

You Too Can Handle FECA Claims: The Basics

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What is the FECA?

Simply put, it's the workers comp system for employees of the US Government (excludes active duty military). Unlike state workers' compensation, there is no apportionment. It is supposed to be a non-adversarial system, but anyone who has filed a claim knows that is not true.

Why get involved with FECA?

According to the Office of Personnel Management, there are 64,000 federal employees in the judicial branch and 2,776,000 employees in the executive branch for a total of 2,840,000 federal employees. This does not include uniformed military personnel.

The US Department of Labor, which oversees the Federal Employees' Compensation Act (FECA) reported that In FY 2010, 127,526 new cases were created. The program provided \$2.86 billion in benefits to approximately 251,000 workers and survivors for work-related injuries or illnesses. Of these benefit payments, over \$1.8 billion was for wage-loss compensation, \$913 million for medical and rehabilitation services, and \$138 million for death benefit payments to surviving dependents.

Simply put, there are a lot of federal employees and they need help!

Who is covered by FECA?

- Employees of all federal agencies in all three branches of government, and the Postal Service, including temporary and probationary employees, but not employees of contractors or of entities covered by other federal workers' compensation laws such as the Longshore & Harbor Workers Compensation Act, The Defense Base Act, the Outer Continental Shelf Lands Act, and the War Risk Hazards Act. There is also coverage for volunteers, certain non-federal law enforcement officers, etc.

Monetary Benefits

- **Lost wages** – Currently pays 75% to an injured worker with dependents (spouse, children under 18 or 23 if they are in college) who loses the capacity to work due to his or her work related medical condition. The rate is 66 2/3% without dependents. See 5 USC §8105 and §8110(a).
- **Schedule Award** – This is as close to a settlement as there is in FECA claims. It is a onetime cash payment for permanent impairment. It is limited to specific body parts – primarily the extremities. Not on the list is the spine, brain or heart. See 20 CFR §10.404 for a complete list and 5 USC §8107(c)(22). Legs 288 weeks, arms 312 weeks, etc.
- **Survivor Benefits** – Payment to the surviving spouse or dependent children whose spouse or parent has died sooner than they otherwise would have without the work related injury. The death does not need to be “caused” by the work injury, a claimant just has to show that the injury hastened death or made the event which caused death more likely. see 5 USC §8133.

Non-Monetary Benefits

- **Medical Treatment** - All medical treatment for accepted medical conditions are paid 100% by OWCP. No co-pays.
- **Vocational Rehabilitation Services** – This is rarely a benefit to claimants. The way this system is used is to give the injured worker some nominal training, find that they can work in some capacity, and use that determination to reduce benefits. The training rarely lasts more than 90 days.

How does one file a claim?

- Claims are filed using standard forms and are submitted directly through the injured worker's employing agency. The forms are preferred - however, in a pinch, any words of claim stating that the injured worker believes he or she has developed a medical condition as the result of a work accident or conditions of employment is sufficient.

Types of Claims

- Traumatic Injury – CA-1
- Occupational Disease – CA-2
- Recurrence – CA-2a
- Death benefit – CA-5

CA-1 Notice of Traumatic Injury

- This is a claim for a medical condition that the claimant believes resulted from exposure to work factors over one work shift. For example, a federal firefighter who gets burned fighting a forest fire.
- Should be filed immediately after the injury occurs. Eligible for 45 days of Continuation of Pay (COP) – 45 days of pay given by the agency without charging sick or annual leave if submitted within 30 days of the injury. Medical documentation must be provided within 10 days.
- Agency should provide medical care authorization (CA-16) until claim is adjudicated.
- Can be filed up to 3 years afterwards (no time limit if the employer was made aware of the injury and causal connection within 30 days).
- Consider third party responsibility.

CA-2 – Notice of Occupational Disease

- This is a claim for a medical condition that the claimant believes resulted from exposure to work factors over more than one work shift. For example, an air traffic controller who develops a stress related emotional condition as a result of working under pressure for several years.
- Can be filed up to 3 years afterwards
- When in doubt if other work events contributed, or even if you suspect they might have, file a CA-2.
- Consider third party responsibility – example asbestosis
- No COP available. Employee uses own insurance until claim is adjudicated.

CA-2a – Notice of Recurrence

- This is a rather complicated claim and one that we tend to avoid for a variety of reasons. It is a claim that additional medical treatment is necessary after release from treatment for the work-related injury or that a work stoppage was caused by a spontaneous return of the symptoms of a previous injury or occupational disease without intervening cause. It is very difficult to prove there is no intervening cause and typically, if the employee has gone back to work, there will be new work factors to implicate.

CA -5 – Claim for Compensation by Widow, Widower and/or Children

- This includes not only when the employee died as a result of a work injury (such as a federal law enforcement officer killed in the line of duty) but also includes situations where an injury or occupational disease contributed in any way to the employee's death. **“To hasten death** is to cause it, as far as the right to compensation is concerned.” Ann L. Oakes, 32 ECAB 39 (1980).
- Even suicide can be covered if the primary reason for the suicide was due to the physical or psychological condition.

What are the elements that must be proven in every FECA claim?

- (1) status as a federal employee covered by the Act; (2) fact of injury (including toxic exposures, repetitive motion activities, etc.); (3) injury occurring in the performance of duty (AOE/COE); (4) fact of medical condition (diagnosis, etc.); (5) causal relationship between the injury and the medical condition, such that the injury caused or contributed to the condition or aggravated a pre-existing medical condition.

What evidence is necessary to support a FECA claim?

- a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition
- medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed
- medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.

Pitfalls!

- Forms are generally insufficient
- Must be an MD. No PAs, NPs, etc. Limited exception for chiropractors – spinal subluxation only.
- Equivocal language in reports
- Avoid the blame game

What happens next?

- **Development letter** – The most common response to a claim submission is for OWCP to ask for more information
- **Referral for a second opinion**
- **Acceptance of the medical condition**
- **Denial**

If the claim is accepted

- Make sure the right condition is accepted
- Notify medical providers of the accepted condition
- Submit past medical bills for reimbursement
- File a CA-7 for any wage loss
- When the condition has reached maximum medical improvement, file a CA-7 for a schedule award
- Regular medical reports must be submitted.

Some negatives about FECA

- No right to judicial review, except in rare instances of constitutional rights violations. 5 U.S.C. §8128(b); *Duncan v. Department of Labor*, 49 Fed. Appx. 653 (8th Cir. 2002); *Rodrigues v. Donovan*, 769 F.2d 1344 (9th Cir. 1985); *Czerkies v. USDOL*, 73 F.3d 1435, 1439 (7th Cir. 1996).
- Inconsistent application of the law and interpretation of the facts by OWCP.
- Constant review by OWCP employees who try to terminate benefits.
- Excessive OWCP delays in taking actions and making decisions, with no penalty (such as interest added to benefits or payment of attorney fees) against the government for same.
- Difficulty communicating with and obtaining information from OWCP.

Some positives about FECA claims

- No cap on benefits. No time limit on benefits.
- No fault
- No apportionment. Any contribution – no matter how slight – by the employment to the production of the injury or disease is sufficient to make the entire disability compensable, without apportionment. *Beth P. Chaput*, 37 ECAB 158 (1985). This means if you allege 30 things, and one is proven, and medical evidence shows it contributed, the whole condition is accepted as work-related.
- The injured worker is afforded nearly infinite “bites at the apple.” After each denial on the merits, a claimant can submit additional evidence and request that OWCP reconsider its decision, with no limit on the number of such requests that can be filed. See 20 C.F.R §10.600.
- Emotional conditions caused by the stress of the work duties themselves, including where the employee is trying to meet the regular or specially assigned duties of his/her position, are fully compensable. See, e.g., *Robert J. Benetti and Department of Transportation, Federal Aviation Agency*, [106 LRP 42673](#) (ECAB 2006).

Examples

- Postal worker calls and says his shoulder hurts after 20 years of delivering mail.
- Air traffic controller calls after being involved in a near miss.
- Former secret service agent calls because his back has gotten worse since he retired.
- TSA employee calls after hurting his back lifting luggage.
- Widow of a federal law enforcement officer calls after her husband dies after suffering a heart attack while chasing a suspect.

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