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EXAMINING THE FEDERAL EMPLOYEES' COMPENSATION ACT AND ITS BENEFITS FOR WORKERS

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

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EXAMINING THE FEDERAL EMPLOYEES' COMPENSATION ACT AND ITS BENEFITS FOR WORKERS

Thursday, May 13, 2004

U.S. House of Representatives

Subcommittee on Workforce Protections

Committee on Education and the Workforce

Washington, DC

The Subcommittee met, pursuant to call, at 1:43 p.m., in room 2175, Rayburn House Office Building, Hon. Charlie Norwood [Chairman of the Subcommittee] Presiding.

Present: Representatives Norwood, Biggert, Owens, and Payne.

Also Present: Representative Greenwood.

Staff Present: Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Donald McIntosh, Staff Assistant; Stacey Dion, Professional Staff Member; Kevin Frank, Professional Staff Member; Jim Paretti, Workforce Policy Counsel; Deborah L. Samantar, Committee Clerk; Todd Shriber, Communications Assistant; Kevin Smith, Communications Counselor; Ann Owens, Minority Clerk; Marsha Renwanz, Minority Legislative Associate for Labor; Peter Rutledge, Minority Senior Legislative Associate for Labor.

Chairman NORWOOD. A quorum being present, the Subcommittee on Workforce Protections of the Committee of Education and the Workforce will come to order.

We are meeting today—I apologize to you now, I have a little allergy. I am just going to say it once, I apologize.

We are meeting today to hear testimony on examining the Federal Employees' Compensation Act and its benefit for workers. Under the Committee Rule 12(b), opening statements are limited to the Chairman and the Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they may be included in the hearing record.

With that, I ask unanimous consent for the hearing record to remain open 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

STATEMENT OF HON. CHARLIE NORWOOD, CHAIRMAN, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Chairman NORWOOD. The Subcommittee is meeting today to examine the Federal Employees' Compensation Act, otherwise known as FECA, which is the comprehensive workers' compensation Law for Federal Employees.

I want to say up front, I view these types of hearings as a great opportunity for Members of Congress to learn. And that really is what this hearing is all about, for us to increase our knowledge.

The law is designed to provide important benefits and services to Federal workers who have suffered economic hardship because of a work-related injury or death.

Today's hearing will allow us to examine the overall effectiveness of the FECA program and to look at whether the claims processing, communication, and payment procedures are effective in meeting the needs of injured workers and furthering the goals of this entire program.

I would like to note that we are not here to propose any particular changes to the program at this point. I believe, and so does our Chairman believe, that that would be premature at this point. We need to learn more about how the program operates and its overall effectiveness on behalf of workers before considering any changes.

We also need to discuss recent changes that have been made to the program, learn about the issues that have been identified by the Office of the Inspector General and see how the Office of Workers' Compensation Programs is today addressing these issues.

OWCP plays a very important function in administering the FECA program, providing wage-loss benefits and medical services to injured Federal workers and helping them return to productive work when they are medically able to do so.

During the last FECA oversight hearing held in October 2000, this Subcommittee looked at how OWCP communicates with injured workers, employing agencies, and medical and other service providers who are involved in treating Federal workers.

I know that the Office of the Inspector General previously made a number of recommendations on how OWCP could improve the program and enhance customer service. It is my understanding that OWCP has been receptive to many of these recommendations and has implemented changes that respond to the OIG's concerns. Nonetheless, there is always room for improvement.

The Subcommittee continues to hear complaints from claimants, medical providers and other congressional offices about the difficulty in communicating with OWCP. One of my colleagues from Texas recently forwarded a letter to me from a constituent who is a physician with experience in treating injured Federal workers. The physician pointed out that he has now stopped seeing new patients with Federal workers' compensation claims, as have many of his colleagues, because of the repeated delays and denials for surgery requests. In his experience, the typical delays for surgery approvals run anywhere from 6 months to a full year.

And if that is a fact and going on very much, that is just totally unacceptable. These kinds of delays can impact the entire system

by significantly increasing the amount of time that workers remain off the job. While I know that the agency receives and processes a vast amount of mail, medical bills and phone calls each year, the program must continue to improve its performance in these areas to benefit workers who need these critical services.

I would like to thank the witnesses for being available to share their expertise with us today. We look forward to your testimony.

Finally, I would like to recognize my colleague from the Full Committee, Congressman Greenwood, who has had a long-standing interest in this program and is joining us today.

Mr. Greenwood, we appreciate that. And I am going to yield Congressman Greenwood the remainder of my time.

[The prepared statement of Chairman Norwood follows:]

Statement of Hon. Charlie Norwood, Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce

The Subcommittee is meeting today to examine the Federal Employees' Compensation Act, otherwise known as FECA, which is the comprehensive workers' compensation law for federal employees.

The law is designed to provide important benefits and services to federal workers who have suffered economic hardship because of a work-related injury or death.

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We need to learn more about how the program operates and its overall effectiveness on behalf of workers before considering any changes.

We also need to discuss recent changes that have been made to the program, learn about the issues that have been identified by the Office of the Inspector General (OIG), and see how the Office of Workers' Compensation Programs (OWCP) is addressing these issues.

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STATEMENT OF HON. JAMES C. GREENWOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GREENWOOD. Thank you, Mr. Chairman very much, both for the courtesy of allowing me to participate in this hearing and for the opportunity to make a brief statement. We were here 7 years ago. I was reviewing the record of that hearing from 1997, and I am very eager to see what has changed.

This is a program that obviously can fail in one of two ways. One of those is to not adequately take care of Federal workers who have been injured and need help from the program to recover and to exist.

And the other is to have Federal workers take advantage of the program and remain in the program where, in many instances, they can have more net take-home pay than they did when they were working and, without proper oversight and follow-through, can remain on the rolls for a lifetime and, in fact, can go out and get second employment. We all know that that happens. I don't know that anybody has ever been able to successfully quantify the extent to which that happens, but we know that, anecdotally, it is a horrendous situation.

So I am eager to see how things have changed in the last 7 years. Thank you, Mr. Chairman.

Chairman NORWOOD. Thank you Mr. Greenwood.

Now I yield to the distinguished Ranking Minority Member from New York, Mr. Owens, for whatever opening statement he wishes to make.

STATEMENT OF HON. MAJOR OWENS, RANKING MEMBER, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Mr. OWENS. Thank you, Mr. Chairman. I applaud the fact that you said this is an education process for Members of Congress as much as anything else.

It is also an oversight hearing on the Federal Employees' Compensation Act. As we know from the Department of Labor's own Web site, FECA is an extremely vital program. It provides essential protections for Federal workers in the event of workplace injuries and illness.

The devastating terrorist attack on Federal workers in Oklahoma City provided a case study of how pivotal this program is in assisting surviving relatives of workers killed on the job. Likewise, services provided under FECA to those Federal workers seriously injured in the Oklahoma City bomb attack made the difference between rapid recovery and dangerous setbacks.

Under this program, nurses visited the injured workers in the hospital, arranged the prompt support for critical medical care and managed the coordination of other urgent services. Oklahoma City was a shining example of both the importance of this program and how seamlessly it can work.

I am, by all means, open to hearing suggestions today about how to make improvements in what the Labor Department's Web site already describes as a highly cost-effective self-insurance system. However, I would be strongly opposed to any effort to use this oversight hearing as a mechanism for putting FECA benefits on the

chopping block. Oklahoma City taught us how the FECA program can at times literally mean the difference between life and death.

Let us not forget that we have Federal civilian employees in harm's way in Iraq and Afghanistan now. If injured or killed on the job, FECA will be central to them and their dependents.

I look forward to hearing the witnesses at this hearing, Mr. Chairman.

Chairman NORWOOD. Thank you, Mr. Owens.

I want to assure you, this is not about a chopping block for anything. It is a time for us to see if we can improve and make the program better and find out what is going on. I appreciate your statement.

And now I would like to begin with our panel of witnesses. To my colleagues here, I would like to introduce you to our witnesses. The first one is Mr. Shelby Hallmark, the director of the Office of Workers' Compensation Programs at the Labor Department.

Thank you folks being here.

Dr. Alan Hunt, the assistant executive director of the Upjohn Institute for Employment Research.

Dr. Hunt, thank you.

Ms. Susan Carney, human resources director at the American Postal Workers Union.

Ms. Carney, thank you for taking time.

Mr. Elliot Lewis, the assistant inspector general for audit at the Labor Department's Office of the Inspector General.

Mr. Lewis, we appreciate you giving us this time.

Before our witnesses begin their testimony, I would like to remind our Members that we will ask questions after the entire panel has testified. In addition, Committee Rule Two imposes a 5-minute limit on all questions.

For the panel, I bring your attention to the light that is in front of you. When that thing lights up yellow, that means red is pretty close by. I would be grateful if you would sort of cut it off at that point. It always embarrasses me to cut our guests off, and I don't like to do that. So if you would help me with that, I would be very grateful.

With that, Mr. Hallmark, I would like to recognize you now for 5 minutes for your testimony.

STATEMENT OF SHELBY HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC

Mr. HALLMARK. Thank you, Mr. Chairman, and Members of the Subcommittee. I appreciate the opportunity to come here today to talk about the measurable progress that we have made in administering the FECA program and also some of the challenges that we see to making it reach its potential as a world-class workers' compensation system.

FECA covers, as you have said, 3 million Federal workers. Last year, we paid $2.3 billion to about 280,000 individuals. We provided crucial and focused assistance for victims of the 9/11 and anthrax attacks, Oklahoma City and other tragedies and, most recently, to civilian employees in Iraq and elsewhere.

Our goal is to provide that same level of high service to all of the 170,000 Federal workers who are injured each year.

In the past decade, we have worked hard to transform ourselves from a bureaucratic organization focused on process, to a proactive service delivery organization that is looking at outcomes for customers as well as improving the service quality and containing costs for the program as a whole through careful measurement and accountability, improved administrative budgets, for which we thank the Congress.

In creative case management strategies and increased cooperation with Federal agencies, we have made real progress toward those goals that we set out about 10 years ago.

My written testimony will provide more details about the progress that we have made. And I can only touch on them in the time that is given to me today. But I will do a few examples.

First of all, in the area of communications that you mentioned, Mr. Chairman, we have dramatically improved the accessibility and responsiveness of our offices to our customers. That was a particular problem in the past. We have established a wide range of very specific and challenging goals to address it and to improve work there. We know there are continuing problems, and we continue to work really hard.

We have increased the number of injured workers that we return to work each year with assistance almost fourfold over the 10-year period. Working case-by-case, we have reduced the average time that a serious injury takes a person away from the Federal workplace by over a month in the past 8 years. And we have made a whole series of major technological enhancements, including a brand-new electronic case-management system, outsourcing and centralizing our mail and managing work and our medical bill process and a totally new support IT system, which is coming this summer.

We have also worked very hard with our Federal counterparts with the employing agencies and doubled the speed that they have in filing OWCP claims with us. We have been very pleased that the President announced a Safety and Health and Return-to-Employment initiative this winter. That SHARE project will focus greatly the attention of the entire Federal establishment on these goals. All of that has allowed us to achieve almost all of our—achieving our different goals.

As a result, OMB has evaluated the FECA program as moderately effective, the second best score that any Department of Labor agency has received. That, we think, is a fair rating for where we are right now. It shows some of our progress, and it also points us to the things that we need to further improve.

We are proud of all these achievements, but despite them, the costs continue to go up in the FECA program, and return-to-work improvements are increasingly difficult. Of the two goals, GPRA goals that we did not meet last year were our most important lost-production-day goals. We cannot make fundamental cuts in those goals without addressing the structural problems that are built into the statute.

Return to work following injury, a very difficult task. It can require physical, mental and emotional accommodations. Some em-

ployees are so seriously impaired they cannot make that transition. But the overwhelming majority of FECA injuries can be overcome.

When our system provides disincentives to return to work or encourages people to cling to a disability mindset, the difficult transition is slowed or it may not happen at all. And if that happens, if those delays occur, then everyone pays—costs to the taxpayers, lost productivity to the employing agency and for the workers themselves, and disrupted family lives and diminished self-esteem. All too often this happens in our system. And we think we should address that.

Some of the disincentives that exist to return to work now in the FECA system are the following: One, it was mentioned, the augmentation of benefits for dependents, creates a 75 percent tax-free benefit that often exceeds take-home pay. No other State system provides this level. OPM retirement benefits are far less generous, and therefore, thousands of FECA beneficiaries are beyond their retirement age. Many believe they have retired on FECA.

Return to work would mean giving up 75 percent FECA benefits, tax-free, at the risk or even the certainty, in some cases, of a lower OPM pension at eventual retirement. That gives a powerful disincentive to return to work and results in people staying on the rolls for the time that they do.

The absence of an effective waiting period combined with our unique continuation-of-pay feature means that many minor injuries which would be excluded in State systems result in time lost from work in the FECA system.

We have improved the administration of the FECA program, but we still have many major challenges, especially regarding return-to-work outcomes. We would like to put FECA on an even, more positive trajectory for the coming century so that it can provide the benefits that we all believe are important.

The 2005 President's budget proposes legislation to update benefit structures, strengthen return-to-work incentives and adopt best practices of State workers' comp systems. Those changes combined with the administrative initiatives that I have mentioned will serve to reduce lost-production days and bring the program into the modern age while maintaining the world class benefit levels and employee-friendly processes and rules that we have now. With relatively modest changes to the system structure, FECA can become a model for other systems to emulate.

I will be glad to answer questions.

[The prepared statement of Mr. Hallmark follows:]

Statement of Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC

Chairman Norwood and Members of the Subcommittee:

My name is Shelby Hallmark. I am the Director of the Office of Workers' Compensation Programs (OWCP), a component of the Employment Standards Administration, within the Department of Labor. OWCP administers four workers' compensation programs, of which the Federal Employees' Compensation Act (FECA) is by far the largest. I appreciate the opportunity to discuss the real and measurable progress we have made in improving administration of FECA, and the challenges that must be addressed if the program is to reach its potential as a world-class workers' compensation system.

The FECA program covers nearly three million employees. It provides a variety of benefits for employees injured in the performance of duty, including payments for

medical care, wage-loss compensation for total or partial disability, schedule awards for loss, or loss of use of certain body parts, and assistance in returning to work, including vocational rehabilitation. FECA also provides benefits to the survivors of Federal employees who die in performance of duty. In fiscal year 2003, the FECA program paid over $2.3 billion in benefits to about 280,000 individuals.

In recent years, we have provided crucial and focused assistance to the victims of the September 11, 2001, and anthrax attacks, the bombings of our embassies in East Africa, the Oklahoma City tragedy, and most recently to civilian employees hurt or killed in Iraq. While most of the injuries we address are less dramatic, OWCP endeavors to provide the same high level of service to all injured Federal workers.

Because this protection is critically important to Federal employees, OWCP strives to provide benefits to beneficiaries as quickly as possible. For the nearly 170,000 workers who file notices of new injuries each year, we have maintained a consistent record of timely adjudication and prompt processing of wage-loss claims and medical bills since the 1980's.

The FECA program's solid record of accomplishment is based on a strategic planning process that started even before the advent of the Government Performance and Results Act (GPRA).

The Past 10 Years: Where We Are Now

Since 1994, OWCP has focused on return to work, service to injured workers, fiscal integrity, and partnerships with stakeholders. OWCP set goals to move the FECA program beyond its traditional role of providing cash benefits, dedicating resources to improving the likelihood that injured workers will recover and return to duty as quickly as possible.

When an employee covered by FECA becomes disabled due to a work-related injury or illness, the program is pledged to restore that worker to gainful employment as quickly and completely as is medically appropriate. New disability management strategies and strengthened vocational rehabilitation assistance that have been implemented since 1994 characterize this make-whole emphasis. We are especially proud of the high number of workers successfully returned to work with our assistance—over 9,200 of the 15,000 referred for intervention last year—nearly a four-fold increase over our results in 1994. We are also proud of the 18 percent reduction in time lost in serious new cases since 1996—in 2003, the average severe injury case resulted in 35 fewer lost .

We also recognize our fiduciary responsibility to Federal employers and taxpayers. Innovative disability case management strategies and effective cost containment measures have enabled the program to hold the cost of the FECA program—both benefit outlays and administrative costs—to an annual average increase of 4.2 percent over the past ten years.

At the same time, greater resources have allowed the program to focus on several areas that needed attention. These initiatives have started at different times over the past decade, but are still in effect and subject to continuous reexamination and improvement. For example, careful case management, including the use of contract nurses, greatly expanded medical and vocational rehabilitation services, and contract medical scheduling brokers who arrange for second opinion medical examinations, have allowed the program to use its core staff more effectively.

FECA also has improved its communication with its customers, including injured workers, medical providers, and Federal employers. The last time this subcommittee held a hearing on FECA there were a number of concerns about the quality of our communications with customers (U.S. General Accounting Office, "Goals and Monitoring Are Needed to Further Improve Customer Communications ," GAO–REPORT 01–72t, October 3, 2000). Since 2000, the program has undertaken a top-to-bottom renovation of its processes for communicating with customers and stakeholders. Investments in personnel and equipment reflect concerted efforts to standardize both the information provided and the methods of delivery, so that callers to our 12 district offices will receive clear, consistent and prompt answers to their inquiries. OWCP has also made information more readily available through automated means via telephone and the Internet, and that access is continually being expanded and improved. Later this year the Internet access to FECA case status information will be made directly available to our claimants for the first time, using OPM's "Employee Express" portal. Customer satisfaction is routinely measured and tracked, to assess how well these communication and service improvements have worked. In 2004, we added a GPRA goal to measure our success in this area. These enhancements have resulted in real improvements in accessibility and responsiveness.

Several major administrative initiatives launched during the past few years have provided better support services for injured workers. One of these has been the es-

tablishment of a centralized mail operation in 2001, whereby all routine mail and bills for the FECA program are directed to a private contractor where the mail is scanned, categorized at a high level, and transmitted electronically to the district offices. This process has dramatically improved OWCP's ability to control and manage incoming mail—previously a serious problem for the program.

In 2003, the program consolidated its medical authorization and bill payment processes. Currently, a private contractor processes all medical bills and handles treatment authorizations for FECA medical providers and beneficiaries. Although there have been start-up problems in implementing this new bill payment system, it has already freed up resources in our district offices to better address injured workers' needs and focus on quality adjudication, case management, and communications. When new service standards, programming changes and telephone service improvements are fully in place, the new centralized system will provide more consistent, better controlled, and more efficient bill payment services.

We have also worked closely with employing agencies to encourage faster transmission of notices of injury and claims for compensation from the agencies to OWCP. Progress in submitting these forms more quickly yields faster adjudication and payment, and fewer customer service problems. More than a quarter of new claims are now received via Electronic Data Interchange from the Departments of Labor, Defense, Treasury, Transportation, Veterans Affairs, and Homeland Security, and that percentage is expected to grow in the future.

In January, President Bush announced the Safety, Health and Return-to–Employment (SHARE) Initiative, which directs Federal agencies to set goals and track results in four areas: lowering workplace injury and illness case rates; lowering lost-time injury and illness case rates; reporting injuries and illnesses in timely fashion; and reducing days lost from work injuries and illnesses. In partnership with the Occupational Safety and Health Administration, OWCP is working with agencies to develop new strategies for improving safety and health at sites with high injury rates, increasing the timeliness of reporting claims through electronic and other means, and providing suitable work—all of which will help achieve OWCP's key goal: reducing lost production days.

Finally, OWCP has made two improvements designed to make claims staff more efficient and effective in handling their caseloads. In discussing the central mail operation I mentioned that claims are now scanned and handled electronically. This has greatly improved our staff's ability to quickly access and review new materials, and enabled multiple parties to share information quickly and without risk of losing files.

Later this year, a second IT improvement will arrive in the form of iFECS, the Integrated Federal Employees' Compensation System. This fully unified information support system will replace the disparate group of legacy programs that OWCP staff has used since the 1970's to process claims actions, make payments, and track results. These legacy systems have required redundant and time-consuming data entry by claims examiners, and blocked implementation of critical enhancements and modern decision support technology. Together, the electronic case processing, central bill payment system, and the new iFECS support system will go a long way toward providing a truly state of the art environment for case adjudication and management that will expedite the handling of claims and dramatically improve productivity and customer service.

While these initiatives are being implemented, OWCP continues to achieve significant progress toward its challenging GPRA goals. In 2003, the FECA program met four of its six GPRA goals, including: savings through management of long-term compensation payments (our "Periodic Roll Management" program); rehabilitation of Postal Service employees into private sector jobs when they cannot return to work at the Postal Service; medical cost containment; and setting a baseline for communication quality. These successes continued a tradition of strong GPRA performance by the program, and a commitment to achieving challenging real-world results.

However, two critical GPRA goals have not been met. While our Quality Case Management program continues to be effective, with the average days lost in serious new injuries down by 18 percent since 1996, the program missed its two Lost Production Day targets (reducing overall lost production days for the Postal Service and for all other agencies). These goals were not met because the total number of new wage-loss claims, and days of "continuation of pay," increased during fiscal year 2003. OWCP's disability management efforts, with the help of the employing agencies and the encouragement of the President's "SHARE" initiative, should allow us to improve our performance against these critical lost days goals.

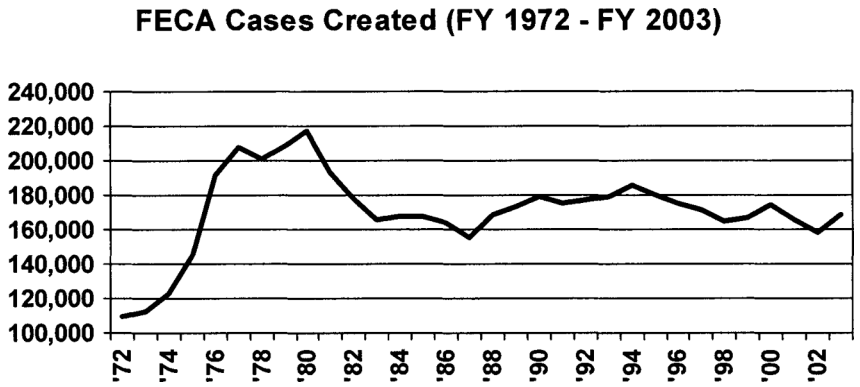
Challenges remain

Despite our progress to date, there are structural features in the FECA which create, in themselves and in their interplay with civil service retirement law, incentives for workers to enter and remain on the long term disability rolls long after they could be expected to return to work. Returning to work following a significant injury can be a difficult and lengthy process, requiring physical, mental and emotional adjustments for the employee. When a workers' compensation system adds economic disincentives to the picture, that difficult transition occurs more slowly or not at all, creating higher costs to the taxpayers, lost productivity to the employing agency, and for workers themselves and their families, disrupted lives and diminished self-esteem.

As currently structured, FECA creates direct disincentives to return-to-work in two significant ways. The first and most far-reaching is that while the basic rate of FECA compensation, 66 2/3%, is comparable to most state systems, the majority of Federal employees receive an augmented benefit, 75%, reflecting at least one dependent. Computed at 75% tax free, FECA benefits frequently exceed the employee's pre-injury take home pay. Few state systems provide any augmentation for dependents, and none approaches the Federal level.

A second major disincentive to an employee's recovery and resumption of a Federal career is the disparity between retirement benefits provided by OPM and long-term FECA benefits. Under current law, the thousands of long-term FECA beneficiaries who are over normal retirement age have a choice between Federal retirement system benefits and FECA benefits, but they overwhelmingly elect the latter because FECA benefits are typically far more generous. Injured employees who do return to work risk the possibility that their retirement income will be less than it would have been had they stayed in the FECA system on total disability. Thus the FECA and retirement benefit structures intertwine to discourage employees from returning to work.

Other features of FECA have an indirect effect on return to work and the monetary and personal costs of Federal workers' compensation. For example ,FECA, like all state systems, has a waiting day provision whose original intent is to discourage the filing of workers' compensation claims for minor injuries that resolve quickly. A waiting period before wage-loss compensation can be paid is virtually universal in state systems. In FECA, however, the waiting period is not applied until after the worker has received the full 45 days provided under FECA's unique "continuation of pay" provision, thus defeating its very purpose. The delayed waiting period unnecessarily burdens program administration with numerous minor injuries and makes the program vulnerable to over-utilization. The figure below shows the growth of incoming injury reports after the 1974 amendments inserted the continuation of pay provision and effectively cancelled the impact of waiting days.



In closing, Mr. Chairman, I believe the FECA program is at a critical juncture. As I described at the beginning of my remarks, we have worked hard over the past decade to enhance service delivery, improve communications, control costs, and provide a prompt, reliable, and cost-effective workers' compensation benefit for injured workers and their employers. Federal agencies have made significant strides toward the safety, return-to-work, and timely claim processing goals of the "SHARE" initiative. Overall, the program has made major progress, but we still have major challenges, especially in achieving appropriate return-to-work outcomes.

We would like to put the FECA program on an even more positive trajectory for the coming century. The fiscal year 2005 Budget's reproposal of legislation to update the benefit structure, adopt best practices of state workers' compensation systems, and strengthen return-to-work incentives will serve to reduce lost production days and bring the program into the modern age. With relatively modest changes to the system's structure, FECA can become far more effective, and can be held up as a model for other systems to emulate.

Chairman NORWOOD. Dr. Hunt, you are now recognized for 5 minutes.

STATEMENT OF DR. H. ALLAN HUNT, KALAMAZOO, MI

Dr. HUNT. Thank you, Mr. Chairman. I just want to preface my remarks by saying that I speak from 29 years of experience in workers' compensation research but, more specifically, from the experience of being a subject-matter expert in a study funded by the Employment Standards Administration last year called the Program Effectiveness Study of the FECA program.

In my view, the FECA program operates predominantly like an exclusive State or provincial workers' compensation fund for Federal workers. Therefore, I have compared FECA performance with both U.S. and Canadian workers' compensation systems, in other words, both private and public workers' compensation systems.

I want to focus just on two performance measures here today, promptness of payment and disability duration. When workers are injured, maintaining an uninterrupted stream of income is obviously one of their major concerns. Figure 1 in my testimony shows the promptness of payments results for 12 U.S. States available from the Workers' Compensation Research Institute.

The typical elapsed time from date of injury to the first income replacement payments in those 12 States is 63 days or 2 months. Only about 45 percent of wage-loss claims see their first payment within 21 days.

Figure 2 in my testimony shows the same measurement for Canadian provincial systems, promptness of payment ranges from about 22 days in Alberta, British Columbia, and Nova Scotia to 50 days in Prince Edward Island. Average is around 30 to 35 days. Thus, the state-of-the-art in promptness of payment is not very good, certainly from the worker's perspective.

The situation under FECA in which Mr. Hallmark has already referred to is not directly comparable because of the continuation-of-pay provisions. OWCP sets goals for adjudicating claims post-COP, which amount to 45 days, 90 percent adjudication of traumatic claims and more for non-traumatic, what they call extended claims.

Generally speaking, they achieve those goals. But I don't regard them as very ambitious. Unfortunately, we don't have a measure of the distribution, so I can't really compare promptness of payment. However, just in scoping out where we are, it appears to me that promptness of payments in the FECA system is roughly comparable to that in U.S. workers' compensation systems.

The other performance measure I want to mention is duration of disability. OWCP was not able to give us a precise statistic that enabled us to compare durations with other workers' compensation systems, but they were able to give us a rough indicator of the

number of long-term claims which matches Canadian measures that are available.

Figure 4 shows that there is considerable variability among Canadian provincial systems in the number of claims that are receiving benefits at the end of the second calendar year following injury. As you will see from the graph, the range is from 1.4 percent in the province of Alberta to 6.5 percent in New Brunswick.

Figure 5 shows a comparable statistic for FECA claims by district office. The percent of lost time claims that are receiving payments at the end of the second calendar year following the injury roughly comparable to Canadian ranking from 1.8 percent to 4.8 percent.

It is vital to mention that in neither case do we know if the claimant was continuously in payment status or in disability status since the injury. This is only a snapshot. However, it does not appear to me that FECA claims last significantly longer than those in Canadian workers' compensation systems. Unfortunately, we do not have a comparable measure for U.S. systems.

The last measure I want to mention is in Figure 5 because I think OWCP deserves some kudos for this. Under GPRA, the measurement of lost-production days is what I regard as the best outcome measure that I have encountered in my 29 years in the workers' compensation world. It captures the desired outcome, namely, minimizing the work time lost due to occupational injuries and illnesses, in a single number.

Figure 6 shows that OWCP has driven that lost-production day rate down by approximately one-third in the past decade through a disability management program called Quality Case Management. This does not represent the entire population, it is important to say, but it is a very significant improvement.

During the course of this study, I was pleasantly surprised by the level of policy development, the commitment to the plan and the goal orientation of OWCP in administering FECA. I was particularly impressed with the field visits I made to the Dallas office. I was struck by the high level of understanding they had of the overall mission and their individual part in it. Their customer orientation was also, frankly, greater than I had expected beforehand.

I also found that OWCP relies on their strategic plan and their annual performance plans in a way that would make the authors of GPRA proud. The plans are specific. Performance is measurable. And the goals are taken very seriously.

So my conclusion is that OWCP is doing a very good job of administering FECA.

Thank you.

[The prepared statement of Dr. Hunt follows:]

Statement of Dr. H. Allen Hunt, Kalamazoo, MI

Good afternoon. My name is Allan Hunt, and I am the Assistant Executive Director of the Upjohn Institute for Employment Research in Kalamazoo, Michigan. The Upjohn Institute has operated as an independent, non-profit organization devoting its resources to finding and promoting solutions to employment-related issues at the regional, state, national, and international levels since 1945.

The broad objectives of the Institute's research and grant programs are to:

1) link scholarship, evaluation, and experimentation with issues of public and private employment and unemployment policy;
2) bring new knowledge to the attention of policymakers and decision makers; and
3) make knowledge and scholarship relevant and useful in their applications to the solutions of employment and unemployment problems.

While the major support for Institute research and publication programs comes from our endowment, the Institute also engages in selected contract research, where the Institute believes the work is in the public interest. In fiscal year 2003, about 16 percent of the Research Division budget of $5.0 million came from such external sources. Those sources include the U. S. Department of Labor. Last year the Employment Standards Administration funded a "Program Effectiveness Study" of the FECA program by ICF Consulting under a GSA Contract (Schedule GS-23F-8182H).

I served as a Subject Matter Expert (SME) under that contract and participated in the study as both an advisor and investigator. I also made a field visit to the Dallas District Office of OWCP. I am not here today to give a full report on that study, but will try to provide some comparative context for the FECA program by using data from the state and provincial workers' compensation systems in the United States and Canada, including some material that I developed for the ICF study of FECA.

Workers' Compensation Systems

As you are probably aware, there are only three countries in the world that have established sub-national workers' compensation systems for workers disabled by their employment: Australia, Canada, and the United States. Over the last 29 years, I have accumulated significant research experience in all three of these countries, and in the different types of workers' compensation systems that they present. Let me summarize that experience by simply saying it is very difficult to make any performance comparisons among systems, and it is nearly impossible to say anything that is universally "true" for all workers' compensation systems.

Nevertheless, my assignment for the ICF study was to try and develop some benchmarks for FECA system performance. Together with my colleague, Professor Peter Barth of the University of Connecticut, I also wrote a chapter on "Promising Practices in Workers' Compensation" for the ICF report. That chapter sought to identify new ideas from other workers' compensation systems that might be implemented in the FECA program.

There are three main objectives for a workers' compensation system:

1) Prevention;
2) Compensation; and
3) Rehabilitation and Return to Work.

If prevention is successful, and no injury occurs, there is nothing to compensate; and, of course, no need for rehabilitation. However, if prevention fails and a disabling injury does occur, there are a host of issues that arise in the appropriate compensation of workplace injuries and illnesses. Depending upon the nature of the injury, there may be very complex and contentious issues involved in determining what sort of rehabilitation is needed and what would be an appropriate return to work under the circumstances.

Government's role in these sub-national systems generally consists of some combination of the following four functions:

1) to provide oversight of the system, including policy expertise;
2) to determine the benefits that will be provided;
3) to regulate or provide an insurance mechanism; and
4) to provide dispute resolution services.

Dispute resolution mechanisms are usually required because of a fundamental design challenge in workers' compensation systems. The benefits are paid to injured workers, while the costs are paid by employers. This places workers' compensation in the realm of labor-management relations, with all that entails. The insurer (whether private or public) is caught in the middle, and the government provides a neutral referee for the resolution of the inevitable disputes.

One of the main structural differences among workers' compensation systems is in the nature of the insurance mechanism. In all Canadian provinces and five U.S. states (North Dakota, Ohio, Washington, West Virginia, and Wyoming – the so-called "exclusive fund" states), a public fund is the only authorized insurer for workers' compensation. In the rest of the U.S. states, private insurance is allowed, frequently in competition with a non-exclusive public fund. In addition, self-insurance is generally allowed for large, financially secure employers, with more or less restrictive access depending upon the jurisdiction. Approximately half the states have competitive public funds, and they are the dominant insurer in a handful of those states.

In the U.S., private insurance carriers accounted for 55 percent of all benefits paid in 2001, with self-insurers at 23 percent and state funds at 16 percent. All federal workers' compensation programs (FECA, Black Lung, LHWA, and EEOICA) account for the remaining six percent of the total. (NASI, 2003, table 5, p. 14) In my view, the FECA program operates much like an exclusive state or provincial workers' compensation fund, but just for federal workers. Therefore, I have compared FECA performance with both U.S. and Canadian workers' compensation systems.

The "Program Effectiveness Study" that I participated in was funded by the Employment Standards Administration and was designed to provide an outside review of program performance. The Statement of Work indicated:

> The study should produce insightful analyses and useful recommendations to enable top Employment Standards Administration and OWCP management to assess FECA program effectiveness in the context of Federal government standards for strategic planning and performance management and in relation to the workers' compensation industry at large.

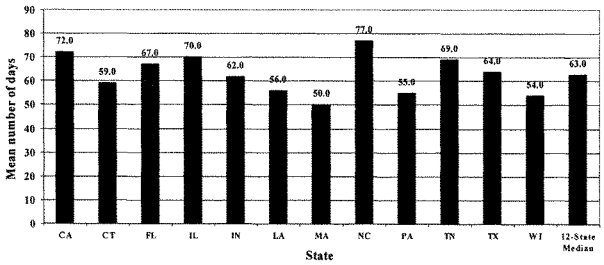
We had considerable difficulty in securing performance measures that were comparable to those available from other workers' compensation systems. This was not unexpected, as each workers' compensation system in the world has evolved under a different set of statutory provisions, legal interpretations, and administrative rules. It was further complicated in this case by the fact that OWCP was in the process of converting to a new data system for the FECA program. So we were somewhat frustrated at what we were able to accomplish in terms of performance measure comparisons.

Promptness of Payment

However, there are a few comparisons that you should see. First is the promptness of payment issue. When workers are injured, maintaining an uninterrupted stream of income is one of their major concerns. Workers' compensation systems have not generally demonstrated good results on this dimension of performance.

Figure 1 shows the promptness of payment results for 12 U.S. states that are included in the CompScope™ series of publications of the Workers Compensation Research Institute (WCRI) in Cambridge, Massachusetts. The typical elapsed time from date of injury to the first income replacement payment is 63 days, with a range from 50 days in Massachusetts to 78 days in North Carolina. Only about 45 percent of wage-loss claims see their first payment within 21 days, according to the most recent WCRI study.

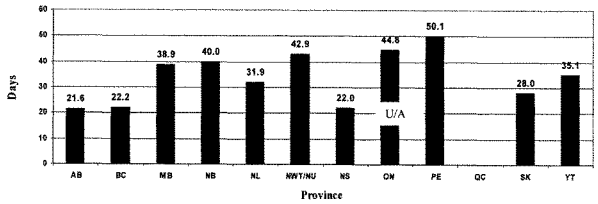
Exhibit 1 Average Calendar Days from Date of Injury to First Indemnity Payment (WCRI CompScope™ States)



SOURCE: Telles, Wang, Tanabe, 2004.

Figure 2 shows the same measurement for the Canadian Provincial systems. The promptness of payment ranges from about 22 days in Alberta, British Columbia, and Nova Scotia to 50 days in Prince Edward Island, with an average around 30 to 35 days. Thus, the "state of the art" in promptness of payment is not very good from the workers' perspective.

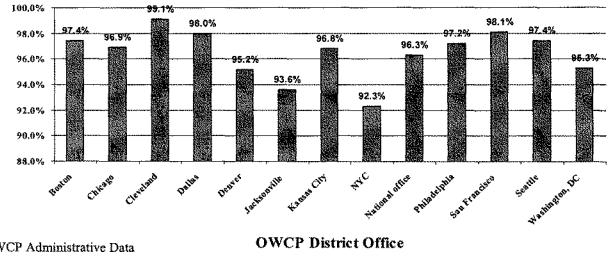
Figure 2 Average Calendar Days from Injury to First Payment Issued—Canadian Provincial Systems



SOURCE: AWCBC, 2003.
Note: U/A = Unavailable

The situation under FECA is not directly comparable to these results because of the Continuation of Pay (COP) provision of the statute. Injured federal workers can elect to have their normal pay continued for up to 45 days following injury. If a claim for compensation is filed subsequently, OWCP processes the claim for workers' compensation wage replacement payments. Figure 3 shows one of the performance measures that OWCP uses to assess this dimension of performance. They seek to process 90 percent of traumatic claims within 45 days, 80 percent of claims within 90 days for non-traumatic injuries, and 70 percent of "extended" claims within 180 days. Figure 3 indicates that from 92 to over 98 percent of traumatic claims are adjudicated within 45 days, depending upon the District Office. Non-traumatic claims and extended claims take significantly longer, but generally achieve the FECA performance standards. However, it is important to remember this is after the COP period, during which the injured worker

Figure 3 Percent of FECA Traumatic Claims Adjudicated within 45 Days by District Office



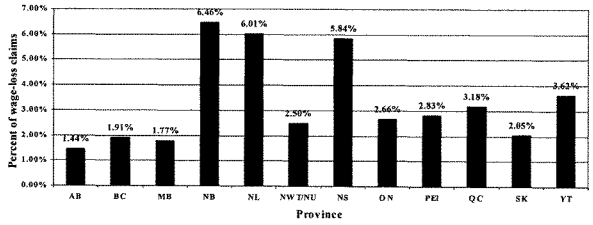
SOURCE: OWCP Administrative Data

receives his or her regular salary. Unfortunately, we do not have a measure of the distribution of timeliness of payment, but it seems likely that the average delay in payment would be comparable to the workers' compensation systems reported above.

Duration of Disability

OWCP was not able to provide us with duration of payment statistics that were comparable with those available from other systems, but they were able to match up on one important indicator of durations. Figure 4 shows the percentage of wage-loss claimants that are receiving benefits at the end of the second calendar year following their injury. This provides a rough indicator of the number of long-term claims. Figure 4 shows considerable variability among the Canadian provincial systems. The range is from 1.4 percent in Alberta to 6.5 percent in New Brunswick.

Figure 4 Percentage of Lost-Time Claims Receiving Benefits After Two Years – 2001 Injuries

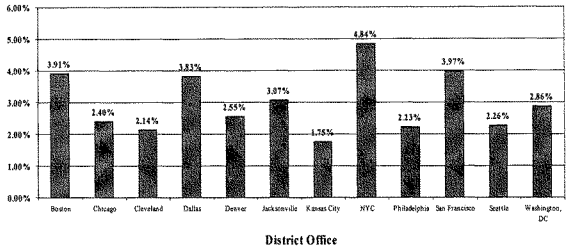


Source: AWCBC, 2003.

Figure 5 shows a comparable figure for FECA claims by District Office. As shown in the figure, the percent of lost-time claims that are receiving payments at the end of the second calendar year following the injury is roughly comparable to the Canadian numbers, ranging from 1.8 percent to 4.8 percent. It is important to mention that in neither case do we know if the claimant was continuously in payment status since the injury; this is a snapshot only. However,

it does not appear that FECA claims last significantly longer than those in Canadian workers' compensation systems. Unfortunately, we do not have this measure available for U.S. systems.

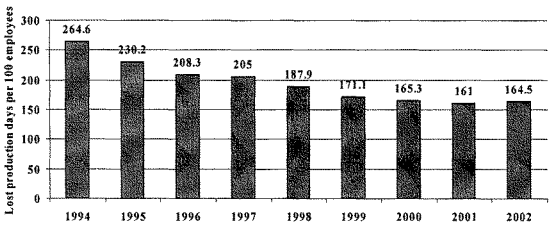
Figure 5 Percent of Lost-Time Cases Receiving Benefits after Two Years—2001 Injuries



SOURCE: OWCP

Thus far I have shown that FECA performance seems pretty typical of other workers' compensation systems. But there is another measure that I particularly want to bring to your attention. OWCP measures one part of their overall program impact with the best indicator that I have seen, lost production days. Under the Government Performance and Results Act (GPRA), OWCP developed the lost production days (LPD) performance measure, which combines the incidence and duration of injuries into a single indicator. I regard this as the best outcome measure that I have encountered in the workers' compensation world because it captures the desired outcome, minimizing the work time lost to occupational injury and illness.

Figure 6 Average Annual Lost Production Days per 100 Employees, QCM Program



SOURCE: Adapted from ICF Consulting, 2004.

Figure 6 shows that OWCP has driven the lost production day rate down by one-third in the past decade. They have done this with a disability management program called Quality Case Management (QCM), which is applied to new wage-loss claims that have no specific return-to-work date. LPD includes the COP days as well as the wage-replacement payment days under FECA, so it is a solid attempt to measure the amount of work time being lost due to injury and illness.

Conclusions

I was aware in a general sense that the GAO had been critical of the administration of the FECA program. And I was aware that the Postal Service had particular problems with workers' compensation issues. So, I accepted the role of Subject Matter Expert for the FECA Program Effectiveness Study at ICF Consulting with some trepidation. But I felt that it was essential that the study be informed by a broader workers' compensation experience if a credible and useful evaluation was to be done.

In the event, I was pleasantly surprised by the level of policy development, commitment to plan, and the goal orientation of OWCP in administering FECA. I was particularly impressed with the field visit I made to the Dallas office. Of course, I did not speak with a random sample of employees, as they were hand-picked by management, but I

was struck by the high level of understanding they had of the overall mission and their individual part in it. Their customer orientation was also greater than I had expected beforehand.

I also found that OWCP relies on their strategic plan and annual performance plans in a way that would make the authors of GPRA proud. The plans are specific, performance is measurable, and the goals are taken very seriously. I have already mentioned the lost-work-day measure. That is an example of how OWCP has advanced the state of the art in workers' compensation performance measurement.

So my conclusion is that OWCP is doing a very good job of administering FECA. Of course there are areas that could be improved, and we tried to identify those in the ICF report. Workers' compensation systems are very complex organisms, with lots of hidden interconnections and subtle influences. It is very difficult to do workers' compensation reform and I would urge you to be cautious in your approach to change or reform the program. We must always remember that the FECA program serves the interests of both federal employees and the federal employing agencies.

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Chairman NORWOOD. Ms. Carney, you are recognized for 5 minutes.

STATEMENT OF SUSAN M. CARNEY, HUMAN RELATIONS DEPARTMENT DIRECTOR, AMERICAN POSTAL WORKERS UNION, WASHINGTON, DC

Ms. CARNEY. Mr. Chairman and Members of the Subcommittee, I am the director of the Human Relations Department for the American Postal Workers Union AFL/CIO.

I would also like to introduce Richard Boutwell, APWU Federal injury compensation specialist, who is here with me today to assist with some questions after my comments.

On behalf of APWU, I would like to say that we appreciate the opportunity to present our views on behalf of the workers, regarding the Federal Employees' Compensation Act and its administration by the Office of Workers' Compensation Program.

The impact of job-related injuries can be devastating to workers and their families in both their workplace and personal lives. Medical expenses and a loss of income often result in loss of property, damaged credit and consequential family problems.

It is human nature to minimize the consequences or discount the effects of a medical condition until it strikes you or a close family member. I have a very different perception on the injured employee's quality of life. You see, I suffer from Carpal Tunnel and Thoracic Outlet Syndromes causal to my employment with the United States Postal Service.

The simple acts that we all take for granted aren't so simple for me. Some examples are, driving, activities with my children, household chores. I am not even able to do my own hair without going to a salon because I can't keep my arms up long enough. I am not

the same person I was before my injury. I am not the exception nor am I unique among the thousands of workers who are injured on the job each year.

Federal workers' lives are not favorably changed by the workplace injuries. Employees who receive wage-loss compensation are placed in a leave-without-pay status. They cannot accrue sick leave or annual leave and cannot make or receive contributions to their thrift savings plan for retirement purposes, benefits they would otherwise be entitled to if not for their on-the-job injury.

Partially disabled employees who are not able to work to work full-time are, according to the Officer of Personnel Management, part-time employees even if their employment status is career, full-time. Their base pay will be pro-rated, and the subsequent annuity reduction can be dramatic.

Additionally, a disabled employee's pay rate for wage-loss compensation is frozen as of the date of the injury or first disability and does not increase as a result of contractual pay raises and COLAs or step increases.

It has been suggested that a reduction in the wage-loss compensation formula would serve as an incentive for all claimants to return to work. This would subject injured workers to additional financial hardship and possible re-injury. This would not be a substitute—this should not be a substitute for the cures that modern medicine has to offer.

It should also be mentioned that if an injured employee qualifies for Social Security Act benefits that are paid for disability, then FECA benefits will be reduced by the Social Security Act benefits attributable to the employee's Federal service. Continuation of pay is only paid for timely filed, traumatic injury claims, not occupational illnesses.

According to the United States Postal Service statistics, the average COP usage is just 66.3 hours per traumatic injury. As for the argument that the 3-day waiting period, which I believe is what we have alluded to, would discourage frivolous or non-meritorious claims, this reasoning implies that it is permissible to penalize the worker whose injury was not severe enough.

Non-meritorious claims are going to be denied by OWCP. When the claim is denied, the employee must reimburse the employer. Therefore, these non-meritorious claims are not a cost factor for the employer. And a 3-day waiting period is simply a pretext for an inequitable reduction of a reasonable wage-loss payment for the worker.

We also hear arguments for creating a FECA retirement system. Compelling people to retire because they have reached a certain age is contrary to our national policy. As stated earlier, since injured employees are in a leave-without-pay status, for first employees, the maximum impact will result in their annuity funding being diminished by 15 percent of their basic pay and result in a loss of the accrued rate of the return on their TSP investment.

Injured workers with disabilities are not able to earn supplemental income as so many healthy annuitants currently do. Disabled workers should not be held to a higher standard, singled out for financial hardship nor be expected to make do on a reduced annuity.

Postal Service injury case rates have declined steadily, yet costs continue to rise due to medical fees. To cut costs, it is imperative to control the escalating prices of the medical industry.

Less than 65 percent of the notice-of-injury/illness forms are received by OWCP from employing agencies within the time limits. We suggest that OWCP be granted enforcement powers regarding the employing agency's obligations under the act.

While we recognize that OWCP has made significant changes to improve services, there are still deficiencies. We think that more claim examiners would be beneficial in the adjudication process of the claim in order to get the individual medical attention to return them back to suitable work.

Additionally, we suggest that OWCP make genuine oversight with all contracting companies. We found that some of their contract agencies are nonresponsive. There is not an ability to terminate the contract with them. Ergonomic injuries alone cost billions of dollars annually. Repealing the ergonomic standards to quell the costs, there must be employer accountability to ensure a safe working environment that is mindful of unsafe conditions and of ergonomic standards.

The Federal Employees' Compensation Act is a law based in equity. The employer gives up some of the defenses available under common law, and the employee similarly foregoes the full range of damages which would be awarded. It is a non-adversarial process designed to provide a predictable level of reliability for the employer and predictable level of benefits for the employee.

To amend the law in a manner which upsets this balance would be a disservice to the overriding concept of fairness that is the law's foundation. Unilaterally reducing benefits to the injured worker simply is an effort to lighten the financial liability of the employer and is not an equitable response to the increasing injury compensation costs. Injured workers already suffer losses, both financial and emotional, for which they can never be compensated. A reduction in benefits that were fairly established would unjustly increase the already substantial burden of their injuries and illnesses and literally add insult to injury.

[The prepared statement of Ms. Carney follows:]

Statement of Susan M. Carney, Human Relations Director, American Postal Workers Union, Washington, DC

Mr. Chairman and members of the subcommittee:

I am Sue Carney, Director of the Human Relations Department of the American Postal Workers Union, AFL–CIO. I would also like to introduce Richard Boutwell, APWU Federal Injury Compensation Specialist and Assistant to the Human Relations Department. On behalf of APWU President William Burrus and our members I would like to say that we appreciate the opportunity to present our views regarding the Federal Employees' Compensation Act (FECA) and its administration by the Department of Labor, Employment Standards Administration, Office of Workers' Compensation Program (OWCP).

The APWU is the largest postal union in the world, representing over 300,000 postal workers in the clerk, maintenance, and motor vehicle service crafts. We are employed in approximately 38,000 sites throughout the country, providing a public service in every city, town and community in our nation. Workplace injuries and illnesses negatively impact a significant number of postal employees. In recognition of this, it is a priority function of the APWU Human Relations Department to provide guidance to our members regarding their rights and responsibilities, as well as the employer's obligations to them under the Federal Employees' Compensation Act.

Overview

Any analysis of federal injury compensation costs which focuses on the reduction of benefits runs counter to the sprit of FECA, and risks the creation of fundamental inequities for the injured worker. Any analysis which is based on the assumption that federal employees are somehow better off because they have become partially or totally disabled due to a workplace injury or illness is, at best, misguided.

Before I discuss the FECA benefit structure, let me point to the very real losses suffered when a federal employee becomes partially or totally disabled due to an on-the- job injury or illness. The impact to injured workers and their families can be devastating in both their workplace and personal lives. Medical expenses and a loss of income often results in loss of property, damaged credit and consequential family problems. Regardless of the compassion you possess for the injured, or how fluent you are regarding various workers compensation programs, it is human nature for those who have never suffered a workplace injury to minimize the consequences or discount the effects of a medical condition until it strikes them or a close family member. Until then, diagnoses such as carpal tunnel syndrome, herniated discs, elbow tendonitis, rotator cuff tears, and closed-head injuries are just words on a page. Due to my personal experiences, I have a very different perception on the injured employee's quality of life. I suffer from carpal tunnel and thoracic outlet syndromes causal to my employment with the United States Postal Service. I have impairments of 29% loss of use to my right arm and 15% loss of use to my left arm. The simple acts that we all take for granted aren't so simple for me. Imagine not being able to drive for any real distance, or having difficulty turning the doorknob to enter your own home, missing out on activities with your kids, requiring assistance with household chores, and having to go to the salon because you can't raise your arms long enough to style your own hair. My former husband has two herniated discs as a result of his employment with the USPS. Our family went months without his wage loss compensation benefit. It took five years for his back surgery to be approved. Our free time was spent in the doctor's office three times a week for physical therapy, injections, routine follow-up visits, completing forms or obtaining medical reports. He is not the same person he was physically or psychologically before his injury. We are not the exception nor are we unique among the thousands of workers who are injured on the job each year.

Any injury compensation policy analysis which implies that federal workers' lives are favorably changed by their workplace injuries demonstrates a fundamental disconnect regarding the realities of life.

Benefits Lost

Totally disabled employees or partially disabled employees who return to work less than full-time, and receive wage loss compensation are placed in a leave without pay (LWOP) status. Employees in a LWOP status cannot accrue sick or annual leave and cannot make or receive contributions to their Thrift Savings Plan for retirement. Benefits they would otherwise be entitled to if not for their on the job injury.

And while their LWOP will count as creditable service for retirement purposes, partially disabled employees who are not able to return to work full-time are, according to the Office of Personnel Management, part-time employees, even if their employment status is career full-time. Their base pay will be pro-rated when their annuity is computed. The subsequent annuity reduction can be dramatic.

Additionally, a disabled employee's pay rate for wage loss compensation is frozen as of the date of injury or first disability and does not increase as a result of contractual pay raises and COLAs, or step increases (a claimant will receive an OWCP COLA after receiving wage loss compensation for one year).

Benefits

FECA's wage replacement rate is 66 2/3%, and if there is a dependent the rate is 75%. There is no income tax deduction from these injury compensation payments, but the employee's health care and optional life insurance premiums are still deducted. The average Postal Service bargaining unit employee has a base pay of under $42,000. At this pay rate it is highly unlikely that the injured bargaining unit employee is going to receive a net pay increase as a result of a disabling injury. When comparing FECA to state wage loss compensation rates, it should be noted that an average bargaining unit employee's weekly compensation of $538 would be less than the average maximum state wage weekly compensation of $559. It has been suggested that a reduction in the wage loss compensation formula would serve as an incentive for all claimants to return to work. Subjecting injured workers to additional financial hardship and possible re-injury should not be a substitute for the cures that modern medicine has to offer. It should also be mentioned that if an

injured employee qualifies for Social Security Act (SSA) benefits that are paid for disability, then FECA benefits will be reduced by the SSA benefits attributable to the employee's federal service.

Continuation of pay (COP) is paid only for timely filed traumatic injury claims. It is not paid for occupational illness claims. According to USPS statistics the average COP usage is just 66.3 hours per traumatic injury. Implementing a three-day waiting period would impose a 37% slash to the worker's pay that if not for the workplace injury they would be earning. As for the argument that the three-day waiting period would discourage "frivolous" or "non-meritorious" claims, this reasoning implies it's permissible to penalize the worker whose injury was not severe enough; the waiting period could prove to be counter productive. Putting it plainly, non-meritorious claims are going to be denied by OWCP. When the claim is denied the employee must reimburse the employer either by substituting leave for the COP, or by paying out of pocket. Therefore, these non-meritorious claims are not a cost factor for the employer, and a three-day waiting period is simply a pretext for an inequitable reduction of a reasonable wage loss payment for the worker.

We also hear arguments for creating a "FECA Retirement System," maintaining that a totally disabled person should be forced into OPM retirement at a certain age. We would argue that compelling people to retire because they have reached a certain age is contrary to national policy and implies that injured employees chose to become totally disabled in order to gain some financial advantage. Additionally, there is no equity in terminating wage loss compensation when an injured employee reaches some arbitrary age. Many people are working well beyond "normal" retirement age because they simply cannot afford to retire. As stated earlier, since injured employees are in a LWOP status, neither they nor their employing agency may make contributions to TSP. For FERS employees, the maximum impact would result in their annuity funding being diminished by 15% of their basic pay and the accrued rate of return on their TSP investment. Additionally, injured workers who continue to have disability causal to their employment would not be able to earn supplemental income to their annuity as so many healthy annuitants currently do. Disabled workers should not be held to a higher standard, singled out for financial hardship, nor be expected to make do on a reduced annuity.

Medical Costs

Statistics from the Department of Labor indicate that Postal Service injury case rates have declined steadily since fiscal year 2000, and continue to decline in fiscal year 2004, yet their federal injury compensation costs continue to rise. One major cost driver is the continuing increase in total amounts billed for medical services. In any efforts to cut costs, it is imperative to control the escalating prices of this powerful industry rather than reduce benefits to injured employees.

FECA Changes

Department of Labor submission timeliness reports establish that less than 65% of notice of injury or illness forms (CA–1s/CA–2s) are received by OWCP from the employing agencies within the federally mandated time limits (ten working days), and less than 48% of wage loss compensation claim forms (CA–7s) are received by OWCP in a timely manner (five working days). These delays have a significant impact on timely adjudication of entitlement to benefits. Until OWCP receives these claim forms, they cannot begin the claim adjudication process. They are unable to initiate the process of evaluating the merits of the claim, to monitor both the medical treatment and the employee's return to medically suitable work. OWCP's internal analysis has demonstrated that the delayed submission of the forms for notice of injury and claim for wage loss compensation make a significant difference in the length of time an injured worker remains off the job, even when injuries and working conditions are similar.

Under the current FECA, OWCP does not have any enforcement powers. They can only attempt to persuade and cajole federal agencies to submit claim forms within the time limits mandated by federal regulation. We suggest that OWCP be granted enforcement powers in regards to addressing the entire experience of injured workers, from the day of injury to their return to work. This is a change which would benefit the injured employee, the employer, and OWCP.

Ergonomic injuries alone cost taxpayers, businesses and workers billions of dollars annually. OSHA estimates that each year, 1.8 million workers suffer from musculoskeletal disorders and that 600,000 people miss work because of them. The Labor Department estimated that "new safety rules" for employers would prevent injury to about 300,000 workers annually and save the U.S. economy $9 billion. Repealing the Ergonomic Standards may have relieved business groups of the financial burden to correct workplace safety violations, but it did nothing to quell the costs of injuries

that they or U.S. taxpayers encounter because of them. The latter is a far greater burden than the cost of addressing the unsafe conditions. Therefore, if in fact the Safety, Health and Return-to–Employment Initiative and this committee are genuine in their goal of reducing the costs of injury, then there must be more than initiative goals beyond that of job performance. There must be employer accountability to ensure a safe work environment that is mindful of unsafe conditions and of ergonomic standards.

Finally, we recognize OWCP has made efforts to improve services. They have made technological improvements in order to process claims more efficiently, which provides claims examiners with more immediate access to imaged records and reduces delays in claim processing. The implementation of a centralized mailroom that services all OWCP District Offices has reduce routing time to responsible claims staff, and reduced record-misplacement occurrences. Although OWCP has relieved its claims examiners of some clerical duties, claims examiners are still in short supply to adequately adjudicate claims in a timely manner. These shortages cause delays in prompt medical treatment, which results in prolonged recovery for claimants and hardships for both claimants and the employers.

In another effort to expedite service, OWCP recently contracted with a single company, ACS, to approve all medical services requiring prior authorization and to handle its bill payment processes. Contracting out, however, has created some new problems. Claims examiners are no longer available to discuss medical bills, reimbursements and authorizations with claimants, their representatives, or their physicians. ACS representatives are not responsive, nor do they demonstrate consistency in applying the regulations, which has resulted in unnecessary delays. We suggest that when duties are contracted out that there be a Statement of Work Agreement that specifies obligations and includes relief to OWCP of the contract when a vendor fails to meet the terms of the agreement. Additionally, we suggest that OWCP maintain genuine oversight with all contracted companies.

Conclusion

The Federal Employees' Compensation Act is a law based in equity. The employer gives up some of the defenses available under common law, and the employee similarly forgoes the full range of damages which could be awarded. It is a non-adversarial process designed to provide a predictable level of liability for the employer, and a predictable level of benefits for the employee. To amend the law in a manner which upsets this balance would be a disservice to the overriding concept of fairness that is the law's foundation. Unilaterally reducing benefits to the injured worker simply in an effort to lighten the financial liability of the employer is not an equitable response to the increasing injury compensation costs. Injured workers already suffer loses, both financial and emotional, for which they can never be compensated. A reduction in benefits that were fairly established would unjustly increase the already substantial burden of their injuries and illnesses, and literally add insult to injury.

Thank you for this opportunity to address these important issues.

Chairman NORWOOD. Mr. Lewis, you are now recognized for 5 minutes.

STATEMENT OF ELLIOT P. LEWIS, ASSISTANT INSPECTOR GENERAL FOR AUDIT, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC

Mr. LEWIS. Good afternoon, Mr. Chairman, and Members of the Subcommittee. Thank you for the opportunity to testify on the work of the Office of Inspector General, U.S. Department of Labor in the Federal Employees' Compensation Act Program.

Today, I will highlight some of our recent audit and investigative work in FECA and outline legislative recommendations for improvement of this important program.

I am accompanied by Stephen Cossu, the assistant inspector general who oversees investigations related to the program. I request that my written statement be included in the hearing record.

Effective and efficient management of the FECA program works to the benefit of every claimant, Federal agency, and taxpayer.

Through our oversight of the program, we have highlighted several challenges regarding internal controls and procedures. Weaknesses in internal controls increase the risk of improper payments to FECA claimants across the Federal Government and medical providers who serve them.

Over the years, we have made recommendations for improvement in the areas of customer service and program integrity. And OWCP has recognized the need to implement changes in response to our concerns.

However, we continue to identify weaknesses in several areas in the program. For example, during our audit of the Department's 2003 financial statements, we found that OWCP is not ensuring that claimants submit medical evidence to support continuing eligibility for compensation and medical benefits. This appeared to be due to OWCP's failure to comply with its own procedures rather than a lack of responsiveness on the part of the claimant. The ineffectiveness of this control increases the susceptibility of this multibillion dollar program to fraud and overpayments.

Another area of concern involves the use of Social Security data. Use of this data is integral to the effective operation of the FECA program. In a September 2000 audit, we reviewed the potential use of cross-matching FECA data and Social Security wage data to combat fraud and overpayments within the program. As a result of our cross-match, we identified and referred for investigation 33 cases that showed a potential cost savings of $7 million to the FECA program. We believe that legislation allowing OWCP access to Social Security wage data could provide a cost-effective tool to identify and remove dishonest claimants who is conceal their earnings.

We have long been concerned with OWCP's customer service. In OIG reports in 1999 and 2002, we recommended the Department improve its goal-setting and measurement of customer satisfaction. We are looking into the Department's implementation of our recommendations as part of a current evaluation on customer service.

The OIG receives complaints, via our hotline, that cover a variety of matters and allegations. During FY 2003, the OIG hotline received 116 complaints related to OWCP and the FECA program. These complaints involved allegations of poor customer service, unfair practices, privacy concerns, mismanagement and fraud. Individual complaints are either addressed by the OIG or referred to OWCP.

In further response to hotline complaints received and as a follow-up to our past work, we have initiated the following work in the FECA program: We are currently evaluating OWCP's handling of complaints of poor customer service. We are assessing the extent to which data-mining techniques can be used by the OIG and the Department to identify patterns of improper FECA payments, fraud and abuse. Our financial statement audit work for 2004 will specifically look at FECA's new medical bill payment system. And finally, we are reviewing the accuracy and validity of FECA-reported performance data.

From an investigation point of view, the OIG investigates FECA fraud, such as claimants who have jobs that are incompatible with their disability and fraud committed against the FECA program by

service providers. In 2003, the OIG opened 154 cases, had 59 indictments, 49 convictions, and over $14 million in monetary results in the FECA program area.

In the past, the OIG has made recommendations to strengthen the program. These have included addressing the 3-day waiting period, addressing the move from FECA to some form of retirement benefit, and granting access to Social Security wage records and a national directory of new hires in order to identify claimants defrauding the program.

In conclusion, Mr. Chairman, our findings and recommendations have focused on helping to make the FECA program operate more effectively and efficiently while ensuring the integrity of the program.

This concludes my statement. Mr. Cossu and I will be pleased to answer any questions you or other Members of the Subcommittee may have. Thank you.

[The prepared statement of Mr. Lewis follows:]

Statement of Elliot P. Lewis, Assistant Inspector General for Audit, Office of the Inspector General, U.S. Department of Labor, Washington, DC

Good afternoon Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to testify on the work of the Office of Inspector General (OIG), U.S. Department of Labor (DOL), in the Federal Employees' Compensation Act (FECA) program. My name is Elliot Lewis and I am the Assistant Inspector General for Audit at the OIG. Today I will highlight some of our recent audit and investigative work in FECA and outline legislative recommendations for improvement of this important program. I am accompanied by Stephen J. Cossu, Assistant Inspector General for Labor Racketeering and Fraud Investigations, who oversees investigations related to the program. He and I will be available to answer any questions the Subcommittee may have regarding the OIG's work in the FECA program.

BACKGROUND—FEDERAL EMPLOYEES' COMPENSATION ACT

The U.S. Department of Labor (DOL) administers several programs and statutes designed to provide and protect the benefits of workers. FECA is a comprehensive workers' compensation law covering some 3 million Federal and Postal employees. It is designed to provide medical benefits, income replacement, and certain supportive services to Federal employees with work-related injuries or, in the case of deaths, survivor benefits to family members. The Office of Worker Compensation Programs (OWCP), which is within the Employment Standards Administration (ESA), is responsible for making eligibility determinations and for the initial reconsideration if a claim is denied. Benefits are paid from the Employees' Compensation Fund, which is principally funded through chargebacks to the Federal agency that employs the injured worker. Therefore, the FECA program affects the budgets of all Federal agencies, and quasi–Federal agencies such as the United States Postal Service.

Recognizing the need to improve this program, this past January the Administration launched a Government-wide initiative to improve workplace safety and health and reduce the costs of injuries to workers and taxpayers. Known as the SHARE (Safety, Health, and Return-to–Employment) initiative, it calls for all Departments to establish goals to lower workplace injury and illness case rates; lower lost-time injury and illness case rates; improve the timeliness of reporting injuries and illnesses; and reducing lost productivity days due to work injuries and illnesses. The Secretary of Labor has been designated to lead the initiative in terms coordinating the development of goals for each Department and measuring their performance. The OIG is encouraged by the goals of this initiative.

OIG ACTIVITIES RELATING TO FECA

Mr. Chairman, effective and efficient management of the FECA program works to the benefit of every claimant, Federal agency, and taxpayer. Through our oversight of the program, we have highlighted several challenges regarding internal controls and procedures. Our concerns have been included in our Annual Management Challenges Report for several years. Weaknesses in internal controls increase the

risk of improper payments to FECA claimants across the Federal government, and medical providers who serve them. Over the years, we have made recommendations to OWCP for improvement in the areas of customer service and program integrity and OWCP has recognized the need to implement changes in response to our concerns.

Financial Statements Audits

However, Mr. Chairman, we continue to identify weaknesses in several areas in the program. For example, during our audit of the fiscal year 2003 DOL Financial Statements, we found that OWCP is not ensuring that claimants submit medical evidence to support continuing eligibility for compensation and medical benefits. Claims Examiners are required to obtain and review medical evidence on a periodic basis to determine continuing claimant eligibility. Our audit found the lack of current medical evidence in 18 percent of sampled cases, which appeared to be due to OWCP's failure to comply with its own procedures rather than a lack of responsiveness on the part of the claimant. The ineffectiveness of this control increases the susceptibility of this multi-billion dollar program to fraud and overpayments.

Social Security Data

Another area of concern involves the use of Social Security Administration (SSA) data. Use of this data is integral to the effective operation of the FECA program. In a September 2000 audit, we reviewed the potential use of crossmatching FECA data and SSA data to combat fraud and overpayments within the program. As a result of our crossmatch, we identified and referred for investigation, 33 cases that showed a potential cost recovery and cost avoidance of $7 million over 10 years for the FECA program. We believe that legislation allowing OWCP access to SSA wage data could provide a cost-effective tool to identify and remove dishonest claimants who conceal their earnings.

Customer Service

Our 1999 evaluation of OWCP's FECA customer service surveys revealed the existence of methodological flaws in several areas, including survey design, measurement of customer service, sampling, response rate, and survey operations. As a result, we made a number of recommendations to enhance the accuracy of the data by improving the survey methodology and thus helping OWCP judge and improve the quality of customer service provided. The agency agreed with most of our recommendations and incorporated them in its subsequent survey. However, OWCP has conducted no written survey since 2000, focusing instead on telephone surveys.

A 2002 OIG report on FECA performance measures recommended, and the Department agreed, to establish a performance goal for customer satisfaction. We are looking at the Department's implementation of our recommendation as part of our current evaluation of FECA customer service, which I will address in a moment.

Hotline

The OIG receives complaints via our hotline that cover a variety of matters and allegations. During fiscal year 2003, the OIG Hotline received 116 complaints related to OWCP and the FECA program. These complaints involved allegations of poor customer service, unfair practices, privacy concerns, mismanagement by OWCP, and fraud against the program. Some complaints are referred to OWCP for action and those dealing with allegations of fraud remain with the OIG.

Current Work

In further response to hotline complaints received and as a follow-up to our past work, we have several current work projects underway in the FECA program:

- Customer Service Evaluation—In this on-going review we are evaluating OWCP's handling of claimant complaints of poor customer service. Our objectives are to determine:
  - The extent to which one OWCP district office responded to and resolved complaints;
  - If employing agencies are satisfied with OWCP customer service; and
  - If OWCP telephone surveys provide an adequate indication of customer satisfaction.

We would be pleased to share the results of our work upon its completion.

- Data Mining—We are currently assessing the extent to which data mining techniques can be used by the OIG and the Department to identify patterns of improper FECA payments, fraud, and abuse.
- Financial Statement Audit—The FECA program has implemented a new medical bill-processing system during fiscal year 2003. Our DOL financial statement

audit work for fiscal year 2004 will look at payments generated by the new system.

- FECA Data Validation—We are reviewing the accuracy and validity of Government Performance and Results Act performance data reported by the Department with respect to FECA.

Fraud

From an investigations point of view, the OIG investigates claimant fraud and fraud committed against the FECA program by service providers. In fiscal year 2003, the OIG opened 154 cases, had 59 indictments, 49 convictions, and over $14 million in monetary results in the FECA program area. We also closed 153 cases from fiscal year 2003 and prior years.

The following cases are representative of the types of fraud we regularly investigate:

- A former Department of Army employee was sentenced to six months' home confinement, 100 hours of community service, two years of supervised probation, and ordered to pay more than $150,000 in restitution for receiving benefits for an employment-related injury while he sold hay and livestock and, for a fee, delivered topsoil and gravel.
- A former Postal worker was sentenced to six months' home detention and five years' probation and ordered to pay $101,206 in restitution after pleading guilty to charges of making false statements to obtain Federal workers' compensation benefits. He was operating a tax business and a limousine business and not reporting this to OWCP as required. This investigation was conducted jointly with the U.S. Postal Inspection Service.
- An orthopedic clinic specializing in sports medicine agreed to pay $2.65 million to settle allegations of overbilling by 17 of its physicians. This investigation, also conducted jointly with the U.S. Postal Inspection Service, was the result of a qui tam action filed by an employee who alleged that the clinic and its physicians knowingly overbilled government healthcare programs, including $110,000 in overcharges to DOL's FECA program.

RECOMMENDATIONS TO IMPROVE THE FECA PROGRAM

In the past, the OIG has made recommendations to strengthen the program. These include:

Changing the Continuation of Pay (COP) Period

FECA currently has a provision that allows employees who sustain disabling job-related traumatic injuries to receive continuation of their regular pay for a period not to exceed 45 calendar days after the injuries. Currently, a three-day waiting period, before FECA benefits could begin, is at the end of the COP period, which does not serve to discourage frivolous claims. We recommend returning the three-day waiting period (before FECA benefits can start) to the beginning of the 45-day continuation-of-pay period. This would require employees to use any accrued sick leave, annual leave, or leave-without-pay for that three-day waiting period, before their FECA benefits could begin. (Should the claim be approved by OWCP, any leave used during this three-day waiting period would be restored.)

Establishing a Retirement Age for Beneficiaries

Currently, FECA beneficiaries are not required to retire at any age. Therefore, beneficiaries may remain on disability for life. This results in a strong incentive to continue to receive FECA benefits, since the tax-free benefits are much greater than any retirement earnings would be. The OIG recommends that a suitable retirement age be established under the Act for FECA claimants. Once the beneficiaries reach the specified retirement age, their retirement benefits would be adjusted downward to a specified level; however, medical benefits could still be paid by OWCP.

Accessing Earning Information

Accessing Social Security wage information and the National Directory of New Hires, which is maintained by the Department of Health and Human Services, could be used by OWCP to document whether a claimant has outside employment. If it is determined that the claimant has unreported outside employment or income, any inappropriately paid benefits can be reduced or withdrawn. Access to Social Security wage information would also be useful to verify the validity of any Social Security numbers provided by the claimants. Unfortunately, OWCP can only access Social Security wage information if the claimant gives OWCP permission to do so. A refusal to grant such authorization has no adverse impact on the claim. Also the National Directory of New Hires, which contains employer-reported information on

newly hired individuals, is not currently available to OWCP. Claimants who are defrauding the FECA program are unlikely to willingly grant OWCP or the OIG the authority to access information about their earnings. Provisions in law would be required for OWCP and the OIG to have access to Social Security data and the National Directory of New Hires, similar to the access already provided to several other Federal agencies.

CONCLUSION

In conclusion Mr. Chairman, our findings and recommendations have focused on helping to make the FECA program operate more effectively and efficiently, while ensuring the integrity of the program. This concludes my written statement; Mr. Cossu and I would be pleased to answer any questions you or the other members of the Subcommittee may have.

Chairman NORWOOD. Thank you very much, Mr. Lewis.

To begin our questioning, I will call on Mrs. Biggert for 5 minutes.

Mrs. BIGGERT. Thank you, Mr. Chairman.

And thank you all for coming today.

Mr. Hallmark, has the use of private contractors for administrative processing made the program more efficient?

Mr. HALLMARK. Yes, I believe it has. We have used contractors for different parts of the FECA program for many years. And it has allowed us to expand and leverage our staff resources to accomplish the really labor-intensive aspects of this program.

We have—as Mr. Lewis mentioned, we started a medical bill pay contract this past September. And that contract is still in the development stage. We are continuing to have fairly serious problems. Although, we believe they are on the road to improvement at the present moment.

But as a principle, we find that contracting out for commercial aspects of what we do to be a successful strategy for the program.

Mrs. BIGGERT. Does it make it more expensive?

Mr. HALLMARK. It is not cheap to do the work that we are accomplishing through the contractor. And part of the issue that we have, and Elliot mentioned it as well, and I think also Sue that we need to do a better job of administering those contracts to ensure that we do have the most efficient process. And that is something we are also working on.

Mrs. BIGGERT. Have you had to let some of the contractors go because they weren't doing their job then?

Mr. HALLMARK. We literally have thousands of contractors. We contract for vocational rehabilitation services on an individual counselor basis, for nurse rehabilitation on an individual nurse basis, and large contracts for——

Mrs. BIGGERT. So it is not a big company all the time that comes in?

Mr. HALLMARK. No. It is a whole range, from one-person operations to multi—our contract for medical services is with Lockheed Martin, fairly large entity. In some cases, we have had to deal with contractors and take actions to shift from one source to another. And that is just the nature of that business.

Mrs. BIGGERT. Then, Mr. Hallmark, Ms. Carney noted in her testimony that OWCP has real power to compel agencies to submit claim forms within the time limit that has been mandated by Federal regulation. So how do you handle that, currently, particularly

in a situation where an agency has failed repeatedly to submit claim forms in a timely manner?

Mr. HALLMARK. The FECA statute provides for a criminal penalty which, to my knowledge, has never been implemented.

Obviously, if we are aware of—and we have been advised from time to time through history—of a situation where just a flat-out failure to report has occurred, and in those cases we would work with the agency and, if need be, with law enforcement officials to address the issue. And we have used the IG and the agency IGs to address those kinds of egregious situations.

But by far, the more common situation is just the simple lack of promptness. And our approach to that has been, and I think it has been very successful, has basically been to work with the agencies and to build cooperation to make clear measurements and targets for improvement which we, for example, post on our Web site by agency. So we, in effect, use the power of publicity to encourage agencies to get better.

And I can say, as I said in my opening remarks, since 1994 or so, when we started really focusing on this, the agencies have gotten twice as good as they were. Now, they were horrible in 1994, to be honest. They are now, as Sue indicated, the average is about 65, 66, 67 percent timely. That is within 2 weeks. That is not good enough. But I would say that the trend is very much positive. And the Postal Service, for example, has made incredible strides, and they are now up near their target of 90 percent, which they deserve credit for.

Ms. CARNEY. While the Postal Service may have made some strides, it is a serious recurring problem. And I would like to also point to the Attorney General's Office as the person that we are supposed to go to when we file these complaints for noncompliance. And, as Mr. Hallmark has said, that has never happened because, of course, in the grand scale of things, we are certainly at the bottom of the food chain for such—when you compare terrorists versus the claim form didn't get there, obviously, we don't get the attention that——

Mrs. BIGGERT. It is hard to tell you, it was lost in the mail.

Ms. CARNEY. But in any case, and within OWCP's own—Department of Labor's own study, it is a fact that, if we get the claims in to OWCP and processed in a timely fashion, then those employees recover more quickly because they are getting their claim adjudicated. They are getting medical services. And then they return to suitable work in a much more timely fashion than the person that has maybe the same condition but didn't get the claim, the receipt of claim. It is not an isolated problem with the Postal Service. It is widespread, and it has definitely——

Mrs. BIGGERT. Let me ask Mr. Hallmark again, usually when some people are prompt, some people are early and some people are late, it just seems like human nature. Is that true of the agencies? Is it always the same agency that has the problem with getting the forms in on time?

Mr. HALLMARK. There are definitely patterns. If you look at our Web site, you can clearly see, there are some agencies that have not made progress, others that, as I say, have made dramatic progress. Several of the agencies have come to us and worked with

the Department of Labor to, for example, transmit their claims electronically so that it cuts out lost in the mail. And we would like the Postal Service to do that, too, but they are resistant. That makes a big difference. Those agencies have moved ahead.

One thing we have in our favor at this point—we don't have a criminal or a penalty kind of process that is really effective—but we do have the President's SHARE initiative, which sets goals not only to reduce the number of injuries that have occurred or will occur but also to process the FECA claims that do occur more rapidly. And each agency has a specific target for improving each year for the next 3 years in that area. And I think that will have an impact on the kind of issues that Ms. Carney is talking about.

Chairman NORWOOD. Thank you, Mrs. Biggert.

I wouldn't hold my breath, Mr. Hallmark, to get the Postal Service to start sending their claims in electronically.

I would now like to recognize Major Owens for 5 minutes for questions.

Mr. OWENS. Talk about conflicts of interest here.

Ms. Carney, what types of special difficulties would you see lower-income injured workers having facing—see them facing in the event that FECA benefits are terminated after age 65 in favor of some sort of retirement annuity?

Ms. CARNEY. What difficulty?

Mr. OWENS. What kind of problems do you see them facing?

Ms. CARNEY. First off, I don't think it is fair to even make a comparability issue between the FECA programs and the State programs. One of the issues is that, depending on where you live, the cost of living is substantially higher than other areas. The way FECA is currently set, with a slight increase for those that have dependents, addresses that. So I think that the compensation wage-loss would be of greater significance.

There is also not a formality within State programs, State comp programs. As Federal employees, that is one of the benefits we all have: We are supposed to have formal—you know, common benefits.

Mr. OWENS. You mentioned carpal tunnel syndrome, the personal problem.

Ms. CARNEY. Yes. Thoracic Outlet Syndrome and Carpal Tunnel.

Mr. OWENS. Could you describe a little bit how that was allowed as a legitimate claim when——

Ms. CARNEY. How did I get it?

Mr. OWENS. No. No, not how you got it. When the new Administration came into power here, the President, along with the Republican majority in the Congress and the Senate, wiped out the ergonomic standards that we had spent 10 years laboring on. I want to know, how is your complaint legitimatized if we don't have those standards in place?

Ms. CARNEY. Well, the machines that I worked on were certainly the culprit in my medical conditions. They are not ergonomically set for the human body to work on. And the functions that I did, had they been taken care of through the OSHA ergonomic standards, if I didn't have to do those particular functions, if I did them on a machine that was built more for the human being body type, as opposed to what we had to go through, I wouldn't be suffering.

I would like to say, too, you know, my former husband—you want to talk about—we addressed time issues, my former husband also a Postal employee, also a back injury, two herniated discs, 5 years to get his back surgery approved.

Mr. OWENS. Thank you.

Dr. Hunt, how many State workers' compensation systems remove retirement-age injured workers from their workers' compensation programs? Is there any State that is currently considering this?

Dr. HUNT. I didn't catch the last part of that. Could you repeat that?

Mr. OWENS. Is there any State that is currently considering removing retirement-age injured workers from their workers' compensation programs?

Dr. HUNT. I don't know if there are any that are currently doing it. I don't know the exact number. I can submit that for the record.

[The information referred to follows:]

Retirement Offsets in State WC Systems

I have briefly reviewed the OWCP publication State Workers' Compensation Laws and estimate that there are about 15 states that reduce wc benefits for receipt of SS retirement and/or employer pension payments. Usually this amounts to an offset of the employer contributed proportion only. The states that have some such offset include: AK, AR, CO, CT, FL, LA, ME, MI, ND, PA, RI, TN, UT, WA, WV.

H. Allen Hunt, Ph.D.
Assistant Executive Director
Upjohn Institute for Employment Research
Kalamazoo, MI

Dr. HUNT. There are a number that have either a step-down or other arrangement at age 65, at the traditional retirement age. I don't know if it is comparable to what you are thinking about for FECA or not.

Mr. OWENS. Would you say one-half the States are doing it or one-fourth of the States?

Dr. HUNT. I would think maybe a third of the States would be my ballpark guess.

Mr. OWENS. Mr. Hallmark, if the retirement age recipients are to be assimilated into a defined benefit plan such as FERS or CSRS, how would their number of service years and salary at retirement be estimated?

Mr. HALLMARK. Well, with great difficulty, I believe. The issue of how one would construct a provision to address the question of comparability between FECA benefits and OPM retirement benefits is an extremely complicated one. GAO studied it in the early 1990's and did a report laying out the difficulties with respect to the proposal that I think you are pointing to, which was that people actually be moved from the FECA rolls and into the OPM pension structure.

And the complexities that you are alluding to, of where their salaries were in the non-funded nature of that kind of a shift, were pointed to with some clarity in that report. The provision that is part of the President's proposal in the 2005 budget would not move individuals from the FECA roles to OPM but would simply create

a different benefit level within the FECA structure and thereby eliminate those background complexities.

Mr. OWENS. My time is up. Thank you very much.

Chairman NORWOOD. Mr. Kline, you are recognized for 5 minutes.

Mr. KLINE. Thank you, Mr. Chairman. Thank you, gentlemen and lady, for being here today.

I took very much to heart the Chairman's comments earlier that it is an educational experience. It certainly is for me. And I very much appreciate your testimony and the answers to the questions.

I have so many here in front of me, I am not sure exactly where to start, except that I am trying to understand the issue of Social Security numbers and access to them and medical records. So let me start with a few for you, Mr. Lewis. We will see how my time holds up if I get in as many as I can.

As I understand in your testimony, you state that OWCP does not always ensure that claimants submit medical evidence to support continuing eligibility for compensation of medical benefits. Do you have an estimate of the amount of overpayment made as a result?

Mr. LEWIS. I do not have an estimate of what the total amount could be as a result of that. We identify each year in our audit in how many cases where there should have been a request for follow-up medical evidence that either the request wasn't made or the evidence wasn't submitted. In our most recent work, we had looked at a random sample of 145 claims that fit that category. And I think it was 27 that were not compliant.

Mr. KLINE. Fifteen percent or so. Mental arithmetic is always a little risky for me.

Let me see if I understand then the issue with Social Security records. Without access to Social Security records, how is it that OWCP would be able to identify and remove any dishonest claimants that there might be?

Mr. LEWIS. Well, there is self-reporting and certification in terms of any income that is earned and dependent status. There is also a voluntary authorization from claimants to confirm with Social Security on a one-time basis, and then leads or referrals that we may get, say, in our IG or in other agency IGs.

Mr. KLINE. Do I understand that you are recommending that OWCP have access to Social Security?

Mr. LEWIS. Yes, to the wage information to verify if someone begins working and has unreported wages.

Mr. KLINE. In your judgment, would this access to this information significantly reduce the cost of the program?

Mr. LEWIS. Well, as I said in the testimony, in our last look at that, we identified 33 cases that totaled $7 million. So we think that is a much more efficient approach than trying to tackle it person-by-person.

Mr. KLINE. OK.

Mr. Hallmark, you mentioned, in response to an earlier question and I think in your testimony, the SHARE program. Could you just take another minute or so I have left and kind of elaborate on that a little bit and tell us what follow-up procedures are in place to en-

sure that the agencies are making progress toward meeting the goals?

Mr. HALLMARK. The SHARE initiative was announced in January of 2004 by the President. It incorporates goals set for each of the Federal agencies to reduce injuries that occur within their workplaces, to speed the filing of FECA forms and also to reduce lost-production days which is the measure that Dr. Hunt was referring to.

All three—all of those goal areas are established by agency for 2004, 2005 and 2006. The Department of Labor, specifically OWCP and OSHA, will be working with each of the agencies to monitor their activities, give them the technical assistance to ensure that they are moving ahead along these goal paths. And we will be publishing results of their performance on a quarterly basis on our Web site. And we will be reporting to the President annually to indicate how well we see the whole program working.

Mr. KLINE. OK. Thank you very much.

I see my time is about to expire. I have got one more, getting back to the medical evidence, medical records issue and again for you, Mr. Hallmark, what is OWCP doing now to improve the process of periodically getting the medical evidence?

Mr. HALLMARK. The finding of OIG was localized for the most part in one of our district offices. We have 12 offices. That office had the procedural breakdown.

The good news is that we have the new IT system that I mentioned in my remarks is going into place this summer. That system will provide prompts to claims examiners and to workers automatically, instead of it having to be found. Those cases will pop up on their computer screen, and they will be guided through the process of ensuring that that data and evidence is procured as needed.

Mr. KLINE. OK. I understand now. Thank you very much.

Chairman NORWOOD. Thank you, Mr. Kline.

Mr. Greenwood, we are delighted to have you with the Subcommittee today, and you are now recognized.

Mr. GREENWOOD. Thank you, Mr. Chairman.

Mr. Hallmark, is there any requirement that beneficiaries re-certify periodically? Annually, do they have to recertify, both as to their medical status? And does that have to be signed off by a physician? How does that work?

Mr. HALLMARK. There is an annual recertification process with regard to employment and earnings and sort of basic status of the individual. The medical—the reevaluation of medical that Mr. Lewis was referring to is gradated depending on the status of the claimant.

In some cases, where the individual has been on the rolls for a longer time period and has been judged to be in a more stable situation, we don't get a medical report every year. But there is a 1- or 2- or 3-year cycle whereby we would go back to that individual's physician to re-verify that the disability from the work injury is continuing and justifies the continuing payments.

Mr. GREENWOOD. When there is fraud, in cases of fraud, why doesn't that periodical medical re-certification catch the fraud?

Mr. HALLMARK. Well, a number of reasons. One is that an individual may have a condition—and the vast majority of injuries that

occur, the 170,000 that occur every year are genuine injuries. It is very rare that someone comes forward with a completely fraudulent case that doesn't exist.

So when we go back to an individual who is on benefits now, they may very well have an injury. They may have a continuing condition that a physician will indicate, yes, that condition remains. However, the individual may still be able and may be, in fact, working in some situations that we are not aware of and failing to report it in the annual——

Mr. GREENWOOD. So it is more the double-dipping that causes the fraud than just sort of malingering, if you will?

Mr. HALLMARK. Well, certainly fraud, if you sign the document saying you are not working and don't have any earnings and, in fact, you are working and do have earnings, that is the nature of the fraud that the IG finds.

Mr. GREENWOOD. That is the nature, but that there is a continuing injury—what I am trying to understand here is, I go to my doctor—and I am required to re-certify. The doctor says, "Yes, the person is still injured." then the person is actually working another job and falsely reports that he is not. Did he pull one over on the doctor? I mean——

Mr. HALLMARK. The doctor is not aware of any——

Mr. GREENWOOD. Not that he has got the other income, but that he is well enough to work.

Mr. HALLMARK. Most of the concerns that we are talking about here are complex. And they are not of the kind that typically are, yes, this person obviously is never going to work again or, no, this person can go right back to work. They are in the gray area. That is the nature of these injuries, many of which are musculoskeletal injuries and subject to a lot of variability and subjective findings.

That is why I was referring to the whole issue of disincentives to return to work. The question many times is that the transition to going back to work, there is—it is rare, it is really quite rare that people are being fraudulent and drawing the benefit and being off somewhere working at another job. That happens, but I think the IG prosecutes 100 cases a year out of the 50,000 long-term roll cases we have.

Much more common is people who are continuing to draw that benefit, not working, not engaging in fraud, but the question is whether or not they shouldn't be back at work. And that is the gray area.

Mr. GREENWOOD. If I am doing a manual labor, and I am injured so that I can't do manual labor, do I—am I—is the Federal Government able to compel that person on condition of continuing to receive the benefit to do another kind of labor that is less taxing on their physical body?

Mr. HALLMARK. There are sections in FECA for participating in a vocational rehabilitation program. So, yes, if an individual is a blue-collar worker who cannot do the craft, one of the things that we will do in our return-to-work effort is identify possible alternative employment and——

Mr. GREENWOOD. One of the things that strikes me there is a shortage of claims managers, right?

Didn't you say that, Ms. Carney, in your testimony? There is a shortage of claims managers.

Ms. CARNEY. In my opinion.

Mr. GREENWOOD. I wonder how many people are receiving FECA benefits who couldn't be claims managers. How hard a job does that have to be? How much training does it take to become a FECA claims manager?

Mr. HALLMARK. I think our claims examiners would indicate it is a very difficult job.

Mr. GREENWOOD. I am sure it is, but you don't have to go to college for 9 years to learn how to do that, do you?

Mr. HALLMARK. It is a complex business, but, yes, we do have claims examiners who are former recipients of benefits who got involved and learned the program through that avenue. And that is fine.

We do look for all kinds of different employment where people can be in that situation. But the big issue, the most—the greatest difficulty in vocational rehabilitation is employee motivation.

Mr. GREENWOOD. Nothing like taking away their benefits to get their motivation going, in my opinion.

Mr. HALLMARK. That is one of the avenues, but it is not dispositive at all times.

Mr. GREENWOOD. Thank you, Mr. Chairman.

Chairman NORWOOD. Thank you, Mr. Greenwood.

I would like to ask the panel, all of us have a lot of questions for which there is not enough time to ask. And we will submit questions in writing, if we could. Perhaps that will help us a little bit. But I will recognize myself to sort of finish up.

Ms. Carney, have you had surgery for your Carpal Tunnel?

Ms. CARNEY. No. In my particular case, I have not. That is because my surgeon thought it was too life threatening. But——

Chairman NORWOOD. Life threatening for Carpal Tunnel?

Ms. CARNEY. Thoracic Outlet Syndrome gets too close to the jugular, too close to the spinal. They would have to cut me through the breast and through the stomach.

Chairman NORWOOD. I am talking about the Carpal Tunnel.

Ms. CARNEY. There is no point in fixing my Carpal Tunnel because of my Thoracic Outlet. They go, pardon the expression, hand in hand.

Chairman NORWOOD. I am going to take my time with one question, Mr. Hallmark. I think it will take you the 5 minutes. I would like for to you walk me through what happens when a patient is injured. That point we know that a Federal employee is injured and sustains an injury, is that employee first seen by an OWCP doctor? Is that the first step? Are there deadlines for filing a claim with an employer? Just how would a typical claim proceed?

Mr. HALLMARK. I don't know if there is a typical claim, but basically the process is an individual's hurt on the job. Typically the—someone is aware of it. They may be referred immediately to—taken to an emergency room to address the traumatic injury that has occurred if it is a slip-and-fall or a vehicle accident, of which we get thousands. That individual would be treated by a physician, whoever was available in an emergency situation.

The claim form would be compiled by the employing agency, signed off by the individual when they are able to come back to work and do that, and signed off by the supervisor in the shop. The employer then, if they are the Postal Service, mails us their claims form within 14 days of the date of injury. That is the goal. And as I said earlier, the Postal Service is pretty good about that.

Chairman NORWOOD. How rigid are you with the 14 days?

Mr. HALLMARK. Well, the 14 days is a regulatory requirement. As I have indicated the current average for meeting that goal is about 67 percent governmentwide. And as Ms. Carney indicates, we don't have a regulatory penalty to apply.

Chairman NORWOOD. So if you get it on the 21st day?

Mr. HALLMARK. We get it when we get it, and we start working as soon as we do. And as Ms. Carney indicates quite accurately——

Chairman NORWOOD. So we need to take the 14 days out and just say turn it in when you are ready.

Mr. HALLMARK. Well, it is our goal for those forms to be sent to us as soon as possible, because as she indicates, if we don't know the claim has been filed, then when the medical bill is forwarded to us, we won't be able to process it. We will send it back to the doctor, and we get into the round of unhappiness and delays that creates the big problem.

So what happens when the individual is injured, the claim comes to us. If the injury is very serious, we will assign a nurse, vocational nurse, to the case to try to help that individual understand what needs to be done medically to recover and then eventually get—work with the employing agency to go back to work.

If they are off work for more than 45 days of continuation of pay, we would then start compensation under the FECA. The claimant and the agency would need to file what's called a CA–7 form asking for wage replacement, and that should be done at the time that the continuation of pay is finished.

Chairman NORWOOD. So what if medical treatment is going on during all of this time? Yes, you are out of the emergency room, but you are still having to go back and forth to your physician. Is that physician—anybody in private practice can do that?

Mr. HALLMARK. Yes. The claimant has the right to choose their physician, and that is a fundamental principle in the FECA program.

Chairman NORWOOD. And the physician says, geez, I think you need this surgery for that carpal tunnel. Does that physician have to ask your permission to do that surgery?

Mr. HALLMARK. Yes.

Chairman NORWOOD. So you have to preauthorize every case before the physician can go ahead and do the treatment.

Mr. HALLMARK. Not every medical procedure is required to be preauthorized, but invasive surgeries, the main purpose for that preauthorization—well, there is really two. One is to ensure that the procedure is, in our view, connected to the injury, because obviously these things could be complicated, and a surgery might be about something else. And the other is to ensure that it is an appropriate medical procedure for that individual, because the surgery, once it is conducted, might have consequences itself. And if

we have authorized it, then those consequential injuries are now payable as part of the person's FECA claim.

Chairman NORWOOD. So you actually—you think probably the doc won't tell you if this surgery is needed according to the injury. You all have to step in and make sure.

Mr. HALLMARK. Well, the doctor—typically the doctor is aiming to try to do what they think is best for the patient. That may or may not be something that we feel is appropriate for the Federal Government to pay for. So the request comes to us in—99 percent of the time in very good faith. But we have to make the determination does this particular surgery fall within our purview, and if it does, is it appropriate for this particular individual? So in perhaps two-thirds of surgery situations, we ask for a second opinion to ensure that it is safe and that it is appropriate.

Chairman NORWOOD. How long does that take, to go between—a patient going to the physician, physician sending in a preauthorization to you saying we need the surgery, from there to a second opinion? How much time have we spent now?

Mr. HALLMARK. Well, it should take less than a week for the decision to be made by our claims examiner that, yes, this does need a second opinion or, no, it doesn't. And if it is a minor kind of procedure that is exploratory and one that is not particularly invasive, our contractor can sometimes do that on the phone or immediately. But if it is a substantial surgery, then within a week our claims examiner ought to have decided yes or no with regard to a second opinion.

And then we have a different set of contractors who schedule the second opinions. I believe those—our goal is for those to occur as quickly as possible. I think it is probably typical to be a matter of 2 or 3 months by the time you schedule the examination and then get a report back from the physician. And obviously, if it is complex, it could be longer than that.

Chairman NORWOOD. My time is expired. Let me just say I am going to explore this a little bit in writing with you. The people I have been hearing from in Texas are people I do respect, and when they tell me it takes 6 months, up to a year to have the preauthorization on surgery, it makes—it just makes a lot of questions come to mind.

How much information do you have in your agency? Do you know how many requests for surgery you had in 2003?

Mr. HALLMARK. I don't know whether that particular number is available to me, but I will certainly look for it and get it to you.

[The information referred to has been retained in the Committee's official files.]

Chairman NORWOOD. Well, I am going to ask you that. And then I am going to ask you out of all of those surgeries that were requested in 2003, what percent of them received a denial the first time? Some people say 100 percent.

Mr. HALLMARK. Well, if that is the case—if it is 100 percent, then people are not following procedures, because we have specific procedures that allow for approval without second opinion of exploratory arthroscopies and that sort of procedure. So there are fairly substantial categories of surgeries that we do intend at least to approve without review.

Chairman NORWOOD. Well, I am not being critical. I am curious. I am trying to see what really does happen. Is my pal down in Texas just having a particular problem in his area, or is this something going on?

Mr. Owens, would you like to——

Mr. OWENS. I just have one off-the-record question. Mr. Hallmark, one of our colleagues here asked you is it possible to train claimants to become claim managers? I will ask you is it possible to train claimants to become Congresspersons? Thank you.

Chairman NORWOOD. Well, I can't close with that. It appears to me anybody can be a Congressman, training or not.

Thank all of you for your time. I really do appreciate your testimony and your willingness to be here with us today, and participation and Mr. Lewis. I am going to have a bunch of questions for you, too, in writing. And if there is no further business, the Subcommittee stands adjourned.

[Whereupon, at 2:52 p.m., the Subcommittee was adjourned.]