

STATEMENT OF SHELBY HALLMARK
ACTING ASSISTANT SECRETARY FOR
EMPLOYMENT STANDARDS
U.S. DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE
AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

September 16, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

My name is Shelby Hallmark, and I am the Acting Assistant Secretary for the Employment Standards Administration of the U.S. Department of Labor, and the Director of the Office of Workers' Compensation Programs.

I appreciate having this opportunity to discuss the Office of Workers' Compensation Programs' (OWCP) role in providing benefits under the Federal Employees' Compensation Act (FECA) to Federal civilian employees serving in Iraq, Afghanistan, and other areas around the world. Please be assured that the Secretary of Labor is fully committed to ensuring our deployed Federal civilian personnel and their families receive the care and compensation they deserve. OWCP has worked with the Department of Defense and other agencies to see that workers' compensation claims received from deployed Federal civilian personnel are handled promptly and appropriately and we look forward to a continuing working relationship to further make improvement in the administration of the FECA in this area. These claims are adjudicated by a special unit located in the Cleveland Division of Federal Employees' Compensation (DFEC) district office to ensure consistent and timely processing and assistance to the injured employee.

The U.S. Government Accountability Office (GAO) recently conducted a review of the DFEC claims process for civilians injured in war zones. The report included only two recommendations; one pertaining to a better explanation of the type of medical evidence required to support a claim for compensation and one regarding establishing a clear timeframe for issuing implementing guidance concerning the death gratuity granted by section 1105 of the National Defense Authorization Act for Fiscal Year 2008, Public Law Number 110-181. We agreed to review the instructions that accompany our injury claim forms, and the death gratuity recommendation was accomplished via our interim final rule published on August 19, 2009.

OWCP/DFEC administers the FECA which provides workers' compensation coverage to 2.7 million Federal and Postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for all reasonable and necessary medical treatment for work related injury or disease and, where necessary, medical and vocational rehabilitation assistance in returning to work. Survivor benefits are also payable for deaths which occurred in the performance of an employee's federal duties. The program has 12 district offices nationwide.

FECA, as the first comprehensive federal workers' compensation legislation enacted on September 7, 1916, has long provided benefits to all federal employees and their survivors for disability or death due to an employment injury. Providing compensation for wage loss and medical care to civilian federal employees who are injured domestically or overseas, facilitating return to work for employees who have recovered from their injury and providing benefits to survivors remains the central concern in the administration of the FECA.

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational diseases (medical conditions sustained as a result of injury or exposure occurring over the course of more than one work shift). Benefits are paid from the Employees' Compensation Fund and employing agencies are billed annually for the benefits paid for their employees from the Fund.

The FECA program provides payment for medical care due to injury as well as payment to the injured worker to replace lost wages (paid at two-thirds of the employees' salary if there are no dependents or three-fourths if there is at least one dependent); provides monetary award to injured workers for permanent impairment of limbs and other parts of the body; and provides benefits to survivors in the event of a work related death.

In addition, the National Defense Authorization Act for Fiscal Year 2008 amended the FECA by establishing a FECA death gratuity benefit of up to \$100,000 for eligible beneficiaries of Federal employees or employees of Non-Appropriated Fund Instrumentalities who die from "injuries incurred in connection with service with an Armed Force in a contingency operation," such as those underway in Iraq and Afghanistan. The \$100,000 death gratuity may be subject to offset by other federal death gratuity benefits provided pursuant to other authorities. Interim Final Regulations explaining this benefit were published in the Federal Register on August 18, 2009.

Claims for benefits under the FECA are usually filed by the injured worker through their employing agency and then forwarded to one of the 12 FECA district offices. District office staff are responsible for reviewing the claims and determining entitlement to FECA benefits. The evidence submitted must establish that the claimant is a Federal civilian employee who filed a timely claim for benefits for a medical condition sustained as a result of a work related incident or exposure. If the evidence submitted is not sufficient to establish the claim, DFEC district office claims staff will advise the claimant and employing agency of the deficiencies in the evidence, explain the evidence which is needed to establish the claim and provide additional time for submission of the necessary evidence. Claims staff may communicate directly with the treating physician or may arrange for the claimant to be seen for a second opinion medical examination.

If the claim is denied or the claimant disagrees with the benefit level awarded, the claimant has several rights of review including either an oral hearing or a review of the written record by an OWCP hearing representative in DFEC's Branch of Hearings and

Review or a reconsideration before the DFEC district office. A claimant may submit additional evidence in support of the claim through the hearing and reconsideration process. A claimant also has the option of requesting an appeal to the Employees' Compensation Appeals Board (ECAB), which is the highest appellate authority in FECA. The ECAB's review is based solely upon the case record at the time of the DFEC's formal decision and new evidence is not considered.

FECA Claims from Iraq and Afghanistan

Specific information about individual claims is generally protected from public disclosure by the Privacy Act (5 U.S.C. § 552a). In an effort to respect the privacy of injured claimants and survivors, I will discuss claims in aggregate. We have identified 537 claims filed with DFEC for injuries sustained by Federal civilian employees while working in Iraq since 2004 and Afghanistan since 2007. (To ensure that war zone cases are carefully managed, OWCP established a separate numbering sequence for such claims beginning in those years.) Some of the injuries claimed arose directly out of the armed conflict and others occurred as a result of routine accidents or exposures. Of the 537 claims, 18 death claims have been filed; 16 of those death claims have been accepted as resulting from an employment related incident. One claim was denied as we were unable to establish that the employee who was a foreign national was killed in performance of their Federal civilian duties and in the second claim we were unable to establish that the exposure occurred during the employee's deployment. A total of \$14.9 million dollars has been paid in medical benefits, lost wages and death benefits for all of these workers or their families. Of the claims identified, 142 have been denied because they did not meet the requirements for entitlement under the FECA. Most of these claims were denied either because no medical evidence was submitted or no exposure or incident was identified (93 cases) or because the medical evidence failed to establish a causal connection between the work-related event and the diagnosed medical condition (42 cases). As I noted, claimants have multiple opportunities to submit additional evidence and obtain further administrative review of a claims determination with which they disagree.

FECA currently provides comprehensive workers' compensation coverage for employees in zones where armed conflict may take place. While Federal employees located abroad are not covered around the clock under all situations, deployed employees in travel status or on a special mission are covered under FECA for all activities reasonably incidental to their employment, such as eating, sleeping and during travel. Under the FECA, "disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States ... is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual." 5 U.S.C. § 8102(b).

A war-risk hazard is defined as a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a covered individual is serving. The hazard may arise from the discharge of a missile; action of a hostile force or person; the discharge or explosion of munitions; the collision of vessels in a convoy or the operation of vessels or aircraft engaged in war activities. Employees who reside in the vicinity of their employment who are not living there solely due to the exigencies of their employment (local hires) are only covered while in the course of their employment.

While Federal employees abroad are not covered around the clock under all situations, FECA (in a manner similar to other workers' compensation systems) recognizes a number of potentially applicable doctrines that extend workers' compensation coverage for Federal employees injured in circumstances not directly related to their job duties.

The zone of special danger doctrine provides coverage of injuries to employees sustained in foreign countries if the obligations or conditions of employment overseas expose them to hazards not common to all travelers.

The proximity rule provides coverage for injuries suffered due to a hazardous condition proximate to the employment premises.

The positional risk doctrine provides coverage for employees where the only connection of the employment with the injury is that employment obligations placed the employee in the particular place at the particular time when he or she was injured by some neutral force, meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.

The rescuer doctrine provides coverage in an emergency to include any act designed to save life or property in which the employer has an interest.

The bunkhouse rule provides coverage where an employee is injured during the reasonable use of employer provided housing which the employee is required or expected to occupy.

While the FECA specifies the critical elements that a workers' compensation claimant must first prove in order to establish entitlement, we do recognize that civilians injured in the war zones may encounter complications in establishing their workers' compensation claims that employees injured in the States would not encounter. There is limited availability of medical treatment and limited communications. We formally met with management from the Department of Defense to discuss these mutual concerns in May 2008, and again in September 2008. It was agreed that similar concerns existed for all agencies with civilians working in the war zones and we participated in an interagency meeting to discuss these concerns in June 2008. We agreed to relax our time frames for claims adjudication and to give advance notice to the employer prior to denying a

claim. We clarified our procedures and what the employing agencies could do to help ensure prompt resolution of their claims.

OWCP works closely with the employing agencies to ensure that individuals with serious injuries, especially those wounded in combat zones, receive prompt services. Claims arising out of injuries sustained overseas are adjudicated by a special claims unit located in the Cleveland DFEC district office. The claims staff in this special unit work closely with the various employing agencies to obtain the evidence necessary to adjudicate the claim and are familiar with certain logistical difficulties that arise from overseas claims. FECA beneficiaries have the right to choose their own physician and all medical costs associated with the injury are paid in full with no co-payment from the injured worker. Additionally, a registered OWCP field nurse may be assigned to the injured worker to assist in coordinating medical treatment and obtaining necessary authorizations. Once the claimant has recovered from the injury OWCP works with the employing agency or provides vocational rehabilitation to assist in return to work.

Under the FECA program, any medical condition can be accepted as long as the probative medical evidence establishes the condition was caused, accelerated or aggravated by the employment-related incident or exposure. This includes mental disorders, traumatic brain injuries and any other medical condition that may be a consequence of an injury sustained on the battlefield. Most conditions, including psychiatric disorders, traumatic brain injuries, burns, open wounds, hearing loss, amputations also occur in non-combat situations and are routinely accepted if the evidence supports that such conditions arose out of the employees' federal employment.

The injured federal worker is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. In addition to the claimant's initial choice of a treating physician, OWCP authorizes referrals to other specialists so long as the treatment is for an injury-related condition.

As noted previously, GAO recently conducted a review of the DFEC claims process for civilians injured in war zones. The report recommended that we revise application materials for FECA claims to make clear what medical documentation applicants must submit with their claims, which OWCP agreed to do. The CA-1, "Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation", is the standard form used to initiate a claim for traumatic injury in every instance that a federal civilian employee sustains an injury while in the performance of federal duty. In FY 2008, DFEC received over 105,000 traumatic injury claims. The nature of the injuries claimed varies from very simple, obvious injuries to catastrophic events and complex disease conditions of uncertain origin. The nature of the injury claimed by the federal employee impacts the type and amount of evidence requested by DFEC. For instance, if an employee experiences an obvious injury such as a laceration on work equipment, usually a diagnosis and a physician's signature are sufficient in itself to accept the claim. However, when a claim that a traumatic event caused a serious medical condition such as myocardial infarction is received, much more detailed evidence is required to include the physician's analysis of the pre-existing medical history and other possible causative factors. The wide array of injuries that are claimed will limit the precision of directions we can provide as to the documentation needed to establish a claim. We do not want to routinely require detailed narrative medical reports in every instance when it may be unnecessary to incur this burden and expense to approve the claim.

Our program is structured to serve the vast majority of our claims that are generated by civilians serving in the continental US and outside the war zones. Our district offices provide employing agencies' compensation specialists with training to assist injured workers in obtaining appropriate information to establish their claims. We provide informational brochures and on-line procedures to aid claimants through the claims adjudication process. Our district offices maintain phone banks to respond to general questions and our Branch of Technical Assistance provides guidance and training to employers, unions and individual claimants.

We recognize that many of these services may not be available to federal civilians who are injured in war zones. Therefore, we agreed to review the instructions that accompany the CA-1 form to determine whether further guidance can be included with respect to the medical information that should be submitted to establish the claim.

OWCP is sensitive to the hardships endured by Federal employees in war zones, and seeks to ensure that the best possible service is provided to these individuals. We continue to work closely with our colleagues in the Department of Defense and other agencies to coordinate services to injured Federal workers. Understanding the difficulties inherent in obtaining medical evidence, we have established guidelines within the special claims unit to assist the injured employee in establishing their claim by using the Office's district medical advisors, by notifying the employing agency of any deficiencies in the medical evidence prior to denying a claim, by providing guidance regarding suitable medical reports to the employing agencies so that their own physicians can opine on the causal connection between war zone conditions and a diagnosed medical condition. In significant injury cases, we have assigned a contract nurse to assist in coordinating medical care when multiple medical specialists are involved in the case. We have authorized and reimbursed the cost of travel when the injured Federal employee chooses to be cared for through the military treatment facilities once they return to the US.

The FECA is administered for deployed civilian employees by OWCP staff who are dedicated to promptly adjudicating claims, promptly paying medical bills and claims for compensation, and providing assistance in returning the injured worker to gainful employment once that is medically possible. In the great majority of in-theater cases filed, these goals have been fulfilled efficiently and effectively. We will, of course, continue to strive to perfect the administration of the FECA for all claims.

Mr. Chairman, I would be pleased to answer any questions that you or the other members of the Committee may have.