SUPERVISOR'S GUIDE TO WORKERS' COMPENSATION CLAIMS

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*Note: The information provided herein does not replace nor in any way modify the workers' compensation regulations or guidance put out by the Department of Labor (DOL). The FAA uses DOL's regulations and guidance for processing all Office of Workers' Compensation Programs (OWCP) claims. The following information is meant solely to help readers understand the OWCP process and the regulations that govern that process.

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Purpose of This Guide

The purpose of this guide is to help you understand the workers' compensation process and your role in this system. This guide is meant to help you educate yourself regarding what actions you can or should take with regard to workers' compensation claims.

Everyone has a right to file a claim but not every claim will be accepted. We need to assist injured employees and reduce the growing costs of this program. By helping injured employees file claims (which we are required by law to do), controverting claims when necessary, monitoring claimants' recoveries, and returning employees to work as soon as possible, we will be successful in improving service, diminishing abuse, and containing costs. This guide will help you know what you can do.

About Workers' Compensation

Program Costs
Currently over 3600 FAA claimants receive workers' compensation payments, costing the lines of business nearly $84 million. Claimants receive full cost of living adjustments annually, and compensation for wage loss is paid at either 75% or 66 2/3% of an employee's salary, tax-free. Additional payments may also be made for medical expenses, death benefits, scheduled awards, and vocational rehabilitation. Payments are made to employees, former employees, and in some instances, surviving family members.

Program Operation
The Federal Employees Compensation Act (FECA) is administered by the Department of Labor (DOL) Office of Workers' Compensation Programs (OWCP) and provides monetary compensation, medical care and assistance, travel to and from medical care, vocational rehabilitation, funeral expenses, survivor benefits and retention rights to Federal employees injured in the performance of duty. FAA pays the costs associated with FECA benefits, but OWCP makes all eligibility and disability decisions. (see 20 CFR 10.0, 10.1, 10.5(a); CA-810 Ch. 1-1, 1-3.)

Sole Remedy
The benefits provided under OWCP are the only compensation benefits available to FAA employees and their beneficiaries for work-related injuries, illnesses or death. Employees and surviving dependents cannot sue the United States or its agencies for damages for any injury, illness or death covered by OWCP. (see CA-810 Ch. 1-2.)

Appeals
The FAA may not appeal OWCP actions but it may provide evidence and comments to OWCP during the claim adjudication process and during appeals made by the claimant. Claimants may appeal case decisions directly to OWCP. There are three methods for reviewing a formal decision of the OWCP: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). (see 20 CFR 10.12(b)(2), 10.118©, 10.600; CA-810 Ch. 4-4.)

Penalties for Misuse
No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. A number of statutory provisions make it a crime to file a false or fraudulent claim or statement or to wrongfully impede a FECA claim. When a beneficiary either pleads guilty to or is found guilty of defrauding the Federal government in connection with a claim for benefits, the beneficiary's entitlement to further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial. (see 20 CFR 10.15, 10.16, 10.17; CA-810 Ch. 1-6.)

Administrative Matters
The DOL, through its district offices, has sole responsibility for administering the program and for making determinations on claims. DOL assigns a number to each claim that should be used for all correspondence regarding the case. (see CA-810 Ch. 4-1.)

Burden of Proof
The employee is responsible for establishing the essential elements of the claim. These are listed below under "Conditions of Coverage by OWCP". (see also 20 CFR 10.115; CA-810 Ch. 4-2.)

Questionable Claims (also see "When & How to Controvert Workers' Compensation Claims" later in this guide)
If the validity of a new claim is questionable, the supervisor should investigate the circumstances and report them to OWCP with supporting factual evidence. Any such supporting evidence should be submitted with the notice of traumatic injury or death, or within 30 calendar days from the date the notice of occupational disease or death is received from the claimant. Do not delay submitting the notice of traumatic injury, notice of occupational disease or notice of death while gathering additional evidence. Immediately bring the form to the Human Resources Management Division (HRMD) Workers Compensation Specialist along with a statement that additional evidence is forthcoming. For employees already on OWCP's rolls, the employer may ascertain the events surrounding the extent of disability where it appears that an employee who claims total disability may be performing other work, or may be engaging in activities that would indicate less than total disability. However, the provisions of the Privacy Act apply

to any endeavor by the employer to ascertain the facts of the case. (see 20 CFR 10.117, 10.118, 10.119; CA-810 Ch. 4-3.)

Decision and Notification

OWCP will notify the employee in writing of the status of his/her claim and any other subsequent decisions made on the claim. Agencies do not have appeal rights once a case has been accepted. If a claim is denied, DOL will notify the employee of his/her appeal routes with DOL. FAA employees may not appeal OWCP decisions to FAA since the agency has no jurisdiction over the OWCP program. (see 20 CFR 10.12(b)(2), 10.118©, 10.119; CA-810 Ch. 4-4.)

Conditions of Coverage by OWCP

All claims must meet all five of the following requirements (see 20 CFR 10.115; CA-810 Ch. 3):

1. Time

   The claim must be filed within 3 years of the injury, illness, or death. A claim may be filed after that time and compensation still allowed, if a written notice of injury was submitted within 30 days of the injury or if the supervisor had knowledge of the injury during that time period. (see 20 CFR 10.100(b) and (b)(1), 10.101(b), 10.105(b); CA-810 Ch 3-1.)

2. Civil Employee

   The injured or deceased must have been an FAA government employee at the time of injury, illness, or death. There are some exceptions for covering others, such as volunteers, but these exceptions are determined on a case-by-case basis by OWCP. The FECA excludes certain persons from eligibility for COP. Temporary employees are covered on the same basis as permanent employees. (see 20 CFR 10.115(b), 10.200(c); CA-810 Ch 3-2.)

3. Fact of Injury

   There are two components to fact of injury, which must be considered together. The first component is whether the employee actually experienced the accident, untoward event, or employment factor as alleged. This is a determination made by the Claims Examiner based on the factual evidence of record. The second component is whether a medical condition has been diagnosed in connection with this event. This is a determination made based on the medical documentation of record. Simple exposure to a harmful environment or the existence of an accident is not sufficient in and of itself; a medical condition must have developed from said incident. (see 20 CFR 10.102(b)(3), 10.115©, 10.303 (a); CA-810 Ch 3-3.)

4. Performance of Duty

   The injury occurred on agency premises, or in some circumstances off premises, while the employee was performing assigned duties or engaged in an activity that was reasonably associated with his/her employment. (see 20 CFR 10.115(d); refer to CA-810 Ch. 3-4. for details on specific situations.)

5. Causal Relationship

   Based solely upon medical evidence, the employee must establish a connection between the injury and the medical condition identified. The on-the-job injury must have caused the medical condition. Opinions by the employee, supervisor, or witnesses are not considered. (see 20 CFR 10155(e), 10.330(i), 10.332; CA-810 Ch 3-5.)

Statutory Exclusions

Benefits are denied if an injury is sustained as a result of willful misconduct, intoxication or intent to harm oneself or another. (see 20 CFR 10.220(f); CA-810 Ch 3-6.)

The FAA Supervisor's Responsibilities

In an emergency, first make sure the employee gets immediate medical attention.

Assisting in Filing the Claim

Provide the employee with the necessary forms to file a claim as soon as the employee makes you aware of an injury. A CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, is used for traumatic injuries (an injury that occurs during one work shift) and a Notice of Occupational Disease and Claim for Compensation, CA-2, is used for occupational diseases (a condition produced by the work environment over a period longer than one work shift). Every FAA employee has a right to file a claim at any time; and, this right is protected by law. Never obstruct anyone from filing or delay the claim paperwork. Instruct the employee to complete the front side of the form in its entirety and return it to you within 24 hours or as soon as possible, but no later than 30 days, and to provide medical documentation supporting all time off from work within 10 calendar days. (see 20 CFR 10.5(q) and (ee), 10.100(a), 10.101(a) 10.105(a); CA-810 Ch. 2)

Completing the Claim Form

Fully complete the supervisor's segment of the claim form and sign the form. Forward the claim and any accompanying information to your HRMD Workers' Compensation Specialist immediately. OWCP regulations state that the employer must complete and transmit the form to OWCP within 10 working days after receipt of notice from the employee (Block 23 of CA-1 or Block 26 of CA-2). This includes both the supervisor's time completing the form and the HRMD Workers' Compensation Specialist's time reviewing the claim and entering it into the FAA's Workers' Compensation Information System (WCIS). WCIS allows for the creation of an electronic case file; assignment of a claim number by OWCP; and, overnight transmission of the claim number from OWCP to the FAA. If you have additional information regarding the claim, state on the form that additional information will follow and forward it as soon as possible with the accompanying claim number. Whenever you submit information on a claim, simply provide facts surrounding the case that will allow OWCP to make an informed decision. Those facts will either support or refute the claim. If you suspect a claim is not legitimate, this is the time to notify OWCP that you are controverting/disputing the claim. It is important to inform the employee of any decision to controvert continuation of pay (COP) and/or terminate pay, for any period of disability. If you need assistance completing the form, contact your HRMD Workers' Compensation Specialist. (see 20 CFR 10.110(b), 10.117, 10.118, 10.211(c); CA-810 Ch. 2-2.a. and CA-810 Ch. 2-3.a.)

Controverting/Disputing Claims (see also "When and How to Controvert or Dispute Workers' Compensation Claims" later in this guide)

If you suspect the validity of a claim, you can challenge the claim at any time prior to adjudication with factual evidence, including witness statements, leave records, information secured by investigation, and any other facts you can present. The key is to provide evidence that will stand up in an appeal and that demonstrates how a claim fails to meet one or more of the Conditions of Coverage (dispute) or how the claim fits one of the nine reasons cited on the CA-1 for withholding COP (controversion). OWCP, which adjudicates all claims, assumes the agency fully supports any claim for which no contrary evidence is provided. It is important to note on the initial CA-1 claim form, in block 35 or 36, that the agency will be disputing or controverting the claim, respectively. This creates an internal flag at OWCP to withhold initial payments while the agency has an opportunity to present evidence to support controversion or dispute. On the CA-2, the period of adjudication varies depending on the specific circumstances of the case, but often takes longer than a CA-1. To dispute a CA-2 claim, indicate that the agency is challenging the veracity of the claim in block 35, and provide the information to OWCP as you compile it, but without undue delay. (see 20 CFR 10.117, 10.118, 10.119, 10.220.)

Authorizing Medical Treatment

If medical treatment is needed for a traumatic injury, you may authorize an employee to seek that treatment by completing form CA-16, Authorization for Examination and/or Treatment. However, in an emergency, the employee should seek immediate treatment, whether or not a CA-16 has been completed. CA-16's are used only for traumatic injuries and not in cases of occupational disease unless prior permission has been obtained from OWCP. Typically,

CA-16s should only be issued for injuries that occurred within four hours. However, if verbal authorization for treatment had been given, you may issue a CA-16 within 48 hours from the injury. Also, depending on the circumstances of a particular claim, you may use your judgment and issue a CA-16 for up to one week after the injury if circumstances warrant it. You should not issue a CA-16 in instances where employees fear they have been exposed to an infectious agent unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. (see 20 CFR 10.300, 10.303; CA-810 Ch. 2-1, 2-2.b.)

Continuation of Pay (COP) (see also "COP Facts" section later in this guide)
If the employee must be absent from work due to a medical condition from a traumatic injury, notify the employee of his/her right to elect COP, also known as traumatic injury leave. COP is contingent upon claim approval by OWCP and is not an automatic entitlement. Time taken as COP must be medically justified and medical documentation must be submitted on an ongoing basis as COP is being used. The FAA may only withhold COP for one of the nine reasons listed on the claim form or if sufficient medical documentation is not provided within 10 days of the injury. (see also 20 CFR 10.200, 10.210(b), 10.211(b), 10.220, 10.221; CA-810 Ch. 5)

Employees filing CA-2 claim forms for occupational disease are not entitled to COP and must use their own sick or annual leave or leave without pay (LWOP) if they must be absent from work due to their disease while awaiting adjudication by OWCP. (see 20 CFR 10.220(a); CA-810 Ch 5-3)

Tracking COP (see also "COP Facts" section later in this guide)
Monitor the employee's COP hours and days (counted as calendar days, including weekends, holidays, and regular days off) and retain records of all leave used for an injury. If the claim is denied, the time card must be amended and any COP used must be converted to sick leave or annual leave, whichever the employee elects. If leave is unavailable, it must be converted to LWOP and deemed an overpayment. (see 20 CFR 10.215(a)-(e), 10.223; CA-810 Ch 5-5.)

Medical Evidence (see also "Obtain Sufficient Medical Documentation" later in this guide)
As a supervisor, you are responsible for monitoring your employee's medical progress for the purposes of returning the employee to work. Maintain regular contact with your employee to monitor his/her recovery and to facilitate the employee's return to work. Require the employee to submit sufficient medical documentation to you for all time away from work. Per 20 C.F.R. 10.506, you may contact the employee's physician in writing concerning the work limitations imposed by the effects of the employment injury and possible job assignments. All COP used and other injury-related leave must be supported by medical documentation. For COP eligibility, medical documentation should be received within 10 calendar days from the day the employee was first absent. Sufficient medical documentation includes the physician's physical findings and diagnosis; the date and course of treatment; the prognosis; a description of any other conditions found but not due to the claimed injury; the physician's opinion, with medical reasons, as to causal relationship; and the physician's assessment of the employee's work capabilities while recovering. If an employee does not provide medical documentation within 10 calendar days after filing the claim for COP, you should terminate COP and require the employee to use sick leave, annual leave, or LWOP for injury-related absences. (see 20 CFR 10.210(a), 10.330, 10.505.)

Cost Containment
As of FY 1998, each Line of Business is responsible for paying all OWCP costs for its injured employees. Monitoring your employees and helping them to return to work as soon as possible is the best way to help the FAA meet its goal of containing workers' compensation costs. OWCP adjudicates all claims but the FAA pays all costs for the life of the claim. Since each long-term case costs the agency an average of one million dollars, it is imperative that we provide strong factual information on a claim before it is adjudicated and return employees to work as soon as possible after an injury. These are the two best ways to contain costs. (see 20 CFR 10.117, 10.118, 10.221; CA-810 Ch. 9-4.)

Return to Work (see also "Returning Injured Employees to Work" later in this guide)
Make the employee and his/her doctor aware from the first day of injury that your goal is to return the employee to work. To aid in this endeavor, OWCP will assign a registered nurse who will meet with employees, physicians, and agency representatives to ensure that proper medical care is being provided, to assist employees in returning to the job by visiting the worksite, to ensure that the duties of the position do not exceed the medical limitations, and to

address any problems the employee may have in adjusting to the work setting. Regularly contact your injured employee and his or her nurse or physician, if necessary, to check on your employee's capabilities for work and request updated medical reports. Contact with the physician must only be in writing with copies of such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. Create temporary assignments or other accommodations, as necessary, to reconcile the employee's medical restrictions and return your injured employee to work, whether to full duty or to a temporary assignment in the same office or another location. It may be helpful to create a list of temporary duty assignments ahead of time and have the injured employee provide this list to the doctor. In a cover letter, inform the doctor that if this employee cannot perform the essential functions of his/her job, to indicate on your list which temporary duty assignments the employee can perform and when. This sets the tone from the outset that return to work is our goal, whether the employee works in the same or another office, location or organization. (see 20 CFR 10.500(b), 10.505, 10.506, 10.515(c), 10.518(a); CA-810 Ch. 8-3 and 8-4.)

Note: Once an employee returns to work, the entire time during which the employee was receiving compensation is credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service. An employee who returns to the FAA in his/her former position or an equivalent position within one year from the date compensation began will resume all attendant rights which the employee would have had, or acquired, had he/she not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force. (see 5 USC 8151(a) and (b)(1).)

Separation from the FAA

An employee is entitled to return to his/her former or equivalent position (i.e., the same type of work and same pay) if he/she fully recovers within one year from the date compensation began. After that date, employees are only entitled to priority consideration. However, since it costs the agency approximately $1 million per person on long-term disability, it is best to reemploy injured workers whenever we can. If you have an employee out of work for approximately one year you should contact your employee relations specialist and workers' compensation specialist to evaluate the most recent medical documentation. You need to determine the person's current condition, whether he/she will be able to return to some type of work in the near future, and whether we can accommodate any medical restrictions. If we cannot or if the person will not be able to return to work, contact the HRMD Employee Relations Specialist to discuss a non-disciplinary removal action. The employee should be counseled about applying for disability retirement. Disability retirement is an option should the employee ever lose his/her OWCP benefits, and also ensures that a survivor benefit will be paid in the event that an individual dies from other than the approved injury or illness. (see 20 CFR 10.505; 5 USC 8151(b)(2); CA-810 Ch. 8-2.)

For Further Assistance

Talk to your HRMD Workers' Compensation Specialist about any questions or concerns you have. Every case is unique and there are many regulations concerning this program. Your specialist is available to help you and can advise you on all matters concerning workers' compensation. Additional information is also available on the Human Resources section of the FAA web page (http://www.faa.gov/ahr/index.htm) and DOL's web page under (http://www.dol.gov/dol/esa/public/regs/compliance/owcp/fecacont.htm).

Employee Benefits Under Workers' Compensation

Benefits Prior to Claim Approval

Up to 45 calendar days of COP, may be used for a traumatic injury. To be eligible for COP, the employee must have filed his CA-1 claim form within 30 days of the injury and begin losing time from work due within 45 days of the injury. If the employee returns to work and subsequently suffers a recurrence of disability within 45 days from the date of first return to work, he/she may be eligible to use any remainder of the 45 days not already used. (See COP Facts section for further explanation and example.) For any time off work beyond the 45 days of COP, the employee must use his/her own sick or annual leave or LWOP. Employees filing occupational disease claims are not entitled to traumatic leave and must use their own sick or annual leave or leave without pay for time off work due to their illness. If a claim is accepted, employees may then file for wage loss compensation with OWCP and buy back any

leave used, if they choose (see "Leave Buy Back" section later in this guide). (see 20 CFR 10.200(a), 10.207; CA-810 Ch 5-7.)

Benefits After Claim Approval

If a claim is accepted by DOL, an employee may receive a combination of compensation for wage loss, medical benefits, and scheduled award payments for the loss of function of a body part. Additionally, death benefits may be provided to a surviving family member. Wage loss compensation benefits are computed as follows (see 20 CFR 10.401(b) and 10.403(b) and (c).):

Total Disability:
- An employee with no dependents receives 66 2/3 % of his/her pay rate
- An employee with at least one dependent receives 75 % of his/her pay rate

Partial Disability:
- An employee with no dependents receives 66 2/3% of the difference between the employee's pay rate and his/her wage earning capacity
- An employee with at least one dependent receives 75% of the difference between the employee's pay rate and his/her wage earning capacity

Holiday, operational differential, night differential and other extra pay are prorated from the prior year and a percentage is added to the base pay. This compensation is tax-free although there are deductions for health benefits and life insurance premiums. If the employee is able to return to work but in a lower graded position, OWCP will make up the difference between the current salary and the salary at the time of injury. OWCP will pay most medical bills related to the condition for which the claim has been accepted, and the costs will be charged back to the FAA. Any medical bills not directly related to the on-the-job injury must be submitted to the employee's health insurance. (see CA-810 Ch. 7-4.B.)

To be paid for wage loss for any time out of work beyond the 45 days of COP once the claim is approved, the employee must file a CA-7, Claim for Compensation, and a CA-20, Attending Physician's Report. A CA-7 and a CA-20 must be filed thereafter on a two-week interval basis unless directed by OWCP to do otherwise. Compensation is payable when the employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 calendar days. Otherwise, compensation is payable on the fourth day after pay stops. The employee must continue to submit medical documentation to OWCP and the supervisor to support his/her disability for the life of the claim. The employee must also submit to any second opinion examination and/or rehabilitation services directed and provided by OWCP in order to continue to receive compensation. (see 20 CFR 10.102, 10.320, 10.401(a), 10.518; CA-810 Ch. 2-2.D-E, CA-810 2-3.C.)

An employee who fully recovers within one year of beginning compensation has mandatory restoration rights to his/her old position or its equivalent (same type of work and same pay) regardless of whether or not he/she is still on the agency rolls. Beyond one year, the employee is only entitled to priority consideration for reinstatement to the FAA. (see 5 USC 8151(b)(2); CA-810 Ch. 8-2.)

Medical Benefits and Care

Necessary medical treatment associated with an injury will be paid with no limit on the length of time or the expense as long as the charges are reasonable and customary and there is a demonstrated medical need for treatment. This includes costs associated with doctors, pharmacies, hospitals, and travel for treatment. Invasive procedures such as surgery, experimental procedures, and destructive procedures such as amputation require prior authorization from OWCP. (see 20 CFR 10.310, 10.315; CA-810 Ch. 6)

Choosing a Physician

The employee is entitled to choose his/her caregiver as long as the provider is a licensed physician. Except for a referral made by the attending physician, any change in treating physician must be authorized by OWCP. (see 20 CFR 10.300(d), 10.316; CA-810 Ch. 6-3.)

Exclusion of Providers
Some providers may be excluded from participation due to previous instances of fraud. (see 20 CFR 10.815, 10.816; CA-810 Ch. 6-5.)

Medical Evaluation
OWCP may request that other physicians examine the employee. (see 20 CFR 10.320; CA-810 Ch. 6-4.)

Payment of Bills
Medical providers should submit itemized bills on OWCP standard claim forms (i.e. HCFA 1500) for payments made by OWCP based on maximum allowable charges. Reimbursements are made to employees after submission of receipts showing that payment was made, up to the maximum allowable charge. All payments to providers must be accepted as "payment in full" and the providers cannot seek additional payment from the employee. (see 20 CFR 337, 10.801, 10.805, 10.811, 10.813; CA-810 Ch. 6-6.)

Claims for Recurrence
A recurrence is defined as a spontaneous return of symptoms with no intervening injury or incident. Employees may suffer a recurrence of medical condition and/or recurrence of disability. If the need for medical treatment or the new period of disability results from a new occupational exposure or traumatic incident, even if to the same part of the body as the original injury, OWCP considers this a new injury, and a CA-1 or CA-2 claim should be filed as appropriate. If the return of symptoms and disability was spontaneous and not attributable to a new incident, the employee should file a CA-2a, Notice of Recurrence. The employee should complete Part A, the Supervisor should complete Part B and then immediately forward the form to the HRMD Workers Compensation Specialist who will send the form directly to OWCP. If the employee is no longer Federally employed, he/she should complete parts A and C and forward the form directly to OWCP.

Recurrence of Medical Condition
Defined as a documented need for medical treatment after release from treatment for the accepted condition, with no accompanying work stoppage. If the need for medical treatment occurs within 90 days of the case closure, OWCP will typically accept a prima facie statement of casual relationship from the attending physician without requiring detailed medical rationale. If the need for treatment occurs outside of 90 days, the employee has the burden of submitting a detailed medical report discussing the casual relationship of the condition to the accepted injury, similar to the burden needed to establish the original claim.

Recurrence of Disability
Defined as a work stoppage which occurs after an employee has returned to work following a period of disability. This includes a material change in the accepted medical condition without an intervening injury or exposure, a return or increase of disability due to an accepted consequential injury, and withdrawal of a light duty assignment made specifically to accommodate the employee's work related injury. If the recurrence of disability occurs within 45 days from the first return to work date and the full 45 days of COP have not been used, the employee may be entitled to the remainder of his 45 days. Please see the section later in this document regarding COP usage.

When And How To Controvert or Dispute Workers' Compensation Claims

Definitions
1) Controvert - To deny a person's right to COP based on one of 9 reasons listed below (and on the CA-1 form).

2) Dispute - To challenge the claim based on questionable circumstances.

Controverting a Claim - Withholding COP Payments

There are nine legally authorized reasons, cited below, for which the FAA can withhold COP when a CA-1 claim is filed. COP can also be terminated if the employee does not provide sufficient medical documentation within 10 calendar days. All COP must be withdrawn and the time and attendance record amended if a claim is denied (see the "COP Facts" section later in this document). (see also 20 CFR 10.117, 10.200©, 10.205, 10.220, 10.224; CA-810 Ch. 5-3.)

1) The disability is a result of an occupational disease or illness.

2) The employee is a volunteer serving without pay or with nominal pay, or a person appointed to the staff of a former President.

3) The employee is neither a citizen nor a resident of the United States, Canada, or the territory under the administration of the Panama Canal Commission (i.e., a foreign national employed outside these areas).

4) The injury occurred off the employing agency's premises and the employee was not engaged in official "off-premises" duties.

5) The employee caused the injury by his/her willful misconduct, intoxication, or intent to bring about his/her own injury or death or that of another person.

6) The injury was not reported on a CA-1 within 30 days following the injury.

7) Work stoppage first occurred more than 45 days following the injury.

8) The employee initially reported the injury after employment was terminated.

9) The employee is enrolled in the Civil Air Patrol, the Peace Corps, the Job Corps, the Youth Conservation Corps, a work study program, or another program covered by special legislation.

Disputing the Claim

The agency may dispute any claim until it is adjudicated by OWCP. The claim might be disputed on the basis that the employee was not performing an assigned duty when the injury occurred, or that the condition claimed is not the result of a work-related injury. Any claim for workers' compensation may be disputed if the supervisor, or other agency official, believes that the circumstances surrounding the claim are of a questionable nature, or the claim does not meet one of the 5 Conditions of Coverage by OWCP described previously under Conditions of Coverage. (see 20 CFR 10.115; 10.117; CA-810 Ch 3.)

How to Controvert/Dispute a Claim

Whenever you submit information to challenge a claim, provide facts rather than opinions or conjecture. This will allow OWCP to make a decision that will stand up in an appeal. The facts should be supported by objective evidence such as witness statements, pictures, accident investigations, time sheets, differing versions of the incident, evidence that the injury occurred outside work, or any other objective means. OWCP makes decisions on cases based primarily on three pieces of information: the employee's claim, the agency's response, and the medical evidence provided. Employees have the right to challenge any decision on any claim. However, once a claim has been adjudicated, the agency may not request an appeal of the decision. For this reason, it is important to provide factual evidence at the outset of a claim (or as soon as such information is received) prior to adjudication. (see 20 CFR 10.515, 10.516; CA-810 Ch 4-3.)

Provide evidence controverting/disputing the claim to OWCP in a memo signed by the supervisor, a manager, the workers' compensation specialist, or other agency official. **The evidence must show how the claim is deficient in meeting at least one of the five required Conditions of Coverage, or is excluded from coverage by statute (e.g., the employee was engaging in willful misconduct, was intoxicated or intended to harm himself or others).**

Continuation of Pay (COP) Facts

COP is the continuation of an injured employee's pay by the employing agency while recovering from a traumatic injury for up to 45 calendar days, while OWCP adjudicates the claim. COP is available only in cases of traumatic injury and is based upon acceptance of the claim by OWCP and the need for absence from work to recover from the injury. If an employee cannot work for medical reasons, the employee may elect on the CA-1 form between COP or sick and annual leave, for injury-related absences from work. The CA-1 form clearly states that if the employee's claim is denied, all time taken for COP must be converted at the employee's option to sick or annual leave, or LWOP (where the COP used is deemed an overpayment and must be paid back to the agency). Time taken as COP must be medically justified and medical documentation must be submitted on an ongoing basis as COP is used. (see 20 CFR 10.200-10.224; CA-810 Ch. 5)

Payment of COP

FAA pays COP but OWCP determines eligibility for COP as it does for all OWCP claims. Therefore, if a claim is denied by OWCP, any COP used must be converted to sick or annual leave or LWOP and the time and attendance records must be amended accordingly. There are no other options allowed by law. (see 20 CFR 10.221 and 10.224; CA-810 Ch. 5-9C)

Eligibility for COP

An employee who files a CA-1 within 30 days of the date of injury and suffers time loss due to the injury is eligible for COP pending medical evidence supporting disability. Final eligibility is based on the subsequent acceptance of the claim by OWCP. (see 20 CFR 10.210(a)-(c) and 10.221; CA-810 Ch. 3-1A)

Amount of COP

Injured employees may use up to 45 calendar days of COP if the nature of the injury leaves him/her disabled from employment or in need of medical treatment. For example, if an employee's injury requires missing only 10 days of work, then the employee would be eligible for only those days. Likewise, if an employee must lose three hours of work to obtain physical therapy and is absent for all or part of the remaining workday, the time loss in excess of those three hours should be covered by leave, LWOP, absence without leave, etc. To be eligible for COP, a person must begin losing time from work due to the traumatic injury within 45 days of the injury. If the employee recovers from a period of disability and subsequently suffers a recurrence of disability, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability as long as the new period of disability commences within 45 days of the initial return to work. **For example, an employee injures himself on January 1, 2000. To be eligible for COP, he/she must begin losing time within 45 days of the injury or February 14, 2000. He/she is unable to work beginning January 31 and uses 10 days of COP before returning to work February 9. As long as the disability recurs within 45 days of the return to work (February 9) which in this instance is March 25, 2000, he may use the remaining 35 days of COP.** However, once the 45-day period has expired, employees are no longer entitled to use any COP, even if the entire 45 days have not been used (the employee would then use sick or annual leave, or LWOP and claim compensation from OWCP for the time). Note that the 45 days of COP are counted in whole days, including weekends, holidays, and regular days off. (see the "Tracking COP" section below), whether or not the employee was absent for the whole day. (see 20 CFR 10.200(a), 10.205(a)(3), 10.207, and 10.215; CA-810 Ch 5-1 and 5-5.)

Controverting COP (see also "Grounds for Controverting a Claim" section)

The agency may only refuse to pay COP for one of the nine reasons listed on the CA-1 form or if sufficient medical evidence is not provided within 10 calendar days (see "Obtain Sufficient Medical Documentation" section for more details). If the claim meets one of these criteria, sick or annual leave should be used instead of COP. The reason for controverting COP should be documented in writing and sent to OWCP to support denial of traumatic injury leave. The final decision, however, on whether to uphold the COP denial or pay COP rests with OWCP. (see 20 CFR 10.220, 10.221, and 10.222; CA-810 Ch 5-3.)

Note: the employee must submit medical evidence of a disabling traumatic injury to the supervisor within 10 calendar days of the first day of COP. If medical evidence is not provided, the supervisor may terminate COP.

Medical Documentation

The employee must provide detailed medical documentation to support all absences from work including absences for doctor's appointments, therapy treatments, and recuperation. All COP time used, whether continuous or intermittent, must be certified by the employee's physician as necessary for treatment or recovery from the injury.

Termination of COP

COP can be terminated if the employee does not submit sufficient medical documentation supporting the need for traumatic injury leave within 10 calendar days after the claim is submitted. COP may also be stopped if medical evidence shows that the employee is not disabled from his or her regular position or the employee refuses a written offer of a suitable alternative position which is approved by the attending physician. Any job offer should be made formally, in writing, and include a description of the duties of the position, the physical requirements, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. A copy of the offer should be provided to OWCP when it is sent to the employee. In addition, a copy of the employee's response and other supporting documentation should be submitted. (see 20 CFR 10.222(a)(1)-(3); 10.507(c)-(d), CA-810 Ch 5-8B.)

Tracking COP

COP is submitted on the employee's time card as #17 (traumatic injury leave) and is approved by the supervisor. Time away from work for medical treatment on the day of injury is counted as administrative leave. COP begins the first day disability begins following the date of injury (providing it is within the 45 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP. The 45 calendar days of COP include scheduled days off, weekends and holidays. Any absence from work for a portion of a day or an entire day counts as one day of COP since COP is counted in whole days only. COP can be used on a continuous or an intermittent basis. When COP is used on an intermittent basis, the employee must begin losing time from work within 45 days of the injury and the disability must recur within 45 days following the initial return to work date. If COP has been exhausted, sick or annual leave or LWOP must be used but this can be claimed later as compensable time if the claim is subsequently accepted (see the "Leave Buy Back" section). (see also 20 CFR 10.215(a)-(e); CA-810 Ch 5-5 and 5-9.)

When COP Is Exhausted

If the employee is unable to return to work and about to exhaust the 45 days of COP:

1) The employee may submit a CA-7 to OWCP to request compensation for wage loss beyond the 45 days of COP. Compensation is payable when the employee starts to lose pay if the injury causes permanent total disability or if pay loss continues for more than 14 calendar days. Otherwise, compensation is payable on the fourth day after pay stops. Compensation may not be paid while an injured employee is in a COP status or receives pay for leave. (see 20 CFR 10.102(a)(1)-(2), 10.401(a).)

OR

2) The employee may use his or her sick or annual leave when COP expires. If the claim is later approved, the employee may buy back the sick or annual leave used and have all or part of the leave restored.(see 20 CFR 10.425.)

Leave Buy Back

If an employee has elected to use sick or annual leave and the claim is subsequently approved, the employee may choose to have this leave restored through the leave buy back (LBB) process. The employee may buy back some, all, or none of the leave used. In addition to the CA-7, the employee must file a CA-7a Time Analysis Form and a CA-7b Worksheet/Certification and Election Form. To have leave restored, the employee must provide medical evidence related to the period requested for buy back and OWCP must approve the time as compensable. OWCP will then pay a percent of the employee's leave to the FAA (the portion they would have paid in compensation) and the employee must pay the remaining balance to the FAA. Compensatory time used may not be repurchased; and,

donated annual leave repurchased by the leave recipient shall be restored to the leave donor. The CA-7b instructs the claimant to submit the LBB claim within one year of the date the leave was used or the claim was accepted, whichever is later. (see 5 CFR 630.911(h), 20 CFR 10.401(b), 10.403(b), 10.425; CA-810 Ch. 7-4F)

Returning Injured Employees to Work

The goal in managing workers' compensation cases is to return the injured employee to medically suitable employment as soon as possible based on probative medical evidence. The nature of the injury and the medical evidence presented by the employee's physician will determine when and how an employee will return to work. Most medical restrictions deal with limiting the number of hours an employee can work each day or limiting the employee to specific work functions. Ideally, if the employee is unable to return to full duty, the employee's position should be modified to accommodate the medical restrictions and allow the employee to return to work in a temporary alternate work assignment until able to return to full duties. Contact your servicing Employee Relations Specialist if you have conduct or performance issues not directly related to the injury. It is not acceptable to allow an employee who is capable of working to remain out of work and in receipt of OWCP benefits for conduct or other performance issues. (see 20 CFR 10.500, 10.501(a), 10.507; CA-810 Ch. 8.)

Value of Return to Work

There is immense economic and psychological value in returning an injured employee to some type of work. It is important to let our employees know up front that they will be returning to work and that they have a valuable contribution to make. By being proactive about returning employees to work we can avoid having to replace injured employees and train new ones, thus saving a great deal of administrative and supervisory time and cost to the agency. (20 CFR 10.500, 10.505; CA-810 Ch 8-1.)

Steps in Return To Work Process

Suggestion - Develop a Pre-Identified Pool of Temporary Duties

It is helpful to have a number of pre-identified alternate work tasks available throughout your division for injured workers. You might want to develop a set of 6 to 8 return-to-work task options for your organization or identify organization-wide tasks or projects that can be accomplished by injured workers. Identify the tasks and classify them by importance, required skills, physical demands, availability and duration (on-going, periodic/seasonal or one-time only, available across all shifts or offered in less than 8-hour or full shift increments). Draft descriptions of each of these tasks to have on hand, ready to provide to physicians. You can solicit the help of the HRMD Workers' Compensation Specialist and/or Staffing Specialist to do this. (20 CFR 10.500, 10.505.)

1. Obtain Probative Medical Documentation - The employee's supervisor and the Workers' Compensation Specialist are entitled to obtain detailed medical documentation of the employee's current condition for the purpose of returning the employee to work. This may require contacting the OWCP office, the OWCP nurse, or even the physician directly. However, you may only contact the employee's physician in writing. You might also want to solicit assistance from the Office of Aviation Medicine. (see 20 CFR 10.506, 10.515; CA-810 Ch 9-3D.)

The medical documentation should include:

a. Firm Diagnosis of the injury
b. Current course of treatment (physical or occupational rehabilitation, medications, number of office visits, etc.)
c. Prognosis for recovery (when the person is expected to recover)
d. Current work capabilities

A good detailed example of what type information to request can be found in the instructions section of the CA-2 Form. (20 CFR 330, 10.506.)

2. Share Medical Documentation with Key Players - Provide current medical documentation to the HRMD Workers' Compensation Specialist, and Office of Aviation Medicine, if necessary. However, keep in mind that all records are protected under the provisions of the Privacy Act, and should be handled and shared accordingly.

3. Plan the Employee's Return to Work - In consultation with the HRMD Workers' Compensation Specialist, a Staffing and/or Employee Relations Specialist, the OWCP nurse or claims examiner, and Office of Aviation Medicine, review the current medical information and develop a plan of action for assisting the employee back to work as soon as possible. This may include creating temporary alternate duties that match the employee's current work capabilities until the employee is fully recovered and able to resume full duties. OWCP notifies claimants of their return-to-work requirements based on the medical documentation. However, we can plan an employee's return to work as soon as we have medical documentation that indicates the person can work. (see 20 CFR 10.505, 10.515; CA-810 Ch 8-4 and 9-3E.)

4. Develop Temporary Alternate Duties (If Necessary) - If an employee is unable to return to regular work, first look at the regular work setting for the possibility of a temporary modification for a few weeks/months.

What's not getting done in your work area?
What special projects are currently on your "To Do" list?
Are there training issues in the division?
If you had eight hours of free labor to be used outside of the regular workload, how could it be used?
What administrative functions of your job could be delegated to an injured employee?
Are there production or administration areas that need straightening, organization, sorting, labeling?
What quality control issues need to be addressed in the department?
What are the challenges in the department? Are there bottlenecks or logjams?
What are the issues and how can they be addressed?

5. Make the Return to Work Offer - Contact the employee with the offer about returning to work. The offer should be in writing (sent by certified mail) and should describe:

- the proposed job duties
- the physical requirements of the job
- the location of the job
- the date the job is available
- the date by which a response to the offer is necessary
- the pay rate or salary of the job offered (if different from the employee's current salary)
- the work schedule

The offer should include medical documentation describing the employee's work capabilities. The letter should also cite the requirement for return to work. Send a copy of the letter to the OWCP claims examiner and the HRMD Workers' Compensation Specialist, and document all actions taken. If a personnel action is involved, the employee must be furnished with a copy of it prior to the effective date. (see 20 CFR 10.210(e), 10.505, 10.506, 10.507; CA-810 Ch 8-4.)

6. Response to Offer - The employee is required to accept any reasonable offer of limited duty. Whether the job offered is accepted or refused, you must notify the OWCP claims examiner so that wage loss compensation benefits can be terminated or reduced. If the employee refuses to accept the work offered, any traumatic injury leave (COP) being received should be terminated as of the date the employee refused the offer, or after five workdays from the date of the offer, whichever is earlier. OWCP will then determine any continued entitlement to compensation based on the medical reports and the job offered to the employee. For documentation purposes, be sure to inform the HRMD Workers' Compensation Specialist of the employee's response. (see 20 CFR 10.515, 10.516, 10.517; CA-810 Ch 5-6 and 8-4.)

7. Return to Full Duty/Permanent Reassignment - After the period of limited duty outlined by the physician expires, the employee should return to full duty, unless otherwise indicated by the medical documentation. The medical documentation must state in a detailed narrative report the diagnosis, prognosis, and approximate date the employee

can resume full duty work. If the injury prevents the employee from returning to full duty, the employee may be reassigned to another position at the same grade and same pay, to a lower grade position and lower salary, or to another facility in the employee's commuting area. In addition, we can subsidize the person working in another government or even private sector job through the OWCP vocational rehabilitation program known as Assisted Reemployment. For more information contact your HRMD Workers' Compensation Specialist. (see 20 CFR 10.507, 10.517; CA-810 Ch 8-4 and 8-6.)

When Fraud Is Suspected

The following are some indicators of possible fraud. If you suspect the OWCP program is being abused, contact your Workers' Compensation Specialist.

- The details of the accident are vague or inconsistent.
- There are discrepancies between what is first reported, the medical report(s), and any witness statements.
- The injury occurred in close proximity to an adverse action or other personnel matter.
- A complaint or tip is received indicating that an injury claim may be fraudulent.
- The claimant is receiving compensation while earning unreported income from other employment.
- There is evidence of falsification or alteration of forms submitted by the claimant.
- Witnesses of the accident provide a different story than the claimant.

References:

- Your HR Workers' Compensation Specialist
- FAA HR Web page - www.faa.gov/ahr/index.htm
- DOL Web page - www.dol.gov/dol/esa/public/regs/compliance/owcp/fecacont.htm (All information below is listed on this web page)
- DOL Publication CA-810 - Injury Compensation for Federal Employees - A Handbook for Employing Agency Personnel
- DOL Publication CA-550 - Federal Injury Compensation - Questions & Answers About the Federal Employees Compensation Act
- Title 20 Code of Federal Regulations, Part 10 - Office of Workers' Compensation Programs, Department of Labor
- Title 5 United States Code, Chapter 81 - Federal Employees' Compensation Act
- Federal Procedure Manual Part 2: Claims
- Decisions of the Employees' Compensation Appeals Board