maribeth Girton, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
100 N. Wilkes-Barre Blvd., Room 300 A
Wilkes-Barre, PA 18702
570-826-6457 (Toll-Free 1-800-347-3755)

Charleston Black Lung District Office
Richard Hanna, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
Charleston Federal Center, Suite 110
500 Quarries Street
Charleston, WV 25301
304-347-7100 (Toll-Free 1-800-347-3749)

Greensburg Black Lung District Office
Colleen Smalley, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
Wellington Square, Suite 405
1225 South Main Street
Greensburg, PA 15601
724-836-7230 (Toll-Free 1-800-347-3753)

Parkersburg Black Lung Sub-District Office
Loretta Bird, Supervisory Claims Examiner
U.S. Department of Labor, ESA/OWCP/DCMWC
Federal Building, Suite 3116
425 Juliana Street
Parkersburg, WV 26101
304-420-6385 (Toll-Free 1-800-347-3751)

DCMWC Field Stations

U.S. Department of Labor
ESA/OWCP/DCMWC
Mine Safety & Health Academy, Rm. G-100
Airport Road
Beckley, WV 25802
304-255-6195

U.S. Department of Labor
ESA/OWCP/DCMWC
601 Federal Street
Bluefield, WV 24701
304-325-2164

U.S. Department of Labor
ESA/OWCP/DCMWC
Randolph Co. Senior Citizens' Center
Fifth and Railroad Avenue
Elkins, WV 26241
304-636-4747

U.S. Department of Labor
ESA/OWCP/DCMWC
513 Dingess Street
P.O. Office Box 1979
Logan, WV 25601
304-752-9514

U.S. Department of Labor
ESA/OWCP/DCMWC
Post Office Box 790
Uneeda, WV 25205
304-369-6050

U.S. Department of Labor
ESA/OWCP/DCMWC
Coal Mine Safety & Health District 3
5012 Mountaineer Mall
Morgantown, WV 26505
304-291-4277

Region IV—Southeast

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Office
Richard A. Brettell, Regional Director
U.S. Department of Labor, ESA/OWCP
214 North Hogan Street, Room 1026
Jacksonville, FL 32202
904-357-4725

Jacksonville FECA District Office
Magdalena Fernandez, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
400 West Bay Street, Room 826
Jacksonville, FL 32202
904-357-4777

Jacksonville Longshore District Office
Charles Lee, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
Edward Ball Bldg., Suite 905, 9th Floor
214 North Hogan Street
Jacksonville, FL 32202
904-357-4788

Jacksonville Energy District Office
William C. Franson, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
214 North Hogan Street, Suite 910
Jacksonville, FL 32202
904-357-4705 (Toll-Free 1-877-336-4272)

EEOICPA Resource Center (Paducah Site)
Jean Gross, Office Manager
Barkely Center, Unit 125
125 Memorial Drive
Paducah, KY 42001
270-534-0599 (Toll-Free 1-866-534-0599)
paducah.center@eh.doe.gov

EEOICPA Resource Center (Savannah River Site)
James Kirr, Office Manager
1708 Bunting Drive
North Augusta, SC 29841
803-279-2728 (Toll-Free 1-866-666-4606)
srs.center@eh.doe.gov

EEOICPA Resource Center (Oak Ridge Site)
Shirley White, Office Manager
Jackson Plaza Office Complex
800 Oak Ridge Turnpike - Suite C 103
Oak Ridge, TN 37803
865-481-0411 (Toll-Free 1-866-481-0411)
or.center@eh.doe.gov

Pikeville Black Lung District Office
Harry Skidmore, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
164 Main Street, Suite 508
Pikeville, KY 41501
606-432-0116 (Toll-Free 1-800-366-4599)

Mt. Sterling Black Lung Sub-District Office
Brenda K. Jamison, Assistant District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
402 Campbell Way
Mt. Sterling, KY 40353
859-498-9700 (Toll-Free 1-800-366-4628)

Region V/VII—Midwest

(Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebrasksa, Ohio, Wisconsin)

Regional Office (Chicago)
Nancy Jenson, Regional Director
U.S. Department of Labor, ESA/OWCP
230 South Dearborn Street, Room 800
Chicago, IL 60604
312-596-7131

Chicago FECA District Office
Joan Rosel, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
230 South Dearborn Street, Room 800
Chicago, IL 60604
312-596-7134

Cleveland FECA District Office
Robert M. Sullivan, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1240 East Ninth Street, Room 851
Cleveland, OH 44199
216-357-5390

Cleveland Energy District Office
Annette Prindle, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
North Point Tower
1001 Lakeside Avenue, Suite 350
Cleveland, OH 44114
216-802-1300 (Toll-Free 1-888-859-7211)

EEOICPA Resource Center (Portsmouth Site)
Kevin Clausing, Office Manager
4320 Old Scioto Trail
Portsmouth, OH 45662
740-353-6993 (Toll-Free 1-866-363-6993)
Portsmouth.center@eh.doe.gov

Columbus Black Lung District Office
Don Dopps, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
1160 Dublin Road, Suite 300
Columbus, OH 43215
614-469-5227 (Toll-Free 1-800-347-3771)

Kansas City FECA District Office
Lois Maxwell, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
City Center Square
1100 Main Street, Suite 750
Kansas City, MO 64105
816-502-0344

Region VI/VIII—Southwest

(Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming)

Regional Office
E. Martin Walker, Regional Director
U.S. Department of Labor, ESA/OWCP
525 South Griffin Street, Room 407
Dallas, TX 75202
972-850-2409

Dallas FECA District Office
Frances Memmolo, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
525 South Griffin Street, Room 100
Dallas, TX 75202
972-850-2330

Houston Longshore District Office
Chris Gleasman, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
8866 Gulf Freeway, Suite 140
Houston, TX 77017
713-943-1605

New Orleans Longshore District Office
David Duhon, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
701 Loyola Avenue, Room 13032
New Orleans, LA 70113
504-589-2671

Sub-Regional Office (Denver)
Robert Mansanares, Deputy Regional Director
U.S. Department of Labor, ESA/OWCP
1999 Broadway, Suite 600
P.O. Box 46550
Denver, CO 80201-6550
720-264-3160

Denver FECA District Office
Shirley Bridge, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1999 Broadway, Suite 600
Denver, CO 80202-6550
720-264-3046

Denver Black Lung District Office
Debra Thurston, District Director
U.S. Department of Labor, ESA/OWCP/DCMWC
1999 Broadway, Suite 690
P.O. Box 46550
Denver, CO 80202-6550
720-264-3100 (Toll-Free 1-800-366-4612)

Denver Energy District Office
Kevin Peterson, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
1999 Broadway, Suite 1120
P.O. Box 46550
Denver, CO 80201-6550
720-264-3060 (Toll-Free 1-888-805-3389)

EEOICPA Resource Center (Rocky Flats Site)
Ray Malito, Office Manager
8758 Wolff Court, Suite 201
Westminster, CO 80031
720-540-4977 (Toll-Free 1-866-540-4977)
denver.center@eh.doe.gov

EEOICPA Resource Center (Espanola Site)
Ray Malito, Office Manager
412 Paseo De Onate, Suite D
Espanola, NM 87532
505-747-6766 (Toll-Free 1-866-272-3622)
Espanola.center@eh.doe.gov

Region IX/X—Pacific

(Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington)

Regional Office (San Francisco)
Edward Bounds, Regional Director
U.S. Department of Labor, ESA/OWCP
71 Stevenson Street, Room 1705
San Francisco, CA 94105
415-848-6880

San Francisco FECA District Office
Andy Tharp, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
71 Stevenson Street, Box 305
San Francisco, CA 94105
415-848-6700

San Francisco Longshore District Office
R. Todd Bruininks, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
71 Stevenson Street, Room 1705
Post Office Box 193770
San Francisco, CA 94119-3770
415-848-6675

Long Beach Longshore District Office
Eric Richardson, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
401 East Ocean Blvd., Suite 720
Long Beach, CA 90802
562-980-3577

Honolulu Longshore Sub-District Office
R. Todd Bruininks, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
300 Ala Moana Blvd., Room 5-135
Post Office Box 50209
Honolulu, HI 96850
808-541-1983

Seattle FECA District Office
Marcus Tapia, District Director
U.S. Department of Labor, ESA/OWCP/DFEC
1111 Third Avenue, Suite 615
Seattle, WA 98101-3212
206-398-8220

Seattle Longshore District Office
Karen Staats, District Director
U.S. Department of Labor, ESA/OWCP/DLHWC
1111 Third Avenue, Suite 620
Seattle, WA 98101-3212
206-398-8255

Seattle Energy District Office
Christy Long, District Director
U.S. Department of Labor, ESA/OWCP/DEEOIC
719 2nd Avenue, Suite 601
Seattle, WA 98104
206-373-6750 (Toll-Free 1-888-805-3401)

EEOICPA Resource Center (Alaska Site)
Don Weber, Office Manager
2501 Commercial Drive
Anchorage, AK 99501
907-258-4070 (Toll-Free 1-888-908-4070)
doecomp@acsalaska.net

EEOICPA Resource Center (Idaho Falls Site)
Bertha Jones, Office Manager
1820 East 17th Street, Suite 375
Exchange Plaza
Idaho Falls, ID 83404
208-523-0158 (Toll-Free 1-800-861-8608)
Idaho.center@eh.doe.gov

EEOICPA Resource Center (Las Vegas Site)
John Krachenfels, Office Manager
Flamingo Executive Park, Suite W-156
1050 East Flamingo Road
Las Vegas, NV 89119
702-697-0841 (Toll-Free 1-866-697-0841)
Vegas.center@eh.doe.gov

EEOICPA Resource Center (Hanford Site)
Eunice Godfrey, Office Manager
303 Bradley Blvd., Ste.104
Richland, WA 99352
509-946-3333 (Toll-Free 1-888-654-0014)
hanford.center@eh.doe.gov

National Operations Office

(District of Columbia, Maryland, Virginia, overseas cases)

Patricia Greene, Acting District Director
U.S. Department of Labor, ESA/OWCP/DFEC
National Operations Office
800 N. Capitol St., NW.
Room 800
Washington, DC 20211
202-513-6816