

**ARE AGENCIES PLAYING IT SAFE AND SECURE:
AN EXAMINATION OF WORKER PROTECTIONS
PRE- AND POST-INJURY**

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT
OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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CONTENTS

	Page
Hearing held on July 21, 2010	1
Statement of:	
Adler, Jon, national president, Federal Law Enforcement Officers Association; James Johnson, 16th district vice president, International Association of Fire Fighters; Maureen Gilman, director of legislation, National Treasury Employees Union; and Milagro Rodriguez, labor relations specialist for safety and health, American Federation of Government Employees, AFL-CIO	49
Adler, Jon	49
Gilman, Maureen	65
Johnson, James	56
Rodriguez, Milagro	75
Howard, John, M.D., Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services; Shelby Hallmark, Director, Office of Workers' Compensation Programs, U.S. Department of Labor; and Jill M. Segraves, Director, Occupational Safety, Health & Environment, Transportation Security Administration, U.S. Department of Homeland Security	4
Hallmark, Shelby	12
Howard, John	4
Segraves, Jill M.	26
Letters, statements, etc., submitted for the record by:	
Adler, Jon, national president, Federal Law Enforcement Officers Association:	
Followup questions and responses	98
Prepared statement of	53
Gilman, Maureen, director of legislation, National Treasury Employees Union, prepared statement of	67
Hallmark, Shelby, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, prepared statement of	14
Howard, John, M.D., Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, prepared statement of	6
Johnson, James, 16th district vice president, International Association of Fire Fighters, prepared statement of	58
Lynch, Hon. Stephen F., a Representative in Congress from the State of Massachusetts, prepared statement of	3
Rodriguez, Milagro, labor relations specialist for safety and health, American Federation of Government Employees, AFL-CIO, prepared statement of	77
Segraves, Jill M., Director, Occupational Safety, Health & Environment, Transportation Security Administration, U.S. Department of Homeland Security, prepared statement of	28

ARE AGENCIES PLAYING IT SAFE AND SECURE: AN EXAMINATION OF WORKER PROTECTIONS PRE- AND POST-INJURY

WEDNESDAY, JULY 21, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL
SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:38 p.m., in room 2154, Rayburn House Office Building, Hon. Stephen F. Lynch (chairman of the subcommittee) presiding.

Present: Representatives Lynch and Norton.

Staff present: Jill Crissman, professional staff; Ian Kapuza and Rohan Siddhanti, interns; William Miles, staff director; Rob Sidman, detailee; Dan Zeidman, deputy clerk/legislative assistant; Adam Fromm, minority chief clerk and Member liaison; Justin LoFranco, minority press assistant and clerk; Howard Denis, minority senior counsel; Marvin Kaplan, minority counsel; and James Robertson, minority professional staff member.

Ms. NORTON [presiding]. The Subcommittee on Federal Workforce, Post Office, and the District of Columbia hearing will come to order and will proceed. I would like to welcome the witnesses in attendance.

The purpose of today's hearing is to address the safety standards and practices employed by Federal agencies to ensure that employees are not exposed to excessive amounts of carcinogens and ionizing radiation and to reduce workplace injuries and accidents.

Part of our role in the subcommittee is to ensure that men and women who serve our country are safe and healthy. For this reason, we have convened today's oversight hearing to receive an update about what exactly Federal agencies are doing to reduce and prevent on-the-job injuries and disease contraction and to discuss the care and compensation currently available to injured Federal employees.

Among other duties, Federal employees fight fires, enforce our laws, defend our Nation, protect our airways, and protect our national parks. In these roles, Federal workers regularly face a variety of health hazards. Notably, Transportation Security Administration baggage screeners and firefighters have raised concerns over exposure to carcinogens and ionizing radiation.

A 2008 Health Hazard Evaluation Report by the National Institute for Occupational Safety found that radiation doses for certain

baggage screeners exceeded the maximum dose for the public and reported that some Explosive Detective System machines emitted levels of radiation that exceeded regulatory limits. The report also found that some x-ray machines were not well maintained and noted unsafe work practices among Transportation Security Administration employees.

In addition to these concerns, the National Institute for Occupational Safety also reports that heart disease, lung disease, cancer, and infectious disease are among the leading causes of death and disability for firefighters because of the hazardous and varied environments they are regularly exposed to.

Given these serious issues, we are very concerned in using today's hearing as a learning opportunity with regard to the safety standards and practices employed by Federal agencies to ensure that Federal employees are not exposed to excessive amounts of carcinogens and ionizing radiation.

We will also use today's proceedings to review ongoing efforts to reduce workplace injuries and accidents. Notably, this past Monday, the President unveiled the Protecting Our Workers and Ensuring Reemployment initiative, which encourages agencies to collect data on the causes and consequences of workplace illness and injury as well as to prioritize effective safety and health management programs.

In addition, we look forward to discussing how well the Department of Labor's Office of Workers' Compensation Programs and the Federal Employees' Compensation Act are meeting the needs of injured workers in high-risk occupations. In fiscal year 2009, Federal employees, excluding postal workers, filed more than 79,000 new claims and received more than \$1.6 billion in workers' compensation payments. Federal employees in a variety of occupations have contacted the subcommittee to share concerns with the Office of Workers' Compensation program, and we need to be confident that Federal workers' claims are addressed in a reasonable timeframe.

It is our hope that the testimony and feedback we receive from today's witnesses can provide the subcommittee with a better understanding of what is being done to ensure that the highest safety standards are in place for Federal employees and to make sure that when these workers are injured they are properly treated.

Again, we thank each of you for being with us this afternoon and look forward to your participation.

[The prepared statement of Hon. Stephen F. Lynch follows:]

STATEMENT OF CHAIRMAN STEPHEN F. LYNCH**SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
OVERSIGHT HEARING****“Are Agencies Playing It Safe and Secure:
An Examination of Worker Protections Pre- and Post- Injury”****Wednesday July 21, 2010**

Ladies and gentleman, as the Subcommittee with jurisdiction over the Federal workforce, part of our role is to ensure that the men and women who serve our country are safe and healthy. For this reason, I have convened today's oversight hearing to receive an update about what exactly federal agencies are doing to reduce and prevent on-the-job injuries and disease contraction and to discuss the care and compensation currently available to injured Federal employees.

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Given these serious issues, I am very interested in using today's hearing as a learning opportunity with regards to the safety standards and practices employed by Federal agencies to ensure that Federal employees are not exposed to excessive amounts of carcinogens and ionizing radiation. We will also use today's proceedings to review ongoing efforts to reduce workplace injuries and accidents. Notably, this past Monday, the President unveiled the Protecting Our Workers and Ensuring Reemployment initiative, which encourages agencies to collect data on the causes and consequences of workplace illness and injury as well as prioritize effective safety and health management programs.

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It is my hope that the testimony and feedback we receive from today's witnesses will provide the Subcommittee with a better understanding of what is being done to ensure that the highest safety standards are in place for Federal employees and to make sure that when these workers are injured, they are properly treated. Again, I thank each of you for being with us this afternoon, and I look forward to your participation.

Ms. NORTON. The committee will now hear testimony from today's witnesses.

It is the committee policy that all witnesses are sworn in. We ask you to rise and raise your right hands.

[Witnesses sworn.]

Ms. NORTON. Thank you, and be seated.

Your entire statement is already included in the hearing record. The green light indicates that you have 5 minutes to summarize your statement, the yellow light means that you have 1 minute remaining to complete your statement, and the red light means you know what.

Please proceed to summarize your statements; and what I am going to do is to introduce you before you speak, rather than all at one time.

I am going to ask first Dr. John Howard to speak. He is Director of the National Institute for Occupational Safety and Health in the U.S. Department of Health and Human Services, also serves as coordinator of the Department's World Trade Center Health program. Prior to his appointment as Director of NIOSH in 2002, Dr. Howard served as chief of the Division of Occupational Safety and Health in the California Labor and Workforce Development Agency from 1991 to 2002. Dr. Howard.

STATEMENTS OF JOHN HOWARD, M.D., DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; SHELBY HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPARTMENT OF LABOR; AND JILL M. SEGRAVES, DIRECTOR, OCCUPATIONAL SAFETY, HEALTH & ENVIRONMENT, TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT OF HOMELAND SECURITY

STATEMENT OF JOHN HOWARD, M.D.

Dr. HOWARD. Thank you very much, Congresswoman Norton.

I am pleased to be here to provide an overview about the efforts by the National Institute for Occupational Safety and Health to prevent work-related injuries and illnesses to public safety workers like police officers, emergency medical technicians, and firefighters, and also to the Transportation Security Administration employees.

Public safety workers are called upon to respond, as you said, to various emergencies involving fires, traumatic injuries, criminal acts; and, in some cases, they enter uncontrolled environments to rescue potential victims. These duties often expose them to biological, physical, chemical, psychosocial hazards that can increase their risk of work-related injuries, illnesses, and fatalities.

NIOSH conducts a number of research projects related to public safety workers through an emphasis program and public safety services sector. NIOSH's research findings and recommendations are implemented by employers throughout the United States and even by international bodies in terms of standards setting.

NIOSH also develops recommendations to safeguard the health and safety of workers through our Health Hazard Evaluation [HHE], program. In response to requests from employers, employ-

ees, and their representatives, the HHE program examines workplace conditions to determine if workers are exposed to hazardous materials or harmful conditions. During these evaluations, the HHE team will assess potential exposures by measurement observations, surveying employees about their health, and reviewing health and safety policies and programs. Based on this information, NIOSH investigators make recommendations at how best to improve workers' safety and health.

Since 2003, the HHE program has received 218 requests to investigate potential occupational hazards among public safety workers and among TSA workers. These requests have concerned indoor air quality, heat, noise, infectious agents, lead, carbon monoxide, musculoskeletal issues, diesel exhaust, radiation exposure.

Between 2002 and 2003, NIOSH received three HHE requests from TSA baggage screening employees at the Cincinnati, Honolulu, and Baltimore airports, which focused on potential exposures to diesel, exhaust, dust, noise, hazardous items found in baggage, and to x-rays from baggage screening machines.

In 2003, NIOSH received also a separate request from TSA management to determine the levels of radiation emissions from various TSA screening equipment and to determine whether routine use of dosimetry is warranted.

NIOSH responded by conducting an extensive field evaluation. The objectives of the evaluation were to assess work practices, procedures, and training and also to provide criteria for future actions.

NIOSH observed the work practices and procedures followed by baggage screeners and conducted tests of around 281 screening machines to detect x-ray emissions. NIOSH found that nearly 90 percent of the TSA baggage screeners received no measurable occupational x-ray radiation exposure, none of the participants' doses exceeded OSHA's permissible exposure limit of 1,250 milligrams per calendar year quarter, nor did measured doses exceed 25 percent of the OSHA quarterly limit, which would have required routine employee monitoring.

However, there were a few employees that had small measures of exposure. NIOSH attributed the radiation exposure to improper maintenance of machines, to equipment design limitations, insufficient training, and improper work practices. NIOSH made several recommendations to address each of these issues, including conducting monthly or quarterly dosimetry targeted at specific airports for a year to further evaluate the radiation doses obtained in the NIOSH evaluation.

NIOSH also encouraged employees to notify their supervisors about equipment malfunctions, to use proper equipment to clear bag jams in screening machines, and to avoid overriding the machine safety features.

As new technologies and products are brought into the workplace, NIOSH will continue to assess their impact on work-related injuries, illness, and disability through our research and prevention strategies.

Thank you very much, And I am pleased to answer any of your questions.

[The prepared statement of Dr. Howard follows:]



**Testimony before the
Subcommittee on Federal Workforce, Postal
Service, and the District of Columbia
Committee on Oversight and Government
Reform
U.S. House of Representatives**

**Are Agencies Playing It Safe and Secure:
An Examination of Worker Protections
Pre- and Post- Injury**

John Howard, M.D.

**Director, National Institute for Occupational Safety and
Health**

Centers for Disease Control and Prevention

U.S. Department of Health and Human Services

For Release upon Delivery
Expected at 2:00 p.m.
July 21, 2010

Good afternoon Mr. Chairman, Ranking Member Chaffetz and other members of the Subcommittee. My name is John Howard, and I am the Director of the National Institute for Occupational Safety and Health (NIOSH), which is part of the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services. I am pleased to be here today to provide an overview on our efforts to prevent injuries and illnesses both in the public safety workforce, and as related to Transportation Security Administration (TSA) workers.

As the lead federal agency in occupational safety and health research, NIOSH strives to increase knowledge of workplace hazards and develop practical, preventative solutions. NIOSH targets its research to focus on relevance, quality, and impact.

Public Safety Workforce

On any given day, public safety workers may respond to emergency calls including involving criminal acts, structural fires, and traumatic injuries. In some cases, they enter uncontrolled environments to rescue potential victims. These duties increase their risks for traumatic injuries and fatalities and place them in contact with biological, chemical, physical and psychosocial hazards associated with cardiovascular disease, cancer and other chronic disorders. Research relating to public safety workers including emergency medical services, firefighting and law enforcement is conducted through the National Occupational Research Agenda (NORA) Services Sector. NORA is a framework to guide occupational safety and health research into the next decade. NORA includes ten Sector Programs, which represent industrial sectors ranging from Agriculture, Forestry, Fishing to Services. Based on Bureau of Labor Statistics (BLS)

employment estimates, nearly 69 million workers were employed in the NORA Services Sector in 2008, which is approximately 50% of the entire U.S. workforce. NIOSH and its partners have completed numerous research projects that address occupational hazards within the Services Sector. For example, evaluation of ergonomic risks and possible video display terminal hazards were initiated more than two decades ago. More recently, NIOSH has developed extensive programs to assess the risks faced by workers in public safety and emergency response and participates with many organizations to evaluate new technologies that enhance protection. Recommendations and intervention strategies from the NIOSH Services Sector research program have been adopted by consensus standard bodies as well as individual employers throughout the United States and around the world.

In addition to the primary Services Sector research conducted through NORA, NIOSH also conducts relevant worker fatality investigations through the Fire Fighter Fatality Investigation Program. According to the U.S. Fire Administration, each year an average of 105 fire fighters die in the line of duty. Through the Fire Fighter Fatality Investigation Program, NIOSH conducts in-depth investigations of the events surrounding fire fighter line-of-duty deaths, which identify contributory factors and steps that can be taken by fire departments and others to prevent future deaths under similar circumstances. This program has made over 1,000 recommendations arising from over 450 investigations since its inception in 1998. Furthermore, NIOSH also addresses the Services Sector by responding to requests from employers, employees and their representatives, (including government agencies) through the Health Hazard Evaluation Program (HHE).

Health Hazard Evaluation Program

The HHE program is comprised of a team of health professionals (including doctors and industrial hygienists) who respond to HHE requests in writing, by phone discussions, or by visiting the workplace to evaluate whether a health hazard is present. They assess exposures by measurement and observations, survey employees about their health, and review health and safety-related policies and programs. Based on this information, they make recommendations about how to create a more healthful workplace. This information is shared with all parties at the worksite and is disseminated more widely through reports published in the NIOSH website, and trade and scientific articles and presentations.

Since FY 2003, the NIOSH HHE program has received 218 requests to investigate potential occupational health hazards among police and fire department, emergency medical services, corrections, and Transportation Security Administration (TSA) workers. Workplace exposures cited in these requests have included indoor environmental quality, heat, noise, infectious agents, lead, carbon monoxide, diesel exhaust, and radiation.

TSA Health Hazard Evaluation

NIOSH's largest response pertaining to TSA was a field investigation released in 2008, which focused on occupational exposure to x-rays from baggage screening machines among baggage screening employees at 12 airports across the nation. The objectives of the study were to assess the work practices, procedures, and training provided to TSA baggage screeners who operated machines that generate x-rays and to characterize baggage screener's radiation exposures and determine if routine monitoring with radiation dosimeters is warranted. NIOSH provided criteria

for airport selection and TSA employee representatives selected the 12 airports for the evaluation to include both small and large facilities, and to include different models and layouts of baggage screening equipment. NIOSH observed the work practices and procedures followed by baggage screeners and took readings around screening machines to detect x-ray emissions. At six airports, NIOSH asked screeners to wear personal monitoring devices or dosimeters to measure x-ray exposures.

NIOSH found that nearly 90 percent of the TSA baggage screeners in the evaluation received no measurable occupational x-ray radiation exposure. However, low doses of x-ray radiation within Occupational Safety and Health Administration permissible exposure limits were found for some baggage screeners¹. Factors that may have contributed to the low doses of x-ray radiation included improper maintenance of machines, equipment design limitations, and insufficient training and improper work practices. NIOSH made the following recommendations to address each of these issues:

- Develop a formal radiation safety program to protect workers from exposures to x-rays;
- Provide baggage screeners with periodic training on safe work practices;
- Improve equipment maintenance;
- Enhance health and safety communication among all employees and management;
- Conduct limited exposure monitoring for employees to further evaluate potential exposure to x-rays; and

¹ Doses for none of the participants in this evaluation exceeded 313 millirem (mrem) over 3 consecutive months (the OSHA quarterly limit that requires employee monitoring).

- Encourage employees to notify supervisors about equipment malfunctions, use proper equipment to clear bag jams in screening machines, and avoid overriding the machines' safety features.

At the time of the NIOSH report, TSA had begun to implement many of these recommendations.

The final HHE report can be found on the NIOSH website at:

<http://www2a.cdc.gov/hhe/select.asp?PjtName=45502&bFlag=0&ID=7>.

Conclusion

As new technologies and products are brought into the marketplace and the workplace, and through the cooperative efforts of workers, management, labor, practitioners and scientists, NIOSH will continue to address the economic and personal impact of occupational disease, disability, and death through high-quality research and effective prevention strategies. I

appreciate the opportunity to present to you and thank you for your continued support of NIOSH.

I am pleased to answer any questions.

Ms. NORTON. Thank you, Dr. Howard.

Shelby Hallmark has served as Director of the Office of Workers' Compensation Programs at the U.S. Department of Labor since 2001. From 1990 to 2001, he was the Office of Workers Compensation Programs' Deputy Director with stints as Acting Director. He has served in numerous capacities within the Department of Labor since 1980. Mr. Hallmark.

STATEMENT OF SHELBY HALLMARK

Mr. HALLMARK. Thank you, Congresswoman Norton.

I appreciate the opportunity to discuss OWCP's role in providing benefits under the Federal Employees' Compensation Act [FECA], to injured Federal workers, including those in high-risk occupations.

The Secretary of Labor is fully committed to ensuring that all injured workers receive the care and compensation they deserve through the services that we provide. We are aware that some of our fellow Feds are subject to unique risks, and we are proud that our program provides comprehensive support for those who need it.

Under the FECA, we provide compensation for wage loss, medical care for on-the-job illnesses and injuries. We facilitate return to work upon recovery, and we pay benefits for survivors. FECA covers 2.7 million Federal and postal workers around the world and some others. It may be the largest self-insured workers compensation system in the world. It is also perhaps the most generous workers compensation system in the world, paying 75 percent of the injured worker's date of injury gross salary tax-free.

In addition, FECA does not arbitrarily limit the duration during which benefits may be paid, as some State systems do. It has no meaningful maximum benefit cap, whereas most States limit compensation to an average weekly wage or a figure of that nature. And its eligible rules are liberal. For example, there are no arbitrary exclusions for particular disease conditions, and the statute of limitations rules are claimant favorable.

Perhaps most importantly, FECA is a nonadversarial system, meaning that the employing agency, which ultimately covers the cost of benefits, has no standing to appeal OWCP's decisions. Only the worker is a party to the claim, and OWCP examiners make objective decisions based on the case law and the facts in the individual case, with no motive to limit costs.

In the year ending June 30, 2010, the program paid out nearly \$2.9 billion in benefits. We accepted roughly 86 percent of all cases filed and rendered a decision within our target timeframes in the overwhelming majority of cases.

But there are some cases which are difficult for the claimant and for OWCP to adjudicate. Traumatic cases of slip-and-fall and accident, for example, are approved more than 92 percent of the time and usually within a few days or weeks, but occupational disease claims receive an initial approval only about 52 percent of the time and may take a few months to decide. A pulmonary condition, for example, can be much more difficult to ascribe to specific causation factors than a traumatic incident.

If evidence submitted with an initial claim is insufficient to accept that case, the claims examiner will explain what is needed to

establish the case and may assist the claimant in gathering medical evidence directly. Roughly one-third of those occupational disease cases who are turned down result in the claimant returning with more information, usually with more medical evidence, and being successful in perfecting their claim. But, fundamentally, these outcomes reflect the fact that occupational disease cases involve murkier situations where the cause of the illness may be ambiguous.

OWCP strives to get the right result in every case, but we recognize that no system is perfect, and we continue to work to improve our processes so that each claimant receives a fair, accurate, and understandable decision, even if it is not the outcome he or she might have preferred.

Providing more information and access to claimants, employing agencies, and medical providers has been a high priority. We already have case status information available on line. In 2011, we will launch an interactive Web-based system that will, for the first time, allow claimants to file their claim forms directly with OWCP and allow them and their agencies and their doctors to upload evidentiary documents directly into the OWCP case file, thus speeding the process. During 2011, we will also implement a greatly enhanced telephone system that will allow our staff to communicate more effectively with workers and deliver improved services.

I am very excited about one other major project, the one that you mentioned, Chairwoman Norton, the President's POWER initiative, Protecting Our Workers and Ensuring Reemployment. He announced that on Monday. He directed the agencies to work to make Federal workplaces safer and to improve FECA case outcomes.

OWCP and the Occupational Safety and Health Administration at Labor will work together with all the Federal agencies to reduce the incidents and severity of on-the-job injuries, speed claim filing, and help people get back to work more effectively. Establishing those kinds of goals, measuring them, and analyzing results has been shown to yield positive change, and we believe POWER will save lives, dollars, and Federal productivity over the next 4 years.

I will be pleased to answer any questions you have. Thank you very much.

[The prepared statement of Mr. Hallmark follows:]

STATEMENT OF SHELBY HALLMARK
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

July 21, 2010

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

My name is Shelby Hallmark, and I am the Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP).

I appreciate having this opportunity to discuss OWCP's role in providing benefits under the Federal Employees' Compensation Act (FECA) to injured federal employees, including those in high risk occupations. Please be assured that the Secretary of Labor is fully committed to ensuring that all injured workers receive the care and compensation they deserve through the services provided by OWCP's Division of Federal Employees' Compensation (DFEC).

FECA was enacted on September 7, 1916 to provide comprehensive federal workers' compensation coverage to all federal employees and their survivors for disability or death due to an employment injury or illness. Although the FECA has been amended over the years it retains its fundamental purpose: to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries and pay benefits to survivors. The FECA system covers 2.7 million Federal and

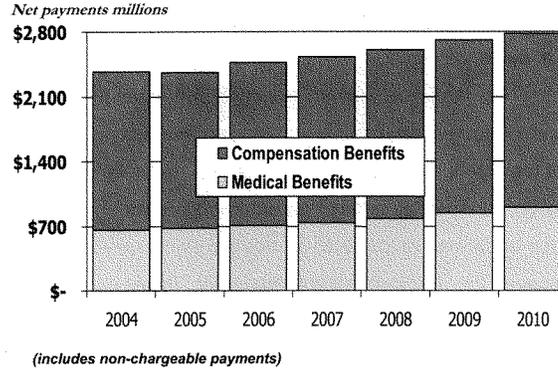
Postal workers around the world for employment-related injuries and occupational diseases and is one of the largest self-insured workers' compensation systems in the world.

In the earliest years of our program, some questioned whether Congress intended to cover occupational disease. Although this debate was resolved in favor of occupational coverage long ago, occupational disease claims (which consist of everything from repetitive strain injuries such as carpal tunnel syndrome to complex cancer and emotional stress cases) continue to be among our most challenging claims. As we approach the 100th anniversary of the 1916 Act, we are constantly evaluating our progress seeking ways to better support the Secretary of Labor's vision of "*good jobs for everyone*" by delivering benefits more efficiently for both traumatic and occupational injuries as well as facilitating return to work for all those able to do so.

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational diseases (medical conditions sustained as a result of injury or exposure occurring over the course of more than one work shift). Compensation and medical benefits are paid out of the Employees' Compensation Fund. These costs are then charged back to the employee's agency and become part of the agency's annual appropriations request. The 2010 chargeback year ended on June 30, 2010. More than \$1.88 billion were paid out in lost wage compensation, impairment, and death benefits and another \$898.1 million were paid out to cover medical and rehabilitation services and supplies. (This includes outlays for non-chargeable costs that total \$86.2 million.) The program is administered by OWCP's Division of Federal Employees' Compensation; administrative costs to manage the program have averaged a very modest 5 percent of total outlays.

Total FECA Benefit Costs

Chargeback Years 2004 - 2010



FECA compensation benefits are based upon an employee's actual wage loss. While many state workers' compensation systems cap benefits at a relatively low level or limit benefit duration, FECA has no time limit on benefit duration and provides compensation based upon salary up to a maximum of GS-15 Step 10. The FECA program provides payment for all reasonable and necessary medical treatment for a work related injury or disease; payment to the injured worker to replace lost wages (paid at two-thirds of the employees' salary if there are no dependents or three-fourths if there is at least one dependent); a monetary award to an injured worker for permanent impairment of limbs and other parts of the body; medical and vocational rehabilitation assistance in returning to work; and benefits to survivors in the event of a work related death. In cases where an employee dies as a result of a work-related illness or injury, survivor benefits are paid to the employee's eligible survivors (generally spouses and minor children). More than 70% of FECA claimants are paid at the augmented (75%) level because they have a qualifying dependent; benefits are tax free; and long-term benefits are escalated for inflation after the first year of receipt.

Claims for benefits under the FECA are usually filed by injured workers through their employing agency and then forwarded to one of the 12 DFEC district offices. District

office staff are responsible for reviewing the claims and determining entitlement to FECA benefits. The evidence submitted must establish that the claimant is a Federal civilian employee who filed a timely claim for benefits for a medical condition that was caused, contributed to or aggravated as a result of a work related incident or exposure. The type of medical evidence required to establish a claim depends on the type of injury or condition claimed. For instance, if an employee experiences an obvious injury such as a laceration on work equipment, usually a diagnosis and a physician's signature are sufficient to accept the claim. However, when a claim is made for an injury or illness whose cause is not as apparent as a fall or an automobile accident, such as a myocardial infarction or cancer, more detailed medical evidence is required to establish the relationship between the employment and the injury. While employment factors do not have to be the sole cause of an injury or illness for it to be covered by FECA, there must be evidence from a physician to show that the employment caused, contributed to or aggravated the medical condition, including analysis of any pre-existing medical history and other possible causative factors.

Clearly occupational illnesses can be more of a challenge for a claimant to establish causation and for OWCP claims examiners to adjudicate than traumatic injuries, even though such injuries can be as serious as a one-time injury. In FY2009, the acceptance rate for all FECA claims was 86 %. The acceptance rate for traumatic injuries was 90.5%, while that for occupational illnesses was 52%.

If the evidence submitted with the initial claim is not sufficient, the claims examiner advises the claimant and employing agency of the deficiencies with the claim, explains what is needed to establish the case and provides timeframes for submission of such evidence. Claims examiners may also communicate directly with the treating physician or arrange for the claimant to be seen for a second opinion medical examination. In complex cases where there is a disagreement between claimant's physician and a second opinion obtained by OWCP, the claimant is referred to an independent referee physician to resolve the disagreement.

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

If the claim is denied or the claimant disagrees with the benefit level awarded, the claimant has several rights of review including either an oral hearing or a review of the written record by an OWCP hearing representative in DFEC's Branch of Hearings and Review or a reconsideration before a different claims examiner in the DFEC district office. Claimants may submit new or additional evidence in support of the claim through the hearing and reconsideration process. Finally, claimants have the option of requesting an appeal to the Employees' Compensation Appeals Board (ECAB), which is the highest appellate authority for FECA. The ECAB's review is based solely upon the case record at the time of DFEC's formal decision and new evidence is not considered.

Mr. Chairman, your invitation indicated a focus on worker protections, both pre-injury and post-injury. Specifically, you requested information on OWCP's role in providing care and compensation to employees post-injury and how OWCP is meeting the needs of injured workers in high-risk occupations.

The benefits available through the FECA program are available to all federal employees, regardless of the characterization of the employee's particular occupation. If the evidence establishes a work-related medical condition, and the case is accepted, benefits are payable. Benefits are payable as long as the work related condition or disability continues.

While FECA coverage is extended to every Federal employee (as well as certain individuals such as local law enforcement officers fighting federal crime), federal employees injured due to a war risk hazard enjoy broader coverage under FECA as do Peace Corps volunteers. Federal employees in travel status or on a special mission are

covered for all activities reasonably incidental to their employment. Federal employees (including those in high risk occupations) may be covered beyond their physical workplace under other well-established doctrines of workers' compensation law such as the zone of special danger, the bunkhouse rule, the proximity rule, the positional risk doctrine or the rescuers doctrine.

The FECA program is a non-adversarial process, and OWCP makes every effort to inform both the employees and the employers of an injured worker's entitlement under the FECA. Our district offices provide employing agency compensation specialists with training to assist injured workers in obtaining appropriate information to establish their claims. We also provide informational brochures and our program maintains a robust presence on the Department's website including the latest updates as well as claim forms and program procedures. Our district offices maintain phone banks to respond to general questions and our Branch of Technical Assistance provides guidance and training to employers, unions and individual claimants. Particular attention has been directed in recent years to address claims related to Federal civilian employees deployed in war zones. OWCP has worked closely with the Departments of Defense and State and with OPM in devising better ways to support these employees, who experience a high degree of risk and uncertainty, and for whom the provision of medical care and development of medical evidence may be more complex. DOL participated with DOD, State, and OPM in the development of the Federal Civilian Employees in Zones of Armed Conflict Benefits Act of 2010 which the Administration transmitted to Congress on June 10, 2010.

OWCP has also made technological advances to more effectively serve injured workers, including the implementation of a more robust IT system for claims staff to use in the management of cases, as well as accepting electronic submissions of certain claim forms. Claimants can now access real time status information about their cases online via our "Claimant Query System," and employing agency personnel can access the same data for their employees. A very substantial expansion of our online

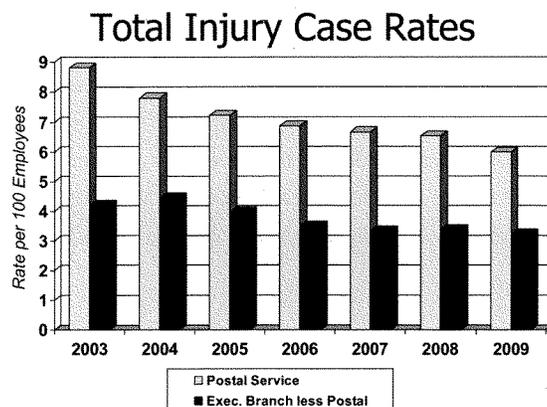
accessibility, including a portal for claimants and their representatives to submit evidence on line, is now under construction and will be implemented next year.

Over a decade ago, President Clinton established "Federal Worker 2000," a new initiative to make the safety and health of every Federal worker a central value in Federal workplaces. The initiative sought to reduce injury rates and to ensure that "when injuries do occur, Federal employees are given the best possible care and are returned to work as quickly as possible." A joint effort of OWCP and the Occupational Safety and Health Administration (OSHA), this new focus on safety and health in the Federal Government sought to achieve measurable improvements in terms of fewer injured workers, significant cost reductions, and enhanced productivity in service to the American public.

Building on the concept of Federal Worker 2000, the Presidential Safety, Health, and Return-to-Employment (SHARE) initiative was launched in 2004 to challenge federal Executive Branch agencies to improve their safety, health and case management programs through four measurable goals: 1) lower total injury and illness case rates; 2) lower lost time injury and illness case rates; 3) increase timely submission of injury reports; and 4) lower rates of lost production days due to workplace injuries and illnesses. Under the auspices of SHARE, OWCP and OSHA worked jointly with Federal agencies to reach these goals, and OWCP tracked and posted on its website detailed agency performance statistics for timely submission of injury notices and wage loss claims. Agencies were slow to improve during the initiative's first two years, and results were impacted significantly by the start-up of the Transportation Security Administration (TSA), which suffered very high injury and lost production day rates in its early years. I am happy to report that all four SHARE goals were met on a government-wide basis for its last four years (FY 2006-2009), and six departments and three independent agencies achieved all four of the SHARE goals in FY 2009.

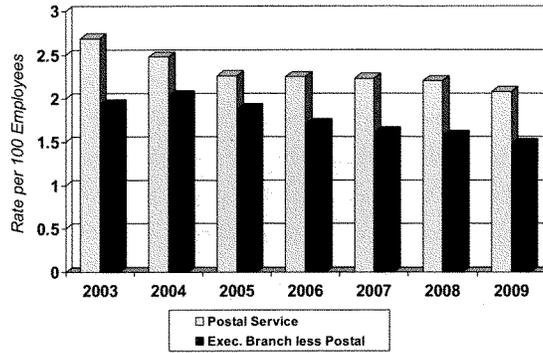
At the end of the six year initiative, the overall total case rate (per 100 employees) had dropped from 4.19 in FY2003 to 3.22 in FY2009, a reduction of 23%. Prior to the

SHARE initiative, in FY2000, OWCP created 174,471 claims for Federal injured workers, but that number has since dropped to 129,690 in FY 2009. This represents a reduction in new claims of over 25%.



The second goal of the SHARE initiative focused on lost time case rates, as opposed to overall case rates. These are cases that result in the employee losing time from work beyond the actual date of the injury, which typically means the injury was more serious. At the end of the six year initiative, the lost time case rate (per 100 employees) had dropped from 1.93 in FY2003 to 1.48 in FY2009, also a reduction of 23%.

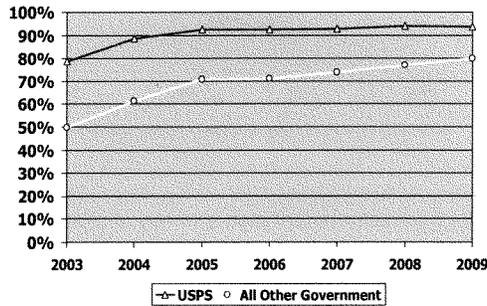
Lost Time Injury Case Rates



Improving the timeliness of reporting new injuries to OWCP, the third SHARE goal, yielded impressive results every year of the initiative. Injuries and illnesses should be reported to OWCP within 14 days, and in FY2003 the government-wide timely filing rate was only 49.6%. By FY2009 the timely filing rate was 80.1%, which represents a 61.5% improvement.

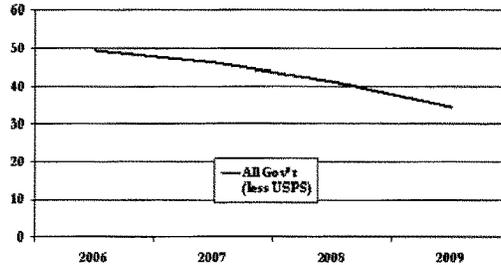
Notice of Injury Filing

Percent within 14 days



The last SHARE goal was to reduce lost production day rates across the federal government by 1 percent per year. The lost production day rate provides a valuable measure of the overall incidence and severity of workplace injuries and the effectiveness of OWCP's and agency return to work efforts since it measures actual lost days from work during the first year of injury. The Lost Production Day performance was 56 days per 100 employees in baseline year FY2003. By FY2006 LPD had declined to 52 days per 100 employees. The measure was re-baselined in FY2006 for technical reasons (the revised baseline was 49.5 days), and by FY2009 LPD declined once again to a rate of 35.8 days per 100 employees for FY2009. This constituted a 27.6% reduction from the FY 2006 baseline, far exceeding the SHARE target. It's worth noting that TSA, which started with an LPD index of well over 400 days per 100 FTE, by FY 2009 had reduced that figure to just 107.5 days per 100 FTE.

Lost Production Day Rates FY 2006 to 2009 *



* Rebaselined in FY 2006 to more precisely measure "intermittent" disability periods.

These important results were achieved through a variety of strategies, including compliance assistance and outreach efforts by both OSHA and OWCP. But most importantly they derived from the increased focus on workplace safety and health and on improved compensation case handling and return to work activities on the part of the major Federal employing agencies. By establishing measurable and achievable goals

and reporting agencies' and bureaus' outcomes on a quarterly basis, the initiative raised the level of attention devoted to these issues throughout the Federal establishment, resulting in clear improvement in these objective measures of workplace safety and health and workers' compensation case outcomes.

While the Federal Worker 2000 and SHARE initiatives were successful, the Department of Labor is committed to continued improvement. Secretary of Labor Solis has proposed to the President the creation of a successor program to SHARE called "Protecting Our Workers, Ensuring Re-employment" (POWER) that will establish new and enhanced goals to improve workplace safety and further reduce the impact of workplace injuries. POWER will build on each of the SHARE measures while adding a new measure to specifically drive improved return to work outcomes in the federal agencies. It is anticipated that POWER will be launched in FY 2011 and will also help the Department of Labor achieve its High Priority Performance Goal to create a model federal workers' compensation program. These efforts will require the Department of Labor to work with all federal agencies, particularly those with high injury and LPD rates, to further reduce the incidence and severity of on the job injuries and adopt innovative strategies to create re-employment opportunities for those who are more severely injured. OWCP hopes to be able to focus additional resources requested in the President's FY 2011 budget to work intensively with agencies where there is continuing opportunity for substantial improvement in both injury rates and return to work outcomes.

OWCP is also independently implementing initiatives to address the concerns and circumstances of injured workers. OWCP is creating a web-based application (ECOMP) that will allow injured workers to electronically file claim forms for new injuries and wage loss. This system will also allow all stakeholders (medical providers, agencies and injured workers) to upload documents directly into the OWCP case file so that they are immediately available to the claims staff. The application will be free of charge to all agencies, and it is scheduled for release in 2011. In addition, to continuously improve customer responsiveness, the FECA program will be deploying a

new interactive voice response customer care system (also in FY 2011), which will provide claimants with greater access to OWCP claims staff as well offer self-help features that will provide timely case status information.

OWCP is also enhancing our Disability Management protocols to more effectively serve the injured worker. If an injured worker has lost time from work, a registered nurse can be assigned as early as one week after the injury to make contact with the injured worker, employing agency and medical provider. Information obtained will allow claims staff to identify those cases that require more extensive intervention due to the severity of the injury, contemplated surgical intervention, or lost time from work. If the injured worker remains out of work, a rehabilitation nurse can be assigned, usually in the locale of the injured worker, to assist the worker in understanding what is needed both for medical recovery and to coordinate between the physician, the worker, and the employer on facilitating return to work when medically feasible.

OWCP is dedicated to promptly adjudicating claims, promptly paying medical bills and claims for compensation, and providing assistance in returning injured workers to gainful employment once that is medically possible. The goal is to ensure that the best possible service is provided to all injured workers, including those in high risk occupations.

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

Ms. NORTON. Thank you, Mr. Hallmark.

Jill Segraves is the Director of Occupational Safety, Health & Environment as well as the Radiation Safety Program Manager for the Transportation Security Administration. She began her occupational safety career 26 years ago with the Department of Army and has worked in a variety of positions in both the Federal Government and the private sector. Ms. Segraves.

STATEMENT OF JILL M. SEGRAVES

Ms. SEGRAVES. Thank you, Congresswoman Norton.

I am pleased to be here today and thank you for the opportunity to discuss TSA's occupational safety and health program and the key initiatives we have implemented to promote a safe and healthful work environment for our employees who occupy the front line in protecting our homeland and to address the recommendations outlined in the National Institute for Occupational Safety and Health [NIOSH], study evaluation of radiation exposure to TSA baggage screeners.

I am a certified safety professional with over 26 years of occupational safety and health, as you mentioned, and have been working with the TSA since January 2003, was part of a team at the start-up of the Occupational Safety & Health program.

The Occupational Safety, Health & Environment program is TSA's major program office responsible for all safety and environmental activities, including policy development, program support, and technical assistance to airports, field units, and TSA headquarters personnel.

In March 2003, TSA submitted a Health Hazard Evaluation request to the National Institute for Occupational Safety and Health to perform an independent study to determine the levels of radiation emissions from the various TSA screening equipment and whether routine use of dosimetry was warranted. This request was based on employee concerns about exposure to x-rays from the carry-on and checked baggage screening systems.

Over the course of the following months, TSA coordinated closely with NIOSH investigators to discuss their findings and implement recommendations for safe work practices, radiation safety training, and equipment design and maintenance. A key finding was that none of the participants' radiation doses exceeded the Occupational Safety Health Administration's criteria above which employee dosimetry would be required. However, NIOSH recommended TSA perform an additional radiation dosimetry study for at least a year to evaluate the differences observed between airports and to address deployment of new systems.

In April 2009, the NIOSH recommended radiation dosimetry study commenced at six airports. Preliminary results reveal that TSOs' exposures are well below the criteria that would require TSOs to wear personal dosimeters.

Today, all of our procurement specifications and engineering reviews of new screening technology consider the safety of our employees. Technology is only deployed once we have certified that it is safe. We work with organizations such as the Food and Drug Administration, the National Institute for Occupational Safety and Health, Federal Occupational Health, the National Institute for

Standards and Technology, and the U.S. Army Public Health Command for technical reviews and independent evaluations.

TSA's occupational safety professionals routinely visit our Nation's airports to provide support and address safety concerns. Workforce training to enhance both the safety of the employees and the security of the traveling public has taken center stage in building a mature, skilled, and professional work force.

In addition to formal training programs, employee outreach has expanded through the use of social media and online communications, allowing us to quickly transmit information on a variety of issues, including worker safety, to our employees and to receive feedback from our employees through TSA's IdeaFactory, Blog Central, and the National Advisory Council.

TSA not only maintains a high level of safety for our work force but continues to focus on innovative ways to raise the bar. We are working to create and sustain a culture of safety at TSA where employees feel a sense of responsibility for their own safety and that of their colleagues and the public.

The National Advisory Council, with the support of my office, has launched "I've Got Your Back," a campaign to promote safety awareness. Working together, it is our goal to provide the safest work environment possible to enable TSA employees to focus on their mission of keeping the American traveling public safe.

Our safety and health initiatives, training programs, and internal and external partnerships have fostered a safer working environment for TSA employees. This is demonstrated through Federal performance metrics for safety and workers' compensation programs, the total case rates for injuries and illnesses, and those cases that result in lost workdays reported by TSO in this fiscal year, approximately 80 percent less than the rates reported in fiscal year 2005. These improvements have led to workers' compensation cost savings of more than 25 percent over the same time period.

I have been privileged to serve as Director of TSA's Office of Occupational Safety, Health & Environment and to develop a comprehensive safety and health program. TSA recognizes that its strength as an organization depends upon the safety of its work force and that its mission as a risk-based, intelligence-driven agency is measured not only by its protection of the traveling public but also by its commitment to protecting the safety and health of its workers.

I thank you for this opportunity to appear before you today, and I look forward to answering your questions.

[The prepared statement of Ms. Segraves follows:]

Statement of Jill M. Segraves, CSP
Director, Occupational Safety, Health & Environment
Radiation Safety Program Manager
Transportation Security Administration
U.S. Department of Homeland Security
Before the
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
Committee on Oversight and Government Reform
United States House of Representatives
July 21, 2010

Good afternoon Chairman Lynch, Ranking Member Chaffetz, and distinguished Members of the Subcommittee. I am pleased to appear before the subcommittee today as you address safety standards and practices employed by the Transportation Security Administration (TSA) and other Federal agencies. TSA has been in the vanguard in promoting a safe and healthful working environment for all of its employees and I welcome the opportunity to discuss our worker safety programs with you. I appreciate the work the Subcommittee performs in providing proper oversight of employee safety issues for the Federal workforce.

Since its creation after 9/11, TSA has played a key role in securing our Nation's transportation systems. TSA employs a layered approach to provide security in all modes of transportation, including aviation and transit rail domains. In so doing, TSA relies first and foremost upon its workforce, which occupies the front line in protecting our homeland. In order to fulfill our vital security mission we must protect our workforce and ensure its safety.

A Commitment to Occupational Safety and Health

I am a Certified Safety Professional who has been with TSA since January 2003 and I am proud to have participated in the start-up of TSA's occupational safety and health program. In the past seven years, I have helped advance programs in all facets of employee safety and health. Today, all of our procurement specifications and engineering reviews of new screening technologies consider the safety of our employees and technology is only deployed once we have certified that it is safe. We coordinate with organizations such as the Food and Drug Administration (FDA), the National Institute for Occupational Safety and Health (NIOSH), and Federal Occupational Health (FOH), all three of which are within the Department of Health and Human Services (HHS); the National Institute for Standards and Technology (NIST); and the U.S. Army Public

Health Command (Provisional) for technical reviews and independent evaluations. TSA occupational safety professionals routinely visit our Nation's airports to provide support and address safety concerns. Workforce training – to enhance both the safety of the employees and the security of the traveling public – has taken center stage in building a mature, skilled and professional workforce. In addition to formal training programs, employee outreach has expanded through the use of social media and online communications, allowing us to quickly transmit information on a variety of issues, including worker safety, to our employees, and to receive feedback from our employees through TSA's IdeaFactory, Blog Central, and National Advisory Council.

The Office of Occupational Safety, Health, and Environment (OSHE), which I lead, is TSA's major program office responsible for all safety and environmental activities, including program support and technical assistance to airports, field units, and TSA headquarters personnel on all matters related to occupational safety, health and environmental management, including hazardous materials. The OSHE Occupational Safety and Health Program develops policy and guidance and provides technical resources to assist TSA managers in implementing the following responsibilities: inspections and audits, abatement plans, incident investigations and reporting, injury and illness tracking and recordkeeping, handling employee reports of unsafe/unhealthful working conditions, responding to Occupational Safety and Health Administration (OSHA) complaints. The Occupational Health Unit provides professional services for medical issues and health-related activities or events, coordinates the development of clear and consistent agency health/medical policies and guidelines, and provides health services for TSA employees located within the immediate Washington, D.C. area. The Environmental Management Program seeks to protect the natural environment affected by our transportation security activities by ensuring compliance with local, State, and Federal environmental requirements. OSHE also works with the Department of Homeland Security's Chief Medical Officer and the Office of Health Affairs, as well as the Office of Safety and Environmental Programs, to ensure the health and safety of our workforce.

An Independent Study of Radiation Exposure Conducted by NIOSH

In March 2003, we requested that an independent study be conducted by the National Institute for Occupational Safety and Health (NIOSH), a division of HHS's Centers for Disease Control and Prevention, to evaluate employees' exposure to radiation from TSA cabinet x-ray systems, which include the checked baggage Explosives Detection Systems (EDS) and checkpoint x-ray systems. The final NIOSH report, analyzing this study and including NIOSH's recommendations, was issued in September 2008. The airports that participated in the study were selected by the workforce itself, specifically by a group of six Transportation Security Officers (TSOs) from different airports who also provided valuable input and coordinated directly with NIOSH researchers during on site surveys.

In its study of checked and carry-on baggage screening practices at the 12 selected airports, NIOSH concluded that exposure levels are below the OSHA permissible standard. The study concluded that none of the participants' radiation doses in the evaluation exceeded the OSHA criteria above which employee monitoring would be required.

The NIOSH study found that TSOs generally are exposed to very small radiation doses: 99 percent of measured monthly doses were less than 10 mrem, and 89 percent were less than 1 mrem. (The monthly natural background radiation dose is approximately 26 mrem per month.) These monthly doses projected over a year are well below the OSHA annual permissible exposure limit of 5,000 mrem or 1,250 mrem per calendar quarter. According to OSHA, personal dosimeters are required if the dose to an employee exceeds or is likely to exceed 25% of the quarterly limit (or 312.5 mrem in a calendar quarter).

The study recommended that additional dosimetry studies be conducted for at least one year to evaluate differences observed between airports and to address the deployment of new systems.

Implementing Key Recommendations of the NIOSH Report

TSA has implemented key recommendations of the NIOSH report, including formalizing a comprehensive radiation safety program to meet OSHA and Department of Homeland Security (DHS) requirements and evaluating TSO radiation exposure levels at selected airports through an additional year-long dosimetry study that commenced in April 2009.

In addition, based on the results of the study, TSA took additional steps to ensure safe working conditions for our workforce, including:

- Adding EDS safety training to baggage screening courses;
- Increasing the number of service technicians equipped with radiation survey meters;
- Improving maintenance through more stringent maintenance contracts;
- Working with EDS manufacturers to improve machine design;
- Providing annual radiation safety awareness training for all TSOs; and
- Using Safety Action Teams, Collateral Duty Safety Officers (CDSOs), and Employee Councils to improve health and safety communications between employees and management.

Consistent with the recommendations of the NIOSH study, each piece of TSA equipment that uses ionizing radiation undergoes an initial radiation survey upon installation and an annual radiation survey to ensure it stays in top working condition. In addition, radiation surveys are performed after maintenance on components that affect radiation safety and at the request of employees. This provides a continuous level of safety.

The additional dosimetry study, managed by certified health physicists from the U.S. Army Public Health Command (Provisional), is being conducted at six airports and is currently nearing

completion. Monitoring at five airports concluded in June and will conclude at the final airport in August. The personal and area dosimeters collected from the airports that completed the study are currently being evaluated.

To date, TSA has focused on airports with standalone EDS systems since employees work in close proximity to these systems and NIOSH had previously recommended a study of these x-ray systems. For the personal dosimetry portion of the study, dosimeters were issued to TSOs and worn for a designated time period prior to being removed and evaluated; 1,155 TSOs have had one or more dosimeters returned and processed. Preliminary results, based on four to ten months of data, are well below the criteria that would require TSOs to wear personal dosimeters.

For the area monitoring portion of the study, dosimeters were mounted near the entrance and exit of TSA cabinet x-ray systems for the designated time period; 159 area dosimeters were placed at the six airports. As expected, the preliminary area monitoring results are higher than the personal monitoring results because the area dosimeters remain in place for the entire monitoring period, whereas the TSOs are monitored only during their work shifts. Also, the area dosimeters are typically mounted closer to the x-ray system entrance or exit than where TSOs are positioned while working at the system. Although the area monitoring results are higher than the personal monitoring results, all of the results are well below the OSHA criteria that would require TSOs to wear personal dosimeters.

Responding to Specific Concerns at Individual Airports

Last March, in response to concerns expressed by TSA workers at Boston Logan International Airport, TSA requested that NIOSH conduct an independent health hazard evaluation (HHE) at the airport. Employees at Boston Logan had expressed concern about the reports of cancer among employees and concerns about radiation exposure from screening machines.

In correspondence dated May 17, 2010, NIOSH concluded:

“(We) believe that it is unlikely that the cancers reported are associated with exposures from the TSA baggage screening machines at Boston Logan. We found that the number of employees with cancer was not above the expected rates overall, and the specific types of cancer diagnosed among TSA employees are varied and among the most common in the general population. Moreover, while the work inherently involves being in the area where ionizing radiation from the x-ray machines is present, the doses to TSA employees are not at the levels to be a health concern. In fact, when we compare the doses to the natural background radiation we all experience in our daily lives, the doses recorded are negligible.”

Our request for an independent NIOSH investigation in Boston, along with our original request for the NIOSH study, and our swift response to recommendations from NIOSH, including a new study of dosimetry, are all illustrations of how seriously TSA takes the safety and health of its employees.

Raising the Bar by Supporting One Another

TSA not only maintains a high level of safety for our workforce, but continues to focus on innovative ways to raise this bar. We are working to create and sustain a culture of safety at TSA where employees feel a sense of responsibility for their own safety and that of their colleagues and the public. The National Advisory Council (NAC), with the support of my office, has launched "I've Got Your Back!" – a campaign to promote safety awareness. Working together, it is our goal to provide the safest work environment possible to enable TSA employees to focus on their mission of keeping the American traveling public safe.

Our safety and health initiatives, training programs, and internal and external partnerships have fostered a safer working environment for TSA employees. This is demonstrated through federal performance metrics for safety and workers' compensation programs. The total case rates for injuries and illnesses and those cases that resulted in lost work days reported by TSOs in this fiscal year are approximately 80% less than the rates reported in FY 2005. These improvements have led to workers' compensation cost savings of more than 25% over the same time period.

I have been privileged to serve as director of TSA's OSHE, and to develop a comprehensive safety and health program. TSA recognizes that its strength as an organization depends upon the safety of its workforce, and that its mission as a risk-based, intelligence-driven agency is measured not only by its protection of the traveling public but also by its commitment to protecting the safety and health of its workers. Mr. Chairman, Ranking Member Chaffetz, I thank you for the opportunity to appear before you today and I look forward to answering your questions.

Ms. NORTON. Thank you, Ms. Segraves.

Let me begin with Dr. Howard.

Dr. Howard, I was interested in the part of your testimony involving observers who recommended that six machines be taken off line because of potential exposure. I wonder if these employees were informed of this potential exposure at the time where they advised to see a physician? What disposition was made of the employees now that we are dealing with the machines?

Dr. HOWARD. The overall study involved about 850 workers, and it wasn't an entirely negative study. There were two workers that had doses that came close, actually exceeded the monitoring threshold that, for instance, the NRC has for a routine dosimetry program. In 13 of the 854 workers, they exceeded the monitoring threshold for DOE. So our recommendation was for TSA—and there is a lot of limitations to our study. First, these were volunteers and several other things. So we asked TSA—

Ms. NORTON. Who were volunteers, Dr. Howard?

Dr. HOWARD. These were study subjects; and we asked them, would you like to participate in the study?

So then our recommendation was, given those limitations—

Ms. NORTON. So why was that a limitation?

Dr. HOWARD. It was a limitation because we didn't have everyone who was exposed in the study.

Ms. NORTON. So it is not a scientific—

Dr. HOWARD. Not a totally scientific. More like a medical investigation to look at a volunteer study. It was—we didn't enroll everyone in it. So we were somewhat concerned about the representativeness of the entire population. So the major recommendation we had is for TSA to take a year and do a more thorough study so that we would be able to establish what exposures were actually occurring.

So in response to your specific question, those individuals that were part of the study subjects that had elevations above zero—and there were very few of those. They didn't get to the level where we would have recommended they see a physician. They were still very low levels and, in fact, below the level in most cases where we would even have recommended a dosimetry program. So we wouldn't have recommended medical evaluation.

Ms. NORTON. So you found no exposures that were particularly harmful.

Dr. HOWARD. Not particularly harmful. But we were concerned, because the study itself lasted only a short period of time, and most of the recommendations are a quarter of a year or a calendar year.

Ms. NORTON. What is to keep a study, a random study from being done?

Dr. HOWARD. I'm sorry?

Ms. NORTON. What is to keep a normal kind of study from being done? Why do you have to go and ask for volunteers?

Dr. HOWARD. Well, our particular program, the Health Hazard Evaluation program, is not a research study. It is in the characterization of a public health surveillance study.

Ms. NORTON. I don't understand that, Dr. Howard.

Dr. HOWARD. There—

Ms. NORTON. If it is going to be valuable to you or to us in evaluating what should be done, why not do it the way every other scientific study is done? Would there be any reluctance of people to come forward?

Dr. HOWARD. If I could explain, it is a requested type of evaluation. So it is not a research study, per se. It is a requested evaluation, a quick "Tell us what the problem is and so we can better define it." So it is not a research study in the way that you are thinking of it. It is an evaluation program. So it is more like a—

Ms. NORTON. I hear you, Dr. Howard. I don't know how to evaluate it, though. If we have a bunch of volunteers not randomly selected, if we don't have the usual control group, I mean, it would be hard for me to see even the value of such a study, frankly.

Dr. HOWARD. Well, the value is we found some workers whose exposure came close to that requirement by a number of Federal agencies that say you have to have a routine dosimetry program. And so our recommendation was: TSA, you need to follow this up and do a more thorough study with—

Ms. NORTON. Although those were the ones you saw, the volunteers. Who knows if there had been young people who were never exposed to anything because they are just not old enough or haven't been there long enough. You found nothing that you would ask even your own family to go see a physician. And so now all you can tell them is, why don't you do a real study? And I don't know why they didn't do a real study to begin with, especially since there was a concern that had been raised.

Dr. HOWARD. It is a program that is designed to quickly go out and identify conditions in order to followup on them.

Ms. NORTON. I hear you, Dr. Howard. If there had not been concern raised and—it seems to me, why take all the time to do studies where concerns have been raised? I hear you. If I were working in the agency, I must say, as one potentially exposed to such a harm, I would take no comfort from such an evaluation and can only wonder why the agency didn't want a deeper study.

Dr. HOWARD. And we're certainly happy to do that.

Ms. NORTON. I understand that. You are the messenger. The real question goes to the agency: What are you afraid of?

You know, if you want to know, then know. Don't dance around the issue. I tell you, this is how people get liability, speaking now as a lawyer. How you get liability is you should have—you had enough sense of concern so that you should have done a real live study when you should have done it and you didn't, and now I have some exposure, me, the TSA employee. That's what you get when you don't act, you don't—the agency, of course I'm speaking—does not act proactively.

Mr. Hallmark, as you are aware, we have just done—an historic health reform bill passed, something that the country has needed for a hundred years. The subcommittee has heard from employees—this is very troubling—who indicate that they face large out-of-pocket medical costs, including hospital bills, while waiting for your office to process their claims. I'm not sure what they would do if they didn't have the funds. What do you do? What's your recommendation for these workers who are simply waiting to be proc-

essed on how they should deal with their own providers demanding payment for services rendered?

I understand that, of course, some cases may be complicated; and you yourself have testified about the difference in cases with some occupational diseases and different from traumatic injury on the job, for example. But some of these cases were clear-cut, on-the-job accidents that were witnessed by multiple individuals. How can you explain the delay that caused the employee to either make out-of-pocket payments or risk losing perhaps the ability to be reimbursed by the provider?

Mr. HALLMARK. Without knowing any of the details of the cases that you're referring to, Congresswoman, I can't directly explain. I can only—

Ms. NORTON. Well, is it your view that there is no delay in these kinds of ordinary kind of traumatic on-the-job accidents?

Mr. HALLMARK. Well, I would say, as I suggested in my remarks, there are also complicated cases. A lot of the complicated cases have do with occupational disease, but—

Ms. NORTON. So those complications may mean—

Mr. HALLMARK [continuing]. Not always.

Ms. NORTON. Those complications may mean that no payment is going to be required at all. Is that what you're saying?

Mr. HALLMARK. In the circumstances when we're making an initial determination about the acceptance of the claim of the original injury, we have to make a determination that in fact the injury meets all the criteria for coverage under the FECA. Oftentimes, there are complexities. Even on a traumatic case—you mentioned situations which were witnessed, so I take it it is individual traumatic events. Even in those circumstances there can be complexities about whether the activity was, in fact, covered.

I don't know—you know, I don't know the circumstances of the case you're talking about, but we can have some delays in those cases. While the case is still being adjudicated, we would not be able to make a medical payment.

Ms. NORTON. Of any kind?

Mr. HALLMARK. If we haven't accepted the condition, then we have no ability to make the medical bill payment.

On circumstances, we try to move very quickly—

Ms. NORTON. Are such on-the-job witnessed accidents normally turned down?

Mr. HALLMARK. Not at all. As I believe my testimony indicated, we approve something like 92 or 93 percent of all what we call traumatic incidents, which is any kind of an injury that happens in 1 day. So the vast majority of those cases are approved.

There are some which are not approved for reasons—

Ms. NORTON. So if an employee came to you, Mr. Hallmark, and said, "I don't have any more ability to make outlays on my own behalf. I'm an employee who has been a good employee," what would you advise that employee?

Mr. HALLMARK. With respect to paying medical bills while the case is pending?

Ms. NORTON. Yeah.

Mr. HALLMARK. It would be my expectation that, in most cases, providers are willing to wait, and/or the employee's health benefit

program could be convinced to make payments. We often reimburse Blue Cross or other health benefit programs for payments made for a case which later is accepted as work-related but which was not accepted at the time. So there are ways to address those issues.

But from an OWCP perspective, our primary goal is to get those decisions done very quickly. We adjudicate the vast majority of cases within our timeframes. For traumatic cases, our goal is 45 days. For occupational diseases that are relatively straightforward, our goal is 90 days. And for complicated, cases it is 6 months. We meet or exceed those goals in an overwhelming number of cases.

But in all programs of this kind, there are cases that are outliers, that are on the edges, where a series of complexities come into play, and those are the ones that sometimes cause these kinds of difficulties.

Ms. NORTON. Understandable, Mr. Hallmark.

In such a case, while you are processing, would it be appropriate or indeed does it occur that the agency is willing to assist the employee so that the information that the claim is being processed is understood to be a good-faith one?

I'm telling my—I'm giving my insurer, my servicer my story, and I don't have any more money to pay. I'm only asking because I accept your view, especially given the number of days you're describing that the agency is in fact in the process. But all we have now is this person who can't front the money anymore. I certainly am not asking you to say, hold it, we're coming with the money. I am saying this is an employee of the agency with a good record and no money. And wouldn't it—is there some way you can assist this employee so that this employee is credible when she says it is an on-the-job accident witnessed by six people, I'm still waiting X number of months. Is the agency at any obligation to assist this good employee?

Mr. HALLMARK. By "the agency," do you mean OWCP or—

Ms. NORTON. Yes, the processor. Or do you think the agency should do it? I'm looking for some way that this employee who is going into bankruptcy waiting for you to process their claim can somehow get some assistance.

Mr. HALLMARK. There are certain circumstances in which the employing agency can issue a form that provides authorization for a brief period of time—I think it is up to 60 days, I believe—for medical benefits. In the case where it is not disputed that the injury has been work-related—an auto accident, for example. The employing agency is supposed to issue the CA-16 to the injured worker. They can take it with them to the emergency room or to a physician; and that provides, in effect, a guarantee that there is going to be payment made for—

Ms. NORTON. That's kind of an instant—a situation where—instantaneous guarantee. And, of course, I'm simply going on the record that's before us. You don't have any such—you have witnesses, perhaps, according to those who have been in touch with the subcommittee, but you don't have an indisputable matter with respect to how much compensation is due. And the initial outlay if you have, I don't know, Blue Cross/Blue Shield, it is probably not going to be a problem for the servicer in the first place. It is when

it gets old and time goes on and the employee has no funds that the concern is raised that I am raising.

Mr. HALLMARK. Well, as I said, I believe—it is typically the case that health care providers like Blue Cross would reject or not pay a case if they know that it has been filed as a workers' comp claim.

Ms. NORTON. Yes. That's true.

Mr. HALLMARK. I believe there are circumstances, the kind where we're talking about now, where there could be communications to allow—to ensure that Blue Cross or whoever the carrier is in fact accept those payments because the workers' comp benefit is not flowing. So my assumption is that in those kinds of cases what we need to do is communicate more effectively between OWCP and the injured worker and, in some cases, with the medical health provider as well as with the employing agency.

But, as I say, there are going to be cases where in fact there is a dispute. Perhaps the agency—even though the event was witnessed, the agency may not believe that in fact it was a work-related event. We have—

Ms. NORTON. Well, I appreciate your response.

The question I'm raising is basically one that goes to communication and to, of course, the burden that the agency may or may not have but which the employee has no matter what the decision is and to the extent that communication so that people know what is being processed all to the good. And the reason I raise it is because there have been complaints that were transmitted to this subcommittee.

Ms. Segraves, as to TSA employees, there have been reports to the subcommittee of employees who make it difficult to apply for Federal Employee Compensation Act [FECA], benefits. The kinds of examples they have offered include refusing to provide the necessary paperwork, talking employees out of applying for compensation, and not allowing employees to seek medical attention. You know, I understand how when somebody comes to talk to the agency that there are questions to be asked and perfectly legitimate questions, but are you aware of these occurrences?

Ms. SEGRAVES. Madam Chairwoman, unfortunately, I'm with the Office of Occupational Safety & Health, and that would be a question to pose to the Office of Human Capital's Office of Workers' Compensation programs—

Ms. NORTON. I asked you if you are aware, Ms. Segraves.

Ms. SEGRAVES. No, I am not.

Ms. NORTON. So you have never heard of people—you don't think perhaps training might be necessary by your agency for TSA managers and supervisors who receive some—are you troubled by this?

Ms. SEGRAVES. Again, I've not heard any of this information to validate that and to comment.

Ms. NORTON. And you say who has heard it is who?

Ms. SEGRAVES. I'm saying that, in my capacity, I've not heard of these issues.

Ms. NORTON. Who would have heard it?

Ms. SEGRAVES. Again, our Office of Human Capital, Office of Workers' Compensation Program.

Now, what I will say is that we do have communication set up for employees to voice different issues.

Ms. NORTON. I'm sorry?

Ms. SEGRAVES. We do have what I think is a pretty robust communications program for employees to raise issues. But, again, in my capacity from the occupational safety health side, I've not heard of those claims or those concerns.

Ms. NORTON. Well, that was one that stood out for me.

Are the results of the radiation surveys that are performed on TSA equipment posted so that employees have access to these results?

Ms. SEGRAVES. What we did do is, instead of posting the full packet on a system, we do provide what we call a radiation safety survey sticker, and so it informs the employee that when the survey was done and when the next one is due. However, at any time, they can request a copy of the survey for their review. So it is available. It is just not something that's put right on the system.

Ms. NORTON. So it is available. It is a sticker?

Ms. SEGRAVES. Yes. It is mounted on the systems.

Ms. NORTON. Dr. Howard, your observers apparently did observe some unsafe practices, poor work practices. What should TSA be providing its employees in terms of training and equipment to deal with the unsafe practices you found clearing, for example, bag jams?

Dr. HOWARD. Employee training is really a vital link in protecting employees, and it is the employer's responsibility to make sure that the training program covers all of the issues and is effective, the employees understand the issue, and so they are empowered to be able to make the changes themselves. Because, oftentimes, workers are not directly supervised every minute of their job.

For instance, one of the practices that we noticed is unjamming a baggage jam. Oftentimes, passengers will push their bags through and they'll get stuck in the machine. And one of the administrative controls that we have recommended is for employees not to be putting their arms into the machine to extract baggage but rather to use an instrument that would protect them from that. So that is a very simple type of procedure, but it requires training, it requires reinforcement of that training. So that's an important recommendation to protect employees from that particular practice.

Ms. NORTON. Thank you. Yes. Some things are very common-sense, but you've got to be aware of them.

Mr. Hallmark, very good to hear of a reduction in total injury case rates and lost injury time. Could this partially stem from agencies reporting fewer injuries and not solely from increased focus on workplace safety?

We are not trying to take credit from whatever focus that has been, but, going back to the question that I raised initially with Dr. Howard, we need to understand as much as we can about changes that we see and, to the extent that we can, separate out cause and effect.

Mr. HALLMARK. I understand.

The POWER initiative that's just been announced by the President includes goals—we'll be setting goals for each of the agencies to reduce lost time and total case rates, to reduce the number of injuries that people have. But we've also included in that set of goals a focus on timely reporting of injuries when they do occur.

And, obviously, that's a very good thing from several perspectives. We can't do a good job and address the kinds of problems you were mentioning earlier if we don't have the claim in hand.

But another reason for that goal to be included is because we don't want agencies to solve the first problem by not filing claims that should have been filed. So the reason for having a goal for timely filing is to keep the emphasis on, yes, when an injury occurs we want that electron to flow to OWCP. We don't want people to dissuade injured workers from coming forward and solve—reach their safety goals through a process that's inappropriate. Obviously, we are aware of that as a possibility. We try to stay in touch with it, and we do communicate with agency representatives including the DHS and TSA folks who work with the workers' comp side of the house.

Ms. NORTON. So you think there has been an actual reduction?

Mr. HALLMARK. I'm sorry?

Ms. NORTON. You think there is been an actual reduction of injuries?

Mr. HALLMARK. Absolutely. The number has dropped every year since about 2003 or 2004. Actually, it rose in the early years in 2003 and 2004, maybe in big part because TSA was ramping up and TSA had a lot of injuries in its early days. As was testified to this afternoon, they have improved their safety record substantially, and they have improved their return-to-work efforts such that their lost production days, which were in 2005 I think were around 400 lost production days per year per 100 FTE, it is down to around 100 now. It is still a high number, but 400 was extraordinary.

Ms. NORTON. That's because they are more experienced now? Their turnover there—

Mr. HALLMARK. Several reasons. One is they've reduced the number of injuries. Lost production days can be reduced by just not having the injury in the first place.

Ms. NORTON. So they have been laudably proactive.

Mr. HALLMARK. Yes, they have been.

And the other thing you can do is get people back to work when the injury occurs.

Ms. NORTON. How do you do that?

Mr. HALLMARK. Well, in the case of agencies such as TSA, where the individual has physical requirements, it requires finding ways to split up the job, bring people back on sedentary responsibilities. In effect, it requires creativity on the part of management to find ways to reemploy people and to accommodate them, the same as the management should be trying to hire people with disabilities in the first place and accommodate them. So that's a management responsibility, and I think TSA has shown in the statistics that they are addressing themselves to that.

Ms. NORTON. Thank you, Mr. Hallmark.

Ms. Segraves, what is the reasoning behind disallowing the employees at TSA to wear personal dosimeters? Did you receive advice from any of the various agencies at DHS or the CDC, etc., on that regard? They apparently did wear some such before the Federal Government took them over.

Ms. SEGRAVES. Right. The responsibility for aviation security screening was performed by the FAA, and so—but even prior to the TSA and even prior to 9/11, the FAA removed the requirement for radiation dosimetry. So after 9/11 and of course then whenever TSA ramped up, then those radiation dosimeters were not issued.

Ms. NORTON. Wait a minute. If an employee has his own dos—you can't wear it anyway?

Ms. SEGRAVES. Well, it is not as simple—whenever you—to just have an employee just go out and buy their own dosimeter. It is not that simple, unfortunately. You have to have control badges. We have to have a mechanism to be able to read that badge and then understand where that badge has been during the course of the individual's wearing. So, for example—

Ms. NORTON. But if it is their own personal device. So what do you care about whether or not it has its batteries?

Ms. SEGRAVES. But, again, it is just we would still have to have the control with that to be able to make a determine of the—

Ms. NORTON. Well, I'm not asking you to use it to make determination. If I want to wear it myself, why can't I wear it myself?

Ms. SEGRAVES. Well, what I'll say is the fact that in my capacity, my requirement is to do the proper assessments, do the proper analysis and evaluations, and to make determination whether or not radiation dosimetry is required. So if there is—and if we are well below the occupational safety health dose limits. So if the individual wants to voluntarily wear one, then I would refer to my senior leadership then to make that decision.

Ms. NORTON. You don't see anything wrong with that, do you? I mean, that can't hurt.

Ms. SEGRAVES. But, again, we would have no control over to the results of that dosimetry.

Ms. NORTON. No, and that's what you'd say. If someone come running to you, you have a perfect answer.

So, from the employee's point of view, it looks strange. It looks like you don't want them to know. And, of course, they can't know because their device is not being monitored by the Federal agency. So as long as they know that it has no effect, it gives them some comfort, you know, like sucking your thumb—excuse me—but at least you have it on you or maybe your wife insists that you do it, even though she doesn't know what she is talking about. Why would the agency want to make trouble in that family by saying you're going to get fired if you take your own dosimeter?

Ms. SEGRAVES. Well, and I'm not really sure that's been presented, that employees have actually been denied. I think, at least from my standpoint, we have educated the work force to tell them what the doses are and—excuse me—what the emissions are—

Ms. NORTON. Would you find out what the exact policy is on that and within 30 days report that to the committee?

Ms. SEGRAVES. I can do that. Yes.

Ms. NORTON. I would like to go back to Dr. Howard.

Could you advise the subcommittee on other Federal occupations that would deserve or need close scrutiny for exposure concerns?

Dr. HOWARD. Well, the risk in the Federal work force varies by the exposure to biological, chemical, physical agents. So, for instance, in the public safety sector where we have police, firefight-

ing, correctional officers, other types of public safety officers, those occupations are at high risk; and there are a number of exposures that are important there. As we've talked about with TSA baggage screeners, there are a number of exposures including radiation that are important.

So the general sector of public safety is one in which you look at injury and illness rates, and they tend to be higher than other occupations so they deserve a lot of attention. And, indeed, we have done a number of both health hazard evaluations and research studies in public safety, in firefighting, in police officers, in correctional officers and others. So they are high-risk occupations in the Federal sector.

Ms. NORTON. I have jurisdiction in the committee I chair over workplace violations here in the legislative sector, and some may remember reading of workers in tunnels of the Capitol exposed to asbestos. It was shocking to Members and staff to hear of this. I would imagine there are similar tunnels or pipes that have to be attended to by other Federal agencies and other Federal workers.

Do you know of exposure, for example, to asbestos, one of the legendary substances that is being taken down all over the United States with effects long ago that can't be rectified but effects we see every day for workers charged with this task?

Dr. HOWARD. Well, certainly the situation that you bring up in terms of the Capitol Hill tunnels and asbestos exposure is one that at NIOSH we are very familiar with, because we were involved in advising the compliance office of Capitol Hill on those issues. But certainly in any workplace, Federal or non-Federal, the exposure to asbestos in place is a very big issue and involves a lot of—

Ms. NORTON. You have not had occasion to look at the rest of the Federal workplace at these issues, only here in the Capitol?

Dr. HOWARD. We've had a number of HHEs in Federal buildings that have involved possible exposure or potential exposure to fibers such as asbestos. Yes.

Ms. NORTON. I would think that would rank right up there with firefighters and others.

Thank you very much. I see that the real chairman is back.

Mr. LYNCH [presiding]. First of all, I want to thank Ms. Eleanor Holmes Norton for her kindness and her ability in conducting this hearing in my absence. I really appreciate having you here and having you able to do this. It allows us to get much more done.

I want to thank the witnesses. I apologize. We had votes on the floor, as you know. But I really do appreciate you coming before this committee and helping us with our work.

In reviewing the testimony that was submitted prior to the hearing, I did note in the NIOSH 2008 report that researchers had observed covered agency stop buttons. In your view, based on those surveys done at the 12 airports, does TSA have a uniform lockout and tag-out procedure in place when transportation security officers [TSOs], must clear these bag jams? And did it appear the workers were aware of and were following those procedures? Is there any alternative approach here in terms of suggestions for maybe improving the lockout/tag-out procedures?

Dr. HOWARD. Well, we certainly expressed concern in our report and asked TSA to look at that issue. We did not provide specific

recommendations on alternative procedures, but we certainly don't think that the insertion of one's arm into an active machine is a good idea in any sense. So we were very concerned about that issue and made recommendations to TSA to provide instruments to remove baggage if they get stuck inside the machine and a TSA employee has to get the bag out.

Mr. LYNCH. OK. Did they respond in any way that indicated that they might be moving toward that?

Dr. HOWARD. Well, certainly in our evaluation, we provide the recommendations to employees and to the employer in our HHE. We don't necessarily do oversight on whether the recommendations are implemented. So Ms. Segraves may have an answer to that particular issue.

Mr. LYNCH. Were you at all able to—you know, and this is completely something that came up in my discussion with some of the TSA employees about the new scanning machine, the total body scanning machine and the number of x-rays that—I guess they are tiny X-rays or very brief. But there is a lot of concern there among the rank and file, just the folks that I run into. I am in and out of airports all the time.

There is a concern about—well, they realize it is not overexposure for the passenger, but for the TSOs that are standing there and conducting this hour after hour, they were concerned. I raised the issue with George Nacarra at Boston, at Logan Airport, and he didn't seem that concerned. But I still felt that, you know, there hadn't been a really in-depth look at this. Do you have any sense of what hazards that might present or not?

Dr. HOWARD. Certainly from a radiation safety perspective, the issue would be how much scatter there is from the machine. Obviously the passenger is standing there at the beam. So the question in any of these situations is how much scatter is there. If there is any scatter at all, then can you protect or shield the employee from that scatter? For instance, the baggage screening machines have flaps and it is enclosed. So in the body scanner, that would be the issue.

We have not, NIOSH has not evaluated body scanners. We are happy to do so at TSA's request or the employees' request, but we haven't actually done that kind of work yet.

Mr. LYNCH. OK. Anybody else?

Ms. SEGRAVES. Yes. We have evaluated the AITs, both from a public dose limit, the dose to the public as well as our employees. So there is an American National Standards Institute standard that we must follow to ensure the safety and health of not only the public but our employees. So the doses that are emitted from these machines are very, very low. So when the employees are standing beside the machine, they are not receiving a dose.

So we instruct you our employees, there is an area around the system that has a mat with a yellow line on it, and we tell them just to stay away from that—stay off that, I should say—so that their radiation exposure is as low as reasonably achievable.

In Boston, we have placed area radiation dosimeters on the systems up there, and we started in April, and so we should hopefully have the evaluation results on those shortly. But even with the surveys we are doing, it is almost—it is just background.

Mr. LYNCH. Are you asking the TSOs to wear dosimeters or anything like that?

Ms. SEGRAVES. No, there is no requirement to do so at this time, and that is why we are doing the area dosimetry.

Mr. LYNCH. It might actually help with confidence for the employees if we somehow allowed them to wear dosimeters and then allowed them to have an impartial reading of that to figure out if they are picking up rems or any radiation. I think it would give them great peace of mind if they were able to become part of that process. I think that might go a long way.

I don't discount what you are saying in any way, but I think that it might be more convincing for the employees, and it might rule out any aberration that might be something that might be missing if it was actually on the TSO, the screener themselves. Thank you.

Now, would that be something legislatively that we would—I know TSA hasn't asked for it, you know, a more thorough screening process for the body scanners. Is that something that you would rather us do?

Ms. SEGRAVES. You mean as far as the availability of dosimetry on personnel that operate the AITs? We can certainly take a look at that. We are performing personal dosimetry at six airports now, based on the recommendation from the National Institute for Occupational Safety and Health. So we can certainly look at that.

We do have a start, though, with the area dosimeters placed on these systems, again only at Boston, Cincinnati and Los Angeles. So surveys and independent evaluations, you know, again, state that these systems are safe both for the folks in the public as well as our employees. But we can certainly look into doing some personal radiation dosimetry.

Mr. LYNCH. Would there be any enhanced vulnerability, say, to pregnant women? That is one example, I guess, being exposed to that low level of radiation. Is that something that might expose the fetus to that, to danger, as opposed to, you know—

Ms. SEGRAVES. From the public or from the employee?

Mr. LYNCH. Either.

Ms. SEGRAVES. Either? No, there is none. There is none. Again, we are following the American National Institute standard that lays out the requirements for the doses of the system, and these systems are well, well below the ANSI standard.

Mr. LYNCH. OK. Let's see, I wonder if you could describe the kind of unsafe work practices that have been witnessed by NIOSH staff in regards to what were described as poor work practices? What in your opinion should TSA be providing its employees in terms of training and equipment to properly deal with the clearing of the bag jams that might occur?

Dr. HOWARD. Right. Again, I think there are two issues. One is proper training, because there is I think an importance to making sure that employees realize the risk of inserting their arm into an active machine before turning it off, etc. Having the proper equipment supplied by the employer to unjam a bag jam is extremely important; instead of using your arm, to use an instrument.

So all of those things are extremely important in making sure there is no unnecessary exposure. The flaps of the machine that you stick your bag through are protective. They act as a shielding

for radiation. But when you violate that protection by putting your arm in it, that is a serious issue.

So that is probably the most important practice that we would consider improper and risky that we would like to see corrected, and I am sure TSA has paid some attention to that recommendation.

Mr. LYNCH. OK, thank you.

The subcommittee has heard some complaints about files being lost and misplaced or that are inaccessible. A document provided by your office to the subcommittee says when an appellate body requests a case file, the electronic portion of the file is sent instantly, but the paper portion of that same file must be physically shipped. It seems when a case file is requested, any paper portion of the file should be made electronic, and then the complete case file be sent electronically.

What are the barriers to setting that kind of a procedure up?

Mr. HALLMARK. The OWCP started imaging cases around 2000, so we have about 10 years now. We did it prospectively, so all new cases starting then were imaged and are totally imaged. Cases which preexisted, we did not go back and image all of the old files. Basically, the cost-benefit analysis, many of the old files are very, very large and we just couldn't afford to do that.

The process, it has been our expectation that over time the number of cases that have a split file, in other words, an electronic component and a paper component, would diminish, and that we will get to the point where we do have a cost-benefit analysis that makes sense to do all the back-imaging. We haven't gotten to that point yet.

Mr. LYNCH. OK. We also got some data regarding appeals to the three different appeals bodies, and it just indicates that between a quarter and a third of the appeals are overturned in favor of the employee and are returned to your respective offices for further development.

With respect to these overturned cases, has there been any analysis regarding a pattern of, I don't know, just a failure or a gap in the system where these employees are being improperly denied? It looks like approximately 26 percent of the cases appealed to the Employees Compensation Appeals Board are settled in the employee's favor. It also seems that the appeals to ECAB also involve an error found in the initial denial, a lot of these cases. Some appeals to the Branch of Hearings and Review and Reconsideration also involve errors found in the initial denial. So we are seeing the appeals, the successful appeals, hinging on errors in the initial assessment.

What has the OWCP done to analyze any trends in these cases, that maybe the first hearing officer or the first person conducting the analysis has not accurately or properly assessed the evidence, and do you have any type of training that might help reduce the error? A third, that is a considerable amount of cases to have improperly assessed at the outset. That is a huge cost by burdening the appeals process.

I am just wondering if we are doing any analysis to look back on the cases that have been ruled on in error to maybe reduce that flaw?

Mr. HALLMARK. A few things I would say about that. First of all, the remand overturn rate of both ECAB and our Hearings and Review internal Unit is relatively common within the Workers' Comp world, if you look at State compensation systems. Many of the errors or the overturns or remands at the hearing level, especially, are generated by new evidence that has been presented or new argument, so it is not necessarily the case that—in fact, it is certainly not the case that all of the remands and overturns are error-related.

ECAB doesn't take new evidence, but they do take new argument, so it is not a one-to-one relationship even there, and obviously in some cases ECAB takes a different—in a particular review, a particular case, may take a different posture with regard to their understanding of policy and procedure than was taken below. So it doesn't translate necessarily directly into, yes, the person who made the initial decision was wrong.

Nevertheless, to answer your first question, we do review the cases that are returned. We do look for trends. The policy shop in the national office evaluates the decisions coming back from ECAB and provides guidance to the district offices about emerging patterns of the nature that you speak to. So that is a part of what we do, and we do the same with respect to hearings cases. And the district offices, when receiving those cases back, the remands and overturns, evaluate them individually to determine what is necessary in terms of training or other activities that they need to conduct locally with respect to those cases that are coming back.

So I think the answer is we are working on those issues. We do have a relatively substantial training program that is ongoing. Our system is now automated so we have training modules that new employees can go on to the computer and pull up various modules for the different segments of the work that we do. That work is still ongoing. It isn't complete yet, but it is moving very well, it is progressing, and I believe our training delivery is in fact moving toward a much stronger situation than we have had in the past.

And we are also improving our evaluation of our quality in general. We have what we call our accountability review system. We review on our motion—this is not from auditors outside our system—we do it ourselves; we review a large sample of cases across all of our district offices addressing all aspects of the work we do to identify what we think is the real quality of the work, and then we develop corrective action plans commensurate with what we find in those activities.

That system has just recently been substantially altered and I believe improved, taking advantage of the fact that we now have image cases so we can bring all of the offices' work together and do the evaluation for a specific type of case nationwide and then develop corrective action plans nationwide.

I think that is going to have some real powerful effects for the program, and I look forward to improvements along that line.

Mr. LYNCH. Thank you.

Now, Mr. Hallmark, do you look at particularly the hearing officers and see how they are ruling and whether or not they are in compliance with your own standards or that they might be misinterpreting certain standards?

Mr. HALLMARK. Well, I don't personally, which is a good thing because I probably wouldn't be qualified to do that. But the individuals who manage our hearing unit, which, as I said, is internal to OWCP, are responsible for doing that on a day-to-day basis. They evaluate the decisions that are made and they provide guidance and coaching, and obviously they evaluate those individuals, their subordinate staff, throughout the year. So that is done.

Mr. LYNCH. Thank you.

Ms. Segraves, I wanted to go back to the radiation issue. Now, when you say the machines comply with ANSI, is that just sort of the model number, or do you actually test the individual scanning machines?

Ms. SEGRAVES. We test the scanning machines to make sure they meet those requirements. So even prior to the deployment, we have the Johns Hopkins Applied Physics Laboratory go ahead and do an independent evaluation for us. So we know the systems were designed to meet the ANSI standards. So then as we started to deploy them, each system has to go through a factory acceptance test, and then once it is deployed to the actual airport, it has to go through site acceptance test, and then we would proceed with routine preventive maintenance radiation surveys.

We also have an independent team that has been going out to the airports now to perform additional radiation surveys because it is a new technology that has been deployed. So that is why I was saying whenever we have gone to Boston, Cincinnati, and Los Angeles.

Mr. LYNCH. OK. One of the things that I heard from one of our TSOs is that—one of the longer serving ones—he said that prior to 2001 they were allowed to wear these lanyards with dosimeters on their person, and then when we Federalized those officers after September 11th, that they were no longer allowed to wear dosimeters to measure radiation. I was wondering what the rationale behind that was?

Ms. SEGRAVES. The rationale was actually the FAA, and they actually in the Federal Register prior to 9/11 had removed the requirement for radiation dosimetry. There was cabin x-ray systems, and they had data over the years, and so they removed the requirement. So that whenever TSA Federalized, then we didn't put dosimeters on our personnel then.

Mr. LYNCH. But it would seem to me to be the case where we are using more radiation machines now than we were in 2000, so the opportunity for exposure is far greater now.

Ms. SEGRAVES. I wouldn't necessarily say that, because the systems that screen the passengers' accessible property at the checkpoint as well as that screens your checked baggage are called cabin x-ray systems. So they all must meet the Food and Drug Administration standards, which is very low, it is something like 0.5 milirankin in any 1 hour. And that is 2 inches from the surface. So it is not when you install more systems that you now created a higher dose environment, so to speak.

Mr. LYNCH. What is the harm? This is telling them you won't put that dosimeter on, you will not measure the radiation that you are exposed to. That is the rationale I am trying to get at. In other words, you are telling these workers that they should not take any

measures for their own reassurance in terms of—and it doesn't seem like it would be that intrusive, but it probably just would be reassuring to the employees, knowing that they are not picking up excessive amounts of radiation.

This reminds me of the policy that we had during the swine flu, when TSA told their workers, you won't wear those masks. Even the ones on the border with Texas. The swine flu emanated from Mexico City, and we had some of these TSOs, these transit security officers, exposed to a lot of passengers coming through there, and they were patting them down. And yet TSA said, you shall not wear those masks because you might scare the passengers. The odd thing was that the Mexican TSOs all had the masks on, which really puzzled me.

You know, denying them the opportunity to protect themselves and to provide that added reassurance has been denied, and I just am curious for the rationale there. FAA originally wiped it out, but what about continuing it?

Ms. SEGRAVES. Again, that was before I came on board with TSA. But I can tell you since my tenure on TSA, that we, again, take radiation surveys and we also then coordinate with the employees with these independent surveys to make sure they feel comfortable working around the systems. Our training has beefed up tremendously to address the NIOSH findings from unsafe work practices around these systems, and we are also now engaged in a 6-month personal radiation dosimetry program based on the NIOSH recommendations that should be finishing up here shortly.

So what we are finding out right now is even with that year-long dosimetry program at the six airports, we are not seeing the levels such that would come close to the requirement for the employees to be wearing dosimeters.

Mr. LYNCH. OK. We have also heard from some TSA employees whose supervisors allegedly have made it difficult to apply for Federal Employee Compensation Act benefits. The instances that we have ever uncovered include refusing to provide the necessary paperwork, actually dissuading or talking employees out of applying for compensation, and also not allowing employees to seek medical attention.

Are you aware of these allegations or these claims? And while it is a laudable goal for an agency to seek to reduce on-the-job injuries, it is concerning that these efforts appear to result in an agency attempting to reduce case rates by pressuring employees not to report injuries. I am a little concerned with that.

Ms. SEGRAVES. Well, my office is a little bit different. I do not manage the Office of Workers' Compensation programs, but I personally have not heard of any of these concerns and where supervisors have denied employees from filing a Workers' Compensation claim.

Mr. LYNCH. OK. Thank you.

I am going to ask if there are any added points that you would like to make, any questions I have failed to ask, or something you would like to amplify before we move to the next panel. Dr. Howard.

Dr. HOWARD. No, sir. Thank you.

Mr. LYNCH. Mr. Hallmark.

Mr. HALLMARK. I think we have covered it.

Mr. LYNCH. Ms. Seagraves.

Ms. SEGRAVES. The only thing I would like to stress is the NIOSH study was done in 2003–2004 when a lot of these findings and unsafe work practices occurred. The TSA work force and agency today is a much different work force and agency that cares for the employees. Their safety is No. 1. And we have made great strides in ensuring the health and safety of our work force.

Mr. LYNCH. Thank you. Are you saying the study was done—the 2008 report relied on 2003–2004 data?

Ms. SEGRAVES. That is correct. Yes.

Mr. LYNCH. That is a good point. Thank you for your willingness to come before the committee and help us with our work. I wish you a good day. Thank you.

[Witnesses excused.]

Mr. LYNCH. Good afternoon and welcome. Before we afford an opportunity for you to testify, it is the practice of this committee to ask all witnesses to be sworn. Could I please ask you to stand and raise your right hands.

[Witnesses sworn.]

Mr. LYNCH. Let the record show that all the witnesses have answered in the affirmative.

What I will do is I will offer a brief introduction of each of our panelists, and then we will go back and allow them to each make a 5-minute opening statement.

Let's see. Mr. John Adler has been the national president of the Federal Law Enforcement Officers Association since November 2008. Mr. Adler began his career in law enforcement in 1991 and has served as a Federal criminal investigator since 1994. His experience includes working a wide variety of investigations and enforcing most of the Federal criminal statutes.

Mr. James Johnson has served as the 16th district vice president for the International Association of Firefighters since 2004, where he represents all firefighters serving in the United States and Canada. Mr. Johnson served as President of the International Association of Firefighters, Local F88, in Ohio from 1998 to 2004 and as a lieutenant in the Wright-Patterson Air Force Base Fire Department from 1987 to 2004.

Ms. Maureen Gilman is the Director of Legislation for the National Treasury Employees Union which represents 150,000 Federal employees and retirees. Ms. Gilman focuses extensively on civil service, budget, tax and appropriations issues. Prior to joining the National Treasury Employees Union in 1992, Ms. Gilman served as chief of staff to Congressman Sam Gejdenson.

Ms. Milagro Rodriguez has served as the Labor Relations Specialist for Safety and Health for the American Federation of Government Employees since 1997. During her tenure, she has developed and implemented an aggressive health and safety program featuring education, information, training and advocacy. Ms. Rodriguez has a master's of public health degree from George Washington University.

Welcome. Mr. Adler, you are now recognized for 5 minutes for an opening statement.

STATEMENTS OF JON ADLER, NATIONAL PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION; JAMES JOHNSON, 16TH DISTRICT VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS; MAUREEN GILMAN, DIRECTOR OF LEGISLATION, NATIONAL TREASURY EMPLOYEES UNION; AND MILAGRO RODRIGUEZ, LABOR RELATIONS SPECIALIST FOR SAFETY AND HEALTH, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

STATEMENT OF JON ADLER

Mr. ADLER. Thank you, Chairman Lynch. I represent 26,000 members of the Federal Law Enforcement Officers Association, and my testimony is going to address the question of how well the Federal Employees Compensation Act is meeting the needs of injured workers in high-risk occupations.

Each year, approximately 300 Federal law enforcement officers sustain line-of-duty injuries in violent conflicts with suspects. Additional injuries come from vehicular incidents, training incidents, and exposure to toxins and hazardous materials exposure, and training incidents.

With all the pain that these noble warriors have endured, the greatest pain they suffer from is, unfortunately, dealing with negative experiences with the Office of Workers' Compensation and the Division of Employee Compensation. And to illustrate the pattern of how our members have been mistreated, including having to endure financial and emotional duress, I will discuss five egregious examples. I will try to summarize them, rather than read them.

The first one involves September 11, 2001, Special Agent Mike Vaiani. Mike Vaiani is down there at Ground Zero, the first tower goes down. He is with a firefighter. They hear a distress signal from another firefighter calling for help. Mike and the firefighter run into the tower, burning. They rescue numerous people, including firefighters. They manage to get everyone out safely.

In the process, Mike sustained serious injury. He hurts his neck, his shoulder, his rotator, his back. It ultimately results in having plates and all sorts of things put in that. I don't even want to think about, it is so painful.

Subsequent to the incident, Mike files his claim. A little over a month later, Mike gets a phone call from a claims examiner, the first time he has heard from OWCP, and the question they put to Mike was: Did the firefighter instruct you to go into the building?

Now, it is very disconcerting that was the question directed to him, as if that would gauge whether or not they would cover Mike, a special agent, for running into the building to save Americans.

It turns out subsequent to that, while Mike was seeking immediate treatment—and Congresswoman Norton hit on this earlier in terms of the time lapse between when you sustain the injury and when the payments come—he incurred serious debt. He didn't have the money to pay for his treatment.

His personal supervisor offered to pay his medical expenses on her personal credit card. That is how bad it was. Then at some point in 2002 they just lost Mike's file.

Mike asked me to deliver this quotation, which is, "I would rather run back into the tower while it is on fire than have to deal with the Department of Labor."

The second case referred to, also in or around or after September 11, 2001, Inspector Bill Paliscak goes into the Brentwood postal facility because they have information that they have equipment that is anthrax contaminated. They needed to preserve the evidence.

Inspector Paliscak enters there, attempts to take custody of this evidence, and he is subsequently covered in what seems to be anthrax powder, anthrax dust. Within 3 or 4 days, Inspector Paliscak, unfortunately, experiences the severe symptoms that one is expected or anticipated to have from anthrax exposure.

He files his claim. A lot of time elapses. He goes for emergency medical treatment. He becomes deathly ill, and yet his claim is not accepted.

Up until May—I think it is May 2002—no, I am sorry, December 2002, Inspector Paliscak was paying his own bills. And two of the questions put to him between the time of him entering Brentwood facility to 2002 was: First of all, was it within your scope to touch a filter or a machine when you are an inspector? And second, they challenged whether or not he was suffering from anthrax exposure, in spite of the fact that the filter he removed was proven to be contaminated with it.

Now, unfortunately, he ran up serious debt in the process, because again we just don't have that much liquidity and funds lying around to pay for these situations, and the moment you go for treatment and fill out the form at the hospital and you say this is work-related, your insurance will not cover it.

Moving right along, we have in November 2006 Special Agent Paul Buta, just made the news, in Annapolis Mall. He is off duty with his family. He witnesses a man being beaten to death by a bunch of thugs. He intervenes. He stops the lethal threat, but in the process he gets shot in the leg.

Now, I have to say, No. 1, Special Agent Buta is an attorney as well, and, No. 2, he is a triathlon athlete.

He goes for treatment. He has a bullet that is lodged in his leg. He is told by experts that he will need serious physical therapy to prevent or slow down the atrophy that is going to take place just in and above his knee.

So he goes for the treatment. Unfortunately, his claim is not approved and he is accruing substantial debt. As I sit here, he has personal debt of \$11,800-plus, because his therapy was stopped in June 2008 because OWCP determined that at this point if he still needs therapy, he might as well go out on a disability.

This is someone who is an outstanding athlete and outstanding agent who wants to come back, and he is someone that I can tell you President Obama wants standing in front of him to protect him.

Then we have Special Agent Tim Chard. From 2000 to 2007, Special Agent Chard was involved in busting and dismantling over 100 meth labs on a task force. Unfortunately, as a result of sustained exposure to a variety of toxins that exist at meth labs, late 2008 into 2009, Special Agent Chard started to experience a variety of

systems that have been linked to others who have suffered from severe meth lab exposure.

Mr. LYNCH. Mr. Adler, where did he serve?

Mr. ADLER. The Utah drug task force.

Mr. LYNCH. OK.

Mr. ADLER. Which, unfortunately, the ranking member is not here to hear this, because Mr. Chard is a constituent of his.

But anyhow, he is evaluated by Dr. Gerald Ross who is considered an expert in the area of meth lab exposure, who writes a letter saying definitively that, based on his review and his examination of Chard, it looks like he is suffering from these symptoms, and he recommends him being enrolled in the Utah Meth Cop Detox Program, which has worked extraordinarily well for 40 other individuals having served in that area and having similar exposure.

His claim is denied, so my organization paid to send him to this detox program. He went through it 30 days and he came out born again. His high blood pressure stabilized, blood sugar stabilized, his migraines are gone, chronic diarrhea gone, and just a host of the other symptoms that otherwise we thought he was actually going to go down for the count.

So now he continues to be monitored, but he is paying for the expense, and his agency wouldn't, unfortunately, allow him to be relocated to an office near the location as well, which is a whole other issue. But nonetheless, thanks to—we had to appeal to Law and Order actor Vice Don to get publicity to give this guy some emotional support. And it shouldn't have to come down to that. And as we sit here today, his claim is still denied because he can't document every single exposure. Yet the task force commander praised Chard by saying that when a detective on his task force would otherwise disappear, Chard was front and center every single time.

Then we have most recently this year, we have Deputy Jason Matthew, working in Superior Court, who was, unfortunately, stabbed by an inmate who has HIV and was secreting an edged weapon on her person. And in stabbing him, he naturally is rushed to emergency medical care. They were aware the inmate had HIV. They were aware that the edged weapon she used that she had secreted on her person was likely to be contaminated with HIV.

So they administered first aid, they gave him all the treatment. The hospital gave him a prescription for some sort of preventative medication for those exposed to HIV.

Well, he takes it. He pays for it out of his own pocket, because OWCP wouldn't process his claim. And then he is ultimately told on the phone by an examiner that because you have not been diagnosed with HIV, we cannot reimburse you for this prescription. So we contacted his agency and his agency immediately paid the bill.

Now, what I am trying to highlight here is a series of events. It is not an isolated issue or five isolated issues, it is a pattern. What we have here is an inability by OWCP and FERC to process these claims timely, to even understand the nexus between the injury and the law enforcement function, and then ultimately to pay these folks timely.

I mean, I have five individuals, all of whom have suffered financial harm, and some of them are still in serious debt. And it makes absolutely no sense.

So what I was hoping to do was appeal today for a further review of how OWCP and FERC handles law enforcement injuries and to see whether or not these people are being treated properly. I mean, in the end, heroes should be supported by the Federal Employees Compensation Act. They shouldn't be hung up on a clothes line and hung out to dry.

Thank you, Chairman. I appreciate the opportunity to speak on behalf of my membership.

Mr. LYNCH. Thank you, Mr. Adler.

[The prepared statement of Mr. Adler follows:]



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July 21, 2010

House Subcommittee on Federal Workforce, Postal Service and the District of Columbia Hearing

Chairman: The Honorable Stephen F. Lynch
 Ranking Member: The Honorable Jason Chaffetz

Hearing: "Are Agencies Playing It Safe and Secure: An Examination of Worker Protections Pre- and Post-Injury."

Federal Law Enforcement Officers Association
 Witness Statement: Jon Adler, National President

Chairman Lynch, Ranking Member Chaffetz, and Distinguished Members of the committee, on behalf of the 26,000 membership of the Federal Law Enforcement Officers Association (FLEOA), I thank you for the opportunity to appear before you today. My name is Jon Adler and I am the National President of F.L.E.O.A. I am proud to represent federal law enforcement officers from over 65 different agencies. My testimony will primarily respond to the question of "how well the Federal Employees' Compensation Act is meeting the needs of injured workers in high-risk occupations.

Every year, approximately 300 Federal law enforcement officers sustain line of duty injuries during violent physical encounters. They also suffer from serious duty related injuries from vehicle accidents, toxins and hazardous materials exposure, and training incidents. From all the pain these noble warriors have endured, the pain that hurts them the most is their negative experiences dealing with the Office of Workers Compensation (OWCP), and the Division of Federal Employee Compensation. To illustrate the pattern of how our members have been mistreated, including having to endure financial and emotional duress, I will discuss five egregious examples:

On September 11th, 2001, Special Agent Mike Vaiani was at Ground Zero when the Twin Towers collapsed. Before the second Tower collapsed, Special Agent Vaiani and a firefighter ran into the building and rescued injured fire fighters and civilians. In the process, S/A Vaiani sustained serious injury to his neck, shoulders and back. After filing his works compensation claim, he first heard from a OWCP claims examiner in October 2001. The examiner asked one question: did the firefighter asked S/A Vaiani to follow him into the building? S/A Vaiani's response was that of a hero: "I went in to save lives because that's what I do." Afterwards, S/A Vaiani began to receive collection notices for unpaid medical bills. Then, in December 2002, OWCP lost his case file and his supervisor offered to pay his medical bills on her personal credit card. After enduring this miserable process, S/A Vaiani stated, "I would rather run back into the Tower while it's on fire than have to deal with the Department of Labor."

After anthrax contaminated mail was sent through the Brentwood postal facility in 2001, Postal Inspector Bill Paliscak responded to the crime scene. He was instructed to remove a contaminated filter to preserve as evidence. Wearing only a dust mask, Inspector Paliscak was unexpectedly covered in Anthrax dust. Days after the severe anthrax exposure, Inspector Paliscak became deathly ill. The OWCP denied his claim because they questioned if it was in his job duties as an Inspector to touch a contaminated filter. In spite of the fact that the filter he removed was saturated with anthrak spores, his claim was denied because he could not immediately prove he was suffering from Anthrak exposure. In May 2002, OWCP finally accepted Inspector Paliscak's claim. Since the incident, Inspector Paliscak's credit was ruined since his medical bills went unpaid for months, and his medical care was disrupted. Today, this hero is bound to a wheelchair, while he suffers from severe muscle spasms, overwhelming fatigue, and other debilitating effects of anthrak exposure.

On November 16, 2006, Special Agent Paul Buta was off-duty with his family in a mall when he was shot while effectively stopping a violent assault committed in his presence. His heroic actions saved a man's life, and stopped a lethal threat. While his wife and his 13 year old daughter administered first aid, S/A Buta's four year old daughter went for help and called 911. After receiving medical care, S/A Buta's doctor told him he would need extensive physical therapy to maintain and prolong the atrophy of his leg muscles. With bullet fragments lodged in his leg, S/A Buta began physical therapy treatment. Unfortunately, due to OWCP's inability to pay S/A Buta's bills timely, his physical therapy ended on June 30th, 2008. His current outstanding debt is \$11,895. Without the physical therapy, S/A Buta is struggling to meet the mandatory fitness standards to keep his job. Prior to the shooting, S/A Buta was a triathlon athlete. Now, he's a hero in pain and in serious debt.

From 2000 to 2007, Special Agent Tim Chard was assigned to a narcotics task force. During this time, S/A Chard was personally involved in busting and dismantling 100 meth labs. His task force commander stated, "I was so impressed that he, a Federal Agent, was helping us do a job we hated when other Detectives assigned to our team

seemed to disappear when ever a lab was discovered.” In late 2008 and into 2009, S/A Chard began to suffer from a variety of debilitating symptoms and pain that seemed connected to his exposure to meth labs toxins. Renowned expert Dr. Gerald H. Ross wrote, “It is my medical opinion that in all reasonable likelihood, S/A Chard’s symptoms have resulted directly from his meth and meth-related chemical exposures.” Dr. Ross recommended that S/A Chard be admitted to the Utah Meth Cop Project 30-day detox program for treatment. Unfortunately, OWCP denied S/A Chard’s claim. Appealing to his agency for help, S/A Chard was told that if he enrolled in the program, “any costs you incur up front will have to paid out of pocket. You will also be required to take sick leave for the program. You would then be reimbursed for your expenses by OWCP, if they accept your claim.” In spite of OWCP rejecting his claim, the FLEOA Foundation paid for S/A Chard to enter the treatment program. After completing the program, S/A Chard’s health greatly improved. However, he will have to pay for all medical tests to monitor his condition. Thanks to the support of the Utah Meth Cop Project, and actor Vince D’Onfrio, this hero is getting emotional support.

More recently, Deputy Jason Matthew was stabbed by a female inmate who had secreted an HIV contaminated edged weapon on her person. Deputy Matthew was immediately taken for emergency treatment to tend to his wound and his exposure to an HIV contaminated weapon. While receiving emergency medical care, Deputy Matthew was given a prescription for HIV preventive medication. After laying out his money to purchase the medication, Deputy Matthew’s OWCP claim was denied. He was informed that because he was not diagnosed with HIV, he would not be reimbursed for the prescription expense. Fortunately, his agency intervened and paid this hero’s medical bill. Deputy Matthew continues to be monitored for his HIV exposure.

The common denominator from these horror stories is that OWCP is unable to effectively process claims filed by injured law enforcement officers. One of the glaring patterns is OWCP’s inability to grasp the nexus of the injury with the law enforcement function. The net effect is that our heroes are left with a physical and financial hardship. FLEOA has been collecting other case related data and will be happy to make this information available to this committee upon request. We hope this committee will consider initiating a review of the law enforcement cases handled by OWCP and the Division of Federal Employee Compensation. Heroes should be supported by the Federal Employees’ Compensation Act; not kicked to the curb.

Respectfully submitted,

Jon Adler

Jon Adler

Mr. LYNCH. Mr. Johnson, you are now recognized for 5 minutes.

STATEMENT OF JAMES JOHNSON

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate the opportunity to appear here before you today on behalf of General President Chatterer and the nearly 300,000 firefighters and emergency medical personnel who comprise our organization.

Over 10,000 Federal firefighters serving our Nation today face some of the most difficult and hazardous working conditions in the country, guarding military installations, strategic sites, and VA hospitals. This unique work places Federal firefighters at increased risk for injury and death.

Because this is inherent to the occupation and can never be fully eliminated, employers must take every effort, make every effort, to promote safe practices. But we must also ensure that when job-related injuries do occur, employees can easily access the care and benefits they deserve. Unfortunately, often the Federal Government falls short in providing for Federal firefighters, both pre- and post-injury.

Federal firefighters respond to the same types of emergencies as their counterparts in the municipal sector, but they also face unique hazards involving incidents at weapons depots; facilities, conducting classified work; and aboard naval vessels. More often than in other occupations in the Federal sector, Federal firefighters are routinely exposed to carcinogens, infectious diseases and other occupational hazards.

To better protect firefighters, the fire service has developed comprehensive industry consensus standards. The adoption and careful application of such standards helps reduce risk to the employees.

While Federal agencies have adopted many standards applicable to firefighter health and safety, too often the same agencies will fail to follow their own requirements at the work site. For example, although the Air Force has adopted SPA 1582, the standard on comprehensive occupational medical programs for fire departments, it chose to amend the standard in its implementation, eliminating or changing important requirements. Given the serious health hazards associated with fire fighting, such changes leave firefighters employed by the Air Force at an unnecessary risk.

Agencies must not be permitted to water down such standards in everyday use. When injuries do occur, a firefighter should ideally focus on his recovery and returning to work as soon as possible. Unfortunately, too often an injured firefighter must instead battle a slow, bureaucratic, and confusing Office of Workers' Compensation programs.

Even before a Federal firefighter files an FECA claim, he or she sometimes faces an uphill battle, receiving guidance from his or her employer. Often the injured employee is given incomplete, conflicting, or flat-out wrong advice.

Once claims are filed, an employee often encounters numerous hurdles which significantly lengthen the claims process. The OWCP education process is especially slow. It often takes 6 months to a year for OWCP to process a claim for employee payments when there are disputes over the claim, and 60 or more days for OWCP to process a claim where surgery or other medical interven-

tion is needed. Aside from contributing to employee pain and suffering, such delays come at significant economic cost by delaying the employee's return to work.

OWCP requires duplicate information on various claim forms and OWCP should take steps to eliminate duplicative paperwork, as well as expand features within the ACS portal, adding ability to upload and view medical document forms and receipts digitally, eliminating the requirement that such information be mailed. These changes would reduce paperwork and the burden on the claimant as well as reduce costs.

Finally, many injured employees have difficulty finding a physician who will accept OWCP claims. OWCP should encourage physicians to accept patients by creating a physician training program and developing resources to help providers better navigate the claims process.

Federal firefighters facing an occupationally caused illness face an even greater challenge. Under FECA, Federal employees suffering from occupational illnesses must pinpoint the precise incident or exposure that caused the disease. This burden of proof is difficult for firefighters to meet because they respond to a wide variety of emergency calls in different environments under varied conditions.

This inability to pinpoint a specific exposure that caused an illness has led to 42 States enacting presumptive disability laws covering municipal firefighters. Based on solid scientific evidence, States have concluded that certain illnesses are clearly associated with fire fighting and they presume these illnesses are job-related. Unfortunately, Federal firefighters know no such protection.

To address this inequity, Representatives Capps and Platts have proposed legislation, the Federal Firefighters Fairness Act, to create a rebuttable presumption that Federal firefighters who become disabled by heart and lung disease, certain cancers and certain infectious diseases, contracted the illness on the job.

By implementing presumptive benefits for firefighters and adopting strong safety standards at work and streamlining and improving the OWCP claims process, the Federal Government can help prevent injury and assure that when an injury or illness does occur at work, the employees may focus on their recovery, rather than the status of their claim.

I would like to thank you for the opportunity to appear here today and I would be happy to answer any questions.

Mr. LYNCH. Thank you, Mr. Johnson.

[The prepared statement of Mr. Johnson follows:]

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS



Statement of

MR. JAMES B. JOHNSON
16TH DISTRICT VICE PRESIDENT
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL
SERVICE AND THE DISTRICT OF COLUMBIA
U.S. HOUSE OF REPRESENTATIVES

on

AN EXAMINATION OF WORKER PROTECTIONS PRE-
AND POST- INJURY

JULY 21, 2010

Thank you Chairman Lynch, Ranking Member Chaffetz and distinguished members of the Subcommittee. My name is James Johnson and I am the 16th District Vice-President of the International Association of Fire Fighters, representing federal fire fighters throughout the United States and Canada. I appreciate the opportunity to appear before you today on behalf of our General President, Harold Schaitberger, and the nearly 300,000 fire fighters and emergency medical personnel who comprise our organization.

Mr. Chairman, I testify today not only as a representative of the IAFF, but as a former federal fire fighter who fully understands the important role federal fire fighters play and the hazards they face. Prior to taking my current position with the IAFF, I served for seventeen years as a Lieutenant at the Wright-Patterson Air Force Base Fire Department in Ohio.

Federal fire fighters play an essential role in protecting the vital interests of the United States. The over 10,000 federal fire fighters face some of the most difficult and hazardous working conditions in the country guarding military installations, strategic sites and VA hospitals. Their seventy-two hour work week is unparalleled. Without their dedicated service, our nation would be less secure.

The job of federal fire fighters is unique in many ways. The nature of the work, which involves fire suppression, rescue activities and the delivery of emergency medical services places federal fire fighters at an increased level of risk for injury and death. Because this increased level of risk is inherent to the occupation and can never be eliminated in total, employers must make every effort to promote safe practices. But we must also assure that when job-related injuries do occur, employees can easily access the care and benefits they deserve through the Federal Employees Compensation Act (FECA) so that they may focus on their recovery. Unfortunately, far too often, the federal government falls short in providing for federal fire fighters both pre- and post-injury.

Job Hazards

Far more often than other occupations within the federal sector, federal fire fighters are routinely exposed to carcinogens, infectious diseases and other occupational hazards.

Federal fire fighters respond to the same types of emergencies as their counterparts in the municipal sector – including medical emergencies, hazardous materials incidents, structural fires, and aircraft emergencies. But they also face unique hazards involving incidents at weapons depots, facilities conducting classified work and research, and emergencies aboard naval vessels.

Federal fire fighters often respond to these incidents without adequate information about the dangers they may encounter. An EMS call can actually turn out to involve a chemical spill, and a structural fire can be the result of a research or ammunition test failure. Although fire fighters take precautions and wear protective gear, as with all aspects involving occupational protection, exposures happen.

Furthermore, fire fighters are regularly exposed to stress, smoke, heat and various toxic substances, including known carcinogens. As a result, they are far more likely to contract heart disease, lung disease and cancer than other workers. Additionally, as the nation's leading providers of emergency medical services, fire fighters are increasingly exposed to infectious diseases.

Workplace Safety

Firefighting is one of the nation's most hazardous occupations, and the IAFF and other fire service organizations place the highest priority on protecting fire fighter safety and health. Through the National Fire Protection Association (NFPA), the fire service has developed comprehensive industry consensus standards regarding personal protective equipment, occupational medical programs, infection control, respiratory protection, and other important safety and health protections.

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires federal agencies to comply with industry consensus standards where applicable. The adoption and careful application of industry consensus standards does much to reduce risk to employees. While federal agencies employing fire fighters have adopted many standards applicable to fire fighter health and safety, too often the same agencies will fail to follow their own requirements at the worksite.

For example, although the U.S. Air Force adopted NFPA 1582, the Standard on Comprehensive Occupational Medical Program for Fire Departments, it chose to amend the standard through a technical implementation guide (TIG), eliminating or changing important safety protections, such as certain hearing tests, cancer screenings, and vaccines. The TIG further deferred many required annual activities under the standard, and left certain required activities to the physician's judgment. Given the serious health hazards associated with fire fighting, such changes leave fire fighters employed with the Air Force at unnecessary risk.

This same scenario repeats itself throughout the Department of Defense and the other administrative agencies. Agencies must be held to the requirements of the National Technology Transfer and Advancement Act, and more importantly, must not be permitted to "water down" such standards in everyday use.

Office of Workers Compensation Programs

Because of the very nature of fire fighting, injuries can and do occur. When they do, an injured fire fighter should ideally focus on his recovery and returning to work as soon as possible. Unfortunately, too often an injured fire fighter must instead battle a slow, bureaucratic and confusing Office of Workers Compensation Programs (OWCP).

Even before a federal fire fighter files a FECA claim, he or she sometimes faces an uphill battle receiving guidance from his or her employer. Often, the injured employee is given incomplete,

conflicting, or flat-out wrong advice on how to proceed by his or her supervisor or HR representative.

Once claims are filed, an employee often encounters numerous hurdles which significantly lengthen the claims process and have the effect of penalizing the employee.

The OWCP adjudication process is especially slow. It often takes six months to a year for OWCP to process a claim for payment, and sixty or more days for OWCP to process a claim where surgery or other medical intervention is needed.

For example, a recently injured fire fighter at the Great Lakes Naval Facility sustained an acute hernia while on the job. Surgery was indicated after the first medical visit; however surgery could not be performed until OWCP adjudicated the case and approved the care forty days later. The fire fighter suffered during this time, during which he could not work. The surgery could have been performed within five days of the initial injury. Had this happened, the employee could have returned to work two weeks before his claim was eventually approved.

Aside from contributing to employee pain and suffering, such delays come at significant economic cost by delaying an injured employee's return to work. This process must be improved, especially when surgery or other medical intervention is necessary.

A second significant hurdle to quality service through OWCP remains the various paperwork requirements. When an employee is injured, they are currently provided numerous forms, many of which require duplicate information. OWCP should also take steps to expand features within the Affiliated Computer Services (ACS) portal, adding the ability to upload and view medical information such as medical documentation, forms and receipts digitally and eliminating the requirement that such information be mailed by USPS. These changes would reduce paperwork and the burden on the claimant, as well as reduce costs.

Finally, many injured employees have difficulty finding a physician who will accept OWCP claims, resulting in limited access to care and delaying a patient's return to work. OWCP should encourage physicians to accept OWCP patients by creating a physician training program and developing dedicated physician resources, such as a website or information packet, to help providers better navigate the claims process. Combined with the ability to upload medical documents, this recommendation will help encourage more physicians to participate in the program, improving patient access.

Making these changes to streamline and improve the claims process will facilitate the quick and effective treatment of the employee with the goal of returning to work as soon as possible.

Presumptive Benefits for Federal Fire Fighters

While the claims process under FECA is difficult enough for injured employees, federal fire fighters facing an occupationally-caused illness face an even greater challenge. Under the Federal Employees Compensation Act, federal employees suffering from occupational illnesses

must be able to pinpoint the precise incident or exposure that caused a disease in order for it to be determined job-related. This burden of proof is extraordinarily difficult for fire fighters to meet because they respond to a wide variety of emergency calls, constantly working in different environments under varied conditions. As a result, very few cases of occupational disease contracted by federal fire fighters have been deemed to be service-connected.

This inability to pinpoint a specific exposure that caused an illness has led 42 states to enact “presumptive disability” laws covering municipal fire fighters. Based on solid scientific evidence, states have concluded that certain illnesses are clearly associated with fire fighting, and they presume that these illnesses are job related even if the fire fighter is unable to document the specific emergency response incident where the exposure occurred.

Unfortunately, federal fire fighters are some of the very few fire fighters in the nation who know no such protection. This unfairness is particularly pronounced in the many places where federal fire fighters participate in mutual aid responses. During my career at Wright-Patterson, I often responded to incidents along side fire fighters employed by municipalities in the neighboring communities of Fairborn and Riverside, Ohio. Every fire fighter in our company knew that if we were exposed to a toxic chemical during a response, the municipal fire fighters would be guaranteed disability compensation, but we would not.

To address this inequity, Representatives Lois Capps and Todd Platts have proposed legislation entitled the Federal Fire Fighters Fairness Act. The legislation would create a rebuttable presumption that fire fighters who become disabled by health and lung disease, certain cancers and certain infectious diseases contracted the illness on the job. H.R. 948 would shift the burden of proof to the employer to prove that the illness was caused by some factor other than the duties of the fire fighter.

Fire Fighting and Disease

The IAFF believes a presumption for these diseases is warranted. Fire fighters are exposed on an almost daily basis to stress, smoke, heat, toxic substances and infectious diseases, and numerous scientific studies have established a link between the diseases listed in the bill and fire fighting:

- A 2007 Harvard study published in the New England Journal of Medicine found that fire fighters face a risk of death from heart attack up to 100 times higher when involved in fire suppression as compared to non-emergency duties
- A 2008 study by Kang et.al. of male Massachusetts fire fighters from 1987-2003 found increased risk among such fire fighters for numerous cancers, including colon and brain cancer.
- A 2006 study conducted by the University of Cincinnati found that on-the-job exposure to soot and toxins creates an increased risk for various cancers among fire fighters.
- A U.S. Federal Government study conducted during the development of the OSHA Bloodborne Pathogen Standard shows that 98% of Emergency Medical Technicians and 80% of fire fighters are exposed to bloodborne diseases on the job.

- A 1989 study by Markowitz in the Archives of Environmental Health of fire fighters exposed to hydrochloric acid during a large PVC fire showed that 9.4% of fire fighters were diagnosed with asthma and 14.3% suffered from bronchitis.

Many additional studies come to the same conclusions – that everyday exposure to smoke, stress, chemicals, carcinogenic agents, extreme temperatures and bodily fluids puts fire fighters at increased risk to develop cancer, heart disease, infectious diseases, and lung and respiratory diseases.

Cancer

The link between fire fighting and cancer is of particular concern. Technology has created a distinct difference in the modern fire environment. Fire fighters are exposed in their work to extremely high concentrations of a large number of toxic and carcinogenic chemical compounds.

Some of these chemicals -- for example, carbon monoxide and soot containing polycyclic aromatic hydrocarbons -- are natural products of combustion and have always been present at fires. However, the combustion of modern synthetic and plastic materials produces many highly toxic and carcinogenic compounds that were not found in fires even three or four decades ago. Exposures today commonly include benzene, formaldehyde, polycyclic aromatic hydrocarbons (PAH), asbestos and the complex mix of carcinogenic products that arise from combustion of synthetic and plastic materials.

These chemical compounds are commonplace ingredients in our environment as components of household furniture, plastic pipes, wall coverings, automobiles, buses, airplanes, and coverings for electrical and other insulation materials.

Practically every emergency situation encountered by a fire fighter has the potential for exposure to carcinogenic agents. However, fire fighters can also be exposed to carcinogenic agents when the protective clothing they wear is exposed to high heat or burns. Fire fighters have even been exposed to carcinogens through the fire-extinguishing agents they utilize. The list of potential carcinogenic agents that fire fighters can be exposed to is almost as long as the list of all known or suspected carcinogens. Nevertheless, fire fighters constantly enter potential toxic atmospheres without adequate protection or knowledge of the environment.

Research has clearly shown the following specific linkages established between cancer and chemicals encountered in fire fighting:

- Leukemia is caused by benzene and 1,3-butadiene.
- Lymphoma and multiple myeloma are caused by benzene and 1,3-butadiene.
- Skin cancer is caused by soot containing PAH.
- Genitourinary tract cancer is caused by gasoline and PAH.
- Gastrointestinal cancer is caused by PCBs and dioxins.
- Angiosarcoma of the liver and brain cancer are caused by vinyl chloride.

Leukemia, lymphoma, multiple myeloma, cancer of genitourinary tract, prostate cancer, gastrointestinal cancer, brain cancer and malignant melanoma are among the cancers that have been observed consistently with increased frequency in epidemiologic studies of fire fighters. It is likely that additional associations will be identified between chemicals encountered in the fire environment and cancer in fire fighters. Nevertheless, the available data are sufficient to conclude that excess risk of cancer is a distinct hazard of fire fighting.

Conclusion

On behalf of the International Association of Fire Fighters, I appreciate the opportunity to share with you our views on federal worker safety and improvements under the Office of Workers Compensation Programs. By adopting strong safety standards at work, streamlining and improving the claims process under OWCP, and implementing presumptive benefits for federal fire fighters, the federal government can help prevent injury and ensure that when an injury or illness does occur at work, employees may focus on their recovery, rather than the status of their claim.

To the extent the IAFF can assist the Subcommittee in working towards this end I am happy to offer our expertise and pledge to work closely with you and your staffs.

Again, I'd like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.

Mr. LYNCH. Ms. Gilman, you are now welcome to offer testimony for 5 minutes.

STATEMENT OF MAUREEN GILMAN

Ms. GILMAN. Thank you, Chairman Lynch, for the opportunity to present NTEU's views on health and safety issues in the Federal workplace.

Since this hearing is focusing on high-risk occupations, I would like to comment primarily on concerns of Transportation Security Officers at the Transportation Security Administration, although many of the problems faced by employees there, particularly with regard to the Federal Employees Compensation Act, exist at agencies throughout the Federal Government.

As we heard from the first panel, shortly after TSA was formed, the National Institute for Occupational Safety and Health received several requests from TSA employees and from TSA itself to assess the work practices and procedures of screeners and to determine the extent of radiation exposure. The data NIOSH collected led to a series of recommendations, including improved training on radiation issues and proper work practices, improved explosive detection system equipment maintenance, and frequent monitoring of machines for radiation leaks, and conduct additional personal dosimetry on screeners to evaluate radiation doses.

In 2007, NIOSH also investigated potential exposure to emissions from forklifts and tugs in airport cargo areas. They found that employees were overexposed and issued additional recommendations. Despite these NIOSH recommendations, our TSA members have not seen any personal radiation testing done.

Baggage screening areas in airports are noisy, dirty, and in need of maintenance. At O'Hare airport in Chicago, for example, our members have recently recorded regular temperatures of over 90 degrees, yet basic requests for fans and bottled water have gone unanswered.

With regard to workers compensation, TSA to its credit has reduced FECA claims and injury rates. Unfortunately, NTEU is concerned that some of the decrease in claims may be due to managers and supervisors discouraging employees from filing.

TSA changed its management objective reports to include specific targets for injury reduction and associated costs in performance assessments of Federal security directors. Our members feel that this has led to the questioning of injury reports and an atmosphere in which lowering the number of claims outweighs the rights of employees to appropriate treatment of injuries and the assurance of a safe work environment.

In fact, based on these concerns, we have provided our TSO members with material on their rights under Workers' Compensation that includes the warning, "Do not let management intimidate you into not filing." We also look forward to working with the administration on its new governmentwide power initiative issued on July 19th to ensure that similar concerns are avoided in that program.

NTEU members at TSA have also faced problems in the area of sick leave. On June 13th of this year, LAX airport in Los Angeles instituted a new leave policy for the entire summer. The policy

stated that employees would be required to provide administratively acceptable evidence for all use of sick leave, both scheduled and unscheduled. This was a change from previous policy, which only required such documentation for requests of more than 3 days of sick leave.

Our members came to us to ask our help in overturning this policy. It seemed to them and to us that it would encourage employees to report for work even when they were sick. In addition, it would require them to seek and pay for medical treatment even if it was unnecessary. I am happy to report that several Members of Congress from the Los Angeles area, including some who serve on this committee, agreed with us, and with their help we were able to reinstate the previous policy.

Ultimately NTEU believes the best way for TSOs to achieve a safe and healthy work environment is through collective bargaining, and we commend this committee for acting favorably on H.R. 1881, which would grant those rights. We also call again on the administration to issue a directive providing TSOs with full collective bargaining rights.

In addition, we recommend that a number of immediate actions be taken, including conducting radiation tests, conducting ergonomic testing in baggage areas, and investigating new technology that would allow machines to do more of the heavy lifting.

Local health and safety committees need to be instituted and empowered. Our TSOs have many good ideas for improving health and safety in their workplaces. Programs need to be set up where by TSO-suggested changes can be reviewed and implemented locally.

Thank you again, Mr. Chairman, for the opportunity to discuss these important issues here today. I would be happy to answer any questions.

Mr. LYNCH. Thank you, Ms. Gilman.

[The prepared statement of Ms. Gilman follows:]



Statement of Colleen M. Kelley

National President

National Treasury Employees Union

Before the

Subcommittee on Federal Workforce, Postal Service and the

District of Columbia

U. S. House of Representatives

On

“Are Agencies Playing It Safe and Secure: An Examination of

Worker Protections Pre- and Post-Injury”

July 21, 2010

Chairman Lynch, as National President of the National Treasury Employees Union, I would like to thank you for holding this hearing on safety and health issues that affect federal employees. Since the hearing is focusing on high-risk occupations, I will speak mainly about the experiences of Transportation Security Officers at the Transportation Security Administration, although many of the problems faced by employees there, particularly when attempting to access the Federal Employees' Compensation Act, are problems faced by many federal employees at agencies throughout the government.

Executive Order 12196 and the Occupational Safety and Health Act of 1970 (Public Law 91-596) require federal agencies to provide a safe and healthful workplace for their employees. TSA has its own Occupational Safety and Health Manual, and I would refer to it today, except we were told that it is not public information. While TSA headquarters has issued detailed directives on health and safety, I am sorry to report that at the airport level, concerns about safety and health are routinely ignored or, worse, punished.

HEALTH HAZARD CONCERNS

Shortly after TSA was formed, the National Institute for Occupational Safety and Health (NIOSH) received several requests from TSA employees and from TSA itself to assess the work practices and procedures of screeners and to determine the extent of radiation exposure. The agency looked at 12 airports. The data NIOSH collected led to a series of recommendations:

- Improve training on radiation issues and proper work practices;
- Improve Explosive Detection System (EDS) equipment maintenance;
- Add frequent monitoring of machines for radiation leaks; and
- Conduct additional personal dosimetry on screeners to evaluate radiation doses.

In 2007, NIOSH investigated potential exposure to emissions from forklifts and tugs in the air cargo area. They found that the airport terminal services employees were overexposed. In addition, NIOSH found that whenever there was a baggage jam, there was an increased risk of high radiation exposure. NIOSH issued a series of recommendations that included:

- Replace fuel-driven forklifts and tugs with electric ones;
- Increase ventilation in the warehouse;
- Conduct emission testing on fuel-driven forklifts and tugs;
- Ask drivers to turn off vehicle's engine when at dock doors; and
- Monitor employees' exposure to carbon monoxide.

Our members are very concerned about radiation levels. They have not seen any dosimetry studies done. Many TSOs at the checkpoints suffer from headaches and nosebleeds if they're at certain machines for too long. The machines are maintained, but superficially. At one of our airports, the checkpoint machines were recently taken apart and cleaned, the first time any TSOs had seen that happen. Many gathered around when it was up and running, marveling at how sharp the images were when five years of dirt had been taken out.

Baggage screening areas in airports are noisy, dirty, and in need of maintenance. Many times there is no potable water available. Bathrooms are not cleaned regularly. Because most of these areas rely on outside air to ventilate the space, temperatures are very high in the summer. TSOs report that fans are often out for repair for months at a time. Eyewash stations remain unfilled. Nets that are supposed to catch bags are in shreds. Water coolers are empty and management refuses to provide bottled water, even when the temperature reaches 90 degrees and above. Tugs are frequently left idling near the TSOs while airline employees load and unload bags, filling the air with exhaust fumes. When our members meet with management about these conditions, they offer solutions – lowering air ducts, installing air duct deflectors, providing drinking water, working with airlines to turn off tugs while loading and unloading. Nothing happens and nothing changes.

WORKERS COMPENSATION

TSA received the 2009 Theodore Roosevelt Workers Compensation and Disability Management Award for its work in reducing the cost of injuries to employees while on the job. The award was given by a company that seeks business in this area to process third-party claims in workers compensation. Perhaps TSA's interest in reducing costs was based on a 2007 DHS IG report. That office conducted a review of TSA's management of its FECA program. DHS was concerned about an estimated future liability to TSA of FECA cases that would hover around \$600 million. After the report (OIG-07-45) was published, TSA began working very diligently to reduce its claims and

its injury rates. Unfortunately, at the airport level, managers and supervisors have found that the best way to reduce injuries is to stop the employees from reporting them. The situation is so bad that NTEU has issued a paper on Workers Compensation for TSOs that starts out, "Do not let anyone in supervision talk you out of filing (the initial form). It is not discretionary on their part. Do not let management intimidate you into not filing."

The Department of Labor states that in order to be eligible for FECA, the injured employee must provide evidence that:

- The claim was filed within the time limits set by FECA;
- The injured or deceased person was an employee of the U. S. government at the time of the injury;
- The injury, disease, or death did occur;
- The employee was in the performance of duty when the injury, disease, or death occurred; and
- The medical condition found was causally related to the claimed injury, disease, or death.

At TSA, there are often additional requirements that result in no claim being filed at all. These are not easy jobs. In baggage, particularly, there is repetitive lifting, standing, bending and stooping. At one airport, however, several employees advised us that they did not file a claim for their injuries in baggage because the supervisor told them that TSA had them on videotape using an improper lifting technique.

When TSA changed its Management Objective Reports, used to assess the effectiveness of Federal Security Directors, to include specific performance targets to meet in injury reduction and associated costs, it was following “good manager” protocol. At the FSD level, however, it means that every statement of injury is questioned, and the person who reports an injury is treated as a pariah. A TSO who is injured on the job is often told to just find another job. Even contacting OSHA with a safety concern can result in a suspension or demotion.

OTHER SAFETY AND HEALTH ISSUES

On June 13th of this year, LAX instituted a new leave policy that would be in effect for the entire summer. The policy stated that employees at TSA would be required to provide “administratively acceptable evidence” for all use of sick leave, both scheduled and unscheduled. This was a change from previous policy which only required such documentation in requests made for more than three days of sick leave. Our members came to us to ask our help in overturning this policy. It seemed to them, and to us, that this policy would encourage employees to report for work even when they were sick to avoid AWOL penalties. In addition, it would require them to seek and pay for medical treatment even if it was unnecessary for them to do so. I am happy to report that several Members of Congress from the Los Angeles area, some on this committee, agreed with us that the policy was troubling enough to insist that it be stopped. With their help, we were able to reinstate the previous policy.

As the above story implies, staffing levels at many airports are not sufficient, and as the vacation season becomes busier, officers who are only certified in passenger screening are being moved into baggage screening areas to load bags. These officers have not been trained, and as the practice increases, so do the injuries.

At one of our larger airports, TSOs now have to be seated to operate the X-ray machine. The machines require pressure to be applied to foot mats, not easily done from a sitting position. In addition, TSOs are forced to contort their bodies on chairs borrowed from the break room and tilt their heads to observe the monitor. It strains the neck, the back and the legs. When the TSOs showed the manager how awkward this new mandate was, the manager asked if any of them had a note from a doctor. If not, they were to get back to work.

I hear stories every day about TSOs who need to seek medical attention but their request for assistance is either delayed or denied. For instance, one TSO has high blood pressure. She began to feel dizzy while on her break. She went to her checkpoint and asked her supervisor to call for medical assistance. The supervisor told her she didn't look sick and refused to do so. After repeated requests, help was called for. The TSO spent the next three days in the hospital. Another member began to choke on his lunch one day in the break room and then was unable to swallow. He went to his supervisor and asked him to call for medical assistance. The supervisor told him to drive to the hospital himself. The TSO did, stopping several times because he couldn't breathe. Once at the hospital, surgeons performed an emergency tracheotomy.

As you know, NTEU also represents Customs and Border Protection Officers (CBPOs). These officers have been represented by us for over 30 years. Through collective bargaining, we have been able to address many safety and health problems. I'm not saying we always agree on how to handle those issues, but the employees at CBP have a voice and a forum for their concerns. Until TSOs have collective bargaining rights, they will not have their needs met in the safety and health areas.

This is a time of great change for the agency. Technology is advancing; a new leader is now on board. With full collective bargaining rights, TSA can figure out how to create safe and healthful work areas. In the meantime, we would like to see a program implemented immediately to perform dosimetry tests at several airports. We would like to see ergonomic testing done in the baggage areas, and investigation into new technology that allows machines to do the heavy lifting. We would like to see better air, cleaner conditions, and unlimited water available in baggage areas. Our TSOs have many good ideas for improving health and safety at airports. A program should be set up whereby TSOs' suggested changes can be reviewed and implemented locally. Once again, thank you for the opportunity to discuss these important matters. I would be happy to answer any questions.

Mr. LYNCH. Ms. Rodriguez, you are now welcome to make an opening statement for 5 minutes.

STATEMENT OF MILAGRO RODRIGUEZ

Ms. RODRIGUEZ. Mr. Chairman and members of the subcommittee, my name is Milagro Rodriguez and I am the Occupational Health and Safety Specialist for the American Federation of Government Employees which represents more than 600,000 Federal employees. On behalf of the members of our union, I thank you for the opportunity to testify today on Federal work force safety and health protections and workers' compensation. We hope that the interests of the subcommittee in these issues will result in all Federal agencies, but especially the Transportation Security Administration, devoting more time to preventing injuries and illnesses.

In general, we believe there is room for improvement in the performance of Federal agencies in protecting employees and preventing on-the-job injuries and illnesses. Federal employees continue to face exposure to chemicals, musculoskeletal disorders, work-related stress and radiation.

Ionizing radiation has been an issue of great concern to Transportation Security Officers employed by TSA from the very beginning of the agency. TSOs are worried about the potential long-term health effects of exposure to radiation emissions from the x-ray machines they use to examine the contents of checked baggage, as well as carryon baggage.

Over the years, they have asked TSA for dosimeters, a device used to measure employee exposure to radiation, but TSA has refused. TSA has held the position that there is harmful exposure to radiation from the equipment and that it is not required by any applicable standards to issue dosimeters. But the fears remain. Instituting a radiation safety and monitoring program at TSA would address TSO concerns and allow them to focus exclusively on their security duties without being preoccupied with their own health and safety.

In 2003 and 2004, the National Institute for Occupational Safety and Health, NIOSH, conducted a study in response to various requests from TSA employees, AFGE and TSA headquarters. One of its recommendations was that a dosimetry study managed by a health or medical physicist be conducted for at least a year. It also suggested the monitoring be mandatory.

NIOSH recommended further study because its findings that overall employee exposures were low did not make a definitive case for a monitoring program, since wearing a dosimeter for the study was voluntary and may not be representative of all exposures. To our knowledge, the NIOSH recommendation has never been implemented.

Given the legitimate health concerns of 40,000 TSOs and TSA's continued dismissive response, AFGE has drafted and is seeking introduction of legislation that would require TSA to initiate the study, with NIOSH's consultation, to provide TSOs who request them with dosimeters and to report to Congress on its findings.

In its report, NIOSH made other recommendations which we strongly support. TSA should provide regular radiation training, provide regular training on safe work practices, improve equipment

maintenance, periodically check equipment radiation levels and post those results on the surveyed equipment, and improve health and safety communication between employees and management. Again, to our knowledge, these recommendations have not been implemented.

On the Workers' Compensation side, we believe that the care and compensation available to injured workers is woefully inadequate. At a time when employees are the most vulnerable, when they need the most help, they often face insurmountable hurdles.

The problems injured workers face often begin at the agency where they work. While we see these practices throughout the government, we highlight TSA, because nowhere are problems more evident. Agencies decide whether a claim is compensable, although under the Federal Employees Compensation Act it is the Office of Workers' Compensation programs that make that decision.

TSA sometimes refuses to accept claims from employees because a supervisor or human resources manager doesn't think it is a good claim. Agencies persuade physicians to release employees to full duty, sometimes before the doctor feels they are ready. TSA tells physicians their patients are at risk of losing their job, and in fact some of them do.

Agencies impose requirements over and above OWCP requirements. TSA continually demands employees' entire medical file when they request accommodations for their injuries.

These and other issues we outline in our written testimony show that required training of agency personnel is crucial. They also show that there is a problem with compliance and enforcement of the requirements of FECA.

We understand that OWCP has no enforcement powers, but there has to be a way to hold the agencies accountable. We urge the subcommittee to request that OWCP identify ways to better ensure the proper administration of FECA at the employing agencies.

The Federal Government should be a model employer in providing a safe and healthful workplace. We believe this to be a goal we can achieve, and our union stands ready to participate in the effort. Identifying hazards early, abating them promptly, training and educating workers, and providing them with the appropriate protective equipment will help keep the Federal work force from becoming injured or sick on the job.

When workers do get injured or sick from their workplace exposures, they deserve to receive prompt medical attention, to have their claims fairly and quickly adjudicated, and to return to work when medically cleared.

That concludes my statement. I will be happy to answer any questions.

Mr. LYNCH. Thank you very much.

[The prepared statement of Ms. Rodriguez follows:]



AFGE Congressional Testimony

STATEMENT OF

MILAGRO RODRÍGUEZ
OCCUPATIONAL HEALTH AND SAFETY SPECIALIST
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND
THE DISTRICT OF COLUMBIA

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

ARE WE PLAYING IT SAFE AND SECURE: AN EXAMINATION OF
WORKER PROTECTIONS PRE- AND POST-INJURY

JULY 21, 2010

American Federation of Government Employees, AFL-CIO
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Mr. Chairman and Members of the Subcommittee, my name is Milagro Rodriguez, and I am the Occupational Health and Safety Specialist for the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the members of our union, which represents more than 600,000 federal employees, thank you for the opportunity to testify today regarding federal workforce safety and health and workers' compensation protections.

After years of neglect and inaction on health and safety, when standard setting was delayed, safety budgets were cut and workplace hazards were left unaddressed, AFGE is pleased to see increased attention being paid to workplace safety and health. The Obama administration has appointed strong, pro-worker health and safety advocates to head the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). The Department of Labor is strengthening enforcement and resuming standard setting. Legislation has been introduced that will strengthen the Mine Safety and Health Act and the Occupational Safety and Health Act (HR 5663), which AFGE supports. This is a good time to also strengthen protections for federal employees, and AFGE is grateful for the opportunity to present our members' concerns. We are hopeful that the interest of the Committee in this very important area, your oversight, and the questions you raise during this hearing will result in federal agencies devoting more attention to health and safety and to preventing injuries and illnesses.

Protecting the Health and Safety of Federal Employees

In general, we believe there is room for improvement in the performance of federal agencies in protecting employees on the job and preventing on-the-job injuries and illnesses. Over the years, there have been several efforts to improve federal agency injury and illness rates and to reduce workers' compensation costs. The Federal Worker 2000 Program and the Safety, Health, and Return to Employment (SHARE) Program are examples of such efforts. In addition, since 2008, OSHA has been inspecting high hazard federal workplaces under the Federal Agency Targeting Inspection Program (FEDTARG).

While the injury and illness rates in the federal workplace have improved over the years, we still see high injury rates. The 2009 total case rate for the government minus the US Postal Service (which is treated as private sector for OSHA enforcement purposes) was 3.22. Several agencies have total case rates that are double that rate. The Department of Agriculture Forest Service has a rate of 10.35. The Department of Homeland Security has a total case rate of 6.79, with the highest rates at Customs and Border Protection with a rate of 11.34, the Federal Law Enforcement Center at 8.23, and the Transportation Security Administration at 6.32. Within the Department of Justice, the Bureau of Prisons has a rate of 6.72 and the Marshall Service has a rate of 7.49. Within the Department of Veterans Affairs, the National Cemetery Administration had a total case rate of 9.07. We believe these numbers indicate that there are areas that need more attention and better compliance with health and safety regulations.

Federal agencies have the responsibility of providing a workplace free from recognized hazards. Federal agency obligations in health and safety protection are specified in the *Occupational Safety and Health Act of 1970, Section 19*, in *Executive Order 12196* of February 26, 1980, and in *29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters*. Part 1960 requires agencies to develop and implement their own health and safety program. We know that the vast majority of workplace injuries and illnesses can be prevented by following protective health and safety measures. Yet our members report that agencies don't always follow their own health and safety programs; sometimes they don't follow OSHA's standards. Even when the agency at the headquarters level develops good, protective health and safety program, it does not always mean they are implemented at the installation level. In our experience, some agencies have excellent programs in writing but not in practice. From program development to implementation, there seems to be a chasm. What good is a program that is not followed?

OSHA standards and regulations require worker protection from the chemicals and other hazards that employees work with. However, there are not OSHA standards for all the chemicals that workers may be exposed to. In order to prevent harmful exposures, employers must have health and safety programs in place. For federal agencies, this is spelled out in *29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters*.

Federal employees work in a variety of occupations, some of which involve using chemicals. Aircraft mechanics have exposure to jet fuel and degreasing agents such as n-propyl bromide. Operating room nurses have exposure to anesthetic gases. Currently, OSHA inspectors and EPA personnel are deployed to the BP oil spill and face potential exposures to a mixture of petrochemicals and dispersants. AFGE members who face a greater concern with radiation exposures are Transportation Security Officers employed by TSA. We will address the radiation issue in more detail in a separate section.

Over the years, AFGE has been involved in cases involving exposures to cadmium, asbestos, and lead, among others. Some exposures result from the presence of carcinogens in a federal facility, for example asbestos, and not from employees directly working with them. We had a case of potential lead exposure at the EPA headquarters this past April. Lead dust was generated by a firing range located in the basement of the one of the EPA buildings. We also had a case of potential asbestos exposure at the Denver SSA office resulting from renovation work being done. In both cases, the union was involved and closely followed the developing situation to ensure that the hazards were abated and that workers were protected from further exposure. We believe the agencies in those situations acted responsibly.

Ionizing Radiation

Our experience with workplace exposure to ionizing radiation comes primarily from our work with Transportation Security Officers (TSOs) employed by TSA. We

know that employees of the Department of Energy, some of whom have potential exposure to radiation, receive extensive training in radiation exposure, possible health effects, and protective measures. They are also monitored over time to ensure that their exposure levels do not exceed the acceptable limits. Ionizing radiation has not been an issue brought to our attention by AFGE members employed by other agencies.

Among TSOs, exposure to ionizing radiation has been an issue of great concern from the very beginning of the agency. TSA has held the position that there is no harmful exposure from radiation emissions from the X-ray machines used to view the contents of checked baggage as well as carry-on baggage. TSOs' concern stemmed from the fact that some of them had worked for the private sector security firms who were doing those jobs before they were federalized in the wake of the terrorist attacks of September 11, 2001. While they were in the private sector companies, the security officers were provided with dosimeters—devices used to measure the employees exposure to radiation. Dosimetry is used to monitor the exposures of workers to ensure that they are not exposed at harmful levels. The dosimeters are usually worn on the person, around the collar or chest area, either pinned on or on a lanyard. The dosimeters are periodically turned in to be read at a laboratory, and a new one issued. Area dosimeters are also used at strategic locations to measure any radiation leakage around a machine or piece of equipment. In both cases, the objective is to monitor exposure, to take corrective actions if any leakage is detected or if exposures are above permissible levels. Individual TSOs and AFGE as their representative have asked about a dosimetry program at TSA, but have been denied the dosimeters. TSA's position is that the agency has done the necessary testing and is not required by any applicable standards to issue dosimeters to its employees.

While TSA may have done the testing necessary to show that the levels of radiation emitted from the screening equipment are below action levels, their lack of response and their failure to address employee concerns beg the question, what are they hiding? If the testing has in fact been done, why has TSA been unwilling to share the results with employees, and with us, their representative? We understand some information may be classified as security sensitive, but employees deserve answers. We urge the Committee to request that TSA provide copies of any studies they have conducted or have contracted with others to conduct.

In order to address our members' concerns, AFGE has offered to conduct an independent study of radiation emissions and has identified a research team to conduct it. We explored the possibility with TSA, and our offer was declined. AFGE has also been willing to fund the purchase of dosimeters for TSOs since TSA refused to provide them. When they asked if they could wear their own dosimeters, TSOs were told by TSA management that they would not be allowed to wear dosimeters not issued by TSA. TSOs have continued to request dosimeters over the years that TSA has been in existence, yet TSA has not changed its position.

In 2003 and 2004, the National Institute for Occupational Safety and Health (NIOSH) conducted a Health Hazard Evaluation in response to various requests from

TSA employees as well as TSA headquarters. The NIOSH study addressed several issues, including radiation exposure. Twelve (12) TSA-run airports were included. The NIOSH study included radiation testing of equipment and monitoring of employee exposures. Overall, the study found that employee exposures were low. NIOSH did observe work practices that could increase exposure, such as reaching into the tunnels that carry baggage goes through or removing the protective lead curtains on the X-ray machines. This is a continuing concern based on the reports we received from our members. As recently as last year, members have called AFGE with their concerns when supervisors ordered them to carry out these unsafe work practices.

With regard to monitoring and dosimeters, NIOSH stated that it could neither justify nor refute the need for a dosimetry program because of the strengths and weaknesses of its study, but encouraged TSA to do so. The reason was that the employees wearing the dosimeters were volunteers and may not be representative of workers at other airports. NIOSH suggested a dosimetry study managed by a health or medical physicist to be conducted for at least a year. NIOSH also suggested the monitoring be mandatory. We have no knowledge of this recommendation being implemented.

The NIOSH report, published in September 2008, included this section:

What TSA Managers Can Do

- Develop a radiation safety program in accordance with the Occupational Safety and Health Administration standard.
- Provide regular radiation training to baggage screeners.
- Provide regular training on safe work practices to baggage screeners.
- Improve equipment maintenance.
- Periodically check radiation levels from EDS machines, and post these results on each surveyed EDS machine.
- Conduct limited dosimetry on employees to evaluate dose differences between baggage screeners working at selected airports.
- Improve health and safety communication between employees and management at each airport.
- Work with EDS manufacturers to improve [the] design of machines.

As far as we know from member reports, TSA did not implement the recommendations of the NIOSH researchers. If equipment maintenance was improved and if machines were periodically tested for radiation leaks, this information was not shared with employees. Their concerns around this issue continue. Recently, two AFGE locals have asked TSA for radiation exposure information because of concerns

over a seemingly excessive number of cancers and thyroid conditions – two conditions that can result from radiation exposure. AFGE members at the Boston Logan International Airport are concerned about the growing number of cancers employees are experiencing. At the San Juan Luis Muñoz Marín International Airport, AFGE members are concerned about what they believe to be a large number of employees who have been diagnosed with thyroid conditions. We have learned from our members that NIOSH has been asked to look into these concerns. In Boston, an assessment of the reported increased cancer has been conducted, and although the researchers did not find evidence of a cancer cluster, employees continue to be alarmed by the large number of cancers. In San Juan, the assessment is still in the early stages.

Communications

One of the NIOSH recommendations listed above is to "improve health and safety communication between employees and management." This is an important point that we want to emphasize. Employees count on their employer to provide a healthful and safe workplace, and safety regulations require employers to do that, but employees also know they have to protect themselves. In order to protect themselves, workers have to know what they are exposed to, what potential health effects they may experience, and what they can do to protect themselves. Risk communication is vital in the workplace. A perceived threat or hazard that is not addressed can increase workers' fear for their own wellbeing and that of their families. Additionally, it can increase the employees' distrust of the employer, who they may see as unwilling to share or hiding information.

We would like to illustrate the importance of risk communication by sharing our experience during the H1N1 (swine) flu outbreak in the spring of 2009. The response of most employing agencies was typical of their responses to other health and safety issues: Slow and inadequate.

The lack of communication was a big part of the problem. There was little or no communication from agencies' headquarters to the individual workplaces and the same is true with respect to the communication from those headquarters to the unions. While some information was available through the media, federal employees should not have to rely on that limited source. AFGE members had difficulty obtaining useful information about worker protection from their agencies. The information they did get was inconsistent and contradictory, and it was often different from one part of the country to another. At least one of AFGE's agency bargaining councils felt compelled to issue its own guidance to fill this void.

Many agencies have been dismissive of employees' concerns, showing callous disregard for employees' legitimate worries on the H1N1 issue, and in our view, this is also happening at TSA with the radiation issue. Agencies at all different levels in the chain of command need to be attuned to employees' concerns and respond to them quickly and appropriately.

Training

Training is an important part of a health and safety program and an effective way to help protect workers. Training and education empowers employees to protect themselves by helping them understand the importance of using protective equipment, following safe work practices and identifying potential hazards to be addressed.

Unfortunately, in our experience, agencies generally provide training only if it is required by an OSHA standard, so that only employees doing work covered by an OSHA standard receive health and safety training. Other employees, whose work is not directly covered by an OSHA standard, do not receive much in the way of training. In our own union-sponsored training and education programs, we hear from members how little they knew about health and safety, the exposures they face on the job, and the potential health effects of chemicals and other hazards. Basic health and safety rights and responsibilities should be an annual offering at every employing agency, in addition to any training required by a specific standard. This is an area that can be greatly improved and one which would yield improved protections for federal employees.

Workers' Compensation

The care and compensation available to injured workers is woefully inadequate. At a time when employees are the most vulnerable, when they need the most help, they face sometimes insurmountable hurdles. The problems injured workers face can start when they first file a claim. Some employing agencies refuse to provide the paperwork necessary to file a claim. Some refuse to accept doctors' notes. Some refuse to accommodate employees who need limited duty because of their medical restrictions.

The problems continue as an employee's claim goes through the workers' compensation system, administered by the Office of Workers' Compensation Programs (OWCP) at the Department of Labor. Delays in approving medical services requested by the employees' treating physician sometimes result in a worsening of the injury or condition. Second opinion medical examinations by OWCP doctors who sometimes spend less than five (5) minutes with the injured worker result in denials or reductions in benefits. We will address separately the problems at the employing agency and the problems at OWCP.

Problems with Employing Agencies

We believe agencies have undue influence on the workers' compensation process. Although the process was set up to be "non-adversarial," it has become rather contentious in practice. While we see these practices throughout the government, we will highlight the practices at the Transportation Security Administration (TSA) because they are the most egregious.

- Agencies interfere with the employee's choice of physician.

- They persuade physicians to release employees to work full duty, sometimes before the doctor feels they are ready. TSA for example, tells physicians their patients are at risk of losing their jobs if they don't return to work.
- They impose requirements over and above the requirements of the Federal Employees' Compensation Act (FECA) and the Office of Workers' Compensation Programs. Agencies refuse to accept doctors' notes taking employees off work for a recovery period or requesting they be placed in light duty while in recovery.
- They provide wrong or misguided information. For example, TSA tells employees they have to use up their own leave before they qualify for workers' compensation.
- Agencies decide whether a claim is compensable or not. It is the responsibility of the OWCP to determine whether a claim is compensable, yet TSA sometimes refuses to accept claims from employees because a human resources manager does not think it is compensable.

Under FECA, employees have the right to choose their treating physician. Agencies may require employees to be seen at a clinic or provider of their choosing before they see their own physician. They are also permitted under the FECA regulations to require employees to be seen by the agency's physician before being allowed back to work. We find that agencies often interfere with this process. Employees are not informed of their right to choose; they are instead misled to believe they have to go where management sends them. We will not speculate on the quality of the care the providers chosen by the employing agency are providing, but we do know agency managers are in a better position to influence their findings and recommendations. We do not believe them to be completely impartial in their decisions about whether an employee can return to work. AFGC members tell us the agency provider sends them back to work even when the employees tell the provider they are in pain and cannot return to work.

It appears to us that most human resources or workers' compensation specialists see their job as returning the employee to work and saving the agency workers' compensation costs. While these are two goals we support, returning an employee to work before he or she is physically ready is harmful and can result in further injury. Further injury can result in more lost production time while the employee recovers. It can also result in more compensation costs.

In returning employees to work, agencies focus on full time duties. When employees are able to do some parts of their jobs but not others due to medical restrictions, they are required by FECA to tell their doctors that their agency may be able to offer light or limited duty positions. Agencies often claim that there are no light duty/limited duty positions available, or in the case of TSA, that there are only a few. When the agency does offer limited duty positions, the limited duty work is sometimes so unproductive and demeaning as to appear punitive. Injured employees should not have to be forced to work in such demoralizing conditions. Employees want to be

productive and contribute in a meaningful way to the mission of their agencies. The stories we hear from our members are reminiscent of the stories we heard from chicken processing plants years ago where injured employees were told to report to work only to sit in a break room just so the company would not have to report lost-time injuries and increase their injury rates. That should not be happening in the federal workplace.

AFGE local unions have sometimes worked with management to identify existing positions doing necessary, meaningful work or to create new ones to accommodate injured employees. We encourage them to do that because it benefits the employee as well as the agency.

Although prohibited by FECA regulations, often agency management or the agency's nurse case managers will call the employee's physician. Under the regulations, the agency may contact the physician in writing to clarify medical restrictions, with copies being provided to the employee and to OWCP; however, this is rarely the case. These agency actions can have detrimental effects. For example, an employee of the VA had her schedule award reduced because the agency submitted information which it obtained by contacting her physician without her permission.

Another problematic area is the issuance of form CA-16, *Authorization for Examination and/or Treatment*, which is issued when an injured employee files a CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*. Agency human resources or workers' compensation personnel sometimes refuse to issue the CA-16, basically forcing the injured employee to see the agency-contracted provider or to pay out-of-pocket. One employer recently told an AFGE local during contract negotiations that they do not have to issue the CA-16. According to FECA regulations, the CA-16 *shall* be issued unless the agency suspects the injury did not take place at work. Even in those cases, agencies can issue the CA-16, but mark on it that they do not believe the injury is work-related. Although the local showed the agency the regulation and our office confirmed the information with OWCP, the management representative insisted no CA-16s would be issued.

All of these issues demonstrate that required training of agency personnel is key. We believe current requirements and compliance with those requirements merit review.

The last issue we would like to bring to the attention of the Committee is the retaliatory actions that are sometimes taken against employees injured or made ill by their jobs. We have already mentioned that employing agencies use some limited or light duty positions as punishment for having been injured. Other limited duty positions are given to those favored by management, while other injured workers must convince their doctors to release them to full duty before they are fully recovered in order to keep their jobs. TSOs tell AFGE they believe they are placed in less-desirable shifts (late-night and early-morning) in retaliation for filing workers' compensation claims. At some airports, injured TSOs are placed in a "limited duty" team while they are under medical restrictions and can only perform part of their jobs. This leads to injured TSOs being stigmatized by other workers.

Injured employees and those made ill by exposures on the job sometimes find their work lives destroyed, and their personal lives suffer as well. This is especially true at TSA where employees are often fired or forced to retire after they are injured because the agency deems them no longer able to carry out their full duties as a screener and cannot accommodate them.

Problems with OWCP

First and foremost, we see a problem with enforcement of the requirements of FECA. We understand that OWCP has no enforcement powers over agencies. But there has to be a way to hold agencies accountable. Congress should create a way for employees to find relief from a source outside their agency in upholding their rights under FECA. To whom does an injured employee complain about an agency error or intentional misapplication of the regulations? The injured employee is left to sort it out on his or her own, often caught between the agency and OWCP, and sometimes their own doctor.

We urge the Committee to direct OWCP to identify ways to better ensure the proper administration of FECA at the employing agencies. There is little or no oversight on how agencies run their workers' compensation programs. As we have just outlined, many of the problems workers face originate with their employing agency and how it administers the workers' compensation program. Many of the problems we mention can be avoided if the agencies follow the requirements of the FECA. It is evident to us that some agency personnel charged with workers' compensation responsibilities lack the knowledge and experience to effectively run the program. OWCP should demand that those working in this area have adequate training.

Like many other federal agencies, OWCP is underfunded and understaffed. This affects the availability of OWCP personnel to discuss questions and issues with the injured or ill worker. The complaint we hear most often is that workers cannot reach their claims examiner. We realize that OWCP has made claims information available online and via automated voice response systems, and that helps. However, sometimes a worker needs to talk to the claims examiner to understand why a medical procedure was denied and what recourse they have to have it approved. It is sometimes difficult for injured employees to understand why a decision was made when they believe they have sent in all the necessary information. To better communicate with workers, phone numbers for claims examiners should be made available and perhaps published online. Ensuring that this office has the necessary funding would greatly improve how well it meets the needs of workers suffering from on-the-job injuries or illnesses.

Additional problems are created by the contractor DOL uses to pay medical bills and to provide other services. Members complain of their doctors' bills are not being paid. They complain of services related to their accepted condition not being paid because of coding errors. They complain of the difficulty in finding out the reasons why bills are not paid or why the medical services they need are denied. Again, employees

may not understand what they can do, if anything, once a bill is denied. Injured or ill employees can face devastating financial situations because of how their claims are handled by the contractor.

Lastly, OWCP should be communicating with employees and employee representatives. Most, if not all, communications from OWCP are directed at agencies. Agencies do not usually share information with employees. Years ago, OWCP met somewhat regularly with employee representatives to update them on new developments in the office's operations. Those meetings were very informative and we would encourage the committee to direct OWCP to resume those meetings. We know they work closely with agencies, but to run an effective workers' compensation program, OWCP must also involve the affected employees and their representatives.

Conclusion

In conclusion, federal agency health and safety programs can be improved. Where good programs already exist, they need to be put into practice. Where they are lacking, they need to be enhanced. In past meetings of the Federal Advisory Council on Occupational Safety and Health (FACOSH), which advises the Secretary of Labor on federal worker safety issues, there have been efforts to make the federal government the model employer in providing a safe and healthful workplace. We believe that is a goal we can achieve, and our union stands ready to participate in the effort. Identifying hazards early, abating them promptly, training and educating workers, and providing them with the appropriate protective equipment will keep the federal workforce from becoming injured or sick on the job. When workers do get injured or sick from their workplace exposures, they deserve to receive prompt medical attention, to have their claims fairly and quickly adjudicated, and to return to work once fully recovered.

Mr. LYNCH. Thank you all.

Mr. Adler, you offered some very powerful examples of failings within this system, all of them really egregious, and I think instructive in a way.

Do you think this is a systemic problem, or do you have any data—you cited in your testimony there are 300 Federal law enforcement officers who sustain line-of-duty injuries each year. Do we have data on how many of those were resolved, I guess, in a satisfactory timeframe and whether these five cases that you are laying out, are they outliers? Are we doing OK on 80 percent of the cases and we got to fix 20, or is it 50–50?

Mr. ADLER. Two different sources for the information. The 300—and that was just for the physical conflict, in the other categories the numbers are much higher—comes from the FBI's collection of data. The information I am providing is anecdotal.

We have compiled a spreadsheet and we have been soliciting input from our members to provide us with their personal stories. So the five I referenced were five egregious examples that sort of spanned 9/11 to the present. But we have been cataloging it and what we have seen is a pattern.

In answer to the first part of your question, yes, it is systemic. You know, it is a combination. It is the cultural impact of sort of functioning on autopilot there, and these are very unique, very, very—well, very traumatic, the injuries that we are talking about.

So I think, again, it's systemic. It is somewhat of the institutional's inability to assess in a timely manner the injury in its connection to the law enforcement duty, because it seems to be a pattern of questioning was this within your job role to do this?

And then, second, the pattern which we've seen—and I think you hear it from others as well—is the timing of the payments, that there is a protracted period of time where, after sustaining the injury, the individual member, the officer or whoever sustaining injury is paying for their own personal medical treatment. That we've seen as a pattern, and I would be happy to make that available to you and the committee as well in terms of the anecdotal data we've been compiling.

Mr. LYNCH. That's great.

You know, I'm a former union president, and I've represented workers in the past as well. And I know you see this as outrageous, and I think the public would, too, in terms of here is a bona fide hero on 9/11 going into Tower One, the South Tower. Everybody else is running out. And here we have a bureaucrat saying, well, did a superior officer order you into the building?

You and I might see that as totally absurd and beside the point, but I think what's going on behind this and I think it might be reflected in a lot of the testimony here, that these folks are trying to shift costs. That's what they're getting at. They're trying to shift costs.

They're saying, well, if the Office of Workers' Compensation Programs can somehow disqualify your folks who are legitimately injured and push them out of that system, then maybe the Federal Employees Health Benefit Program will pick up the costs of paying for the health care that employee requires. And that's the game

that's being played here. They're trying to shift costs away from that system, reduce their numbers, and force it on to other people.

And, in some cases, it's just the taxpayer and it's the injured worker that is losing out. Because I'm sure when they go to FEHBP, the Federal Employee Health Benefit Plan, they're saying, well, how did you get hurt? Well, in the line of duty. And they're saying, well, my goodness, that's a clear case where you should be paid under the Workers' Compensation Act.

And so they're being sort of like a ping-pong ball. They're being denied on one and denied on the other, and that's why they're playing this waiting game. And the person that's really suffering the worst is the worker and their families, the person who did the right thing and was injured in the line of duty.

Mr. ADLER. Mr. Chairman, one additional point and even unique for law enforcement. We're held under a microscope in terms of candor and Giglio/Henthorn issues, which means our honesty, our integrity. We go into a hospital banged up in emergency, and if we're lucky we can fill out that admittance form, and we put down it's job related, and now they come back and say, it's not. So now they're going to question our integrity and our honesty, which could impact our job, just by questioning, not to mention the gap of time.

And you know what? If they quickly came back and said, within 24 hours, claim rejected, OK, well, then we get it in writing, we submit it to the insurance company and the hospital and say, well, I must have been mistaken. It wasn't my job to run into that building. It was determined it was just my option, my fetish.

So at least if they're going to sort of do exactly—and I agree with you. That is what's happening in reality. Do it immediately. Do it quickly. Just say no, denied. This way we know we can still get emergency care and at least have the documentation to show, no, I'm not a liar. I didn't make this whole thing up. So then I have my agency questioning my integrity in filling out a form.

Mr. LYNCH. The other part of this that troubles me is when you mentioned those labs, the meth labs—and I live in an inner city, and so we see the consequences where buildings have been torn down because the process of these meth labs just eats away at the building itself. And the illustration that you gave of the officer who conducted a hundred or so of these meth lab busts—and I guess this question could also apply to firefighters in general, Mr. Johnson.

We've got this greater level of exposure that is—in the case of the TSOs, they're somewhat more standardized. You've got the radiation that we talked about and I guess the physical ergonomic hazards that are there in that job. But the situation that you're dealing with, how much training are you seeing in terms of your own officers regarding being instructed about these different materials and buildings, the different hazards that you're encountering on a daily basis?

Some of these are totally unpredictable, I would imagine, and that every day is something different for the people that both of you represent. I mean, you've got a big population out there in terms of the folks that are running into burning buildings and dealing with hazardous chemicals just as the law enforcement community is. Are we seeing any training out there to sort of update

the mindset of our law enforcement and our firefighters so that they can better protect themselves?

Mr. ADLER. Yes, more recently. In the case of the Meth Cop Project, what happens is that you generate publicity. You get a guy like Vince D'Onofrio who is willing to help publicize the situation. And now, all of a sudden, there is a buy-in from the respective agencies to allocate more funding toward the training. So I would say now that situation for those working, you know, it's unfortunately lessons hard learned.

In the case of Tim Chard from, say, 2000 up through 2006, maybe that last year he worked on the task force they finally got them the personal protection equipment that they should have been wearing all along.

So I would say more recently there is a greater emphasis on training and equipment, although, obviously, we're in a bad economical situation where the first thing that gets cut in every agency is training. So there's greater awareness but probably less funding; and that's, unfortunately, the reality we have to live with.

Mr. LYNCH. Mr. Johnson, what about our firefighters? What are they dealing with in terms of the training aspect of this so they can be better prepared for these different situations?

Mr. JOHNSON. Well, I think, for the most part, the training in most cases is adequate. In 2004, OPM included a hazardous material technician classification and a firefighter classification standard, and a lot of agencies adopted that and trained—if they weren't already trained their firefighters as hazardous materials technicians. So from the training perspective, I think, obviously, more training is always better, but I think it's probably adequate.

The problem I think that we see, at least at some locations, is a lot of the situations that the firefighters end up dealing with or going into are unknowns because of classified work and other types of situations, that basically they go into a situation where they have no idea what they're getting into, what the material is, until after the fact. So it's kind of hard to prepare for some circumstances like that.

But the attempt is there as far as the training, but that's my big concern, is that there's a lot of unknowns and in some cases they don't even know they were exposed until far after the exposure took place.

Mr. LYNCH. Thank you.

We asked the previous panel regarding the radiation issues at the airport. I'm still getting questions.

I think AFG's representative at Logan Airport, A.J. Castillo, stopped me. I fly in and out of there a couple of times a week. Treasury employees have also approached me on this issue. Because you're representing folks in various airports as well. How do you think we can better bring those assurances to the employees and to their families that we don't have a—you know, we don't have a situation where, because of lack of testing, there's some exposure at some level in some of these airports?

I would think that the greater assurances we can give to the employee who is standing next to that machine every single day 6 or 8 hours, the greater protection we can provide for them, the protection will be there for the passenger who is just going to walk

through every so often, maybe a couple times a week. I think it's a very positive safety measure in terms of reviewing this equipment on a regular basis.

And I just want to know from your standpoint whether or not TSA is providing the proper level of oversight of these new systems. The testing, is it going on on a regular basis? Is there some type of pilot program that we could use, say, at the major airports that have heavy use of these scanners, the radiation scanners? And is there a way that we can help you get those dosimeters on the employees so that they can have that reassurance? Ms. Gilman.

Ms. GILMAN. I think there is. I think that whether or not the testing is going on, we are unaware of it if it is, and that's a big underlying problem at TSA. There is no communication between the employees and the agency. There is a communication problem throughout the agency I believe as well.

I was surprised to hear the witness from TSA earlier say that she was unaware of FECA problems. I know NTEU has met with Acting Director Rossides in a meeting where there must have been 10 or 12 senior TSA officials, including DHS CHCO, human resources people, everybody. And we presented them with paper and examples of FECA problems where employees were trying to file claims and were being discouraged.

So for the head of OSHA to say she had never heard of that—first of all, it's not her job but she had also never heard of it, that is I think an indication of a very systemic problem at TSA. And the communication with the employees is probably the worst example of that.

So one of the things that we were suggesting was health and safety committees where TSA has to talk to the employees. If they are doing testing, the employees are not aware of it.

The example that you mentioned earlier, comparing the—prohibiting employees from wearing their dosimeters to prohibiting them from wearing masks during the swine flu outbreak is exactly on point. If the employees had information that the testing that they claim is going on and everything is safe, they wouldn't feel that they needed to do this on their own. But that communication is not there, and we have no evidence that the testing is there to show that the machines are safe.

Mr. LYNCH. Ms. Rodriguez.

Ms. RODRIGUEZ. We also have an issue with the communications problem at TSA. Basically, our issue is the lack of communication telling employees what is going on. We've heard today about some efforts that are ongoing at TSA. And as the other witness mentioned, there is no information to employees about what is happening. So that certainly is problem No. 1.

In addition to that, training and education is sorely lacking. If there are programs that they have, they do not make it to the airports. If there are health and safety committees that they set up where participation is limited, we don't know when meetings are. We don't know how to get people on those committees. That kind of information needs to get out to employees.

One of the things that we have been pushing for is the actual dosimetry program. We think that taking that into account would be very important.

Paying attention to employees' concerns. This agency has been very dismissive. If I raise an issue, I would like to know that it's being heard. I would like to know that it's being addressed. If it's being addressed and I have no knowledge of it, then my fears are still there.

Risk communication in this field is critical. If people don't know what they're being exposed to—if people don't know that it's OK, that you might have an exposure but that it's not at the point where it will harm you, then that is again something that people need to know.

Ms. GILMAN. If I could add one more thing to that.

Mr. LYNCH. Sure. Please.

Ms. GILMAN. But there is no transparency. One example of that, in preparing for this testimony we went on the TSA Web site, and they have some information on health and safety, and they referenced the TSA health and safety manual, and we tried to download it and couldn't. So we called TSA and said, we'd like to get a copy; and they said, no, it's a security information. It's not available to you or anybody other than TSA employees.

Mr. LYNCH. Wow. So it's public. It's on their Web site. But you can't—

Ms. GILMAN. You can't get to it on their public Web site. Apparently, employees are allowed on their intranet part of the Web site to access the manual, but they are not allowed to share it with anybody who is not a TSA employee. It's not available to the union representatives or anybody else.

Mr. LYNCH. OK, we will look into that.

I feel like I'm the union rep for the TSA employees because they don't have one. So every time I go to the baggage claim there or go through the screener, they sort of, you know, give me an earful about what's wrong. So I know more about this than I want to.

But they were telling me that, in handling the baggage, the baggage now gets x-rayed on a conveyor and there's a little gantry that comes down. And when there's a baggage jam, they actually have to reach in there and dislodge the bags and stop the jam. And that's a gap in the system and they get exposure when they do that.

When we brought it up with the earlier panel, I believe—I forget which witness addressed that, well, the response was that they're working on equipment that might address that issue. Are you aware of any equipment that they're providing that would—

Ms. RODRIGUEZ. Not to our knowledge, no. And there were practices that NIOSH referred to are still ongoing, and every day employees get told by their supervisors to reach in there and get the baggage out. So things that tend to slow down the line and keep passengers from getting through are problems, and so people have to do what they have to do, what they're told. And we get calls from employees raising concerns because they've spoken up and have said, "That is not safe. I will not do it." And so they're looking to us to represent them in backing them up and standing up for their health and safety rights.

Mr. LYNCH. Right. We had to deal with TSA during the swine flu epidemic, and that was one of the most frustrating bureaucratic messes that I've had to deal with. They would not allow hand

cleaner or Purell or anything like that to the TSOs who were actually patting down passengers. They're having physical contact with 400, 500 passengers in a shift; and they weren't allowed to have masks. And now they're going home to their families after all that exposure.

It just didn't seem—if we're interested in reducing contamination, it just highlighted a lot of flaws. And we kept getting these pronouncements out of the TSA that did not make sense.

Let me ask you. On the equipment part of this, how are the different agencies dealing with self-contained breathing apparatus or any equipment that might help either law enforcement or fire-fighters dealing with these new and different exposures that we're seeing? Have there been any initiatives out there? I know we do fire grants and police grants on occasion, but they seem fairly standard, the ones that I see going out. But are there technologies and is there equipment that's being distributed or deployed that is helping you fight this?

Mr. ADLER. I think so. I think we've come a long way.

The Federal Law Enforcement Training Center, where the majority of Federal law enforcement officers train, have a couple of programs that are geared toward how to use this equipment, how to respond to critical incidents or be in a situation where it happens unexpectedly. But I think the knowledge has certainly increased. I think the equipment is there. It's made more available.

Again, unfortunately, the reality we're contending with is in the funding cuts, the availability of the equipment. But I think the specialty units that have greatest risk of exposure to contaminants and toxins do have access now to the personal protective equipment and the training, again based on the availability by FLTC. But the trick is each individual agency has to have the money to send their officers, their agents, inspectors, and deputies to FLTC for the training, and that comes with a price tag. So that's really the realistic hurdle we're up against.

Mr. LYNCH. Can you use the police grants for training? Is that a way? No?

I know at the State level, when my local departments get that, they can use it for hazmat training and things like that.

Mr. ADLER. Yeah. COPS is a great program run out from DOJ, but the Federal components don't receive the funding benefits from that.

Mr. LYNCH. I see.

Mr. JOHNSON. It's the same on the fire side. We can't benefit from any of the Federal grants in the Federal fire sector. So we're at the agency's mercy, I'll say, more or less, as far as funding. The individual agencies have to fund all the equipment, the hazmat equipment down to the fire engines, the SCBAs, everything comes through the agency's budget.

And, unfortunately, what we see is the budgets get cut like every other program. You put in for a certain amount, you don't get that, and so you have to make reductions or you don't replace equipment as often as you should. And because of that—

I mean, in the Federal sector we do have some areas, some agencies that don't replace fire equipment as often as they should. They're outside the standards, the industry standards, for replace-

ment for fire engines and other equipment SCBA. And so we try to stay on them as far as their replacement of those important items, but, unfortunately, it's budget driven, and we have a tough time in some cases getting some of that stuff replaced.

Mr. LYNCH. Let me ask, you know, the system that I'm most familiar with is the Massachusetts system. And when you have a situation where an employee is hurt at work and they don't—the agency or the employer doesn't acknowledge it or admit it, there's still an opportunity for the employee to try to get health care and then later on so that the employee isn't just left without health care. And that's the limbo that your folks are in, that they've got to pick up the tab. You've got, you know, other supervisors that are offering to put the cost of medical care on their credit cards. That's ridiculous.

How do we resolve that so the employees don't end up in limbo where, you know, if OWCP denies it or just doesn't do anything but leaves them out there, and yet in this case the Federal Employees Health Benefit Plan thinks that the facts would indicate that person would be covered under workers' compensation, you've got a person who's stuck. And you're all describing that situation.

How do we resolve that? Is there a quick appeal process or is there something legislatively that might be done to make sure that, look, that person needs to get health care? Is there a way to sort of short-circuit the stand-off between the two parties so that at least that employee gets cared for?

Mr. ADLER. We've made the recommendation to the Division of Federal Employee Compensation. In fact, we have a meeting again this Friday. And what we've previously recommended to expedite the time from when the officer sustains injury is a couple of things.

First, they can assign—when it's a law enforcement or a public safety injury that's traumatic, if they assign a nurse immediately to the case, the percentage of success tends to significantly increase both in terms of satisfaction from our member and in terms of how they administer the process. Because what you have is a person with medical expertise who can quickly assess the situation and make a timely decision or help the administrator make a timely decision.

Second, we recommended that they have regional liaisons or agency representatives. So if we have a situation where one of our guys is in the hospital and they're getting no response or it could be an extended weekend or whatever it is there's no response from OWCP and we have that protracted period of time, if we have people, if we have that 911 option to get somebody in play who will have immediate access to the right person in OWCP and FEC, we can accelerate the process. It's something that would, again, fall under certain situations where the injuries are severe and catastrophic in nature, so that we wouldn't have this protracted.

So what we were told, unfortunately, during our first meeting was, well, we haven't gotten any complaints. As far as we know, everything is working out fine. So, you know, with head buried in sand, the world is a beautiful place.

So we're now coming back to them with a spreadsheet of all these individual cases to try and illustrate to them, hey, there is a real pattern here. Real people who take risks every day are suf-

fering, and you're contenting yourself into this delusion that things are just hunky dory.

Mr. LYNCH. Well, that's the most troubling aspect here. We're not talking about—you know, look, I understand from the employer's standpoint or from the agency's standpoint that they want to root out any fraud or false claims. But here, you have—in the cases that you've described, there's injury. And no one is conceding that there's injury. They're just arguing about liability, really. And so while they're arguing, you know, your folks are out there without care or—either that or they're paying out of their own pocket for something that happened on the job and, you know, maybe with some delay in getting personal care while they're trying to figure out how to get it paid for.

The other situation that I'm concerned about with the TSA is turnover rate. I've seen a lot of people go through the cycle where they go to work for TSA and because of the conditions there and unfavorable work environment they're leaving. And so we've got—we don't really have a good career environment there where people can come in and advance themselves and have decent working conditions and stay. And we're not developing enough long-time professional security officers and personnel in our airports where we're spinning these people through and they're coming in and working for a while and then they're leaving.

And I'm just wondering, you know, what can we do to professionalize this force here where we're relying on them for a very important role in our security framework and how can we better ensure that these employees stay and view their responsibilities with the importance that we give it as passengers and as a Nation?

Part of our national security is right there at the airports and at border crossings. And, you know, if we continue to treat this as a low priority—let's put it that way—we're going to, I think, miss an opportunity. And I think when we see breaches in our security, maybe we will go back and look at it. But I would rather not get to that point. How do you think we can improve this?

Ms. GILMAN. Well, I think TSA continues to have the highest turnover rate in the Federal Government and the lowest morale.

When TSA was created and they moved those screeners from working for the private sector to being Federal employees, there was a big fight on Capitol Hill on whether or not they were going to do that, but they were given exceptions to just about everything else that applies to the rest of the Federal work force, and I think that is a reason that they have different statistics than the Federal work force.

They don't—they are not on the same pay system. The employees don't understand the pay system. It's extremely low. They are very—paid very, very low wages compared to other Federal employees. They don't get appropriate training. The health and safety issues that we've been discussing today, not only is the situation bad, but they don't have a way to try to address it.

I know that our No. 1 thing is that they need a union to be able to be there and represent them on those issues, and I do think that would go a long way. But all of H.R. 1881, enacting that I think would make a really big difference.

They don't have civil service rights. They have whistleblower protection only to the extent that TSA wants to give it to them. They don't have it by statute. You know, every right that every other Federal employee has, TSA has the authority to say we may or may not give that to you. And I think that's what makes them different than the rest of the Federal work force.

Mr. LYNCH. Ms. Rodriguez.

Ms. RODRIGUEZ. And in addition to that—and then, of course, the big thing being collective bargaining rights. In addition to that, standardizing some of the work practices so that it doesn't depend on who you work for and what airport you're at, what kind of things apply to you, so that everybody one knows what standards they have to meet so that everyone knows how they get to the next step.

With respect to also the number of people who are leaving TSA, many of those are injured employees. Many of those are people who are finally at the point where they have become so injured they can no longer do their jobs and they're not being accommodated by TSA or people who are at the point where they are just exasperated with the process both at TSA and with OCWP and feel they have to find employment elsewhere. And we are losing that knowledge and that experience.

Mr. LYNCH. As with the earlier panel, I asked them if there were any questions I hadn't asked or any point you'd like to amplify or elaborate on that might help the committee in its work. Mr. Adler.

Mr. ADLER. No. Thank you, Chairman.

Mr. LYNCH. Mr. Johnson.

Mr. JOHNSON. Nothing else at this time. No. Thank you.

Mr. LYNCH. Ms. Gilman.

Ms. GILMAN. No. Thank you.

Ms. RODRIGUEZ. I would add an issue with retaliation and fear of actual reporting. We have seen this with our TSOs. Earlier, the witness for TSA mentioned that they have a system of reporting health and safety concerns. People are afraid to use that, because often those reports turn into a blame-the-worker kind of process. And so looking for what the worker did wrong versus how do we fix this process, how do we make this work better. And I think that is something that is affecting TSOs tremendously.

I also believe that may be some of the reasons why some of the numbers are lowered. People are intimidated. And they don't have to be physically intimidated, they don't have to be verbally intimidated. Knowing what happens to people when they're injured at TSA can be a deterrent in itself, and people don't want to go through the process.

Mr. LYNCH. I do want to acknowledge that Mr. Moran of Virginia, Mr. Wolf, Mr. Connolly, we marked up a bill earlier today in our markup regarding training of Federal managers and Federal supervisors, and that might be a way in, by requiring a certain curriculum in terms of how these managers are trained and in a way that provides the basic protections and dignity that these workers deserve.

I realize we had most of this hearing after votes and other Members are gone, but I'm going to leave the record open for 5 calendar

days—5 legislative days, excuse me, to allow Members to ask any questions of you.

Mr. Adler, we talked about some data that might be available at some point.

Mr. ADLER. Yes, sir. I'll make that available to you ASAP.
[The information referred to follows:]

For questions 1-7, Mr. Kapuza should understand a couple of things. First, he should know that the universe of cases is based on the creation date. For this exercise, we are looking at a universe of all cases *created* during FY2009, which have been adjudicated. Second, he should know that OWCP administratively closes cases where the injury appears to be relatively minor and the employing agency does not dispute the claim. Payments of medical bills are authorized up to \$1,500 on these cases. These claims are not “formally” adjudicated and are called short form closures (SFCs). SFCs are administratively closed on the date created and benefits are payable immediately. His questions and the corresponding responses are noted below:

1. The mean and median number of days that *all FY2009 cases* were adjudicated in.

Summary - FY2009 Claims

Adjudication Timelag Mean (Days)	Adjudication Timelag Median (Days)	Total Number of Claims	Type of Claims Adjudicated
16 Days	0 ¹	129,945	All Claims Adjudicated in FY2009

Detail - FY2009 Claims

Adjudication Timelag Mean (Days)	Adjudication Timelag Median (Days)	Total Claims in FY 2009	Type of Claim Adjudicated
57 Days	58 Days	12,295	Basic Occupational Disease
114 Days	110 Days	4,717	Extended Occupational Disease
0 Days	0 Days	87,084	Short Form Closures
35 Days	39 Days	25,849	Traumatic Injuries

2. The mean and median number of days that *all FY 2009 traumatic injury cases* (excluding very complex cases) were adjudicated in.

OWCP does not discern between “very complex” and regular traumatic injury (TI) claims; therefore, the below figures represent all TIs, broken down by SFCs and formally adjudicated TIs. Of note is that our operational goal in FY2009 was to adjudicate 90% of all TIs within 45 days, but we exceeded that goal by adjudicating 97.6% within that timeframe.

Adjudication Mean (Days)	Adjudication Median (Days)	Total Claims in FY 2009	Type of Claim Adjudicated
0 Days	0 Days	87,084	Short Form Closures
35 Days	39 Days	25,849	Traumatic Injuries

3. The mean and median number of days that *all simple FY 2009 occupational illness cases* were adjudicated in.

OWCP characterizes occupational disease claims as basic and extended. The below number represents basic occupational disease (BOD) claims. Of interest here is that our operational goal in FY2009 was to adjudicate 85% of BODs within 90 days, but we adjudicated 94.8% within that timeframe.

Adjudication Mean (Days)	Adjudication Median (Days)	Total Claims in FY 2009	Type of Claim Adjudicated
57 Days	58 Days	12,295	Basic Occupational Disease

¹ The median lag is zero because more than half of all cases get SFC closed at time of creation.

4. The mean and median number of days that *all other FY 2009 occupational illness cases* were adjudicated in.

The below number represents extended occupational disease (EOD) claims. Our operational goal for adjudicating EODs was 75% within 180 days and 98% within 365 days, but we exceeded those goals by adjudicating 88.1% within 180 days and 99.4% within 365 days.

Adjudication Mean (Days)	Adjudication Median (Days)	Total Claims in FY 2009	Type of Claim Adjudicated
114 Days	110 Days	4,717	Extended Occupational Disease

5. The mean and median number of days that *all FY 2009 very complex cases* were adjudicated in.

OWCP does not have a category of "very complex cases." We only have SFCs, TIs, BODs and EODs, as noted above.

6. The number of claims approved in FY 2009.

The acceptance rates outlined below in the column titled "% Initial Acceptance Rates in FY 2009" represent the cases that OWCP accepted after the initial development and review period. The acceptance rates for TI claims are higher than those for OD claims since TI claims typically are more straightforward and the relationship between the injury and the medical condition is usually more apparent, many times requiring only a diagnosis and a physician's signature to accept the claim. OD claims, on the other hand, require more detailed medical evidence to establish the relationship between the employment and the medical condition claimed. This includes a physician's opinion substantiating that the employment caused, contributed to or aggravated the medical condition based on an analysis of any pre-existing medical history and other possible causative factors. This evidence can be more difficult to obtain and as a result a higher percentage of OD claims are denied during the initial adjudicatory phase.

The acceptance rates outlined in the column titled "% Overall Acceptance Rates in FY 2007" provide a better illustration of OWCP's true case acceptance rates. If a claim is denied, the injured worker can appeal that decision and new evidence can be submitted to perfect the claim based on the specific deficiencies outlined in the initial denial. A request for reconsideration can be submitted to the district office or a request for a hearing can be submitted to the Branch of Hearings and Review. Many times the submission of new evidence during this appellate phase, in particular the necessary medical evidence linking the medical condition to the employment, is sufficient to satisfy the requirements for acceptance of the case, thereby increasing the overall case acceptance rate when these secondary reviews are taken into account. The percentages provided for Overall Acceptance Rates include both primary and secondary review outcomes for cases adjudicated in FY 2007, since more recent data is not readily available because of changes in the IT support system

% Initial Acceptance Rates in FY 2009	Total Claims Accepted in FY 2009	Type Accepted	% Overall Acceptance Rates in FY 2007
85.6%	111,242	Total Claims Accepted	89%
52.4%	8,952	Occupational Disease	72.9%
90.5%	102,290	Traumatic Injury (Including SFCs)	91.5%

7. The number of claims rejected in FY 2009.

% Denied	Total Denied	Type Denied
14.4%	18,703	Total Claims Denied in FY 2009

8. The number of decisions which were appealed in FY 2009.

Under FECA, a claimant who disagrees with OWCP's decision has 3 appeal rights but may not exercise more than one appeal right at the same time. A claimant may: 1) request reconsideration before the OWCP district office based on new evidence or legal argument within one year of the decision; 2) request a hearing before the Division of Federal Employees' Compensation Branch of Hearings and Review (which may be a review of the written record or a hearing (face to face, telephonic or videoconference) upon request within 30 days or 3) review by the Employees' Compensation Appeals Board (ECAB), an appellate body outside of OWCP but within DOL, within 180 days of the decision.

Within the course of one year, a claimant may utilize more than one appeal right. It is noted, though, that appeals filed during the one year timeframe are not reflective of only disagreements with newly created cases, wherein issues such as performance of duty and the sufficiency of the medical evidence to establish a work related condition are being appealed. Cases may also be appealed for disagreements on tangential/routine issues in longstanding claims, such as a pay rate calculation or an impairment rating for a schedule award.

Number of Appeals Received in FY2009	Type of Appeal
6,435	Branch of Hearings and Review (BHR)
6,718	Reconsideration (Recon)
2,376 ²	ECAB
15,529	Totals

a. The number of which were settled in the employee's favor.

FECA does not allow for settlement or compromise of workers' compensation claims—claims are either accepted or denied. However, cases can be overturned on appeal in favor of the claimant or remanded back to OWCP for additional development. Such findings can result from submission of new evidence not previously considered by OWCP (in BHR and Recon appeals) or if error is found with the initial denial (BHR, Recon or ECAB appeals). The following figures reflect cases that were overturned or returned to OWCP on appeal.

% of Appeals that were overturned or returned to OWCP for further development	Type of Appeal
29% ³	Branch of Hearings and Review
32%	Reconsideration
26% ⁴	ECAB

² Data provided by ECAB

³ Our coding structure does not allow for an exact percentage in this area, but a manual review of our records revealed this approximation.

⁴ Data provided by ECAB

9. The mean and median number of days that the appeals process took for all cases in FY 2009.

Adjudication Mean (Days)	Adjudication Median (Days)	Adjudication Median/Days
114.87	111.66	Branch of Hearings and Review
60.86	59	Reconsideration
270 ⁵	* ⁶	ECAB

10. We have received complaints from federal workers saying that they were told that their case files were lost. How are the case files stored and how is it possible that these files can be lost?

Beginning in the year 2000, DFEC began creating all new cases electronically. These case files are available at all times to all authorized users and cannot be lost, regardless of which district office or appellate body has jurisdiction of the case.

When DFEC began creating new cases electronically, we also began storing all new documents received for existing cases in the same manner. Cases that existed prior to 2000 therefore have two components – an electronic portion and a paper portion for all documents received prior to the year 2000.

When a case file is requested by an appellate body (ECAB or BHR) or the injured worker moves to an area under the jurisdiction of a different district office, the case file is transferred. The electronic portion of the case file is transferred instantly, but the paper portion of the case must be physically shipped.

Admittedly, the movement of paper case files does present challenges not inherent with the movement of electronic cases files. DFEC has however taken precautions to prevent the loss of any submitted documentation, as well as case files. We have procedures for the transfer of paper files and a tracking system within our database. We also have a central mail room that images the majority of our incoming documents and an electronic case creation process performed by contract staff, both of which have established service level agreements for quality and timeliness. Given the millions of individual documents received and imaged into our system and the number of paper case files transferred within our program, it is possible (though infrequent) that an individual document could be misfiled or that a paper case file could be lost due the human error inherent in any system of this magnitude. The loss of the entire paper portion of a case file, however, is an extremely rare occurrence.

It should also be noted that DFEC has implemented procedures so that paper portions of case files can be converted to electronic records. Currently, 79.3% of our active case files are completely electronic while the rest have a paper component to them. As more of our existing paper case files are converted to electronic case records, the incidence of lost paper documents will become an even rarer occurrence.

⁵ It is important to note that ECAB tracks timeliness in two (2) categories; first cases "not in posture" which is defined from the time ECAB receives an appeal request to the time a decision is issued. This category represents the 270 day figure. Cases "in posture," which are appeals that are ready for processing, e.g. ECAB has physical possession of case record (if still paper), attorney authorizations are submitted properly, the appellant has clarified the decision(s) they wish to appeal etc., comprise the second category. The average number of days ECAB takes to process an appeal for a case "in posture" is 159 days. This data was provided by ECAB.

⁶ Data not available.

Mr. LYNCH. I want to thank you all for helping the committee with its work, and I wish you have a good day. Thank you.

This hearing is now adjourned.

[Whereupon, at 6:05 p.m., the subcommittee was adjourned.]

