



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

September 18, 2007

To: Brenda Despanza
Human Resources Director

From: Jane E. Altenhofen
Inspector General

A handwritten signature in cursive script that reads "Jane E. Altenhofen".

Subject: Inspection Report No. OIG-INS-50-07-02: Federal Employees' Compensation Act

We initiated this inspection in June 2007 to determine whether the Federal Employees' Compensation Act (FECA) program at the National Labor Relations Board (NLRB or Agency) is operating effectively and in accordance with Federal regulations.

The Agency is not effectively managing workers' compensation cases. Of the 20 cases we identified requiring regular monitoring, 13 were not regularly monitored. Sufficient medical documentation was not maintained for eight of these cases to verify the claimants' continued eligibility for benefits. The Agency also has not been confirming the eligibility of survivors to continue to receive benefits for cases involving death benefits. The death benefit cases accounted for approximately 61 percent of the Agency's FECA costs from July 1, 2005, through June 30, 2007.

The U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) did not receive NLRB's workers' compensation claims timely. Of the 29 cases we reviewed, 25 were not received by OWCP within 10 working days after receipt of notice from the employee. On average, it took 29 working days for OWCP to receive the claim forms, with a majority taking more than 21 working days.

The Human Resources Branch (HRB) is not complying with requests by the Deputy Associate General Counsel in the Division of Operations-Management (Operations-Management) and the Executive Secretary for Special Counsel to review cases involving Operations-Management, field, Board, and Division of Judges employees. Of the 33 cases from these offices, Special Counsel did not review 14.

SCOPE

We reviewed FECA; applicable sections of the Code of Federal Regulations; and Injury Compensation for Federal Employees, Publication CA-810. We reviewed the Administrative

Policies and Procedures Manual Chapter PER-6, Federal Employees Compensation Program, dated March 31, 1992. We interviewed members of HRB, Operations-Management, and Office of the Executive Secretary to determine the procedures for monitoring cases, processing workers' compensation claims, and monitoring continuation of pay benefits. We interviewed five NLRB employees to obtain their feedback regarding the workers' compensation process. We also interviewed five NLRB supervisors to obtain additional information on the timeliness of claims filed.

We compiled a list of NLRB employees who filed claims or received benefits during Fiscal Year (FY) 2006 and FY 2007, through July 20, 2007, from a list maintained by HRB, chargeback reports compiled by OWCP, and employees receiving continuation of pay benefits. We reviewed case files to determine whether the Agency regularly monitored cases to verify benefit eligibility. We reviewed claims filed to determine whether they were received by OWCP in a timely manner and the appropriateness of continuation of pay benefits for the four employees who received this benefit. We also determined whether Special Counsel reviewed applicable claims.

We conducted this review from June to September 2007. This review was done in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

BACKGROUND

FECA provides compensation benefits to civilian employees of the United States for disability due to personal injury or disease sustained while in the performance of duty and provides for payment of benefits to dependents if a work-related injury or disease causes an employee's death. FECA is administered by OWCP. Benefits are available only while the effects of a work-related condition continue. Each disabled employee is obligated to perform such work as he or she can, and OWCP's goal is to return each disabled employee to suitable work as soon as he or she is medically able.

The NLRB is responsible for: providing advice, information, and instructions regarding FECA to employees and supervisors; processing reports, statements, and forms; and cooperating and serving as liaison with OWCP. Agency responsibilities also include submitting all relevant factual and medical evidence in its possession or which it may acquire through investigation or other means. The Employee Relations Section of HRB handles workers' compensation claims. Three human resources specialists are assigned to work on cases based on geographic location and caseload.

FECA costs are financed by the Employees' Compensation Fund and are assigned to employing agencies annually at the end of the fiscal accounting period, which runs from July to June. Each year, OWCP furnishes agencies with a chargeback report which is a statement of payments made from the Employee's Compensation Fund on account of injuries to employees. The NLRB costs were \$394,958 for the period of July 1, 2005, through June 30, 2006, and \$450,333 for the period of July 1, 2006, through June 30, 2007.

We identified 64 cases within the scope of our review, 25 of which were submitted prior to FY 2006 and account for 89 percent of the NLRB's FECA related costs. The remaining 39 cases were submitted in FY 2006 and FY 2007.

RESULTS

Case Management

In the interest of providing good service to employees while containing costs, OWCP encourages active management of workers' compensation cases by agency personnel. This includes obtaining medical information from OWCP or the injured employees as often as necessary to assess potential return to regular, light, or limited duty.

The Agency is not effectively managing workers' compensation cases. Of the 20 cases we identified requiring regular monitoring, 13 were not regularly monitored. Eight of these cases had compensation or medical payments and five were survivor benefits payments. We were unable to review another case because there was no file maintained in HRB.

Sufficient medical documentation was not maintained for eight cases to verify the claimant's continued eligibility for benefits. Medical documentation was at least 2 years old in most cases. In one file, the most recent medical documentation was dated July 16, 1994, and stated that the individual was cleared to work 8 hours per day with restrictions; however, there was no evidence in the file that any job offers were made to the individual. This recipient is currently receiving \$1,676 in monthly disability payments. We believe that medical updates should be obtained at least annually to review the claimant's eligibility and to identify any return to work opportunities.

For the five survivor benefits cases, the Agency has not been confirming the eligibility of survivors to continue to receive benefits. These cases accounted for approximately 61 percent of the Agency's FECA costs from July 1, 2005, through June 30, 2007. According to HRB, OWCP contacts survivors annually to confirm eligibility, but there were no records to document these annual confirmations. By not verifying the eligibility of survivors, the Agency is at risk for making improper payments.

Timeliness

Federal regulations require that the Agency complete and transmit Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation (Form CA-1) and Notice of Occupational Disease and Claim for Compensation (Form CA-2) to OWCP within 10 working days after receipt of notice from the employee if the injury or disease will likely result in: a medical charge against OWCP; disability for work beyond the day or shift of injury; the need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work; future disability; permanent impairment; or the payment of continuation of pay. The Agency should not wait for submittal of supporting evidence before sending the form to OWCP.

The NLRB's workers' compensation claims were not received timely by OWCP. Of the 29 cases we reviewed, 25 were not received by OWCP within 10 working days. For the remaining cases, we were unable to determine the timeliness of one case because OWCP had not received the Form CA-1, and we were unable to determine the timeliness for another case because the date the notice was received by the supervisor was blank. Late claim submissions could delay the claimant's benefits. On average, it took 29 working days for OWCP to receive the claim forms, with a majority taking more than 21 working days as shown in the chart below.

Working Days	Claims Filed
≤ 10	2
11-20	7
21-30	8
≥ 31	10
Not Received	1
Undated	1
	29

The Employee Relations Section Chief stated that the NLRB has experienced problems with forms being received by OWCP, specifically when the claim forms are mailed. Therefore, HRB is now faxing claim forms and sending a hard copy. Also, she said that the use of interoffice mail by field offices delayed the receipt of claims in HRB. She said that office managers were recently told to either fax or e-mail claim forms.

Continuation of Pay

For most employees who sustain a traumatic injury, FECA provides that the Agency must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days, except when conditions that effect eligibility are not met, including that the employee stopped working more than 45 days following the injury. This process is called continuation of pay. When OWCP finds that the employee is not entitled to continuation of pay after it has been paid, the employee may choose to have the time charged to annual or sick leave or incur a debt.

Of the four employees who received continuation of pay, one was ineligible and another's claim was later denied. This led to an overpayment of \$1,883. In one case, an employee was not eligible for continuation of pay because time loss was not within 45 days of the injury. The employee's date of injury was September 27, 2006, but the first day that she received the continuation of pay benefit was not until December 21, 2006, 85 days after the injury occurred. Timekeepers manually enter pay codes for the continuation of pay into the Agency's payroll system, but the payroll system does not have the capability to track the number of days continuation of pay is used after an injury. Another employee used 2 days of continuation of pay. The claim was later denied by OWCP and the hours charged to continuation of pay were not corrected.

Special Counsel Review

The Deputy Associate General Counsel in Operations-Management requested that HRB inform Special Counsel of every case involving Operations-Management and field employees. The Executive Secretary also requested that HRB notify Special Counsel of any claims involving Board employees, including employees in the Division of Judges, as soon as HRB becomes aware that a potential claim exists. Special Counsel will then review any submission or correspondence made on behalf of the Agency prior to forwarding it to OWCP.

The HRB is not complying with the requests for Special Counsel review. Of the 33 cases we identified, Special Counsel did not review 14. Twelve of these cases involved field employees, and the other two were filed by Board employees.

The Director of Human Resources disagreed with having Special Counsel review workers' compensation claims because she has concerns about sharing medical information regarding employees with people outside the employee's chain of command. Special Counsel provides legal advice to the Board and General Counsel in employment matters; accordingly, Special Counsel has a need-to-know this information.

SUGGESTIONS

We suggest that the Human Resources Director:

1. Establish procedures to actively manage cases and ensure that updates are obtained.
2. Establish procedures to ensure that all claims are received by OWCP within 10 working days.
3. Correct the two instances in which the employees' claims were either ineligible for continuation of pay or were denied.
4. Establish procedures to ensure that Special Counsel reviews all cases involving Operations-Management, field, Board, and Division of Judges employees.

cc: Board
General Counsel
Director of Administration