*REPORT TO THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE*



*BY THE COMPTROLLER GENERAL OF THE UNITED STATES*

# Improvements Needed In Administration Of Benefits Program For Injured Workers Under The Longshoremen's And Harbor Workers' Compensation Act

Department of Labor

The 1972 amendments to the program greatly increased Labor's claims workload and backlog. Labor has not provided sufficient resources to meet the increased workload.

This affected Labor's ability to effectively oversee the claims to assure that injured employees received the compensation and other benefits under the act.



MWD-76-56

JAN. 12, 1976

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor and
Public Welfare
United States Senate

Dear Mr. Chairman:

Pursuant to your request and subsequent agreements with your office, we have reviewed the Federal compensation program established under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901). Our review primarily considered actions taken to implement the 1972 amendments to the program. As agreed, we did not obtain formal comments from the Department of Labor; however, we discussed the contents of the report with Department officials and considered their views in preparing it.

The report shows that the increased coverage and other program revisions made by the 1972 amendments have had a significant nationwide effect on the Department's workload. From fiscal years 1972 to 1974, injuries to workers covered under the act rose from 72,087 to 151,274, a 110-percent increase; the Department's claims case workload rose from 19,283 to 38,358, almost a 100-percent increase; and, according to the Department, the backlog of claims increased from 2,663 to 9,722, a 265-percent increase.

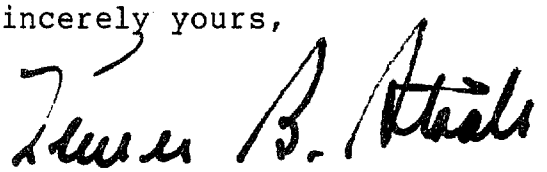
The number of injuries reported under the act during fiscal year 1975 was 166,367 and the backlog was 14,039. The Department projected a backlog of 16,000 cases by the end of fiscal year 1976. The staff for the Department's office primarily responsible for administering the act increased by only 24 percent, or only 24 positions from 1972 to 1975.

The backlog includes all claims awaiting action either in the Department's review and monitoring of the claims or the formal adjudication process. The significant backlog has adversely affected the Department's ability to administer the act. We noted many administrative problems in the program, however, that could be alleviated by improved management controls.

We are recommending that the Secretary of Labor review the Department's allocation of resources and staff to assure that adequate resources are available to efficiently and effectively administer the act. A number of recommendations are also made to the Secretary to correct present management problems. (See pp. 62 and 63.)

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We will be in touch with your office in the near future to arrange for distribution of the report to the Secretary and to the four Committees to set in motion the requirements of section 236.

Sincerely yours,



Comptroller General
of the United States

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ABBREVIATIONS

| | |
|---|---|
| ALJ | Administrative Law Judge |
| ESA | Employment Standards Administration |
| LHWCA | The Longshoremen's and Harbor Workers' Compensation Act, as amended |
| OALJ | Office of Administrative Law Judges |
| OMB | Office of Management and Budget |
| OWCP | Office of Workers' Compensation Programs |

COMPTROLLER GENERAL'S REPORT TO THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

# IMPROVEMENTS NEEDED IN ADMINISTRATION OF BENEFITS PROGRAM FOR INJURED WORKERS UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

Department of Labor

## D I G E S T


GAO was asked how effectively and efficiently the Department of Labor's Office of Workers Compensation Programs operates the Federal compensation program established by the Longshoremen's and Harbor Workers' Compensation Act.

In its review, GAO placed particular emphasis on Office actions taken to put the program's 1972 amendments into action and the result of these amendments on the Office's workload.

GAO's review covered activities of the program at headquarters and 13 of 14 district offices and included all extensions of coverage except the District of Columbia Workmen's Compensation Act.

Since this act is the only activity under the Longshoremen's and Harbor Workers' Compensation Act handled by the Office's Washington, D.C., district office and its operations are financed under separate appropriation, GAO did not perform work at this district office. (See pp. 4 and 65.)

GAO recommends that the Secretary of Labor review the allocation of resources and staff to assure that adequate resources are available to effectively and efficiently carry out Labor's responsibilities under the act. GAO also recommends steps for Labor to take to correct management problems cited below. (See pp. 62 and 63.)

The increased coverage and other program revisions made by the 1972 amendments had a nationwide effect on the Office's workload and administration of the act. From fiscal years 1972 to 1974, injuries to workers covered under the act rose from 72,087 to

151,274, a 110-percent increase; the Office's claims case workload rose from 19,283 to 38,358, almost a 100-percent increase; and, according to the Office, its backlog of claims has increased from 2,663 in 1972 to 9,722 in 1974, a 265-percent increase.

During fiscal year 1975, the number of injuries reported under the act was 166,367 and the Office's backlog rose to 14,039. The Office projected a backlog of 16,000 cases by the end of fiscal year 1976. Office staffing to administer the act increased by only 24 percent, or 24 positions, from 1972 to 1975. (See p. 6.)

Backlog includes all claims on which some action is to be taken, such as developing the claim, responding to inquiries, scheduling informal conferences, holding informal conferences, and formal hearing and adjudication. Because of this backlog, Labor's ability to carry out its responsibilities required under the act--to oversee and monitor the compensation payments and other benefits provided by employers to injured employees--have been adversely affected. GAO found that:

--The Office's district offices are not effectively monitoring claims to assure that proper and timely compensation payments and other benefits are being provided to injured employees as required by the act. (See p. 15.)

--Some injured employees are not receiving compensation payments in the amounts and time periods required by the act. (See pp. 13 and 14.)

--The Office is not assessing employers' penalties for late reports and late benefit payments as required by the act. (See pp. 18 and 19.)

--Long delays are occurring in the informal hearing of contested claims by the Office and formal adjudication by Administrative Law Judges, which is resulting in hardships to some injured employees. (See p. 22.)

--The Office has not established effective programs to assist claimants in processing claims and to actively supervise medical treatment given to injured employees as intended by the 1972 amendments to the act. (See p. 33.)

--Labor is not providing legal assistance to claimants upon request nor does it intend to establish such a program as permitted by the 1972 amendments. (See p. 35.)

--The Office's program for vocational rehabilitation of disabled employees has a very low priority and as a result few claimants are in rehabilitation. (See p. 42.)

--The Office's district offices are not following procedures to assure adequate insurance coverage by employers for compensation payments. (See p. 46.)

--The Office's national office needs to provide more effective guidance and monitoring of the districts' program operations. (See p. 54.)

## CHAPTER 1

## INTRODUCTION

The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), (33 U.S.C. 901), was passed in 1927 to provide compensation and other benefits to maritime workers injured while working in certain locations over navigable waters and declared by the Supreme Court not to be protected by States' worker compensation laws. Since 1927 various acts have been passed to extend LHWCA provisions to other types of employees. These acts and the employees covered under LHWCA are as follows:

--The District of Columbia Workmen's Compensation Act (36 D.C.C. 501), enacted in May 1928 and added employees in private employment in the District of Columbia.

--The Defense Base Act (42 U.S.C. 1651), enacted in August 1941 and added employees of a contractor of the United States at military, air, and naval bases or on public works in any territory or possession outside the United States.

--The Outer Continental Shelf Lands Act (43 U.S.C. 1333), enacted in August 1953 and added employees of firms working on the Outer Continental Shelf of the United States in the exploration and development of natural resources.

--The Nonappropriated Funds Instrumentalities Act (5 U.S.C. 8171), enacted in July 1958 and added civilian employees of nonappropriated fund instrumentalities (such as post exchanges) of the Armed Forces.

--The LHWCA 1972 amendments (Public Law 92-576), enacted in October 1972 and extended LHWCA to cover maritime workers employed on shoreside areas such as piers, wharfs, drydocks, and terminals--customarily used by employees in loading, unloading, repairing, or building ships.

All employees covered by LHWCA, including those added under the extensions, who are injured on the job are entitled to medical care, disability compensation, and other benefits. Under the act, the term "injury" includes occupational diseases arising out of employment.

An employee, to obtain LHWCA benefits, must report to his employer and to the Department of Labor any injury sustained on the job. If the employer accepts the employee's

claim, the employer must provide the necessary medical treatment and compensation, as provided by the act. Should the employer deny the employee's claim of injury and benefits due under the act, the employee has the right to file a claim with Labor for adjudication.

Under the act, the employer must notify Labor of all reported injuries as well as any action taken regarding the employee's claim; i.e., payment of compensation, medical treatment provided, or denial of the claim. Labor is required to insure that the injured employee or his surviving dependents receive compensation due under the act and that injured employees receive required medical treatment.

Appendixes I and II provide more detailed information on claims processing.

## COMPENSATION AND OTHER BENEFITS

Benefits provided include (1) the medical, surgical, and hospital treatment required by the injury; (2) assistance in obtaining medical, manpower, and vocational rehabilitation services; and (3) compensation payment for temporary or permanent disability suffered from the injury. Also, if the injury causes death, or if a person with a permanent total disability dies, the act provides death benefits such as reasonable funeral expenses and compensation payments to surviving dependents.

Under the 1972 amendments, maximum compensation payments were increased from $70 a week to the present maximum of $318.38 a week. The $318.38 represents 200 percent of the national average weekly wage 1/ at October 1, 1975. The maximum compensation is adjusted annually according to the movement of the average weekly wage. The minimum compensation for total disability was raised to either (a) not less than 50 percent of the national average weekly wage (presently $79.60 a week) or (b) the average weekly wage of the disabled worker, whichever is less.

LHWCA requires the employer to furnish the surgical, hospital, or other medical treatment required for the recovery of the injured employee and to make most compensation payments to injured employees and death benefits to surviving

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1/LHWCA defines the term "national average weekly wage" as the national average weekly earnings of production of nonsupervisory workers on private nonagriculture payrolls.

dependents. The act requires each employer to secure payment of these benefits either through appropriate insurance with Labor-approved carriers or by acting as a self-insurer after furnishing Labor with satisfactory proof of its ability to pay such compensation and benefits.

Under the act, Labor is responsible for arranging with appropriate public or private agencies for vocational rehabilitation of permanently disabled employees. Labor is also to provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and help such employees obtain the best services available.

Some compensation and other benefits are paid from a special trust fund established under section 44 of the act. This fund gave effect to a congressional policy determination that, under certain circumstances, the employer of a particular employee should not be held totally responsible for paying the compensation benefits due that employee under the act. Instead a portion of such payments should come from the industry generally.

The special fund is used for

--maintenance payments to, and any prosthetic appliances or other apparatus needed by, employees undergoing vocational rehabilitation;

--providing medical, surgical, and other treatment in disability cases where the employer has defaulted because of insolvency; and

--cases where judgment against employers cannot be satisfied because of insolvency or other circumstances precluding payment.

The special fund is financed from

--payments from employers for the death of an employee where there are no persons entitled to compensation under the act,

--payments by employers of fines and penalties to Labor's Office of Workers' Compensation Programs (OWCP) for late reports levied under the act, and

--assessments of insurance carriers and self-insured employers for their proportionate shares of estimated expenses of the fund during the year.

## PROGRAM ADMINISTRATION

The Secretary of Labor is responsible for administering compensation and benefit programs authorized by LHWCA and its extensions. The Secretary has delegated this responsibility to the Assistant Secretary for Employment Standards Administration (ESA). OWCP (an office within ESA) administers LHWCA through a Division of Longshore and Harbor Workers' Compensation, headed by an Associate Director, at the Washington, D.C., headquarters office and 14 district offices located throughout the United States.

Each of the 14 districts is directed by a Deputy Commissioner or Assistant Deputy Commissioner, a position authorized by LHWCA. The district offices' primary function is to monitor and mediate claims under LHWCA.

Labor, through OWCP's district offices, oversees and monitors benefits provided by the employers or their insurance carriers to assure that injured employees receive the required medical treatment and that they or the surviving dependents receive compensation payments due them under the act's provisions.

The employer may contest the claim for compensation for disability or death. LHWCA empowers the Deputy Commissioners to resolve disputes through informal conferences. If agreement cannot be reached, the regulations require the Deputy Commissioners to prepare a memorandum stating the disputed facts and to submit the case to an Administrative Law Judge (ALJ) in Labor who conducts a formal hearing and issues a decision in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. 554).

ALJ decisions may be appealed by either party to Labor's Benefits Review Board, which consists of a chairperson and two other members appointed by the Secretary of Labor. The Board decisions may be appealed to the U.S. Circuit Court of Appeals.

As indicated on page 1, the District of Columbia Workmen's Compensation Act applies to private employment in the District of Columbia. Program administration is handled exclusively by OWCP's district office in Washington, D.C. Since this act is the only LHWCA activity handled by the Washington district office, we did not perform work at this office or obtain data on the District of Columbia Workmen's Compensation Act.

The statistical and other program data presented in this report covers activities for all other employees under LHWCA at OWCP's Washington headquarters and its 13 other district offices. (See scope of review, p. 64.)

About 600,000 employees are covered by LHWCA. Compensation and medical benefits paid under LHWCA totaled about $32.9 million in 1972, $46.5 million in 1973, and $65.4 million in 1974.

## SPECIAL BENEFITS FUND

Since enactment of the 1972 amendments, fund activity has increased as shown below.

| FY | Payments into the fund | Compensation benefits disbursements |
|---|---|---|
| 1972 | $ 13,000 | $ 41,989 |
| 1973 | 1,722,000 | 59,014 |
| 1974 | 2,796,960 | 2,011,731 |
| 1975 | 4,765,286 | 2,002,513 |

## PROGRAM ADMINISTRATION EXPENSES

Salary and expense costs of administering the compensation and benefits program under LHWCA are financed through congressional appropriations. Since enactment of the 1972 amendments, these costs have been increasing as illustrated below:

| FY | Amount |
|---|---|
| 1973 | $1,394,000 |
| 1974 | 1,774,000 |
| 1975 | 2,617,170 |
| 1976 | a/3,736,000 |

a/As of November 1, 1975, the amount requested in Labor's FY 1976 appropriation request was in a joint conference committee.

## CHAPTER 2

## EFFECT OF INCREASED OWCP CLAIMS WORKLOAD AND BACKLOG ON ADMINISTRATION OF BENEFITS PROGRAM

The increased coverage and other program revisions made by the 1972 amendments had a significant, nationwide effect on OWCP's workload and administration of LHWCA. From fiscal years 1972 to 1974, total injuries reported under the act rose from 72,087 to 151,274, a 110-percent increase; OWCP's caseload rose from 19,283 to 38,358, about a 100-percent increase; and OWCP's backlog of cases increased from 2,663 in 1972 to 9,722 in 1974, a rise of 265 percent. During fiscal year 1975, the number of injuries reported under the act was 166,367 and OWCP's backlog rose to 14,039. OWCP projected a backlog of 16,000 cases by the end of fiscal year 1976.

Backlog includes all claims on which some action is to be taken--such as developing the claim, responding to inquiries, scheduling for informal hearings or conference, holding conferences, and formal hearing and adjudication.

Also, while OWCP's workload increased significantly since the 1972 amendments, its staffing level has remained relatively constant. OWCP had 100 people working on the LHWCA program in 1972. By the end of fiscal year 1975, there were only 124 people working on the program, or an increase of only 24 percent.

The significant backlog has adversely affected Labor's ability to carry out its responsibilities under the act--overseeing and monitoring employers' compensation payments and other benefits to injured employees. We found, for example, that:

--OWCP district offices are not effectively monitoring claims to assure that proper and timely compensation payments and other benefits are being provided to injured employees as required by the act.

--Some injured employees are not receiving compensation payments in the amounts or time periods required by the act.

--OWCP is not assessing employers' penalties for late reports and late benefit payments.

--Long delays are occurring in OWCP's informal hearing of contested claims and in ALJ's formal adjudication, which is resulting in hardships to some injured employees.

--OWCP has not established effective programs to help claimants process claims or to actively supervise medical treatment given to injured employees as intended by the 1972 amendments to the act.

--Labor is not providing legal assistance to claimants nor does it intend to establish such a program as permitted by the 1972 amendments.

--OWCP's program for vocational rehabilitation of disabled employees had a low priority compared to the rehabilitation program for Federal employees under the Federal Employees' Compensation Act. As a result, few LHWCA claimants are enrolled in vocational rehabilitation.

--OWCP district offices are not following procedures to assure adequate insurance coverage by employers for compensation payments.

--The OWCP national office needs to provide more effective guidance and monitoring of the districts' program operations.

## INCREASE IN INJURIES TO WORKERS COVERED UNDER THE ACT

OWCP's nationwide workload--in terms of injuries to workers covered under the act--has increased substantially, from 72,087 in fiscal year 1972 to 151,274 in fiscal year 1974.

Under LHWCA, employers are required to report to Labor any accidental injury, occupational illness, or death-on-the-job sustained by any employee. Two types of injuries are reported to OWCP, no-time-lost injuries and time-lost injuries. In no-time-lost injuries, the injured employee lost no time on the job. In time-lost injuries, the employee had to leave or be absent from work because of his injury.

In its budget justification for fiscal year 1976, submitted to the House and Senate Appropriations Committees, Labor reported the following increases in the two types of injuries since the 1972 amendments.

| FY | Total injuries | Type of injury: No time lost Number | No time lost Percent | Time lost Number | Time lost Percent |
|---|---|---|---|---|---|
| 1972 | 72,087 | 54,420 | 75 | 17,667 | 25 |
| 1973 | 105,384 | 82,382 | 78 | 23,002 | 22 |
| 1974 | 151,274 | 118,330 | 78 | 32,944 | 22 |
| Percent of increase since 1972 | 110 | 117 | | 87 | |

During fiscal year 1975, covered workers incurred 166,367 new injuries, including 37,474 lost-time injuries and 128,893 no-lost-time injury cases. The schedule below shows the total injuries for 13 district offices during fiscal year 1975 and the increase in injuries since 1972.

| OWCP district Location | Injuries in FY 75: No time lost | Time lost | Total | Injuries in FY 72 | Percentage increase or (-) decrease in injuries |
|---|---|---|---|---|---|
| Boston | 40,587 | 2,906 | 43,493 | 10,735 | 305 |
| New York | 5,140 | 6,076 | 11,216 | 4,817 | 133 |
| Philadelphia | 4,976 | 857 | 5,833 | 2,386 | 144 |
| Baltimore | 10,285 | 1,519 | 11,804 | 3,938 | 200 |
| Norfolk | 11,793 | 1,983 | 13,776 | 5,613 | 145 |
| Jacksonville | 11,734 | 3,231 | 14,965 | 3,129 | 378 |
| New Orleans | 13,342 | 4,867 | 18,209 | 13,681 | 33 |
| Houston | 13,226 | 4,825 | 18,051 | 6,941 | 160 |
| Cleveland | 1,077 | 692 | 1,769 | 1,989 | -11 |
| Chicago | 1,232 | 664 | 1,896 | 1,788 | 6 |
| San Francisco | 8,108 | 5,021 | 13,129 | 9,234 | 42 |
| Seattle | 5,325 | 3,620 | 8,945 | 3,915 | 128 |
| Honolulu | 2,068 | 1,213 | 3,281 | 3,921 | -16 |
| Total | 128,893 | 37,474 | 166,367 | 72,087 | 131 |

According to ESA, the 1972 amendments extending coverage to maritime workers employed on shoreside areas and increasing compensation and other benefit levels, are the basic cause for the increased number of injuries reported to OWCP. ESA analyzed the injuries reported from February 1973 through June 1974. The analysis showed that, of the 186,336 injuries reported during that period, 86,325 cases, or 46 percent of the injuries, occurred in areas in which coverage had been extended by the 1972 amendments.

## INCREASE IN CLAIMS ACTIVITY AND CASE WORKLOAD

OWCP's claims activity--case workload--increased from 19,283 in 1972 to 38,358 in 1974, about a 100-percent increase.

Since not all injuries will result in compensation payments or other benefits the total number of injuries reported by employers under the act does not represent the actual workload in the district offices. The Longshore (LHWCA) Procedure Manual requires that only injuries reported by an employer as time lost are to be jacketed as a case.

In its budget justification for fiscal year 1975, OWCP reported the following increase in its claim or case workload on the basis of time-lost injuries from 1972-74:

| FY | Time-lost injuries |
|---|---|
| 1972 | 17,667 |
| 1973 | 23,002 |
| 1974 | 32,944 |

In fiscal year 1975, employers reported 37,474 time-lost injuries to covered workers.

Although OWCP reported a 32,944 case workload for fiscal year 1974, the actual claims jacketed (or case workload) as reported by the 13 district offices in response to our questionnaire was 38,358. For fiscal years 1972 and 1973, the 13 district offices responses to our questionnaires showed they jacketed 19,283 and 26,414 claims, respectively.

These discrepancies apparently resulted because some district offices were not consistently following the Longshore (LHWCA) Procedure Manual's requirements for jacketing claims. The responses to our questionnaires sent to the 13 districts showed that 5 of the 13 were jacketing claims on the basis of receiving a form LS-201, "Notice of Employees Injury or Death," regardless of whether the injury reported was a no-time-lost injury.

Each jacketed claim opened requires some action by a claims examiner before the case can be closed. It would appear, therefore, that the district offices' workload could be reduced if only those injuries involving time lost on the job were jacketed as claims as required by the manual.

The Associate Director of OWCP's national office was not aware that the five districts were jacketing claims for every LS-201 received. He stated his office would review the matter and issue procedures for consistent handling of the time-lost injury reports and jacketing claims.

## INCREASE IN CLAIMS BACKLOG

OWCP's backlog of claims increased--nationwide--from 2,663 cases in fiscal year 1972 to 9,722 cases in fiscal year 1974--an increase of 265 percent. OWCP's backlog was 14,039 cases at the end of fiscal year 1975, which OWCP estimates will increase to 16,000 cases by the end of fiscal year 1976.

OWCP uses the term "backlog" to quantify--at any point in time--the number of cases for which some action should have been taken. OWCP requires the district offices to report the case backlog monthly. In its budget justification for the fiscal year 1976 appropriations, OWCP reported the following backlog for fiscal years 1972-74, which showed a 461-percent increase since 1972.

| FY | Backlog |
|---|---|
| 1972 | 1,998 |
| 1973 | 6,848 |
| 1974 | 11,213 |

OWCP footnoted the 1973 and 1974 backlog figures (in the fiscal year 1976 budget justifications) as including backlog statistics for all employees covered under LHWCA, except those added by the District of Columbia Compensation Act. However, our analysis of the data showed that the District of Columbia Act backlog figures were included. The District of Columbia Act's backlog for fiscal years 1973 and 1974 was 1,336 and 1,491, respectively. Our analysis also showed that the fiscal year 1972 backlog of 1,998 reported by OWCP excluded 665 cases reported by 13 district offices. The backlog at the end of fiscal year 1972 should have been 2,663 and at the end of fiscal year 1974, 9,722, a 265-percent increase since 1972. OWCP national office officials could not explain the reason for the errors in its backlog figures.

The backlog reported by the 13 districts to the national office at the end of fiscal years 1972 and 1975 is shown below.

| OWCP district | Cases in backlog 1972 | 1975 | Percentage change |
|---|---|---|---|
| Boston | 402 | 2,474 | +515 |
| New York | 594 | 3,799 | +540 |
| Philadelphia | 3 | 122 | +3,967 |
| Baltimore | 61 | 170 | +179 |
| Norfolk | 7 | 64 | +814 |
| Jacksonville | 246 | 870 | +254 |
| New Orleans | 344 | 855 | +149 |
| Houston | 101 | 748 | +641 |
| Cleveland | 7 | 51 | +629 |
| Chicago | 371 | 27 | -93 |
| San Francisco | 281 | 3,074 | +994 |
| Seattle | 118 | 1,648 | +1,297 |
| Honolulu | 128 | 137 | +7 |
| Total | 2,663 | 14,039 | +429 |

ESA stated that the primary factors contributing to the backlog increase were the (1) large increase in injuries being reported under the expanded coverage of the 1972 amendments and (2) increase in OWCP's responsibilities toward injured employees, including the requirements for closer supervision of medical services, providing assistance to claimants in filing, and processing claims and providing assistance in obtaining vocational rehabilitation services.

Officials of the Boston, New York, and San Francisco district offices we visited generally agreed that the increase in backlog was due to the expanded coverage under the 1972 amendments, resulting in an increased number of claims filed which the districts could not handle due to inadequate staff resources.

The increased backlog is causing problems in OWCP's processing and monitoring of claims. To illustrate, in the budget submission for fiscal year 1976, ESA stated

> "The staff assigned to the Longshore program will not be able to remain current with incoming workloads. The backlog continues to grow, and a deterioration of service will occur in areas requiring intensive time per claim. The most critical areas will be the medical monitoring and rehabilitation counseling services mandated by Section 7 and 39 of the amended Act. In order to prevent a complete breakdown of the program 56 more positions (32 for the direct program and 24 for legal support) will be needed to restore

the program to the level of capacity available in FY 1972, the last fiscal year before the Amendments."

A discussion of the problems and deficiencies we noted in Labor's monitoring and adjudication of the claims and other benefits for injured workers under the act is presented in the following chapters.

# CHAPTER 3

# OWCP DISTRICT OFFICES NOT EFFECTIVELY MONITORING COMPENSATION PAYMENTS AND OTHER BENEFITS TO INJURED EMPLOYEES

OWCP district offices are not effectively monitoring the employers' or their insurance carriers' payments of compensation and other benefits due the injured employees. Some injured employees are not being compensated in a proper or a timely manner and are not receiving the benefits the act entitles them to. OWCP is not assessing employers civil penalties provided by the act for failing to meet compensation payments and other benefit requirements.

To examine the procedures and practices under which the district offices monitor claims, we randomly selected 100 cases jacketed in fiscal year 1974 by the OWCP San Francisco district office. We also reviewed a limited number of case files during our visits to the Boston and New York district offices. In addition, we obtained information and data on claims monitoring by the remaining 10 district offices covered in our review through the use of a questionnaire sent to the Deputy Commissioners.

## COMPENSATION PAYMENTS NOT MADE TO INJURED EMPLOYEES ON TIME AS REQUIRED BY THE ACT

The act requires that, unless the employer denies his liability to pay compensation, the first compensation payment must be made within 14 days after the employer's knowledge of the injury. The act allows an additional 14 days to make the first payment before assessment of a 10-percent late payment penalty. The act states that the penalty shall be added to the compensation paid to the injured employee.

The act requires the employer to notify OWCP immediately upon making first payment of compensation and upon suspension of payment. OWCP forms LS-206 (Payment of Compensation Without Award) and LS-208 (Compensation Stopped or Suspended) have been designated for notifying the Deputy Commissioners upon commencing or terminating compensation, respectively.

In our 100 case sample, 58 cases involved injured employees who received compensation. Our review of those cases disclosed that:

--In 9 of the 58 cases, the date of the first payment could not be established because the LS-206 had not been received (5 cases) or was incomplete (4 cases).

--In 25 of the other 49 cases (over 50 percent), the employer did not pay compensation within the 14 days after notification of the injury as required by the act.

--In 15 of the 25 cases, the employer did not pay compensation within the 14 extra days allowed before a penalty should be assessed. The lateness of the payments ranged from 1 to 177 days beyond the 14 extra days allowed by the act.

San Francisco district officials said they do not enforce the 14-day requirement for "fear" that pressing the issue may further delay compensation payments. The officials stated that no action is taken unless the employee complains to OWCP about not receiving compensation in a timely manner.

## PENALTY ASSESSED EMPLOYERS FOR LATE PAYMENT OF COMPENSATION

The act states that a 10-percent penalty for late payment of injured employees shall be added to the compensation paid the injured employee.

The San Francisco district office did not assess penalties in the 15 cases we noted where compensation was made after the extra 14-day period allowed by the act.

Five district offices were making some use of the penalty provision. New York has assessed this 10-percent penalty over the last 4 years and in fiscal year 1975 assessed 77 penalties resulting in employees receiving an additional $11,200 in compensation payments. Cleveland reported assessing two penalties under this provision of the act in fiscal year 1975. Baltimore, Jacksonville, and Seattle said some penalties were assessed but they had no records of how many.

The other seven districts said they were not assessing penalties or had no records on the penalties assessed.

## COMPENSATION PAYMENTS NOT MADE IN AMOUNTS REQUIRED BY THE ACT

The act entitles injured employees to compensation after the third day of disability. If, however, the injury results

in disability of more than 14 days, compensation must be paid for the first 3 days. The rate of compensation is to equal two-thirds of the injured employee's average weekly wage (generally for the last year before his injury), subject to the minimum and maximum prescribed in the act. (See p. 2.)

In 10 of the 100 cases we reviewed in San Francisco, we questioned the computation of employees' compensation. Eight employees' compensation payments appeared to be less than what they were entitled to under the act. These possible underpayments totaled almost $700 for the periods of their disability and ranged from $5 to $200.

The remaining two employees did not receive compensation for injuries that caused disability of more than 3 days. In one case the employee should have received compensation for 30 weeks because of a partial disability and in the second case the employee was due compensation for 2 weeks. We were unable to determine the compensation due because information was not available on the employees' average weekly rate of pay.

District office officials stated that the claims examiner working on these two cases left and because of the office's heavy workload, the other claims examiners had been unable to work on the cases.

District officials also stated that action would be taken in 8 of the 10 cases to correct the discrepancies. However, they said no action would be taken on one of the remaining two cases since it involved a third-party suit. In the remaining case, the claims examiner did not believe that the injured employee was entitled to the additional compensation. Although the employee's doctor had approved his return to work on the 28th of the month, he did not report until 3 days later. The claims examiner said the employee could have missed the 3 days for reasons other than the injury. He said if the employee thought he was underpaid he could contact the district office.

## COMPENSATION PAYMENTS AND CLAIMS NOT BEING REVIEWED

The Longshore (LHWCA) Procedure Manual requires district office claims examiners to review forms LS-206 and LS-208 to verify that the injured employee is receiving compensation benefit payments in accordance with the act's provisions. The manual also requires that, when the reported payments are correct, the claims examiner note on form LS-208 the date the form is sent to the claimant.

For 58 of the 100 cases we examined, compensation was paid to the injured employees. Our review of the 58 cases disclosed that

--in 6 cases there was no evidence that either form LS-206 or LS-208 had been reviewed as required,

--in 7 cases there was no evidence that form LS-208 had been reviewed as required, and

--in 24 cases there was no evidence that form LS-206 had been reviewed as required.

The discrepancies noted in our review--errors in computation of employees' payments--should have been detected when the claims examiner reviewed the compensation forms submitted by the carrier or employer. District officials agreed that these discrepancies should have been detected had the claims examiner made a better review of the compensation forms submitted by the carriers or employers.

The Longshore (LHWCA) Procedure Manual also requires that all open cases contain a callup card for periodic review by the claims examiner. The San Francisco district office has established a callup system for setting predetermined dates for periodically reviewing case files. However, this callup system has not been properly administered and, as a result, case files are not being adequately monitored.

In our 100 case sample, 40 were active or open cases and should have been periodically reviewed by claims examiners. However, we found that

--although 35 of the 40 cases (87 percent) had callup dates scheduled between February 8, 1974, and June 7, 1975, no action had been taken on them and

--5 of the 40 cases (13 percent) had no callup cards scheduling the cases for review.

The Assistant Deputy Commissioner, San Francisco district office, said he made limited use of a callup system and claims examiners indicated they did not use the system--although some cases are scheduled for callup. District officials stated that cases are reviewed only when a required report is received or the case is brought to the district office's attention through some other action (such as compensation inquiry from an injured employee).

## REQUIRED REPORTS OF INJURIES NOT SUBMITTED IN A TIMELY MANNER

Section 30(a) of the act requires that all employers submit a report to the Deputy Commissioners when any employee sustains an injury or is killed on the job. The act requires that the report be submitted within 10 days from the date of knowledge of injury or death. OWCP requires that this report be made on form LS-202 (Employer's First Report of Accident or Occupational Illness).

The San Francisco district office had received LS-202 injury reports from employers in 98 of the 100 cases we examined; 2 employers failed to submit the LS-202. Of the 98 reports, 52 were submitted after the 10-day period required by the act. The 52 reports were submitted an average of 20 days after the required date and ranged from 1 to 221 days late.

In Boston, 6 of the 14 case files reviewed showed the employer's first report of injury was submitted after the 10-day requirement. In New York, 57 cases were reviewed and 35 of these showed the employer's first report was not submitted within the 10-day period.

## REQUIRED REPORTS OF MEDICAL TREATMENT GIVEN TO WORKERS NOT SUBMITTED

Section 7(d) of the act requires that the first report of treatment of the injured employee by the attending physician be submitted to Labor (OWCP) within 10 days after the physician's first treatment. The OWCP district office is to use the reports to assure that the injured employees are getting proper medical treatment.

Of the 100 claims examined in San Francisco, a physician's first report was required in 98 cases. In 19 cases no report was received, and of the remaining cases only 28 were received within 10 days after initial treatment as required. The other 51 reports were received an average of 50 days late--with a range from 11 to 387 days.

OWCP also requires that the physician submit subsequent periodic reports, generally at 30-day intervals, on OWCP medical report form LS-204, or in narrative form, the original to the Deputy Commissioner and a copy to the employer (or carrier).

Of the 100 cases examined, 29 were closed cases; i.e., where an injured employee received compensation and returned to work. For 20 of these cases a medical report was not received within 30 days either before or after the employee returned to work. In 5 of the 20 cases, the district office had requested and not received the reports.

## PENALTIES FOR LATE REPORTS ARE NOT BEING ASSESSED AS PROVIDED BY THE ACT

OWCP is not levying civil penalties on the employers for late submission or failure to submit the reports as provided for in the act. Failure to use provisions for assessing penalties deprives OWCP of a valuable monitoring tool for (1) proper enforcement of the act and (2) protection of benefits due the injured employee. It also deprives the special fund of the additional monies that should have been collected through the penalties.

### Late reports of injuries

The act specifies that any employer who fails or refuses to furnish an injury report (LS-202) to OWCP within 10 days after the employer has knowledge of the injury shall be subject to a civil penalty not to exceed $500.

OWCP received injury reports from employers in 98 of the 100 cases examined at the San Francisco district office. Of the 98 reports, 52 were submitted an average of 20 days after the required date. However, in none of the 52 cases had the employer been assessed a late submission penalty.

In Boston, 6 of the 14 case files reviewed showed the employer's first report of injury was submitted after the 10-day requirement. None had been assessed a penalty.

In New York, 35 of 57 cases reviewed showed that the employer's first report was not submitted within the 10-day period. None had been assessed a penalty.

### Late reports on termination of compensation payments

The act requires employers to notify the Deputy Commissioner within 16 days after final compensation has been paid. The act states that if the employer fails to notify the Deputy Commissioner within such time, Labor shall assess the employer a civil penalty of $100. OWCP form LS-208 is used for reporting the final payment.

Payment termination notices were received by the San Francisco district office in 53 of 58 cases where compensation was paid. However, in 25 of the 53 cases, the payment termination notice was submitted in excess of 16 days--an average of over 2 months (66 days), ranging from 3 to 435 days after the required submission date. In none of the 25 cases were employers assessed a penalty.

## ASSESSMENT OF PENALTIES BY OTHER OWCP DISTRICTS

OWCP had not assessed penalties against employers submitting late reports under the act before fiscal year 1974. In fiscal year 1974 OWCP levied only five penalties for a total of $875. Statistics on penalties for fiscal year 1975 follow:

| | |
|---|---|
| Number of penalties recommended by Deputy Commissioners | 42 |
| Number of penalties assessed by OWCP | 34 |
| Dollar amount of penalties recommended | $5,325 |
| Dollar amount assessed | $2,625 |

In fiscal year 1975, the districts started reporting to the national office the number of employer's first report of injury (LS-202) that were filed late with the district office. These district reports were consolidated by the national office--on a nationwide basis--and sent to the districts in a memorandum. These memorandums showed that between October 1974 and April 1975 there were 3,625 late 202s and, under the act's provisions, these employers could have been fined up to a maximum of $500 for each late report. Any penalty collected would have been added to the special fund.

ESA national office officials stated that penalty assessment has been extremely lax and that only one type of penalty has been enforced--the late submission of the employee's first report of injury (LS-202). They said until recently, penalty assessments had been regarded as token gestures to warn the industry and nearly all the assessments which had been levied had been originated by the Deputy Commissioner in Houston's district office.

An apparent cause for the lack of penalty assessments by the districts may be attributed to a lack of guidelines. The OWCP national office has not issued adequate instructions or guidelines to the districts regarding levying penalties on employers who do not submit the required reports.

We also noted that Labor's internal reviews have reported a laxity in assessing penalties at other district offices and the need for guidelines. For example, Labor's Division of the Internal Audit issued a report on April 28, 1971, on its review of the LHWCA program in two district offices. One of the report's findings was the districts' failure to assess employers fines for not submitting the reports required by the act. The report stated there was a need to review and possibly revise OWCP procedures on assessment of civil penalties to make such assessments as provided by the act.

Subsequent inspections were made by the Associate Director, Division of Longshore and Harbor Workers' Compensation, OWCP national office, at San Francisco in April 1974, Houston and New Orleans in July 1974, and Jacksonville in January 1975. In each report, observation was made that employers failed to submit the first reports on injured employees and compensation reports as required by the act and that the district offices made no attempts to impose penalties.

In August 1974 guidelines and procedures for recommending penalties under sections 14(g) and 30(e) of the act were issued. As indicated by our review and the January 1975 inspection at Jacksonville, these instructions either are not adequate or are not being effectively implemented.

In January 1975 OWCP issued a notice to employers and insurance carriers regarding its policy on assessing penalties under the act. The notice stated

> "The failure of many employers to submit reports of injuries or deaths timely, or of insurance carriers or self-insured employers to submit other reports as required by the Longshoremen's and Harbor Workers' Compensation Act and its extensions, including the District of Columbia Compensation Act, is detrimental to the interests of injured workers and their survivors and interferes with the effective administration of this law by the OWCP. We are therefore reminding you of the requirements of the law with respect to the timely filing of certain reports."

In November 1975, the Associate Director, Division of Longshore and Harbor Workers' Compensation, advised us that assessment of penalties has increased in the first

quarter of fiscal year 1976. During this period, the 13 OWCP district offices have recommended that 208 penalties, amounting to $22,665, be assessed against employers for submitting late reports. Of the 208 recommendations, 90 have been approved by Washington headquarters, 35 have been waived, and 83 were still under review.

# CHAPTER 4

# TIME FRAMES FOR ADJUDICATION OF CLAIMS

Under LHWCA, employers can deny the injured employee's right to compensation and medical benefits. The act also allows an injured employee to contest the action of the employer or its carrier in reducing, suspending, or terminating benefits, including medical care. The act provides for settling disputes through informal procedures conducted by the Deputy Commissioner or his designee and through a formal hearing process.

OWCP does not always give injured employees' claims prompt action during the informal phases of hearing disputed issues. For example, it took the San Francisco district office up to 6 months to complete the informal review for most of the 10 disputed injured employees' cases we reviewed. In addition, it takes up to 6 months for OALJs to complete formal hearings. The lack of prompt action has resulted in hardships to some injured employees.

## TIME FRAMES FOR COMPLETING THE INFORMAL HEARING PROCESS

As stated above, in the cases we reviewed in San Francisco, it took up to 6 months for most of the 10 injured employees' cases to go through OWCP's informal hearing process. New York officials said it may take up to 9 months to take a case through the informal hearings process. Other districts reported to us that cases could take from 15 days to 4 months to process.

Labor's regulations state that the Deputy Commissioner upon receiving notice of employer's denial of a claim or an injured employee's notice to contest a claim should immediately begin adjudication proceedings.

In line with the act and Labor's regulations, the Longshore (LHWCA) Procedure Manual states that claims should be adjudicated informally, whenever possible, and should not be referred to OALJ for formal hearings until after informal proceedings have been used. The manual, however, contains no specific requirement as to how soon the informal hearings should be scheduled after the Deputy Commissioner receives a request from the employer or employee.

The informal hearings, conducted by the Deputy Commissioner or his claims examiners, attempt to resolve all

disputed issues through agreement of both employer and injured employee. This is generally accomplished by telephone, written correspondence, or conferences. Following an informal conference at which agreement is reached, the Deputy Commissioner is to embody the agreement in a formal compensation order. If agreement on all matters cannot be reached, the examiner closes the informal negotiations.

The manual requires that a memorandum of the informal hearing be prepared stating the issue(s) and the Deputy Commissioner's or claim examiner's recommendation for resolution of the disputed issue(s). The manual contains no guidelines or requirements as to how soon the memorandum should be prepared.

The Deputy Commissioner sends copies of the memorandum, by certified mail, to all interested parties, who then have 14 days after receipt to indicate in writing their agreement or disagreement. If any of the parties rejects the recommendation and the Deputy Commissioner determines that further informal proceedings would be unproductive, or if any party has requested a formal hearing, the Deputy Commissioner is to prepare the case for transmittal to OALJ.

The Deputy Commissioner prepares the case for transmittal by preparing a separate memorandum stating the facts and issues of law pertaining to the claim on which the parties agree and disagree. The memorandum, however, is not to indicate or suggest the Deputy Commissioner's opinion or recommendations on the case. The Longshore (LHWCA) Procedure Manual does not specify how many days should elapse between the date the informal conference is held and the date the memorandum is prepared and the case transferred to OALJ.

During fiscal year 1974, 30 cases were referred by the Deputy Commissioner in the San Francisco district office to OALJ for formal hearings and 71 cases were referred in the first 11 months of fiscal year 1975. We reviewed 10 of the cases referred in 1975 and found:

--It took 1 to 6 months from the time the employer or employee requested an informal conference until the district office held the conference.

--After the informal conference, it generally took 1 to 37 weeks before a required memorandum of the proceedings was prepared by the district office.

--After the formal hearing was requested by the employer or employee it took the district from 3 to 26 weeks to refer the case to OALJ.

It took about 6 months for most of the 10 claims to go through the district's informal review process. In one case it took 12 months to complete the informal review. In another case an informal conference was held in May 1974 and the district office did not prepare the memorandum until February 1975.

San Francisco's Deputy Commissioner stated that insufficient staff to administer the district's large workload caused delays in scheduling and holding informal hearings. A general discussion on staffing is presented in chapter 8.

We reviewed a limited number of cases in the Boston and New York districts. Boston officials estimated that it took about 55 days for their office to complete informal review. New York officials said it may take up to about 9 months to take a case through the informal hearing process. As of July 1, 1975, the New York district had a backlog of 888 conferences scheduled into December 1975, and 365 requests for conferences that had not been scheduled.

Responses to the questionnaire we sent to Boston, New York, and the other 10 districts showed the following estimated elapsed time to complete informal hearings:

| | Average number of elapsed days | | |
|---|---|---|---|
| District | Between request and informal hearing | Between hearing and preparation of memorandum of hearing | Total elapsed time |
| Boston | 45 | 10 | 55 |
| New York | 225 | 30 | 255 |
| Philadelphia | 15 | 2 | 17 |
| Baltimore | 120 | 7 | 127 |
| Norfolk | 13 | 2 | 15 |
| Jacksonville | 45 | 7 | 52 |
| New Orleans | 20 | 7 | 27 |
| Houston | 30 | 10 | 40 |
| Cleveland | 45 | 10 | 55 |
| Chicago | 60 | 10 | 70 |
| Seattle | 33 | 21 | 54 |
| Honolulu | 25 | 3 | 28 |

As the table shows, it takes an average of 15 days (2 weeks) in Norfolk to 255 days (about 9 months) in New York to take a case through the OWCP informal hearing process. Additional time, of course, would be involved for the Deputy Commissioner to prepare the required memorandum transferring the case to OALJ.

Officials of several districts agreed that the increase in workload and lack of staff are causing delays in scheduling and in holding informal hearings.

Labor's Division of Internal Audit reported in April 1971 it took one district an average of 92 days before an informal conference was held after it was requested. The report recommended that the Director, OWCP, obtain information from other offices and, if appropriate, issue instructions or guidelines for holding informal conferences within specified periods. In his July 1971 response to the report, the Assistant Secretary, ESA, stated

> "We were surprised at the finding that an excessive amount of time elapses between the scheduling and holding of conferences. We are endeavoring to find out what the situation is nationally and for what reasons delays occur and how they can be best corrected. Once the extent of the problem is known, we will take whatever steps are necessary to insure that the claimants needs are satisfied."

Our review shows that as of fiscal year 1975 there was still a considerable time lapse between the time an informal conference is requested and the time it is held. Also, as of September 1975, the national office had not issued guidelines recommended by the internal auditors.

## TIME FRAMES FOR FORMAL HEARING BY OALJ

It takes an average of about 6 months for OALJ to complete work on a case.

After OALJ receives the Deputy Commissioner's memorandum outlining the facts in the case and delineating disputed issues, it assigns the case to an ALJ for a formal hearing. The ALJ establishes a date for formal hearings and sends a notice of the hearings to the parties in the case.

Usually, OALJ waits until there are sufficient cases in an area to justify the expense of sending a judge to hold hearings. After concluding the formal hearings, the ALJ returns to Washington to prepare a formal written decision. Copies of the decision are given to the interested parties and to the Deputy Commissioner having original jurisdication.

Since the 1972 amendments, the number of LHWCA cases referred to OALJ has steadily risen as shown in the table below.

| FY | Number of cases |
|---|---|
| 1973 | 223 |
| 1974 | 421 |
| 1975 | 757 |

At the beginning of fiscal year 1975, OALJ had 314 pending LHWCA cases. It received 757 new cases and disposed of 697 cases during the year. This left a backlog of 374 pending cases at the end of the fiscal year.

The schedule below shows the total number of ALJs allocated to OALJ and those allocated to handle LHWCA cases.

| FY | Total number of ALJs | ALJs handling LHWCA cases |
|---|---|---|
| 1973 | 20 | 0 |
| 1974 | 38 | 2 |
| 1975 | 51 | 4 |

According to the Chief Judge in OALJ, the number allocated for LHWCA cases was so limited that OALJ borrowed staff from its other resources (i.e., its traditional work on labor-management cases as well as black lung program hearing officers).

The Chief Judge said OALJ actually utilized the following manpower resources on LHWCA cases.

| FY | Staff years | Cases disposed of |
|---|---|---|
| 1973 | 1.2 | 58 |
| 1974 | 7.8 | 272 |
| 1975 | 15.5 | 697 |

The San Francisco district office referred 30 cases to OALJ during fiscal year 1974. The hearings on these cases were held in the San Francisco district.

Our analysis of 14 cases showed that

--it took an average of 5 months for OALJ to set a formal hearing date after receiving the case from the Deputy Commissioner and

--it took an average of almost another 7 months for the ALJ to issue a decision.

The time elapsed in setting a hearing date for the 30 cases ranged from 31 to 247 days. The time to render a decision ranged from 38 to 282 days.

We also analyzed 10 of 71 cases referred to OALJ by the San Francisco district office during fiscal year 1975. OALJ has set hearing dates for 7 of the 10 cases. Our analysis of the seven cases showed that some improvement had been made in setting the date. OALJ set a formal hearing date for an average of 9 to 10 weeks after the case was received.

According to OALJ national statistics, the average time from the date an LHWCA case is referred to the ALJ to the date of a final ALJ decision was 190 days in fiscal year 1973 and 185 days in fiscal year 1974.

The Chief Judge in OALJ attributed the delays and backlog to insufficient staffing, particularly during the program's initial stages in fiscal year 1973; frequent requests for postponement by the parties, including attorneys for the claimants, due to their inability to proceed with their cases because of illnesses by claimants and unavailability of witnesses, especially doctors; frequent requests for posthearing delays, such as filing of briefs and taking posthearing depositions from doctors who could not testify at the original hearings; and loss of experienced ALJs to other agencies. During fiscal year 1975 and early 1976, OALJ experienced a turnover rate of 50 percent and lost 12 judges assigned to the processing of LHWCA cases to other agencies.

Another factor cited by the Chief Judge is the act's requirement that hearings be held as close as possible to the claimants' homes. This involves a travel factor which often necessitates a delay in scheduling hearings until a number of cases can be heard in a specific locality.

The Associate Chief Judge in OALJ said he was planning to start a new scheduling process in the last quarter of fiscal year 1975 and that the total formal hearing process should be reduced to 5-1/2 months. He said a case was to be scheduled for hearing within 2 weeks after it was referred to OALJ. To consolidate travel, minimize requests for postponements, and make sure attorneys for both sides are available, cases were to be set for 8 weeks in the future. After a hearing is held, there is a 2-week minimum before OALJ and the parties receive their copies of the transcript from the court reporter. After receipt of the transcript, the parties are ordinarily given 30 days to file briefs before the hearing is closed. After that it is anticipated that decisions can be issued in 30 to 60 days.

The Associate Chief Judge said that these goals will result in a formal hearing process of 5 to 5-1/2 months, as shown below.

| | Estimated number of days |
|---|---|
| Referral to hearing scheduling | 10 |
| Scheduling to actual hearing | 56 |
| Hearing to transcript | 14 |
| Transcript to attorneys brief | 30 |
| Receipt of briefs to decision | 30 - 60 |
| Total | 140 - 170 |

Even with this new schedule, an injured employee would have to wait about 6 months for a decision from OALJ.

In a discussion in December 1975, the Chief Judge stated that, with the increased productivity rates experienced in fiscal years 1975 and 1976, the replacement of the 12 judges lost through turnover, as well as improved scheduling procedures through use of calendar calls, in his opinion, the number of pending cases should be reduced to manageable proportions.

Regarding above cited time elements in case handling stages, the Chief Judge stated that if the 11 additional positions for OALJ included in the 1976 fiscal year appropriation are approved, the case handling process can be reduced to approximately 4 months as follows:

| | Estimated number of days |
|---|---|
| Referral to hearing scheduling | 5 - 10 |
| Scheduling to actual hearing | 30 - 40 |
| Hearing to transcript | 14 - 21 |
| Transcript to attorneys brief | 30 - 50 |
| Receipt of briefs to decision | 30 - 50 |
| Total | 119 - 161 |

In the opinion of the Chief Judge, the above figures represent optimum median time targets which cannot realistically be reduced even through the infusion of additional staff or money, because of the due process requirements of the Administrative Procedures Act, the inevitable requests by parties, including claimants, for postponements, and the need for pre- and post-hearing dispositions.

## APPEALS TO BENEFITS REVIEW BOARD

If either the injured employee or the responsible employer is not satisfied with the OALJ decision, the case can be appealed to the Benefits Review Board. It takes the Board an average of 1 to 6 months to decide an appeal case.

The Board, established by the 1972 amendments, consists of a Chairperson and two other members appointed by the Secretary of Labor. The current Board, appointed April 1974, is composed of two former attorneys and a workmen's compensation specialist from private industry.

In fiscal years 1974 and 1975, the Board acted on 71 and 138 cases, respectively. The table below shows those affirmed, dismissed, and reversed.

| Decisions | FY 1974 Number | FY 1975 Number |
|---|---|---|
| Affirmed | 25 | 64 |
| Dismissed | 15 | 14 |
| Reversed | 31 | 60 |
| Total | 71 | 138 |

According to a Board official, it took an average of 30 to 180 days for the Board to render a decision on an appealed LHWCA case.

According to a Board official, the shorter time periods are usually the result of the Board's dismissal of the appeal at the petitioner's request or for defects in timely filing of briefs. The longer time periods are due to requests for time extensions for parties to submit legal briefs, petitions, or other relevant material.

The Board Chairperson also stated that since the Board is of recent origin, it had to initiate and adopt certain legal procedures recommended by court administrative experts to handle the processing of the appeals. The official also stated that the Board has been severely hampered by the limited number of professionals (five attorneys) it has on the staff to deal with the large volume of appeals it must consider.

## EFFECT ON INJURED EMPLOYEES OF DELAYS IN ADJUDICATION PROCESS

Our review of 10 cases with OALJ at June 1975 in the San Francisco district indicates that hardships have resulted to some of the injured employees.

Following is a description of the events that occurred in two separate cases.

Case A

--December 1973, employee sustained a contusion to left shoulder and back and employer voluntarily paid compensation for temporary total disability.

--January 1974, employer discontinued compensation stating that claimant was able to return to work and the settlement figure for permanent partial disability was set too high.

--May 1974, an informal conference was requested.

--September 1974 (4 months later), memorandum of informal conference prepared.

--February 1975, claimant's attorney wrote to OWCP and stated that nothing was to be accomplished by further negotiation and that it was imperative that this matter be set for hearing at the earliest possible time. Claimant had used $12,000 in savings in order to live and was without funds to support himself and his family.

--May 1975 (3 months after request), San Francisco district office submitted case to OALJ.

--As of June 1975 no hearing date had been set by OALJ.

Case B

--October 1972, employee sustained injury to both knees and sprained dorsal and lumbar spine; employer voluntarily paid compensation for temporary total disability.

--December 1972, compensation stopped because employee returned to work.

--March 1973, compensation resumed voluntarily by employer when employee had operation on left knee.

--September 1973, temporary compensation payments discontinued because employer challenged employee's degree of disability.

--February 1974, employee requested informal conference by OWCP.

--April 1974, informal conference held.

--August 1974 (4 months later), OWCP prepared memorandum of the informal conference.

--August 1974, claimant's attorney requested district office to submit case to OALJ for formal hearing.

--December 1974, claimant's attorney again requested OWCP to submit case to OALJ for formal hearing. Attorney said applicant was receiving no compensation and was suffering thereby.

--February 1975 (6 months after initial request), district office transferred case to OALJ for formal hearing.

--April 1975, OALJ held formal hearing.

This claimant was 52 years old, with four children under age 18, and had only a ninth grade education. At the time of our review, his only source of income was social security and a union disability pension.

At the informal hearing the claimant said he owed $400 on rent and utilities and $320 on food. Examiner recommended that the self-insured employer pay disability and 10-percent penalty on back compensation.

In six of the other eight cases reviewed, the injured employees' compensation had been terminated. One of the six employees was collecting unemployment insurance and another was receiving social security disability. We could not determine the source of income for four cases. In the two remaining cases the employees were only receiving partial compensation payments. For example, one of the employees, a parent with four children, was living on $250 a month child support and $43 a week in compensation.

A review of a few cases in process at July 1975 in Boston and New York that have been referred to OALJ also showed delays which caused financial hardships to the injured claimants as follows:

--A 36-year-old claimant, with five children 16 years of age or younger, is now on welfare and cannot work because of disability. This case has been in adjudication since January 1973.

--An injured employee with five children has been living on welfare and social security disability since date of accident. Employee was injured in June 1970 and carrier appealed OALJ's decision to Board in February 1975.

--Claimant was without income from October 1974 until June 1975 and his only source of support was his savings.

Although some of the injured claimants were not working and had no--or minimal--income for extended periods we noted that OWCP does not require district offices to give priority attention to the neediest cases. Moreover, as discussed earlier in the chapter, OWCP's policies and procedures do not require that district offices have specific time frames for completing various steps of the informal hearing process.

## CHAPTER 5

## EMPLOYEE ASSISTANCE PROGRAMS UNDER THE 1972 AMENDMENTS

The 1972 amendments substantially increased Labor's responsibility in providing service to employees covered under the act. The amendments state that Labor shall provide employees, upon request, with information and assistance in processing claims and shall actively supervise the medical care rendered to assure that injured employees obtain the best services available. The amendments also state Labor may, upon request, provide legal assistance to claimants covered by the act.

OWCP and the Solicitor's Office have not fully or effectively implemented these programs.

### PROVIDING INFORMATION ON ASSISTING CLAIMANTS IN PROCESSING CLAIMS

The House and Senate Committee Reports 1/ on the 1972 amendments stated that assistance to be provided under section 39(c) should enable persons covered under the act to understand the benefits and other matters relating to the statute's operations. The reports also stated that it was intended that assistance be all inclusive and enable the employee to receive the maximum benefits due him without having to rely on outside assistance other than that provided by Labor.

Labor's revised rules and regulations (20 C.F.R. 702) issued September 26, 1973, pursuant to the 1972 amendments, stated that OWCP was to provide persons covered under the act, upon request, with (1) information and assistance relating to the act's coverage and (2) procedures for obtaining such compensation, including assistance in processing a claim.

OWCP has not established effective procedures either to provide claimants with information on available services or to assist claimants in processing claims.

One method used by OWCP--also used before the 1972 amendments--to inform injured employees of benefits under

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1/H. Rep. No. 1441, 92d Cong., 2d Sess., 12-13 (1972).
S. Rep. No. 1125, 92d Cong., 2d Sess., 15 (1972).

the act is a form letter (LS-504). OWCP sends this letter to the injured employee after the employer notifies it of the injury. This letter informs the employee that his employer is required under the act to provide medical and compensation benefits and includes information on benefits he may be entitled to and where claims may be filed. The letter does not specifically advise the injured employee that assistance will be provided if requested nor does it advise that:

--Legal assistance may, upon request, be provided to the employee, free of charge, by Labor.

--The compensation rate while the employee is totally disabled should be two-thirds of his average weekly wage, subject to a minimum and maximum.

--Compensation payments should be received semimonthly during total disability.

--Vocational rehabilitation may be available through OWCP.

The Longshore (LHWCA) Procedure Manual, provides little guidance to the districts on distribution of the letter to injured employees. The manual states that the letter may be sent to employees who have no-time-lost injuries at the Deputy Commissioner's discretion. It does not require that the letter be sent to employees reporting time-lost injuries (i.e., those sustaining injuries severe enough to keep them off the job), even though these employees would be more likely to be eligible or in need of the act's benefits.

A San Francisco district office official told us that the form letters are sent to all injured employees--those involved in time-lost injuries as well as those reporting no-time-lost injuries.

Of the 100 claims we examined in San Francisco, we found, in 85 cases, no evidence in the files that the claimant had been sent an LS-504 form letter.

Another method OWCP uses to inform covered employees of the benefits and assistance provided for by the act is through distribution of a pamphlet entitled, "Workmen's Compensation for Persons in Maritime Occupations" (OWCP pamphlet LS-560). Use of this pamphlet was discussed by the Secretary of Labor in his December 26, 1973, response to the Chairman, Senate Committee on Labor and Public

Welfare. The Chairman had written the Secretary in November 1973 expressing concern about Labor's method of assisting claimants in processing claims and providing benefit information.

The Secretary responded that information was being provided by the OWCP pamphlet, which had been published in April 1973 and which provided workers covered by LHWCA with basic information about its provisions. The Secretary also stated that

> "* * * The pamphlet in one section advises employees that they may receive information about the Act and, if they request it, assistance from the Department of Labor in processing a claim. It also lists the cities in which district offices of the Office of Workers' Compensation Programs which administers the Act are located. This pamphlet was printed in large quantities and has been made available for wide distribution to individual workers covered by the Act through Labor organizations and other sources. * * *"

Although this pamphlet is informative, it does not inform the injured employees that free legal assistance may be available from Labor upon request. We also noted that the San Francisco district office has not received instructions on how or where to distribute the pamphlet. We reviewed the distribution practices in the San Francisco office and found that it sent the pamphlet to employers, insurance carriers, and labor organizations for distribution to individual workers. The district, however, did not follow up to see if the employers, unions, and insurance carriers actually distributed the pamphlet. Thus, the district had no assurance that the employees actually received the pamphlet.

## LABOR NOT PROVIDING LEGAL ASSISTANCE TO CLAIMANTS

Labor is not providing legal assistance to claimants who requested it, as permitted by the 1972 amendments to the act.

The House and Senate Committee Reports on the 1972 amendments 1/ indicate that legal assistance was to be

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1/S. Rep. No. 1125, 92d Cong., 2d Sess., 15 (1972).
H. Rep. No. 1441, 92d Cong., 2d Sess., 13 (1972).

given to claimants as liberally as possible. This is indicated by the following statement:

> "* * * It is the Committee's desire that the Secretary construe this provision as liberally as possible so as to provide any worker in need of legal assistance such counsel, especially where the employee is either indigent or of minimal means. It would also be appropriate for the Secretary to provide legal assistance in similar types of death cases as well as to provide as much assistance in other cases of hardship or unusual types of proceedings or difficult cases."

Labor regulations (20 C.F.R. 702.136) state that legal assistance is to be made available at the Solicitor of the Department of Labor's discretion before, and during, the time the claim is being processed, and is to be furnished without charge to a claimant. The regulations also state that legal representation of a claimant in adjudicatory proceedings may be furnished in cases where Labor's interest in the case is not adverse to the claimant's. The Longshore (LHWCA) Procedure Manual requires Deputy Commissioners to submit requests for legal assistance to the national office.

In San Francisco, since the 1972 amendments were enacted, the Deputy Commissioner has recommended to the OWCP national office that legal assistance be provided in two cases. These involved legal assistance to be provided to two claimants in presenting their cases before an ALJ. Both recommendations were denied by the Solicitor's Office in the national office. The Deputy Commissioner said that he assumed others would be denied and, therefore, he has made no other recommendations.

Following is an example of a claimant who the Deputy Commissioner believes should have been provided legal assistance. This employee suffered a permanent partial disability and requested an increase in compensation to cover the cost of operating an electrical heating pad which he had to use daily. A formal hearing before an ALJ in October 1974 had to be postponed because the employee's attorney died and the ALJ ruled that the employee's hearing impediment and lack of formal education prevented him from effectively representing his own interests.

The formal hearing was held on January 16, 1975, with the employee being represented by a union official. The employee was denied the electricity costs and was barred

from litigating the issue again. The Deputy Commissioner requested legal assistance from Labor to appeal the case. The request was forwarded to the Associate Solicitor for Employees Benefits, and the legal assistance was denied by the Solicitor's Office.

In our questionnaire to the other 12 OWCP district offices, we requested information on the legal asssitance provided to claimants. The responses from the 12 districts show that, although they had requested legal assistance for claimants, the Solicitor's Office did not honor their requests. Officials in the New York district stated that a request was sent to the Solicitor who did not reply. The officials said since then, if a claimant requests legal assistance, he is referred to the Bar Association or legal aid society or he is provided with the names of three or more attorneys practicing in the area of workmen's compensation.

The Counsel for LHWCA in the Solicitor's Office stated that since enactment of the 1972 amendments his office had received less than 10 requests for legal assistance. In each case the request for assistance was denied by the Solicitor's Office.

Officials in the Solicitor's Office told us that no program has been established to provide legal assistance to injured employees covered by the act. They said the Solicitor's Office's primary responsibility is to represent the Director, OWCP, in all legal matters and court cases pertaining to the act's administration--and not to provide legal assistance to individual claimants.

They stated that there are no plans to establish a program to provide legal aid to claimants on an individual basis. Limited manpower and financial resources were cited as the reasons for not establishing a program.

The Associate Solicitor (Division of Employees Benefits) advised us in November 1975, that available resources have prevented the Solicitor's Office from establishing a special program to provide legal assistance to LHWCA claimants who request it under the amended act. She pointed out that the act's language makes the provision of such assistance discretionary and Labor's regulations place the authority to make such decisions in the Solicitor.

She stated that the Solicitor's Office has received very few such requests under the act and each file has been reviewed. She further advised that the Solicitor's decision

to deny the request had been communicated to the claimant. Notification to the claimant was made either directly from the Solicitor's Office or by the Deputy Commissioner in whose district the claim was submitted.

## DISTRICTS NOT ACTIVELY SUPERVISING MEDICAL TREATMENT OF INJURED EMPLOYEES

The San Francisco district office is not actively supervising the medical care rendered to injured claimants and is not complying with the act's intent. We also found indications that the other OWCP districts are failing to actively supervise medical treatment of the injured employee.

Section 7(b) of the act, amended in 1972 to require Labor to actively supervise the medical services being received by claimants, states in part that:

> "The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgement such change is desirable or necessary in the interest of the employee."

The following excerpt from the Senate and House Committee Reports 1/ on the 1972 amendments indicates the intent of this section:

> "* * * [The act] also requires the Department of Labor to take a more active role in assuring that injured employees receive proper medical treatment and rehabilitation services. It is the Department's responsibility to take affirmative action in this area by actively supervising the medical care given to injured employees. This does not mean that the Department may tell doctors what to do, but it does mean that the Department should require

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1/S. Rep. No. 1125, 92d Cong., 2d Sess., 15 (1972).
H. Rep. No. 1441, 92d Cong., 2d Sess., 13 (1972).

periodic medical reports and take the initiative in contacting injured employees, especially in cases of serious injury to see that the employee is receiving proper care and that rehabilitation services are being provided, where required."

Labor regulations (20 C.F.R. 702.407) state that OWCP, through the Deputy Commissioners, shall actively supervise the medical care of an injured employee covered by the act.

The Longshore (LHWCA) Procedure Manual provides that, among other things, the treating physician file periodic reports with the Deputy Commissioner on medical care being rendered the injured employee. The Deputy Commissioner is to determine (1) the necessity, character, and sufficiency of medical care rendered the injured employee and (2) the need for a change in physicians or hospitals. In making these determinations the Deputy Commissioner may consult with the district's Medical Director who handles Federal employees' compensation cases under the Federal Employees' Compensation Act. Labor regulations (20 C.F.R. 702.408) provide that the Deputy Commissioner can secure further evaluation of medical questions if needed by qualified physicians and specialists.

In San Francisco, the district's Medical Director for Federal Employees had a large backlog of Federal employees' cases (878 cases at December 1974) and was not available for advice except on the most difficult LHWCA cases. This left medical supervision, for the most part, to the Deputy Commissioner and his claims examiners. District officials indicated that neither the Deputy Commissioner nor the claims examiners have the medical background or qualifications to make the medical evaluations and determinations required by the manual.

No information was available on the number of cases in the San Francisco office which were receiving "active medical supervision" at the time of our review in June 1975. The Deputy Commissioner estimated that it was less than 5 percent of the active caseload, which was at 7,438 at June 28, 1975. The district's role in cases it does "supervise" is mainly in the area of authorizing changes in physicians or getting an independent medical examination on disputed cases. These actions are generally requested by the employee or employer and are not the result of the district's active supervision of medical care.

The district's passive role in medical supervision is also indicated in its weak monitoring of the number and timeliness of medical reports received on the injured employees as required by section 7(d) of the act. (These were described on pp. 17 and 18.)

Essentially, medical supervision at the district office is no different now than it was before the 1972 amendments. The Deputy Commissioner in the San Francisco district office told us that if the district were to actively supervise the medical care of all injured claimants it would require two full-time physicians, a paramedic, and a case file on all reported injuries. He said that no funds have ever been available to hire even a part-time physician for medical supervision of LHWCA cases.

In response to our questionnaire, officials at 12 other district offices reported that limited, if any, medical supervision was being given to injured employees. Most reported that supervision of medical care rendered to injured claimants is the same now as it was before the 1972 amendments.

In an inspection of the San Francisco office in April 1974, the Associate Director of OWCP's national office criticized the district for not improving the medical supervision or monitoring of medical aspects of case handling over the pre-1972 amendment period. He said that the deficiency could be attributed in part to a lack of guidance by the national office. He said, however, it appeared that, as a minimum, the claims examiners should show more initiative in insuring regular receipt of medical reports. With a larger claims staff, and after issuance of guidelines or procedures by the national office, the Associate Director said improvement in this area would be expected in the next inspection. Guidelines on supervision of medical care were issued in August 1974 as part of the Longshore (LHWCA) Procedure Manual.

Our review, made more than 1 year after the Associate Director's inspection, showed that improvement had not been made in medical supervision and monitoring of the required medical reports at the San Francisco district office.

ESA's Office of Program Development and Accountability believed that the manual's guidelines were not adequate to implement the supervision of medical care as intended by the 1972 amendments. The ESA office made a review of the LHWCA program in the Philadelphia region in April 1975 and a major issue reported was that the national office urgently needed to develop standards and criteria for the districts

to meet requirements and fulfill their responsibilities for monitoring medical care. The report said that, in the interim, the districts can and should take the initiative to periodically sample case files for trends with employers and/or doctors having cases reopened because of recurring medical problems, complaints, and undue duration of disability. The report said this can at least isolate problem areas.

As of September 1975, the national office had not issued any additional or revised guidelines or procedures for actively supervising and monitoring medical care.

# CHAPTER 6

## VOCATIONAL REHABILITATION

## PROGRAM GIVEN LOW PRIORITY

Section 39(c)(2) of the act states the Secretary shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate State public or private agencies for such rehabilitation. The act allows the Secretary to use the special fund to provide vocational rehabilitation services including such prosthetic appliances and other apparatus necessary for the injury.

A vocational rehabilitation specialist in each OWCP district is to be responsible for supervising the implementation of the vocational rehabilitation of injured employees under the act. However, the district offices have placed low priority on LHWCA's vocational rehabilitation program. As a result, few LHWCA claimants are enrolled in vocational rehabilitation and there is a lack of adequate followup and monitoring by the specialists on those enrolled in the program.

### VOCATIONAL REHABILITATION IN THE SAN FRANCISCO DISTRICT OFFICE

The San Francisco district office has two rehabilitation specialists assigned full time to the vocational rehabilitation program. In addition to the LHWCA program, the specialists are responsible for the vocational rehabilitation of Federal employees under the Federal Employees' Compensation Act. One rehabilitation specialist is responsible for 44 northern California counties and Nevada, while the other specialist is responsible for 14 southern California counties and Arizona.

The rehabilitation specialists refer permanently disabled employees from LHWCA who are interested in rehabilitation to the appropriate State department of vocational rehabilitation where a rehabilitation plan is developed with assistance from a State counselor. The plan is reviewed by the specialist who may accept, reject, or modify the plan.

The two rehabilitation specialists spend most of their time rehabilitating injured Federal employees and very little time on the vocational rehabilitation program for LHWCA cases. They have referred few LHWCA cases to the State for vocational rehabilitation, and those few cases that have been referred are not adequately monitored.

For example, in fiscal year 1973 only 15 injured employees were referred for rehabilitation and only 18 in fiscal year 1974. During fiscal year 1975, 23 LHWCA cases were referred to the State for rehabilitation services.

We reviewed 18 cases that were active at the time of our fieldwork. Of the 18, 4 injured employees were enrolled in a vocational rehabilitation training program and 14 were listed as being in the process of developing a rehabilitation plan. The four claimants being trained were registered in programs with training periods ranging from 9 months to 2 years for (1) air conditioning and refrigeration repairman, (2) museum aide, (3) receiving clerk, and (4) small motors repairman.

The rehabilitation specialists were not adequately monitoring the progress of the 18 cases and had only limited contact with the State counselor and the injured employee. For example, for 17 of the 18 claimants enrolled in rehabilitation the specialists did not followup on referrals to the State within the 60 days as required by Labor regulations (20 C.F.R. 702.504) and the Longshore (LHWCA) Procedure Manual. The regulations say this followup is necessary to assure uniform reporting and handling of the cases by the State agencies. Delays from referral to followup for the 18 cases averaged 275 days--ranging from 40 to 585 days.

The specialists stated that periodic telephone contact is made with the State counselor and claimant, but a memorandum is not always made of the conversations.

We found no evidence in the districts' files that the specialists were receiving monthly Certificates of Vocational Training (form BEC-128) from the injured employees enrolled in the State's vocational training program.

OWCP requires employees to submit monthly three copies of the certificate to the district, signed by the employee and the State official. After Deputy Commissioner approval, two copies are forwarded to OWCP headquarters and one copy can be retained by the district office. The manual states they are to be used to approve payment of the maintenance allowances from the special fund, to monitor the claimants' rehabilitation progress, and to determine whether training should be continued. No copies of this certificate are retained in the district office files to indicate that these claimants enrolled in rehabilitation programs are being monitored as required. A specialist informed us that the district office forwards all three copies of the certificate to OWCP headquarters.

## VOCATIONAL REHABILITATION IN OTHER DISTRICTS

There appears to be a lack of adequate effort on the LHWCA vocational rehabilitation program in the other districts. In response to our questionnaires, the other 12 districts reported that in fiscal year 1974, 194 claimants were involved in LHWCA's vocational rehabilitation program. For fiscal year 1975, the 12 districts reported 254 claimants were involved in the program. The number of claimants reemployed as a result of rehabilitation efforts decreased from 35 in fiscal year 1974 to 32 in fiscal year 1975.

In April 1975 ESA's Office of Program Development and Accountability reviewed the LHWCA program in the Philadelphia region, and one of the major issues discussed in its report was the need to develop specific and clear criteria for a rehabilitation program. The report said this becomes imperative with the probable authorization of additional rehabilitation staff for fiscal year 1976. The report further stated the district offices should notify carriers and self-insurers that rehabilitation efforts are expected wherever possible.

ESA and OWCP recognize that there is a lack of adequate effort in the vocational rehabilitation program as evidenced by the comments in ESA's budget submission for fiscal year 1976:

> "* * * It is recognized that the resources the Department presently has available for this effort are inadequate to meet the need. The 1972 amendments require the Department of Labor not only to provide information on rehabilitation to employees receiving compensation, but to assist them in an active way in obtaining the best such services available.
>
> "At present OWCP has only one employee in the National Office engaged entirely in vocational rehabilitation services. In those joint FECA 1/ Longshore district offices where a vocational rehabilitation specialist is located, the specialist devotes some of his or her time to assisting Longshore Act claimants. This provides a very limited service at best. It is estimated that with adequate staffing, the following numbers of cases could be processed each year:

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1/Federal Employees' Compensation Act.

| | Cases |
|---|---|
| Boston | 134-264 |
| New York | 31-62 |
| Baltimore and Norfolk | 142-286 |
| Jacksonville | 25-51 |
| New Orleans | 140-280 |
| Chicago and Cleveland | 19-38 |
| San Francisco | 58-116 |
| Seattle | 25-51 |

"A rehabilitation staff of nine additional professionals is proposed to provide these required vocational rehabilitation services. The expected increase in the professional staff of rehabilitation specialists is intended to provide a structured, comprehensive rehabilitation program. * * *"

As of November 1, 1975, the request for additional staff was being considered as part of Labor's fiscal year 1976 appropriation request by a Joint House-Senate Conference Committee.

# CHAPTER 7

## NONCOMPLIANCE WITH OWCP REQUIREMENTS TO ASSURE PROPER INSURANCE COVERAGE FOR CLAIMANTS

The district offices were not complying with some OWCP regulations to assure that employers had adequate insurance coverage for compensation due employees under the act.

Section 32 of the act requires every employer to secure payment of compensation under the act by (1) insuring and keeping insured payment of such compensation with any stock company, mutual company, association, person, or fund, authorized under the laws of the United States or of any State and approved by the Secretary of Labor, to insure workmen's compensation, or (2) furnishing satisfactory proof to the Secretary of the employer's financial ability to pay such compensation and receiving an authorization from the Secretary to act as a self-insurer for payment of compensation.

Labor has issued regulations governing (1) the authorization of insurance carriers and of employers acting as self-insurers and (2) issuance of certificates of compliance to employers. Part 5 of the Longshore (LHWCA) Procedure Manual contains the policies and procedures district offices must follow in enforcing the insurance requirements in the act and the regulations.

### NOT ALL EMPLOYERS SUBJECT TO ACT IDENTIFIED

The Longshore (LHWCA) Procedure Manual states that it is the Deputy Commissioner's responsibility to see that all employers with employees covered by the act have the required insurance coverage.

In San Francisco, the district office has not identified the employers who are subject to the act's requirements. As a result the district does not know the number of employers who are--or should be--covered by the act and should have the required insurance coverage.

Responses from the other 12 districts indicated that only 3 districts knew how many employers in their districts were subject to the act's provisions.

## AUTHORIZATION TO WRITE INSURANCE UNDER THE ACT

OWCP requires that, to receive authorization to write insurance, companies must (1) have 4 years of experience in writing workmen's compensation coverage and (2) be listed in "Best's Insurance Reports," with a policyholder's rating of "B" or better.

There were 301 insurance carriers authorized to write coverage for compensation and other benefits due under the act as of October 1, 1973. Our review of these authorizations disclosed some carriers that do not meet the basic requirements as follows

--11 insurance carriers are listed but have no rating in "Best's" and

--2 carriers are not listed in "Best's."

During our review of the listing in "Best's," we identified five carriers that have changed their names. The district, however, was not aware of these name changes, nor did it issue these companies new authorizations to write insurance. The Longshore (LHWCA) Procedure Manual provides for issuance of a new certificate of authorization when a carrier changes its name.

Labor regulations (20 C.F.R. 703.107) and the Longshore (LHWCA) Procedure Manual state that an insurance company's authorization to write insurance under the act expires at the end of the fiscal year. The company must request in writing authority from OWCP each year to continue to write compensation coverage.

In San Francisco we identified several insurance carriers that were writing policies for periods for which they were not authorized to write such coverage. These companies were writing policies on a calendar year basis; thus they were writing policies to cover periods after their authorization expired on June 30.

## INADEQUATE CONTROL OVER CERTIFICATES OF COMPLIANCE

Insurance carriers, after receiving OWCP approval, must submit to the Deputy Commissioner a card report (form LS-570, Card Report of Insurance) signed by an authorized representative of the carrier, showing which employees are covered under the policy. The manual requires that promptly upon receipt of the card, the Deputy Commissioner is to issue the

employer a Certificate of Compliance (form LS-239), showing that the employer has obtained coverage from an insurance carrier.

Section 37 of the act provides that no stevedoring (longshoremen's) firm shall be employed by a vessel or a hull owner until it presents a Certificate of Compliance issued by the Deputy Commissioner to such vessel or hull owner. The act states that any person violating the section is subject to a fine of not more than $1,000 and/or imprisonment for not more than 1 year.

Our review of the Certificates of Compliance issued by the San Francisco office during fiscal year 1974 disclosed that the district office

--did not know how many LS-570s were received annually or how many Certificates of Compliance were issued annually,

--did not know whether a Certificate of Compliance was issued for each LS-570 received,

--usually issued the Certificate of Compliance a month or more after the LS-570 was received, and

--issued many of the certificates for periods exceeding that for which carriers were authorized to write insurance under the act.

Labor regulations (20 C.F.R. 703.503) also provide that when an employer's insurance is cancelled or the carrier's authorization is revoked the employer is to be sent a form requesting that he return the Certificate of Compliance. However, the district is not requesting employers to return the certificate as required by the regulations when their policies have been cancelled or when their carrier's authorization has been revoked.

In April 1971, Labor's Division of Internal Audit reported that two district offices were failing to fully comply with Labor regulations and procedures relating to insurance activities, including failure to issue required Certificates of Compliance.

In replying to a suggestion for improvement made by the internal auditors, ESA stated that, because of the expansion and demands of other compensation functions that have taken place over the years, the district offices have generally given the insurance review function a lower priority. Nevertheless, ESA said that approval of insurance coverage is a

vital control to insure that injured workers receive benefits provided them by the law. ESA said it would reemphasize the importance of this function to the district offices so that sufficient effort is employed to meet the standards envisioned by the act.

OWCP has not taken effective action to correct the weaknesses in the insurance function. This is demonstrated not only by our San Francisco findings but by the findings of OWCP's national office inspections at four district offices (San Francisco in April 1974, Houston in July 1974, New Orleans in July 1974, and Jacksonville in January 1975), which showed weaknesses in insurance coverage. Weaknesses included not maintaining insurance coverage cards (LS-570) in an up-to-date manner and not contacting employers about renewing expired policies. (Some policies had lapsed 2 to 3 years.) The reports said that many expired policies relate to employers who have reported injuries to employees covered by the act.

# CHAPTER 8

# OWCP STAFFING FOR ADMINISTRATION OF THE ACT

Although OWCP's workload increased substantially since the 1972 amendments, its staffing level has remained relatively constant. OWCP had--nationwide--100 employees working on the LHWCA program in fiscal year 1972. By the end of fiscal year 1975, OWCP had only 124 employees working on the program.

## REQUESTS FOR OWCP STAFFING

Since the 1972 amendments, ESA, which is responsible for OWCP operations, has submitted several requests to Labor for additional OWCP staff. However, these requests have been either reduced or rejected by Labor and/or the Office of Management and Budget (OMB).

The table below shows OWCP staffing requests and positions authorized for fiscal years 1972-76.

| | OWCP staff positions (note a) | | | | |
|---|---|---|---|---|---|
| FY | Requested by OWCP/ESA | Approved by Labor | Approved by OMB | Approved by the Congress | Positions authorized/ budgeted by Labor |
| 1972 | 100 | 100 | 100 | 100 | 100 |
| 1973 | 285 | 199 | 100 | 100 | 100 |
| 1974 | 285 | 199 | 130 | 130 | 118 |
| 1975 | 212 | 212 | 124 | 124 | 124 |
| 1976 | 180 | 180 | 180 | - | - |

a/The above figures include 18 positions (Deputy Commissioners and their secretaries) which have LHWCA responsibilities but devote most of their time on Federal Employees' Compensation Act.

To enable OWCP to handle the increased workload under the 1972 amendments to the act, ESA requested 285 OWCP positions for fiscal year 1973. As the table shows, the request was reduced to 199 positions by Labor and to 100 positions by OMB. The staff request for 1973 was made in a supplemental appropriation request for fiscal year 1973. The supplemental request, however, was submitted too late for congressional action.

The 1973 request was resubmitted for fiscal year 1974 and again Labor reduced the request to 199 and OMB to 130 positions. The Congress approved the 130 positions, but Labor

transferred 12 of the positions to 3 other Labor agencies which are also involved in administering LHWCA. These were the Office of the Solicitor, OALJ, and the Benefits Review Board. Each recevied four new positions. As a result, OWCP was authorized 118 positions for nationwide administration of the act for fiscal year 1974. However, only 111 persons were working at June 30, 1974.

ESA did not request additional positions in the initial appropriation request for fiscal year 1975 because its officials believed that claims activity would level off. However, when activity continued to increase, ESA requested 94 new positions for the LHWCA program in its first supplemental appropriation request for fiscal year 1975. These included 62 positions for OWCP and its district offices, 12 positions for the Office of the Solicitor, 14 positions for OALJ, and 6 positions for the Benefits Review Board. OMB did not approve the request.

In a second supplemental request for fiscal year 1975, ESA requested and obtained 15 temporary (2-year) clerk positions for OWCP and 6 permanent positions--2 for the Office of the Solicitor, 2 for OALJ, and 2 for the Benefits Review Board.

In a February 27, 1975, memorandum to the 13 district offices transmitting the official distribution of the 124 budgeted positions for OWCP for fiscal year 1975, the Assistant Secretary, ESA, stated:

> "* * * In each instance, regional comments indicated that the number of positions were not sufficient to meet the workloads of the program. I recognize the problem of insufficient resources. The fiscal year 1976 Budget now pending before Congress, contains provisions for a number of new positions. Until these increases are enacted, however, we must make do with what we have."

At June 30, 1975, 124 persons were working on LHWCA.

In its budget submission for fiscal year 1976, ESA requested 56 new permanent positions for the LHWCA program--32 for OWCP and district offices, 11 for the Office of the Solicitor, 11 for OALJ, and 2 for the Benefits Review Board. In justifying the increase, ESA said the staff assigned to the LHWCA program will not be able to remain current with incoming workloads. It also said

> "* * * The backlog continues to grow, and a deterioration of service will occur in areas requiring intensive time per claim. The most critical areas will be

the medical monitoring and rehabilitation counseling services mandated by Section 7 and 39 of the amended Act. In order to prevent a complete breakdown of the program 56 more positions (32 for the direct program and 24 for legal support) will be needed to restore the program to the level of capacity available in FY 1972, the last fiscal year before the Amendments."

Of the 56 positions, 10 were for vocational rehabilitation specialists to be funded by the special fund and 46 were to be financed by a proposed user charge.

PROPOSED USER CHARGE

Labor proposed, in its budget submission for fiscal year 1976, that the financing mechanism for administering LHWCA be changed from one of funding through general appropriations to one of reimbursements, or "user fees," based on assessments to self-insured employers and insurance carriers providing benefits and payments under the act.

Labor and OMB believe that services provided by the Federal Government to employers subject to LHWCA are subject to the policy stated in 31 U.S.C. 483a and OMB Circular A-25. This policy directs Federal agencies to make a reasonable charge to each identifiable recipient of a measurable unit of Government service or property from which the recipient derives a special benefit--or when it becomes apparent that a service is being rendered which provides special benefits to the recipient beyond those which accrue to the general public.

The theory underlying user charges is that the taxpayer should not bear the burden of administering programs which do not affect the general public, and that such costs should be borne by the industries served.

Under the proposal, each self-insured employer or insurance carrier would be assessed annually a share of administrative costs proportional to the level of payments made in the preceding year by the individual self-insurer or insurance carrier compared to the total payments made under LHWCA.

Labor said that the concept of assessing user charges is not unusual in the worker's compensation area. It said 21 States operate their workers' compensation programs with funds received from assessments against the industry. Labor also said that the principle of charging employers through

insurers for administrative costs of compensation programs had been recommended by the National Commission on State Workmen's Compensation Laws.

In reporting out Labor's appropriation for fiscal year 1976, 1/ the House Committee on Appropriations deleted the appropriation language proposed in the budget to institute a user-charge mechanism for financing the costs of administering the act. By this action, the 46-position increase, to be financed by the user charge, was also disallowed.

The House Report stated that, if Labor needed more positions to administer the act, a formal budget request should be submitted to the Congress. On June 25, 1975, the House passed the appropriation bill as reported out by the Committee.

The Senate Committee on Appropriations in reporting out 2/ the Labor appropriation concurred with the House and deleted the proposed user charge. However, the Senate Committee restored the increase of 46 positions Labor had requested. The Senate has approved the Committee's actions, and as of November 1, 1975, the fiscal year 1976 appropriation was being considered by the Joint Conference Committee.

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1/H. Rep. No. 311, 94th Cong., 1st Sess., 11 (1975)

2/S. Rep. No. 366, 94th Cong., 1st Sess., 17 (1975)

# CHAPTER 9

# NEED FOR MORE EFFECTIVE GUIDANCE AND MONITORING BY OWCP NATIONAL OFFICE

A factor contributing to the problems and weaknesses noted in our review appears to be a lack of effective guidance, direction, and monitoring of the LHWCA program by OWCP's national office.

The Division of Longshore and Harbor Workers' Compensation in OWCP's national office is responsible for administering the LHWCA program. Its responsibilities include providing direction and guidance, establishing and issuing regulations and policies to implement the requirements of the act, and issuing the necessary operating guidelines and procedures to the district offices. The division is also responsible for monitoring district office operations of the LHWCA program.

## LACK OF EFFECTIVE GUIDANCE

There is a need for more effective guidance, direction, and monitoring by OWCP's national office. Although the LHWCA program has been operating since 1927, the national office has not yet issued a complete and updated operating manual containing detailed policies, procedures, requirements, and instructions for operating the LHWCA program. As of October 1971, the national office planned to have the manual prepared and issued in 10 parts. Each part was to cover a significant program area, such as

--processing of claims,

--making investigations of employers for compliance with the act and OWCP's requirements,

--medical supervision,

--vocational rehabilitation,

--insurance coverage,

--records and files, and

--statistics.

The 10 parts were to have various sections detailing policies and procedures for the subjects covered in each part.

In early 1974, we made preliminary inquiries regarding the LHWCA program and found that the OWCP national office had not completed or issued an up-to-date manual as planned. At that time the Associate Director of the national office agreed that a complete manual did not exist although one was being planned.

More than 1 year later, in July 1975, the national office had not prepared and issued a complete up-to-date manual. Only 7 of the 10 planned parts had actually been issued. One of the three parts not issued was to contain OWCP's policies and procedures for investigation of compliance by employers with the reporting, insurance, and other requirements of the act.

Of the seven parts that were issued, some were not complete and sections of others had not been issued or had not been updated since the 1972 amendments were enacted. For example, some of the sections containing proposed procedures and policies in processing of claims were missing and never issued. In regard to vocational rehabilitation of injured employees, the section which was to detail OWCP policies was never issued, and the rest of the part had not been revised since December 5, 1968, 4 years before the 1972 amendments.

During our work in San Francisco, the district office's employees informed us that the OWCP national office sometimes failed to followup on memorandums issued requiring action and sometimes sent out new forms for use in the program without any direction or guidance on how they should be used. When we started our work at San Francisco, the district office did not have a complete and updated manual and set of the other national office instructions, bulletins, and memorandums.

As discussed in various sections of this report, Labor's internal auditors, as far back as 1971, and ESA's program accountability reviews have called attention to the need for better and effective guidance from OWCP's national office. In addition, some of the national office's inspection reports on monitoring visits to the district offices acknowledged the lack of guidelines in some aspects of the LHWCA program.

We asked the Deputy Commissioner in the San Francisco district office how he administers a program without an up-to-date procedures manual to insure that his district is operating consistently with other districts. He said it was strictly a matter of how he and the other Deputy Commissioners interpret the act and the Code of Federal Regulations.

We discussed the matter with the Assistant Regional Director of ESA in San Francisco who is responsible for ESA activities, including the OWCP programs. She told us that the lack of a complete manual from the OWCP national office is one reason for the deficiencies in the district LHWCA program operations in San Francisco.

The Associate Director of the OWCP national office agreed that the lack of a complete manual contributed to weaknesses in program administration. He said progress should be made toward completing the manual when a new Assistant Associate Director joins his staff in July 1975. In July 1975 the Associate Director informed us progress had been made on the procedures manual and that two revised sections--vocational rehabilitation and claims--would soon be distributed to the district offices.

## LACK OF EFFECTIVE MONITORING OF DISTRICT OFFICES BY OWCP NATIONAL OFFICE

The OWCP national office did not initiate routine monitoring of district office operations until April 1974.

Monitoring is intended to (1) insure compliance with departmental regulations, policies, and procedures; (2) identify the strengths and weaknesses of the program; and (3) recommend program and administrative improvements when necessary. Generally monitoring is accomplished through onsite inspections and reviews of required reports.

The national office has not established formal review or inspection guidelines for the monitoring trips or a schedule of inspection visits to district offices.

We reviewed the OWCP national office monitoring activity since its inception in April 1974. The following table summarizes appraisals performed at the district offices through August 1, 1975:

| | District 1 Boston | District 6 Jacksonville | District 7 New Orleans | District 8 Houston-Galveston | District 13 San Francisco |
|---|---|---|---|---|---|
| Number | Once | Once | Once | Once | Once |
| Dates of trips | 8/75 | 1/75 | 7/74 | 7/74 | a/4/74 |

a/The Director of the national office also visited San Francisco in June 1975. Although this was considered a monitoring visit, its main purpose was to discuss (1) our findings and (2) the opening of an office in Long Beach, Calif.

The above table shows that only five districts have had monitoring inspections by the national office.

National office officials recognize the inadequacies of their monitoring, as illustrated in the following excerpt from the report on the inspection made in San Francisco in April 1974:

> "Since time constraints prevented me from spending more than two days in San Francisco at this time, it was not possible to conduct an in depth inspection of the Division. A further disadvantage was the fact that this was the first routine type inspection of a Longshore office by the headquarters office of the Division in my memory, and no format for conducting an inspection has yet been developed. The lack of it resulted in overlooking such important areas as conferences and rehabilitation. An inspection format will be developed for future district office inspections."

The reports on the other monitoring visits made by the national office contained similar statements that, due to time constraints, the inspections were not an indepth analysis of the program.

No inspection format had been developed or used by the national office. It uses questionnaire-type forms to obtain information, mostly through interviews, when conducting inspections. In August 1975 the Associate Director said that he is still working up a format--which would consist of an audit checklist--with the aid of ESA's Office of Program Development and Accountability.

Although national office inspections were only cursory-type inspections of a few records, some of the reports did contain observations on problems in program administration. These included poor maintenance of insurance coverage cards; reports not submitted promptly or within the required time; inadequate followup on requests for information; pulling cases on callup several months late; some insurance carriers and employers not filing reports of payment of compensation; and poor medical monitoring. Many of these problems were noted during our review and are discussed in this report.

The Associate Director of the national office informed us that, before the 1972 amendments to the act, the LHWCA program was very loosely controlled by the national office and that no inspection trips were made until ESA's establishment of the Division of Accountability and Review prompted such action. The Associate Director said that the lack of

time, personnel, and an established review cycle were the reasons that all the district offices had not been visited.

In November 1975, the Associate Director advised us that since August 1975, his office has made inspection visits to two other district offices, Chicago and Cleveland, and has a visit scheduled for the New York district office.

## OTHER INTERNAL REVIEWS OF THE LHWCA PROGRAM

Other internal reviews by Labor agencies have reported administrative problems in the program.

The Directorate of Audit and Investigations, under the Assistant Secretary for Administration and Management, is responsible for internal audits of Labor activities. Two Labor internal audit reports have been issued on LHWCA. The more recent report, dated June 1975, was on the audit of LHWCA's financial operations and reported no questioned costs or administrative findings.

The first report, issued in April 1971, identified certain aspects of insurance-related activities, compensation case handling, and statistics reporting that could be improved by revising and/or simplifying certain regulations and requirements and by adhering to certain procedures. The findings and recommendations in the first report are discussed in various sections of this report.

The Directorate of Audit and Investigations has no other reviews planned of the LHWCA program except for a financial audit of assessments of carriers and self-insurers for payment into the special fund.

ESA's Office of Program Development and Accountability also performs accountability reviews of the LHWCA program. The most recent report, at the time of our fieldwork, was issued in April 1975 on a review in the Philadelphia region. The report recommended that the Division of Longshore and Harbor Workers' Compensation furnish appropriate guidance to the district offices in developing a format for maintaining a standard log of cases referred to the ALJs, develop standards and criteria for district office responsibility in meeting requirements for monitoring medical care, and develop specific and clear criteria for a rehabilitation program. Some of these findings were also discussed in this report.

An official of this office told us that they are planning a review of LHWCA in all 14 district offices beginning in August 1975. The official acknowledged that these reviews have been scheduled in part because of the findings

in our review and the internal complaints from various assistant regional directors. He also said that ESA generally believes the LHWCA program needs reviewing.

# CHAPTER 10

# CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS

The 1972 amendments have had a twofold effect on OWCP. The extension of coverage to shoreside areas adjoining the navigable waters has caused a significant increase in the number of injuries reported under the act, and the additional compensation and benefits provided by the amendments increased OWCP's responsibility to injured employees and their survivors. These changes have significantly increased OWCP's claims workload and backlog.

Although OWCP's workload and responsibilities have significantly increased since the 1972 amendments, OWCP officials indicate adequate resources and sufficient staffing have not been provided commensurate with the increased responsibilities.

As a consequence, OWCP's ability to effectively carry out its oversight and monitoring responsibilities required under the act have been adversely affected. OWCP district offices are not adequately reviewing and monitoring the employers' and their insurance carriers' payments of compensation and other benefits due injured employees. As a result, some injured employees were not receiving all of the benefits due under the act.

OWCP is not levying civil penalties as provided for by the act for failing to meet reporting and other requirements of the act. Failure to assess penalties deprives OWCP of a valuable monitoring tool for proper enforcement of the act and for protection of benefits due the injured employee. It also reduces the amount available in the special fund since any penalty collected for late reporting is added to the fund. In those cases involving penalties for late compensation payments, injured employees are deprived of additional monies due them for late payments.

Contested cases involving disputes between employers and employees are not always given prompt attention by OWCP district offices during the informal hearing phase of adjudication. Delays seem to occur because OWCP's policies and procedures do not require districts to have a specific time frame for completing the various steps of the informal hearing process. Delays were also occurring during the formal hearing of contested cases which were appealed to OALJ. OALJ has made improvements and it expects further improvements

with the addition of new ALJs to handle LHWCA cases and a new scheduling system.

OWCP has not established an effective program to assist claimants in processing claims nor has it provided the active supervision of medical care rendered to injured employees contemplated by the 1972 amendments. The Solicitor's Office has not provided legal assistance to any claimant since the 1972 amendments were passed nor does it have a program to provide this assistance as permitted by the amendments.

There is lack of adequate effort at OWCP district offices to enroll disabled employees covered by the act in vocational rehabilitation programs. Also, OWCP district offices were not following prescribed procedures and regulations to assure that employers had adequate insurance coverage for compensation due employees under the act.

Labor's own internal review reports--some dating back to April 1971--have pointed out the same or similar operating deficiencies that we identified. Corrective action taken by OWCP on internal review findings has not been effective.

Labor has recognized the need for additional staff to meet OWCP's increased workload and it has requested 56 new positions in fiscal year 1976. The question remains whether the present staff plus the new positions will be sufficient to allow OWCP to remain current with the incoming workloads. Should the backlog continue to grow, as OWCP predicts, a deterioration of services could continue.

Nevertheless, we believe that many of the weaknesses and problems we noted could be alleviated by better administration and improvement in management controls. The OWCP districts should be required to comply with the act and the prescribed policies and procedures for operating the program. OWCP has established the policies and procedures because they are considered essential to help insure a more effective and efficient program.

In addition, there is need for the OWCP national office to provide more effective and active direction and guidance to the OWCP districts. One essential step would be for the national office to complete and issue the updated Longshore (LHWCA) Procedure Manual. Also, the national office needs to establish a more effective and comprehensive program for monitoring the district offices' operations.

## RECOMMENDATIONS TO THE SECRETARY OF LABOR

In view of the continuing increase in the workload and backlog of claims and contested cases, we recommend that the Secretary review the allocation of resources and staff to administer the benefits program under LHWCA to assure that adequate resources are available to effectively and efficiently carry out the Department's responsibilities under the act.

In addition, to improve and strengthen present management of the LHWCA benefits program, we recommend that the Secretary direct the Assistant Secretary for Employment Standards to:

--Insure that the OWCP district offices follow prescribed policies and procedures in reviewing the employers' payment of compensation under the act.

--Have OWCP establish and publish guidelines and criteria directing district offices to more closely enforce the provisions of the act providing for assessment of penalties for late reporting or late payments of compensation.

--Have the OWCP national office provide more active direction and guidance to the district offices by, among other things, updating and issuing a complete and detailed procedures manual for reviewing and overseeing claims under the act.

--Have OWCP establish and publish criteria requiring district offices to process claims under informal hearing process in a more timely manner by establishing specific time frames for scheduling and holding informal conferences requested by employees and employers and preparing the required memorandums for transmission of cases to ALJ.

--Have OWCP establish effective programs to assist claimants in processing claims and to actively supervise the medical care provided injured employees as intended by the Congress in the 1972 amendments.

--Have the OWCP district offices give more emphasis to the program for having disabled workers enrolled in vocational rehabilitation.

--Have OWCP district offices follow prescribed policies and procedures to assure that employers have adequate insurance coverge as required under the act.

--Establish a schedule for systematic monitoring of district offices by the national office, which considers the review efforts of other Labor groups such as internal audit.

We also recommend that the Secretary direct the Solicitor of Labor to establish a program to provide legal assistance to claimants, upon request, as permitted by the Congress in the 1972 amendments to the act.

## CHAPTER 11

## SCOPE OF REVIEW

Our review was made primarily to determine whether the Federal compensation program established under LHWCA is being carried out in conformity with the act's intent and whether Labor performs its operations effectively and efficiently. We specifically focused our attention on determining

- --whether Labor is monitoring the claims processing and payments by insurance carriers and self-insured employers efficiently and effectively to assure prompt compensation payments and other benefits to claimants;

- --whether Labor has effectively implemented the assistance programs under the 1972 amendments to the act;

- --whether Labor requested sufficient resources to effectively implement the 1972 amendments; and

- --Labor's justification for adopting the proposed user charge for financing administration costs for the program.

We reviewed the act's legislative history; the regulations, policies, and operating procedures established by Labor; and pertinent records, documents, and case files. We interviewed Labor officials at the locations visited and attorneys and other representatives of employers, employees, and insurance carriers.

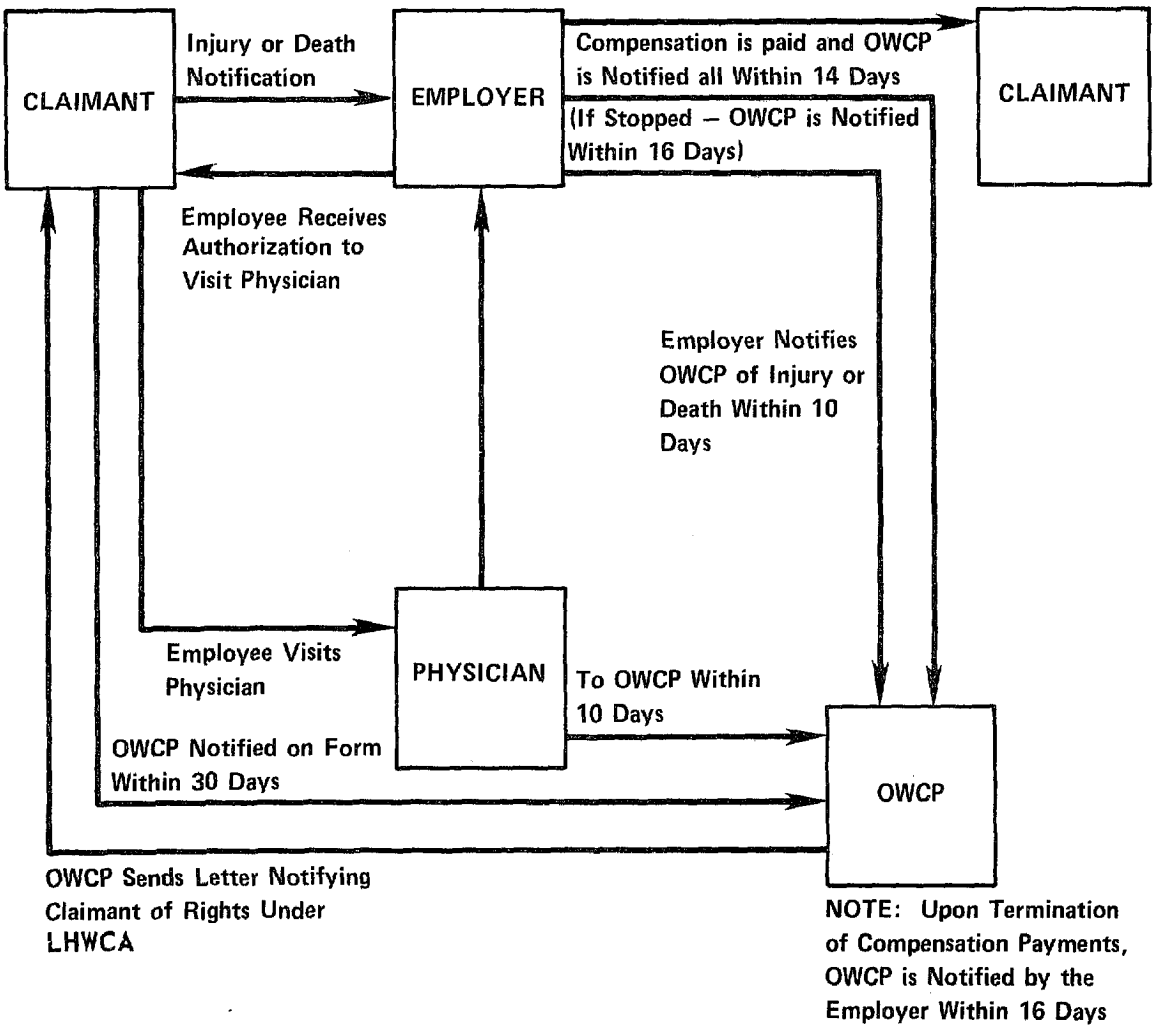
Our review was performed primarily at OWCP headquarters in Washington, D.C., and at its district office in San Francisco, California. In San Francisco, we took a statistical random sample of claims filed during fiscal year 1974. The selected cases were used to review the district's policies, procedures, and practices in its monitoring and overseeing of claims under the act.

Limited fieldwork was also performed at the Boston and New York City district offices. Additional data and information was obtained, through use of a questionnaire, from the other compensation district offices (except the Washington, D.C., district office) administering the LHWCA program. We also obtained information from Labor's OALJ and the Benefits Review Board.

The OWCP district office in Washington, D.C., is solely responsible for administering the benefits program for employees in Washington, D.C., covered under the District of Columbia Workmen's Compensation Act. The benefits program under this act is financed under a separate appropriation from the District of Columbia government. Since this act is the only activity under LHWCA handled by the Washington district office, we did not perform work at this office nor did we obtain data on the District of Columbia Workmen's Compensation Act.

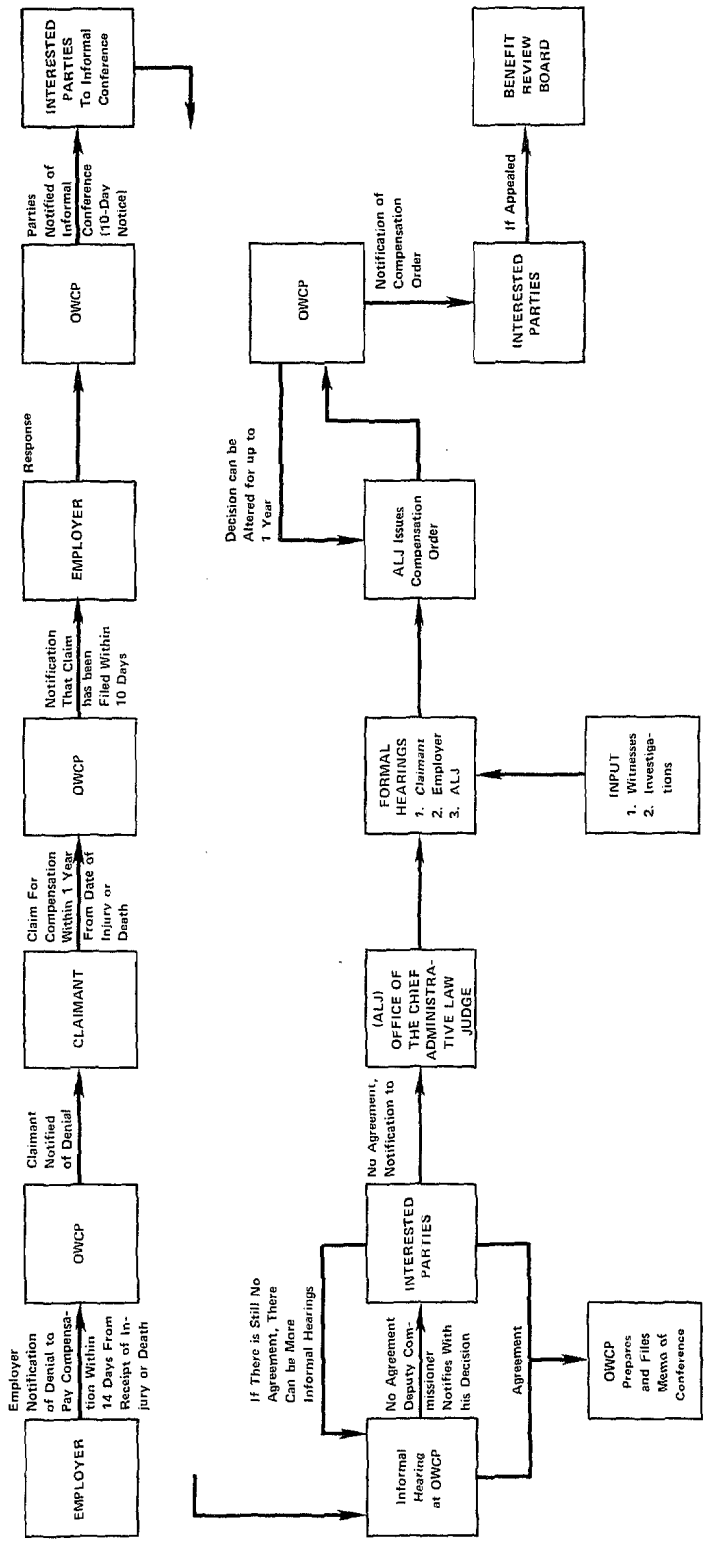
APPENDIX I

## PROCEDURES IN CLAIM PROCESSING UNDER LHWCA WHEN EMPLOYER DOES NOT CONTEST EMPLOYEE'S CLAIM



APPENDIX II

## PROCEDURES IN CLAIM PROCESSING UNDER LHWCA WHEN EMPLOYEE'S CLAIM IS CONTESTED BY EMPLOYER



## PRINCIPAL OFFICIALS OF THE DEPARMENT OF LABOR RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

| | Tenure of office | |
|---|---|---|
| | From | To |
| SECRETARY OF LABOR: | | |
| John T. Dunlop | Mar. 1975 | Present |
| Peter J. Brennan | Feb. 1973 | Mar. 1975 |
| James D. Hodgson | July 1970 | Feb. 1973 |
| ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS: | | |
| Bernard E. DeLury | May 1973 | Present |
| Vacant | Jan. 1973 | May 1973 |
| Richard J. Gruenwald | Jan. 1972 | Jan. 1973 |
| Horace E. Menasco (acting) | Oct. 1971 | Jan. 1972 |
| Arthur A. Fletcher | May 1969 | Oct. 1971 |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS' | | |
| Herbert A. Doyle, Jr. | Feb. 1974 | Present |
| Herbert A. Doyle, Jr. (acting) | Sept. 1971 | Feb. 1974 |
| ASSOCIATE DIRECTOR, DIVISION OF LONGSHORE AND HARBOR WORKERS' COMPENSATION: | | |
| John E. Stocker | Nov. 1970 | Present |
| OFFICE OF ADMINISTRATIVE LAW JUDGES: | | |
| H. Stephan Gordon, Chief Judge | Sept. 1971 | Present |
| BENEFITS REVIEW BOARD: | | |
| Ruth Washington, Chairperson | Apr. 1974 | Present |
| Ralph Hartman | Apr. 1974 | Present |
| Julius Miller | Apr. 1974 | Present |

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