BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Multiple Problems With The 1974 Amendments To The Federal Employees' Compensation Act

The 1974 amendments to the Federal Employees' Compensation Act allow continuation of employees' pay after an injury and give employees a free choice of a physician in injury cases.

These provisions and increased employee awareness of the program have sharply increased claims for on-the-job injuries involving time lost from work.

Employing agencies need more authority to deal with continuation-of-pay claims. The Labor Department's administration of the program has been plagued by processing delays, a lack of coordination with employing agencies, and inadequate claims reviews. Program administration by employing agencies is not uniform.

The Congress should require a 3-day waiting period before payment of continuation of pay. It, and Labor, should take other actions to improve program administration.

This review was made at the request of the Chairwoman, Subcommittee on Manpower and Housing, House Committee on Government Operations, and Congressman Don J. Pease.

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

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To the President of the Senate and the
Speaker of the House of Representatives

This report reviews the effects of the continuation-of-pay and free-choice-of-physician provisions of the Federal Employees' Compensation Act.

We made our review at the requests of the Chairwoman, Manpower and Housing Subcommittee, House Committee on Government Operations, and Congressman Don J. Pease. It was prompted by their interests in the extent that these provisions have contributed to the increase in lost-time traumatic injury claims and employee abuse of the workers' compensation program, and in evaluating the effect of these provisions on Labor's ability to administer the program.

We are sending copies of this report to the Director, Office of Management and Budget, and the Secretary of Labor.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

MULTIPLE PROBLEMS WITH THE 1974 AMENDMENTS TO THE FEDERAL EMPLOYEES' COMPENSATION ACT

D I G E S T

The number of lost-time injury claims filed by Federal workers escalated sharply after the Federal Employees' Compensation Act was amended in 1974 to allow employees' pay to continue uninterrupted for 45 days after an injury; it also gave employees the freedom to choose a physician. Employee awareness of the program also contributed to this increase in the number of lost-time claims.

In fiscal year 1974 about 12,000 claims for compensation were filed for job-related lost-time traumatic injuries. 1/ The Labor Department estimated that, for fiscal year 1976 (the first full year after the amendments), the number of such claims had risen to about 80,000; Labor also estimated that the number will increase to 101,000 for fiscal year 1979. (See p. 5.)

GAO reviewed the effects of the amendments to determine the extent these provisions have contributed to increased injury claims and employee abuse of the workers' compensation program, and how the provisions have affected Labor's ability to administer the program.

GAO estimated that continuation-of-pay benefits amounted to about $45 million in fiscal year 1976, about $55 million in 1977, and about $58 million in 1978. (See p. 6.)

1/A traumatic injury is defined as a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable as to time and place of occurrence and member or function of the body affected; and be caused by a specific event or incident or series of events or incidents within a single day or work shift.

The continuation-of-pay provision is a primary cause of the growth in claims for compensable disabling injuries and has contributed substantially to the overall cost of the workers' compensation program. However, it is difficult to fully assess the provision's effect, since the free-choice-of-physician provision and increased employee awareness of the program have also contributed to this growth. (See p. 7.)

THE ELIMINATION OF A WAITING PERIOD FOR CLAIMS PAYMENT IS A MAJOR FACTOR IN INCREASED CLAIMS

The continuation-of-pay provision authorized employing agencies to continue an employee's pay up to 45 calendar days for a traumatic injury. This provision, which established immediate full-salary benefits to employees awaiting claims adjudication by Labor, was meant to eliminate the gap in some employees' cash flow resulting from claims processing delays. (See p. 2.)

Previously, employees had to wait 3 days before receiving compensation, but, under continuation of pay, this 3-day wait was moved to the end of the 45-day period. Removal of the waiting period, in conjunction with requiring employing agencies to automatically continue an employee's pay--except for nine specific reasons (see ch. 1)--has encouraged employees to file claims for minor and frivolous (unworthy of serious consideration) injuries and for injuries of short duration. (See p. 9.)

GAO randomly selected 410 continuation-of-pay claims--a statistically valid sample--from seven Labor district offices. Based on the duration of the injuries in this sample, a medical consultant's analyses, and other available factors, GAO believes that as many as 46 percent of all claims might have been eliminated by a 3-day waiting period. The evaluation showed that

--about 37 percent of the claims (149 of 410) were minor or frivolous and

--about 9 percent (38 of 410) were not considered minor or frivolous, but, because they lasted only 4 to 7 calendar days, would probably have been eliminated if a waiting period had been in effect. (See p. 9.)

GAO believes that requiring the 3-day waiting period to be applied before continuation of pay would

--reduce the overutilization of the compensation system, thereby allowing claims examiners to expeditiously process more serious claims;

--significantly reduce compensation costs to the taxpayer; and

--increase worker productivity. (See p. 17.)

THE FREE CHOICE OF A PHYSICIAN, WITHOUT EMPLOYING AGENCY CONTROLS, LEADS TO PROGRAM ABUSE

The 1974 amendments also gave employees the option to select a physician of their choice for care and treatment. This amendment replaced the statutory requirement that employees use Federal medical facilities (except where Federal medical facilities were not available). (See p. 20.)

GAO's review of the free-choice-of-physician provision showed that employing agencies need the authority, if there is a question about the initial diagnosis of an employee's injury or the length of disability resulting from that injury, to require an employee to be examined by a Federal medical officer or a physician designated by the Secretary of Labor. Employing agencies need to contact and work more actively with employees' private physicians. GAO believes that this would result in employees returning to work earlier. (See p. 33.)

GAO's analysis of its random sample of 410 claims to determine the effect of the free-choice-of-physician provision showed that, without employing agency controls, the provision has contributed to abuse of continuation of pay.

--About 20 percent of the claims (80 of 410) appeared abusive either in occurrence, job relatedness, or duration.

--In about 20 percent (81 of 410) light duty could have been more effectively utilized in returning employees to work. (See p. 20.)

IMPROVEMENTS NEEDED IN PROGRAM ADMINISTRATION

Since the 1974 amendments were passed, employing agencies have been responsible for making continuation-of-pay payments to injured employees, which has placed the employing agencies in a more prominent role in managing traumatic injury claims. GAO believes that Labor has not provided employing agencies with sufficient authority for carrying out this responsibility. As a result, employing agencies are hampered when making sure that the employees who receive these payments are entitled to them. (See p. 36.)

To realize more effective management of the program, Labor needs to give all employing agencies the authority to withhold continuation of pay for controversial claims and for claims which lack adequate medical evidence, and when the available medical evidence indicates that an employee is able to return to work. (See p. 41.)

The large backlog in Labor's district offices has hindered the continuation-of-pay program. Claims processing has been delayed and shortcuts have been taken to try to control the volume of claims. This has allowed erroneous and unsupported claims to get through the system. The backlog has increased the claims

processing time in Labor's district offices, thereby reducing Labor's ability to respond to employing agencies in a timely manner. (See p. 55.)

GAO's review of employing agencies' management of continuation of pay has shown that the degree of management varies widely. The primary reason for this variance appears to be Labor's lack of guidance to employing agencies on how to manage continuation-of-pay claims. (See p. 57.)

Labor agreed that this report accurately describes some of the serious, long-term problems of the workers' compensation program. It further stated that, since the beginning of the present administration, it has been actively engaged in a series of administrative measures to improve the program.

Labor also noted that there are some areas in which legislative action may be required, and that it has under active consideration legislative proposals to amend the act which will probably address many of the problems discussed in this report. Labor stated that it would make its legislative proposals available to GAO when they are submitted to the Congress.

Labor also described actions which it has taken, is in the process of taking, or has under consideration. GAO agrees that Labor has taken steps that should improve the administration of the workers' compensation program. However, GAO's review showed that deficiencies continue to exist in administration of the program. (See pp. 19, 34, 42, 56, and 63.)

RECOMMENDATIONS TO THE CONGRESS

To reduce the number of minor and frivolous claims which divert Labor's efforts from more serious claims, to reduce the cost to taxpayers, and to give Federal employees an incentive to return to work, the Congress

should require that the 3-day waiting period for traumatic injuries be applied before continuation of pay, rather than 45 days later. (See p. 19.)

To make the free-choice-of-physician provision more effective and to help employees return to full or light duty at the earliest possible time, the Congress should provide employing agencies with the authority--if there is a question about the initial diagnosis of an employee's injury or the length of disability resulting from that injury--to require the employee to submit to a second medical examination by a Federal medical officer or a physician designated by the Secretary of Labor. (See p. 35.)

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To make the continuation-of-pay program more effective and to give employing agencies the necessary authority to effectively handle their responsibilities, Labor should give employing agencies the authority--in addition to the nine regulatory categories to which they are now limited--to controvert and withhold continuation of pay in controversial claims or in claims for which the agencies have found a basis for denial. (See p. 43.)

To make the continuation-of-pay program more effective and to provide for more prompt and consistent adjudication of claims, GAO makes other recommendations to Labor. (See pp. 35, 43, 56, and 64.)

Contents

ABBREVIATIONS

COP	continuation of pay
GAO	General Accounting Office
OWCP	Office of Workers' Compensation Programs
SSA	Social Security Administration
TVA	Tennessee Valley Authority

CHAPTER 1

INTRODUCTION

We reviewed the effects of the 1974 amendments to the Federal Employees' Compensation Act (5 U.S.C. 8101) which provide for the continuation of an employee's pay and the employee's free choice of a physician. Our review was to determine the extent that these provisions contributed to the increase in traumatic injury claims and the employees' abuse of the workers' compensation program, and to evaluate the provisions' effect on Labor's ability to administer the program. Our review was conducted at the request of the Chairwoman, Manpower and Housing Subcommittee, House Committee on Government Operations, and Congressman Don J. Pease. Their requests resulted from their concerns and the numerous employing agencies' complaints about the program's administration.

AGC 00009

Post Office AGC 00052

The act provides for paying compensation for the disability or death of Federal civilian employees injured or killed while performing their duties. These benefits include compensation for wage losses, dollar awards for bodily impairment or disfigurement, medical care, rehabilitation services, and survivors' compensation.

TVA AGC 00107

About 3 million Federal employees and certain non-Federal employees (such as law enforcement officers injured in connection with Federal crimes) are eligible for benefits under the act for a work-related injury. In general, the act covers all civil officers and employees of any branch of the Federal Government.

CHANGES RESULTING FROM THE 1974 AMENDMENTS

Far-reaching amendments to the act were made on September 7, 1974. Employing agencies were authorized to continue an employee's pay up to 45 calendar days for a traumatic injury. 1/ This change, referred to as the "continuation-of-pay" (COP) provision, established immediate full-salary

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1/A traumatic injury is defined as a wound or other condition of the body caused by external force, including stress or strain. The injury must be identifiable as to time and place of occurrence and member or function of the body affected; and be caused by a specific event or incident or series of events or incidents within a single day or work shift.

benefits (subject to income tax, retirement, and other deductions) to employees awaiting claims adjudication by Labor. The COP provision was to eliminate the gap in some employees' cash flow resulting from claims processing delays.

The 1974 amendments also had a provision giving employees the right to choose a physician for care and treatment. This amendment replaced the statutory requirement that employees use Federal medical facilities, if available, with the option to use private physicians and hospitals only if Federal medical facilities were not available.

History of the COP provision

Before the 1974 amendments to the act, employees who wanted compensation for lost time due to work-related injuries were immediately placed in a leave-without-pay status. Employees, if they so desired, could use sick and/or annual leave during this period to reduce the financial effects. However, once their leave balances were depleted they would be returned to a leave-without-pay status until their claims were adjudicated or they returned to work. If their claims were decided in their favor, the employees could then have their leave restored and receive compensation.

The administrative procedure for filing a notice of injury and a claim for compensation, and the filing of medical evidence in support of the claim, often resulted in long delays in the authorization of payments. Once Labor authorized payment, a further delay was encountered in preparing the check by the Treasury. This process could cause a financial hardship on the employee, especially those who remained injured for long periods of time.

To avoid this situation, the 1974 amendments authorized the employing agency to continue the employee's pay up to 45 days, thus allowing sufficient time for Labor to receive the proper injury and compensation claim forms, the necessary medical reports, and make a proper decision before the employee entered a leave-without-pay status.

After the 45-day COP period, the employee, if still disabled, may receive regular workers' compensation for the duration of the injury. However, the employee will not receive compensation for the first 3 days of disability (i.e., the waiting period) following the 45-day COP period unless the disability extends more than 14 days beyond the initial 45-day period. This 3-day waiting period must be

3 days without pay and may not be satisfied by using sick or annual leave. The compensation after the 45-day COP period is tax free at 66-2/3 percent of salary (75 percent if the employee has dependents).

If, after the employee's pay has been continued under COP, his/her claim is disapproved by Labor, the employing agency then gives the employee the option of converting the COP paid to annual or sick leave. If leave is not elected, the employing agency may declare the salary received for the period an overpayment subject to recovery under section 5584 of Title 5 of the United States Code.

Before these amendments were enacted, a Federal employee injured or disabled on the job filed a regular claim for workers' compensation. Only after approval of the claim by Labor would the employee receive compensation for the length of the disability. No compensation was provided for the first 3 days (the 3-day waiting period) unless the disability lasted longer than 21 days (14 days after the 1974 amendments).

History of the free-choice-of-physician provision

The act specifies that medical and related services be provided to employees injured in the performance of duty. Before the 1974 amendments, injured employees were required to be treated at Federal medical facilities or by physicians designated by Labor. A designated physician was one who had agreed to treat injured employees upon proper referral by the employing agency or Labor. In February 1972 Labor made an administrative decision that all physicians, practicing medicine within the scope of their practice as defined by State law, were considered to be designated physicians. Thus, where Federal medical facilities were not available, the employee was allowed to choose a physician for treatment--the 1974 amendments made this selection a right for all employees.

However, under the law, Labor retains the authority to require periodic examination of a claimant by a physician of its choice to resolve medical conflicts in the claimant's record, and/or to determine the nature and extent of the injury-related disability or impairment. The employing agency does not have this authority.

Controversion of COP

The act provides that the employing agency will continue paying the employee's full salary unless controverted (contested) under regulations of the Secretary of Labor. Labor's regulations permit agencies to controvert under any circumstances, but require the employing agency to continue pay unless the controversion is based on one of the following nine reasons:

(1) The disability is a result of an occupational disease or illness.

(2) The employee falls within the exclusions of 5 U.S.C. 8101(1)(B) or (E). Such persons include those who render personal service to the United States similar to civil officers and employees of the United States, but who work without pay or for nominal pay.

(3) The employee is neither a citizen nor resident of the United States or Canada (i.e., a foreign national employed outside of the United States or Canada).

(4) The injury occurred off the employing agency's premises and the employee was not involved in official off-premises duties.

(5) The injury was caused by the employee's willful misconduct; the employee intended to bring about the injury or death of himself/herself or another person; or the employee's intoxication was the proximate cause of the injury.

(6) The injury was not reported within 30 days following the injury.

(7) Work stoppage first occurred 6 months or more following the injury.

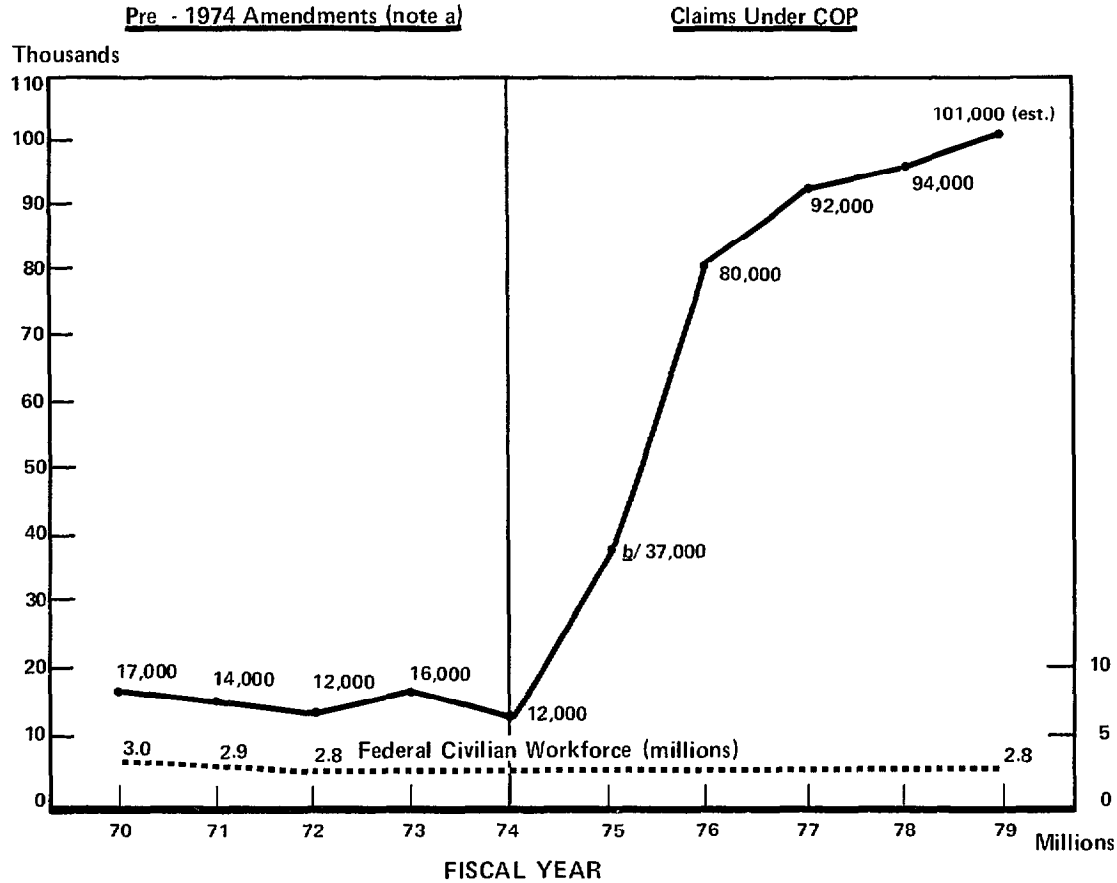
(8) The employee reports the injury after his/her employment has terminated.

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or other similar groups.

EFFECT OF THE 1974 AMENDMENTS

After enactment of the 1974 amendments, the number of claims for the reimbursement of wage losses for lost-time injuries escalated sharply. During fiscal year 1974 about 12,000 compensation claims were filed for job-related lost-time traumatic injuries. For fiscal year 1976, the first full year after the amendments, Labor estimated that the number of traumatic injury claims for the reimbursement of lost wages (COP claims) had risen to about 80,000. Labor estimates that the number of COP claims will increase to 101,000 for fiscal year 1979. These increases occurred even though the Federal workforce remained fairly stable:

Chart of Lost-time Traumatic Injury Claims and Federal Civilian Workforce



a/Our estimates based on data available at Labor and discussions with Labor officials.

b/Includes an estimated 5,000 claims for compensation for lost-time traumatic injuries in the 4 months of the fiscal year before the amendments passed, plus 32,000 COP cases in the 8 months after the amendments.

Before the COP amendment, many employees used sick or annual leave for lost-time injuries of short duration; compensation was not requested in these cases because of the waiting period. However, after the passage of the 1974 amendments employees began using COP for injuries of short duration.

The number of lost-time injuries increased to different extents in agencies. The following chart shows COP's initial effect for calendar year 1976 on the 11 agencies with the largest number of lost-time injuries per 200,000 hours worked. 1/

Agency	Lost-time injuries per 200,000 hours worked		
	1974	1976	Percentage increase
Government Printing Office	1.25	12.02	862
Postal Service	2.85	6.04	112
D.C. Government (est.) (note a)	1.45	4.03	178
Dept. of the Navy	1.79	3.53	97
Veterans Administration	1.53	3.29	115
Dept. of Transportation	1.45	2.50	72
Dept. of the Interior	1.64	2.43	48
General Services Administration	1.15	2.40	109
Tennessee Valley Authority	1.64	2.32	42
Dept. of Agriculture	1.92	2.32	21
Dept. of the Army	1.06	2.18	106

a/By amendment, the act's coverage was extended in 1919 to cover the District of Columbia Government in addition to the regular civilian employees of the Federal Government.

COP PROGRAM COSTS

Based on the best available agency statistics, we estimate that COP benefits paid to employees totaled about $45 million, $55 million, and $58 million in fiscal years 1976, 1977, and 1978, respectively. The COP benefits paid by the employing agencies are in addition to the medical and compensation benefits paid and reported by Labor.

1/The number of hours worked by each agency is estimated based on pay period data reported to the Office of Personnel Management (then the Civil Service Commission) by the agencies.

The COP provision, being a primary cause of the growth in compensable traumatic disabling injuries (see ch. 2), contributed substantially to the program's overall cost. However, it is impossible to estimate the amount of the cost increase because it cannot be determined how many COP claims would have resulted in claims for compensation and, as a result, would have been program costs with or without COP. It is also difficult to fully assess COP's effect alone, since the free-choice-of-physician provision and the continuing trend of employee program awareness have also contributed to this growth and the resulting costs.

Other program costs which are difficult to calculate because the information is not determinable or available include

--the cost of program administration at both Labor and in the employing agencies and

--the effect of the growth in COP claims on productivity in terms of time spent filling out accident reports and in terms of productivity losses due to the absence of experienced employees.

ORGANIZATIONAL RESPONSIBILITIES

The Secretary of Labor has delegated the responsibility for administration of the act to the Office of Workers' Compensation Programs (OWCP), in Labor's Employment Standards Administration. OWCP administers the program through a Division of Federal Employees' Compensation at the national office (which develops policies and procedures) and at 15 district offices. Generally, claims are adjudicated and serviced by the district offices. The Branch of Special Claims in the Division of Federal Employees' Compensation, however, is responsible for examining, developing, and adjudicating unusually complex or confidential claims, regardless of where the injury occurred.

HRC 00365

PROGRAM FUNDING

The Federal workers' compensation program is financed by the Employees' Compensation Fund, which is appropriated by the Congress directly, or indirectly through a chargeback to the various agencies. Each year the Secretary of Labor furnishes each agency with a statement of payments made from the Fund for its employees; the agencies include these amounts in their budget requests. The resulting sums appropriated are deposited into the Fund.

The act also provides that, in addition to the benefits, the Postal Service, mixed-ownership Government corporations, and certain other Government corporations are to pay their fair share of the program's administrative costs, as determined by Labor.

The COP amendment, however, authorized the employing agency to continue a disabled employee's pay up to 45 days from when the employee files a claim for a traumatic injury. In this case the payment of the full amount of the employee's salary, subject to normal deductions, is made directly by the employing agency. Medical benefits and any compensation over the 45-day limit are paid from the Fund administered by Labor.

CHAPTER 2

THE LACK OF A WAITING PERIOD IS A MAJOR FACTOR IN INCREASED NUMBERS OF CLAIMS

The number of claims for wage-loss reimbursement resulting from traumatic lost-time injuries has increased dramatically since the 1974 amendments passed. Members of the Congress, Labor, and employing agency personnel have raised many questions about the reasons for this increase. To identify the reasons for the increase, we reviewed the operation of the COP program at both the OWCP and employing agency levels and performed an extensive review of a random sample of 410 lost-time injury claims.

Our analysis indicated that a substantial part of this increase was directly related to the lack of a 3-day waiting period before beginning COP. We believe, based on the duration of injuries in our sample, the analyses made by our medical consultant, and other available factors, that if a 3-day waiting period had been in effect as many as 46 percent of all COP claims might have been eliminated. This estimate is based on the evaluation of our sample of 410 claims which showed that

--about 37 percent (149 of 410 claims) were minor or frivolous (unworthy of serious consideration); and

--about 9 percent (38 of 410 claims) were not considered minor or frivolous but, because they lasted only 4 to 7 calendar days, were considered marginal.

Under the 1974 amendments the 3-day waiting period now takes effect after the 45-day COP period. The removal of the 3-day waiting period, in conjunction with the requirement that employing agencies automatically continue an employee's pay (except for the nine specific reasons discussed in ch. 1), has served as an incentive for employees to file claims for minor and frivolous injuries and for injuries of short duration. This process is very simple and guarantees the employee almost 100-percent assurance of obtaining COP for wage losses.

Before the COP provision, minor and frivolous injuries were, because of the waiting period, more than likely "written off" by the employee. Employees lost little, if any, time from work because they did not want to use their own sick or annual leave during disability, or because their disabilities

were not of enough duration to make filing compensation claims worthwhile. Because the claimant would suffer an initial wage loss, the waiting period served as a disincentive for considering claims for minor injuries of a short duration.

The disincentive feature of the waiting period is supported by the fact that, in fiscal year 1974 (prior to the amendments), there were over 31,300 disabling injuries reported to OWCP that were not claims for compensation, but would have been potential claims for compensation if there had not been a waiting period. Of the 31,300, about 13,800 were for disabilities lasting 1 to 3 days, and the remaining 17,500 lasted longer periods but were covered by the employees electing to use sick or annual leave instead of claiming compensation.

MINOR AND FRIVOLOUS CLAIMS HAVE INCREASED

Employing agencies generally agreed that their employees were using COP for lost-time injuries for which they would previously have used sick or annual leave. To determine how much these minor and frivolous claims have affected the system, we evaluated the claims in our random sample of lost-time injuries on the basis of the duration and nature of the injury. In analyzing the claims, we considered such factors as the available medical evidence (including physician's comments) and the nature of the claimant's job.

Based on our evaluation, we believe that 149 claims from our random sample of 410 were of a minor and/or frivolous nature and might have been eliminated if a 3-day waiting period existed. Of these 149 claims, 89 were categorized minor and/or frivolous because they were only 1 to 3 days in duration. Based on the available medical evidence our consultant, a medical doctor, identified 60 more claims lasting longer than 3 days that he considered to be for minor injuries.

Our analysis of the leave balances of 138 of these employees for which balances were available showed that, even without COP, about 81 percent had sufficient sick and/or annual leave to cover their absences from work and that they would not have suffered a wage-loss hardship. The remaining 19 percent, we believe, could have been advanced leave.

Office of Personnel Management statistics for calendar year 1976 show that executive branch employees used an average of about 9 days of sick leave a year. With full-time employees earning 13 days of sick leave per year, this would

result in the average employee accumulating about 4 days of sick leave each year. Therefore, after less than 1 year of service the average Federal employee would have sufficient sick leave to cover these 1- to 3-day injuries.

Claims of 1 to 3 days

Of the 410 cases we examined, 89 (about 22 percent) were for 3 days or less. Of these claims, 28 were for 1 day, 26 were for 2 days, and 35 were for 3 days.

Further evaluation of the 1- to 3-day claims showed that the nature of the injuries could be categorized as follows:

Bruises/contusions	25
Sprains	19
Strains	19
Cuts/lacerations	10
Other	16
Total	89

Of the above claims, 38 were for strains and sprains. For claims of this nature we often found little, if any, objective medical evidence in OWCP files to support the claims for these injuries.

We discussed with physicians the problems with diagnosing and treating injuries--especially sprains and strains. Physicians from the Tennessee Valley Authority (TVA) and the Public Health Service stated that, when an employee complains of an injury such as a back strain, even without objective findings the normal treatment may be giving the employee up to 3 days of rest. After this time off, if no further objective findings are made, the patient quite often could be returned to work with little, if any, physical limitations.

Following are examples of claims which were for 3 days or less and for which COP claims probably would not have been filed if a 3-day waiting period had existed:

--A Postal Service clerk caught a finger while clearing a machine and suffered a contusion to his finger. The employee was diagnosed as totally disabled for 3 days (granted as COP) and returned to work on the fourth day.

--A Postal Service mail handler strained his right arm. The strain resulted from excessive use. The X-ray

indicated that the elbow was normal and the physician diagnosed tendonitis of the right elbow and prescribed 3 days rest. After 3 days the employee returned to his regular work. OWCP approved 3 days COP.

--The claimant, a diet clerk at an Air Force base, suffered a bruised coccyx when she slipped and fell on a wet floor. The injury occurred on Wednesday near the conclusion of her shift; information in the claim file indicated that she went to the emergency room at the Air Force base hospital on the day of the injury, where she was diagnosed as being disabled for 24 hours (no medical report was available). The claimant took off 2 days (Thursday and Friday) and left on her honeymoon the following Tuesday (Monday was Labor Day). OWCP approved 2 days COP.

Minor injuries over 3 days

Based on evaluation of the available information, our medical consultant identified 60 claims, in addition to the 89 claims of 1 to 3 days in duration, which he considered to be of a minor nature and for which we believe COP claims may not have been filed if a 3-day waiting period had existed. Of these claims, 46 were for 4 to 7 days in duration (2 to 5 workdays in most cases) and 14 for 8 days or more.

Further evaluation of the minor injuries over 3 days showed that the nature of the injuries could be categorized as follows:

Strains	24
Bruises/contusions	10
Cuts/lacerations	7
Sprains	3
Other	16
Total	60

Examples of claims in these categories follow:

--A Postal Service clerk riding in the back of a pickup truck was thrown down when the truck made a sudden movement, and he suffered contusions to his left leg. He saw a doctor the following day, and the prognosis was that he was not fit for duty for 3 days and fit for duty on the fourth day. Four days after the injury the claimant saw another physician, who extended his not-fit-for-duty status 2 more days. The employee returned to work after these 2 days. OWCP approved 5 days COP.

--A mailhandler for the Postal Service sprained his back while lifting a heavy cart. The treating physician diagnosed a low back strain and recommended that the employee be off work for 1 week. No objective medical findings were indicated in the physician's report. The employee returned to work 1 week later. OWCP approved 7 days COP.

MARGINAL CLAIMS

In addition to eliminating or reducing minor claims, we believe a 3-day waiting period would also reduce the number of claims which we did not classify as minor but ranged from 4 to 7 calendar days (2 to 5 workdays in most cases). We believe a waiting period would have eliminated or substantially reduced many of these claims (1) through the use of leave or (2) because of the financial incentive to return to work or light duty.

Our analysis of these employees' leave balances showed that, even without COP, 80 percent of the employees with these 4- to 7-day COP claims had sufficient sick and annual leave to cover their absences from work, and they would not have had to suffer a wage-loss hardship. The remaining 20 percent, we believe, could have been advanced leave.

We found, after eliminating the minor claims, that 38 (9 percent) of the 410 claims were for 4 to 7 days. Of these claims, 7 were for 4 days, 12 for 5 days, 8 for 6 days, and 11 for 7 days.

Further analysis of these claims showed that the nature of the injuries were:

Strains	15
Sprains	6
Bruises/contusions	5
Cuts/lacerations	3
Other	9
Total	38

Examples of claims from our sample in this category follow:

--The claimant, a postal worker, suffered a contusion to his thumb. He continued to work for about 5 days, but the injury apparently worsened. He was referred to an emergency room for X-rays, which were negative,

and he was told that he had "a little arthritis." Because of continued discomfort, the patient saw a physician who diagnosed "classical trigger thumb," 1/ while finding no evidence of ligament or tendon problems. The claimant was given a 1-week prescription, and he was diagnosed as incapacitated; no consideration was given for light duty. OWCP approved 7 days COP.

--The claimant, a welder at the Norfolk Naval Shipyard, hit his knee on a bulkhead while climbing a ladder. The claimant saw a physician at the shipyard dispensary and was diagnosed as having traumatic tendonitis. The physician stated that the claimant was not able to return to work--even for light duty. The claimant returned for a reevaluation 4 days later and returned to work on that day. OWCP granted the employee 4 days COP.

Questionnaire results

We used a questionnaire to obtain views on the 1974 amendments from individuals at Labor, 15 employing agencies, and nine unions representing Federal employees. We sent 225 questionnaires (100 to employing agencies, 75 to Labor, and 50 to unions) and received 190 responses, for a response rate of 84 percent.

In our questionnaire we asked to what extent the reinstatement of a 3-day waiting period, without pay, would reduce the number of COP claims. The following schedule summarizes their opinions:

	OWCP	Agency	Union
Substantial or very great extent	60%	56%	14%
Moderate extent	21	16	3
Some or no extent	19	24	72
Unable to judge	0	4	11

We also asked these individuals what they believed were the primary reasons for the increase in lost-time injury claims. OWCP and agency personnel believed that the attractiveness and awareness of COP benefits, the elimination of the 3-day waiting period, and the ease of getting a COP claim

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1/A medical term for the bending of the thumb joint in a position which cannot be straightened.

approved were the primary reasons for the increase in lost-time injury claims. Unions also agreed that the attractiveness and awareness of COP benefits were the major reasons for the increase, but they also cited the deterioration of safety conditions and increased production pressure as additional factors.

THE CONCEPT OF COMPENSATION--THE EMPLOYER AND EMPLOYEE ARE TO SHARE THE RISK OF INJURY

Workers' compensation benefits are wage related. The basic theory is that an injured employee, having given up his rights to sue at common law, is given certain indemnity, based on his wage loss, without a need to prove fault but also without an allowance for pain and suffering. Only part of the wage loss is restored to preserve incentives to return to work.

After a worker is temporarily and totally disabled, he/she normally does not receive benefits for the first few days. Virtually every State workers' compensation statute has a waiting period, expressed in calendar days, for which no benefits are paid. The recommended standard for State workers' compensation laws published by Labor provides for a 3-day waiting period, with payment of compensation for the 3 days if the total disability exceeds 14 days. The report of the National Commission on State Workmen's Compensation Laws also recommended a waiting period of no more than 3 days. This 3-day waiting period, as implemented by Labor--before payment of compensation--is 3 days without pay and may not be satisfied by using sick or annual leave.

For a traumatic injury, under the Federal workers' compensation program, compensation for wage losses is payable after a 3-day waiting period following the expiration of the 45 days of COP. In a nontraumatic injury claim, compensation for wage losses is payable after an initial 3-day waiting period.

Waiting periods have always been a part of workers' compensation systems and, as a part of the overall system of compensation benefits, waiting periods help to

--eliminate or reduce compensation payments for minor injuries while assuring benefits for more serious ones, thus keeping compensation costs from becoming excessive;

--reduce the number of claims that enter the compensation system and burden its administrative resources, thereby permitting administrators to concentrate on more serious claims; and

--reduce overutilization of the compensation system by deterring the filing of frivolous claims, thus avoiding harmful effects on the quality of labor and workers' morale.

The basic theory underlying the workers' compensation statutes, expressed by the Commission to Investigate the Matter of Employers' Liability and Workmen's Compensation, 1/ follows:

> "* * * the employer and employee may be regarded as joint adventurers in a dangerous employment in which accident and injury are to some extent inevitable. Heretofore the employer has borne the whole burden of the injury where his negligence could be shown and the employee the whole burden when negligence could not be shown * * *. The Government therefore, in effect, says public policy demands that all accidents irrespective of fault, must be regarded as risks of industry, and the employer who invests his capital in the dangerous business for the profit realized and the employee who invests his labor for the wages paid shall share the burden of the loss between them--the employer by paying in every case a certain defined and fixed proportion in money and the employee by contributing his part in the loss of a portion of his wages." (62d Congress, Senate Document no. 338, p. 70).

Retroactive reimbursement of pay

The reason for a retroactive provision in workers' compensation is based on the concept that, when a disability persists beyond a certain number of days at a reduced compensation rate, the continued loss absorbed by the employee is no longer of a size that the average worker can be expected to bear. When the worker has suffered the loss of the difference between his normal wage and his workers' compensation

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1/The Commission was established by a joint resolution of the Congress to make a thorough investigation of employers' liability and workmen's compensation.

benefit for an extended period, his loss is generally considered to have reached such proportions that it is necessary to pay the benefit that was omitted during the waiting period. Most workers' compensation laws contain a provision that, when disability lasts for an extended period of time (generally 14 to 21 days), the pay lost during the initial waiting period will be reimbursed.

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A drawback of a retroactive period (when daily benefits are substantial) is that it becomes an incentive for those who have recovered to extend the disability to the end of the retroactive period in order to recover the waiting period. Furthermore, the Secretary of Health, Education, and Welfare indicated in April 1978 that wage replacement ratios, even of 80 percent, have a dangerous effect on the economic incentives to return to work.

New York State compensation experience

In 1970 New York State negotiated a new union contract with State employees which liberalized the leave provisions of the workers' compensation program. As a result, New York State experienced a large and continuous increase in the growth of claims between 1970 and 1977. The State has since inserted a waiting period which appears to have reduced claims. (See ch. 7.)

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

Our analysis of our sample of claims shows that reinstatement of a 3-day waiting period before COP might eliminate up to 46 percent of all COP claims. Also, we believe that this 3-day waiting period must be without pay in order to be effective and to conform with the other waiting periods used by Labor. Such action, we believe, would (1) reduce the overutilization of the compensation system, thereby allowing claims examiners to more expeditiously process more serious claims, (2) significantly reduce compensation costs to the taxpayer, and (3) increase the productivity of workers. The effects of COP's overutilization are further discussed in chapter 5.

Removal of the waiting period requirement and COP's full wage replacement has stripped the compensation system of its economic disincentives to file claims for minor or frivolous injuries or claims for injuries of marginal duration. Also, the lack of a waiting period for COP ignores a basic concept

of employee compensation benefits, which provides that risks in the cost of injuries should be shared between the employee and employer.

A 3-day waiting period without pay would deprive employees of little or no pay loss since, for short periods of disability, employees would ordinarily use leave instead of filing a claim. Employees without sufficient leave could be advanced leave to cover the disability. The 3-day loss is spread over a longer period for employees who suffer disabling injuries for longer periods and who file claims. With the full-wage replacement provided by COP, this 3-day pay loss for the longer disabilities, in effect, causes little hardship.

The COP provision as it is now written, in our opinion, is not equitable to employees suffering long-term injuries. Presently, the 3-day waiting period only applies after the injured employee is out of work for 45 days. In our opinion, an employee who has suffered an injury of this duration should not be penalized with a 3-day waiting period when an employee who suffers only a minor injury is not penalized. The waiting period, as initially conceived, was intended to discourage the filing of minor and frivolous claims, not to penalize employees suffering from long-term injuries.

Commenting on our report, Labor agreed that compensation was sought for claims which may seem minor, but was of the opinion that "frivolous" was an inappropriate generalization.

While the distinction between minor and frivolous may be subtle, we believe use of the term frivolous is appropriate. Claims which we considered minor were those which we believed to be debilitating for very short periods of time. Claims which we considered as frivolous were, in our opinion, not debilitating.

For example, we found:

--An employee suffered a cut to his finger; he received first aid which did not require any stitches--the injury was medicated, cleaned, and dressed. Health unit files described the injury as "a scratch type injury" rather than a cut. The next day the claimant took off work to see a physician of his choice for the injury. He was granted 1 day COP by OWCP.

--A Deputy Marshall hit his hand on a door cell and received a soft tissue injury to his hand. He returned to work the next morning and took off part of the afternoon to see a physician. OWCP approved 1 day COP for the visit to his physician.

We do not dispute the fact that these injuries occurred; however, we do not believe that the nature of these injuries was worthy of serious consideration.

Labor also stated that it is making an extensive examination of the feasibility of some adjustment in the application of the waiting period and acknowledged that most State compensation systems require a waiting period at the outset of the disability. Labor noted that some areas may require legislative action and that the administration is considering legislative proposals to amend the act which will probably address many of the problems to which the report is directed. Labor stated that it would make these proposals available to us when they are submitted to the Congress.

RECOMMENDATION TO THE CONGRESS

To reduce the number of minor and frivolous claims which are diverting Labor's efforts from more serious claims, to reduce the cost to taxpayers, and to give Federal employees an incentive to return to work, we recommend that the Congress require that the 3-day waiting period for traumatic injuries be applied before the payment of COP, rather than 45 days later.

CHAPTER 3

THE FREE CHOICE OF A PHYSICIAN, WITHOUT EMPLOYING AGENCY CONTROLS, LEADS TO PROGRAM ABUSE

The 1974 amendments gave employees filing disability claims the right to choose a physician for care and treatment. This provision replaced the requirement that employees use available Federal medical facilities, with the option to use private physicians and hospitals when such Federal facilities were not available. Our review of 410 randomly sampled claims showed that the present process of permitting employees a free choice of physicians without employing agency controls has contributed to COP's abuse and has resulted in employees not utilizing light duty to the fullest possible extent.

We found that

--about 20 percent (80 of 410 claims) appeared abusive either in occurrence, job relatedness, or their duration, and

--in about 20 percent (81 of 410 claims) light duty could have been more effectively utilized to return employees to work.

During our review, we discussed the problems associated with the free choice of a physician with OWCP, employing agencies, and physicians in private practice and in the Government. Generally, we found that private physicians were uninformed about COP and what their program responsibilities were. We also found that employing agencies lacked the authority to substantiate the extent of the employee's disability through the use of timely second medical opinions. Labor can authorize second medical opinions but, because of the short duration of most COP cases, we believe that, by the time Labor could authorize the second medical opinion, the examination would not be timely because the employee would already have returned to work.

However, we did find that certain employing agencies (such as TVA and certain Defense installations) have developed programs to reduce the effect of problems associated with the free choice of a physician. These programs include the extensive use of light duty and greater communication with the free-choice physician.

THE FREE CHOICE OF A PHYSICIAN, COMBINED WITH A LACK OF CONTROLS, LEADS TO ABUSE

Our analysis showed that employees are abusing the right of free choice of a physician. We evaluated our sample to determine if employees could have returned to their jobs earlier, either full time or on a light-duty status. Our medical consultant also examined these claims and evaluated the available medical evidence and any related information (such as the nature of the employee's job). As a result of this evaluation, we believe that about 20 percent of the claimants in our sample were abusing COP and about 20 percent could have returned to work earlier on light duty.

Abusive claims

Analysis of our sample showed that the abuse of COP occurred in a number of claims. We believe that, of the 410 claims, 80 (about 20 percent) were abusive either in occurrence, job relatedness, or their duration.

Although we found abuse very difficult to substantiate (such as whether or not an injury was job related or even if the injury actually occurred--70 percent of the injuries in our sample were unwitnessed), we identified many claims which appeared to be abusive.

Based on our analysis of the 410 sample claims, we believe that

--12 claims (about 3 percent) appeared unsupportable as to their work relatedness and

--68 claims (about 17 percent) appeared abusive because available medical evidence indicated that the claimants could have returned to work earlier.

We believe that if employing agencies had more closely monitored these claims, if they had communicated more extensively with the free-choice physician, or if they had the authority to obtain second medical opinions, the claims could have been substantially reduced. Following are examples of claims in which, in our opinion, COP privileges were abused.

Example 1

The claimant, a Postal Service clerk, bruised his right toe when a hamper rolled across it. That same day, the claimant went to the dispensary for treatment and returned

to duty. He continued working until 6 days later, when he took 10 days off to receive physical therapy for his right ankle from a hospital of his own choice. The hospital report noted that the employer questioned whether this was an industrial injury. OWCP approved 10 days of COP.

Example 2

A 28-year-old letter carrier, hurrying to complete her route after taking an unscheduled break with her fiance, tripped over a coat hanger on the steps of an apartment house. Her injuries included contusions of the knee and shoulder and a back strain, which kept her off work for 19 workdays covered by COP. Although she returned and worked on light duty for approximately 1 month, she again claimed COP after her physician stated that her condition had worsened since the last examination and that she must be at rest for 2 weeks.

Five days after her physician returned her to a disability status, the local newspaper reported that she had married and was on an out-of-town honeymoon. She did return to work for a few days after the honeymoon, but then again claimed total disability for 5 months. The employee returned to work only after being required to report for a fitness-for-duty examination, which disclosed no disabling condition. Her own physician concurred with the findings of the fitness-for-duty examination.

During the first 6 months of her employment she had two on-the-job injuries, both involving COP. Her supervisor considered her to be a problem employee, believed her to be malingering while on COP and compensation, questioned the circumstances of the injury, and believed her to have fraudulently claimed COP.

Example 3

On September 19, 1977, the claimant, a distribution clerk for the Postal Service, suffered a contusion to the left knee and a possible strain to the groin area when she slipped on some ice cream on the floor. Upon being examined the following day she complained of pain to the left knee and multiple aches to the left pelvis, back, and shoulder. Hospital X-rays were negative, and the prognosis was time off for 7 to 10 days. The claimant did not return to work and was examined 30 days later by another physician. Among the comments in this physician's report were:

"* * * The patient forgets which shoulder was giving her trouble but the right shoulder is the one giving her trouble at this time." (Underlining added.)

X-rays revealed a loose body in the left knee, no evidence of fracture or dislocation in the hip, and some arthritic changes of the interspaces between the vertebrae in the back. On a return visit, degenerative arthritic changes were noted to the spine, shoulder, and humerus. However, the patient did admit that she had disabling periods of arthritis before her accident.

The case record file maintained by the Postal Service Health Unit contained the following comments concerning the claimant.

November 9: "Received a call from [physician] * * *. Stated he suggested she [the claimant] come back to work on a part time basis doing light work. Employee said she couldn't come back to work in these dusty conditions * * *."

November 30: "Received a call from [physician] * * *. Stated that he felt she [the claimant] was able to resume work, but he said she is resisting him claiming she cannot work * * *. He stated that [claimant] informed him when she first came to him that she had no intention of returning to 'that filthy place.'"

OWCP approved COP from September 20 through November 3 and workers' compensation from November 4 through December 5. OWCP disallowed any further compensation. As of December 14, 1978, the claim was still being pursued and the employee had not returned to work.

The potential for abuse was further substantiated in our questionnaire to individuals at Labor, employing agencies, and unions. We asked to what extent the free choice of a physician leads to abuse by employees. The opinions of the respondents were:

	Agency	OWCP	Union
Substantial or very great extent	53%	35%	3%
Moderate extent	9	28	3
Some or no extent	30	33	86
No basis to judge	8	4	8

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Physicians we interviewed said they could not always detect malingerers, and some injuries, such as lower back strains, could easily be faked. We discussed this problem with a private physician whose practice includes contract work with the Public Health Service in Washington, D.C. He and his clinic partners see approximately 3,000 COP and compensation patients a year on referral, and he sees about one-third of these himself. In his opinion, only about half of these claims are serious enough to justify work absence. He believes that as many as 10 to 20 percent of the Federal employees treated at his clinic were faking injuries for COP benefits and about 40 percent were malingering or trying to stretch out their recoveries.

More use of light or limited duty needed

An employee is required to accept suitable light or limited work if the employee's work-related disability is partial. Continued absence in such instances is considered an overpayment of COP. However, in most cases COP payments can be terminated by the employing agency only with OWCP's approval.

Although light or limited duty was provided for a number of claims, many employing agencies did not provide sufficient opportunities for such assignments to injured employees. For many claims we found that, even when physicians recommended light or limited duty, the agency did not make such work available. We interviewed officials at many employing agencies and found that only a few have organized efforts to provide light or limited duty.

During our review we noted that 158 claims (about 39 percent of our sample) either involved light or limited duty or, in our opinion, should have required the claimant to use such duty. Our analysis of these 410 claims showed that:

--For 77 claims (about 19 percent) light or limited duty was recommended by the physician and accepted by the employee.

--For 36 claims (about 9 percent) the physician recommended light duty but the employee failed or was unable to take advantage of the opportunity.

--For 45 claims (about 11 percent) light duty was neither recommended by the physician nor used by the employee, but we found from information in the claims files that light duty could have been used.

The above analysis shows that, for all the claims for which we believe light duty was appropriate, light duty was actually used in less than half the claims.

Returning an employee to work on light duty represents a significant savings to the employing agency. The following examples demonstrate the savings an effective light-duty program can have in returning an employee to work:

--A Post Office mail handler fractured his little finger. The attending physician put a cast on the finger and indicated that the claimant could perform light duty. The claimant returned to work the next day, resulting in no COP.

--A second postal employee, a distribution clerk, also fractured his little finger. The attending physician provided conflicting medical information, but indicated that the claimant could resume work. Because the agency did not follow up on the medical evidence, this claimant remained off work for 37 days on COP.

Although the severity of these two fractures could not be thoroughly analyzed by the available medical reports, we believe that the use of 37 days of COP was excessive for the second claim. If light duty had been provided and a proper dialogue had been conducted between the employing agency and the physician, the second claimant might have returned to work much sooner.

During our review we discussed with employing agency officials the problems associated with the free choice of a physician and the use of light duty. We found that there often appeared to be a reluctance on the part of the employing agencies to communicate with the treating physician about the employee's work status.

Examples from our sample in which we believe light duty could have been used follow:

--The claimant, a counselor at the District of Columbia Children's Center, strained his right ankle on July 25 and saw a Public Health Service physician on July 27. The physician stated the employee would be ready for regular work on August 1--no comment was made concerning light duty. On August 2 the physician again saw the claimant and recommended light duty beginning immediately and full duty beginning August 9. The claimant proceeded to see a private physician, who certified that the claimant was totally incapacitated until August 15, at which time the claimant returned to work. OWCP approved 18 days of COP.

--The claimant, an employee at an Army dining facility, cut her left hand while peeling potatoes. She went to the Army health clinic, where the laceration was cleaned and closed with three sutures. The prognosis was that the patient was not to work around food or water for 10 days. We could not identify an attempt to place the claimant on light duty. OWCP approved 11 days of COP.

In our questionnaire we asked whether employing agencies should make more light duty available to partially disabled employees, when permitted by the physician. Their opinions were:

	Agency	OWCP	Union
Probably or definitely yes	74%	100%	74%
Undecided	5	0	19
Probably or definitely not	21	0	7

As can be seen above, a large majority of those questioned in all groups believe that more light duty should be made available to partially disabled employees.

THE CAUSES OF ABUSE OF THE FREE CHOICE OF A PHYSICIAN

The present free-choice-of-physician concept permits the employee to shop for a physician who the employee believes will be the most sympathetic. This could result in a physician making decisions with only minimal knowledge of the

employee's working conditions and only the employee's word on the events leading to the disability. Under these situations, it can be expected that the employee will almost always be given every benefit of a doubt.

During our review we found that the abuse of COP has been primarily the result of

--private physicians, frequently uninformed about COP and light duty, making important decisions on the duration and extent of an employee's disability, often based on what the employee tells the physician; and

--employing agencies lacking the authority to obtain timely medical evaluations of employees.

These problems have been further complicated by OWCP instructions for implementing the 1974 amendments to the act. These instructions require the forwarding of several important medical documents (such as the treating physician's report) only to OWCP, while requiring only the duty status report to be sent to the employing agency.

Private physicians are uninformed

Private physicians often do not fully understand the COP process and, as a result, unknowingly permit Federal employees to abuse COP. To better understand the problems associated with the free choice of a physician, we discussed some of the relevant issues with private physicians who treat or have treated COP cases. We found that:

--Many physicians did not understand what their diagnosis meant in terms of the workers' welfare and the Federal compensation involved.

--Many physicians were not aware of light-duty programs, and those that were usually relied on the claimant to describe the available work.

--Many physicians stated that, because of the high Federal compensation benefits, they have had more problems getting Federal workers back to work as opposed to workers under other compensation programs.

--Almost all physicians stated that they would not object to employing agencies obtaining second medical opinions.

--Private physicians agreed that they would not object to the employing agency inquiring about the employee. Many physicians stated that they have not discussed claims with employing agency representatives. Several physicians stated that they thought that this would be a good idea, and they noted that State and private industry officials contact them all the time.

Many physicians readily acknowledge that a great many of their final decisions are based in large part on what the employee tells them. They quite often take the patient's word that he/she is in pain. These physicians generally agreed that they would like to know more about the employee's job, available light duty, and the implications of their decisions.

Several private physicians, based on their experience with treating Federal workers, stated that it is often difficult to get Federal employees back to work in a timely manner. One physician stated that he did not necessarily consider Federal employees "fakers or malingerers," it just "becomes a way of life to the Federal worker that they will not work with pain." He noted that they really begin to think they are sick and that it is like an "11th commandment" that "thou shalt not work with pain."

Another physician, who treats about 20 COP cases a year, stated that he objected to the present compensation process which uses physicians in the capacity of a judge (i.e., doctors are required to render medical opinions as a basis for compensation awards, time off from work, and availability for light duty). He viewed physicians as ill-prepared to act in such a capacity and stated that this situation places the physician in an awkward position which jeopardizes the patient-physician relationship.

The opinions of those responding to our questionnaire substantiated the need for more communication with the physician. We asked how often employing agencies communicated with the injured employee's physician:

	Agency	OWCP	Union
Some or none of the time	46%	64%	39%
About half	9	5	6
Most or all of the time	34	10	33
No basis to judge	11	21	22

The above indicates that employing agencies have been reluctant to contact the employee's physician. Many private physicians have informed us that their knowledge of available light duty is often based only on what the employee tells them; the physicians would welcome agency contacts. Therefore, we believe that physicians, when providing information to OWCP, are often uninformed about many of the factors which are considered in processing a COP claim.

Agencies lack the authority to obtain second medical opinions

Employing agencies are responsible for authorizing an injured employee to obtain medical treatment. When treatment is obtained, the employee is required to ask the treating physician when he/she can return to work. A duty status report must be completed by the physician as often as required by the employing agency and sent to both the employing agency and OWCP. If a disability is partial and suitable light duty is available, the employee must accept the work. The employing agency is responsible for determining whether suitable light duty can be provided.

Under current procedures, OWCP has advised the employing agencies that, if they disagree with the medical opinion of the employee's physician, it is the responsibility of OWCP, not the employing agency, to obtain a second medical opinion. This procedure, we believe, because of the short duration of many COP claims, has limited the employing agency's ability to obtain timely information on the employee's ability to return to full or light duty.

We discussed the free-choice-of-physician provision with several employing agency officials. Some of their concerns included

- --employees visiting liberal doctors who certify excessive time off for minor injuries,
- --physicians not responding to employing agency requests to complete light-duty status reports, and
- --employees' free-choice physicians often are not familiar with the employees' duties and working conditions.

We believe that employing agencies need the authority to obtain second medical opinions in claims where such action may be warranted. Although OWCP does not permit employing agencies to require second medical opinions relative to COP or compensation claims, they do acknowledge that there is nothing in the act or OWCP regulations which would deny an employing agency the right, pursuant to its own regulations, to direct an injured employee to submit to a fitness-for-duty examination.

Accordingly, the Postal Service has been using the fitness-for-duty examination approach to obtain timely and thorough second medical opinions for OWCP's review. A Postal Service official stated that fitness-for-duty examinations are only required in extreme cases and when the Postal Service cannot get clear answers from the employee's private physician. For example, this official noted that, during fiscal year 1978 and the first month of fiscal year 1979, out of 1,127 claims from four major postal centers, only 67 (6 percent) were given fitness-for-duty examinations. He added that, as a result of these examinations, 50 employees returned to either full or limited duty.

SOME EMPLOYING AGENCIES HAVE PROGRAMS TO REDUCE ABUSE OF COP

During our review, we found that some employing agencies (such as TVA and certain Defense installations) have been very active in contacting the employee's physician, making light or limited duty available, and obtaining medical evidence. They stated that these efforts have substantially reduced the duration of many COP claims.

Tennessee Valley Authority

TVA has organized a program to gain maximum utilization from the free-choice-of-physician provision. This program includes providing light duty to all employees injured on the job if they are not totally disabled. It is available to assist employees on COP as well as those receiving workers' compensation. The program was implemented with the aid of TVA's medical review team, which includes about 200 nurses and 18 physicians.

Each of TVA's four regions is assigned an area nurse who is primarily responsible for coordinating the health needs of injured employees. The remaining project nurses are dispersed throughout the field to provide initial contact with employees receiving job-related injuries. Project nurses have the following responsibilities:

--They provide immediate contact with injured employees, identify their needs, and initiate steps to obtain medical treatment. A TVA physician generally administers the initial medical treatment, and the employees may select their own doctor for later treatments. The project nurses make medical appointments and coordinate monitoring the employees' progress and his/her return to work.

--They contact attending physicians and inform them about employee job descriptions and TVA's light-duty policy. When employees become available for light duty, project nurses handle their return to work and coordinate relocating employees to another region if light duty is not available at the original worksite.

--Finally, project nurses make house visits to injured employees, discussing the employees' problems and providing assistance for returning them to work as soon as possible.

Before an injured employee returns to work, a TVA physician performs a fitness-for-duty examination and makes the final decision concerning his/her ability to return to work. Officials believe these efforts have slowed the rate of increase for injury claims and the amount of time lost from work.

Puget Sound Naval Shipyard

In early 1977, the Puget Sound Naval Shipyard recognized that a total lack of control existed over employee actions during periods of disability, and the shipyard began to implement new injury monitoring procedures:

--The shipyard dispensary made each injured employee's initial medical appointment by telephoning the private physician selected by the employee.

--The shipyard dispensary then telephoned the employee's shop supervisor to determine the extent of limited duty available to the employee and put this data, plus a description of the accident, on a consultation sheet which the injured employee took to the selected private physician on the first appointment.

--The employee was required to telephone the shipyard dispensary doctor at least once a week to give progress and treatment reports.

Shipyard officials provided us with information which indicated that the above procedures had contributed to the reduction of COP costs at the shipyard from about $418,000 in fiscal year 1977 to about $347,000 in fiscal year 1978. Also, COP days taken were reduced from about 5,000 during fiscal year 1977 to about 3,800 days during fiscal year 1978.

THE ADVANTAGES AND DISADVANTAGES OF A FREE CHOICE OF A PHYSICIAN

The responses to our questionnaire concerning the free choice of a physician generally demonstrated that the free choice of a physician offers advantages to the employee and disadvantages to the employer.

We asked how advantageous the free choice of a physician was to:

	OWCP	Agency	Union
The employee:			
Very or somewhat advantageous	75%	86%	86%
Neither advantageous nor disadvantageous	13	9	14
Somewhat or very disadvantageous	12	5	0

	OWCP	Agency	Union
The employer:			
Very or somewhat advantageous	7%	16%	47%
Neither advantageous nor disadvantageous	17	11	31
Somewhat or very disadvantageous	76	73	22

In our questionnaire, agency and OWCP personnel most often cited as advantages to the employee, that the free-choice physician is more likely to give the employee a liberal disability assessment and that the employee has more confidence in the treatment received. Union personnel most frequently stated that free choice is advantageous because of the confidence employees have in their own physicians.

Agency and OWCP personnel most often cited as a disadvantage to the employee that the employee possibly may not choose the best qualified physician or specialist for treatment. Union officials generally did not believe there were any disadvantages to the employee.

The majority in all groups believe that the free choice of a physician is advantageous to the employee and, except for union representatives, they believe that free choice is a disadvantage to the employing agency.

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

The free choice of a physician is a complex problem to which no simple answer can be provided. The employee of course desires using a family physician in whom he has confidence through previous experience. The employer's motive is to assure prompt and expert care directed toward rehabilitation and reemployment. The workers' compensation agency wants to use physicians familiar with accurate reporting and the evaluation of impairments. Few physicians possess all these qualities.

The free-choice-of-physician provision, as it presently is being administered, has impaired the compensation system by restricting the employing agency's ability to evaluate the condition of an employee and to protect the Government's interests by returning that employee to useful service as soon as possible. Under the present system the private physician is often only aware of the cause of the injury, the working conditions, and available alternative duty to the extent that the employee informs him/her. This places the physician in a very difficult position when it comes to making judgments on COP claims. As a result, such options as limited or light duty are often ignored.

We believe that the Government's interests should be protected by giving employing agencies the authority, if there is reason to question the initial diagnosis of an employee's injury or the length of the disability resulting from that injury, to require an employee to be examined by a Federal medical officer or a physician designated or approved by the Secretary of Labor. This, we believe, would give OWCP and employing agencies the opportunity to obtain more information on which to base their evaluations of the employee's injury and, as a result, would (1) reduce the opportunities for employees to abuse COP and (2) provide more opportunities for light-duty assignments.

We also believe that employing agencies need to communicate more extensively with the employee's physician. We found that physicians are often left uninformed about information such as available light duty and the employee's working conditions, which is critical to the physician's evaluations and recommendations on the validity of the employee's claim

and the possibility for returning the employee to work. Therefore, if employing agencies made more extensive efforts to communicate with the physicians, we believe that many misunderstandings among physicians, employees, and employing agencies could be averted, and many employees could be returned to work earlier.

Commenting on our report, Labor stated that it believed that employing agencies now have sufficient authority to obtain second medical opinions under the existing act and Office of Personnel Management regulations for fitness-for-duty examinations.

Although the above options do give employing agencies some opportunity to obtain medical evidence, neither provides the employing agency with the option to obtain a second medical opinion which is necessarily both timely and by a physician who is fully aware of all the available reemployment and rehabilitation options.

Obtaining the authority from OWCP for a second medical opinion under the existing act (see p. 20) can be a time-consuming process. We believe that, before this authority could be obtained, the employee would most often have already returned to work. In these cases a second medical opinion would be of little use.

Obtaining a fitness-for-duty examination under Office of Personnel Management regulations would not necessarily solve the problem. Although a fitness-for-duty examination could be conducted by a Federal medical officer or an agency-designated physician, the employee can refuse such an examination and instead fulfill the requirements by obtaining the examination from a physician of his/her choice. 1/

Labor noted that it has undertaken a number of program initiatives consistent with the objective of improving the effectiveness of the free-choice-of-physician process. These undertakings include quarterly meetings with employing agency management and a comprehensive training program for agency

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1/This free choice of a physician is subject to the provisions that the physician is board certified in the appropriate medical specialty and acceptable to the agency. According to the Office of Personnel Management the term "acceptable to the agency" is generally used to only provide the employing agency some control over the geographic location, cost, and timeliness of the examination.

compensation specialists. Labor also noted that it is modifying its forms and developing a national medical program to improve cooperation among OWCP, employing agencies, and the medical community. Labor stated, however, that these planned initiatives will have only a small direct effect on short-term disabilities because of the time needed by an employing agency to develop, with the employee and attending physician, a plan for medical rehabilitation and reporting. Labor believes that, in most COP cases, the employee would have returned to work before such a plan could be negotiated or implemented.

During our review we documented employing agency and physician concerns regarding the need for more extensive communication on COP claims. Also, during our review we documented successful programs for short-term disability claims at TVA and the Puget Sound Naval Shipyard. Accordingly, because the program initiatives cited by Labor do not directly address the problems with short-term disability claims, we continue to believe that, if employing agencies made more extensive efforts to communicate with the physicians, many misunderstandings among physicians, employees, and employing agencies could be averted and many employees could be returned to work earlier.

RECOMMENDATION TO THE CONGRESS

To make the free-choice-of-physician process more effective and to help return employees to full or light duty at the earliest possible time, we recommend that the Congress provide employing agencies with the authority--if there is a question about the initial diagnosis of an employee's injury or the length of disability resulting from that injury--to require an employee to submit to a second medical examination by a Federal medical officer or a physician designated by the Secretary of Labor.

RECOMMENDATION TO THE SECRETARY OF LABOR

To make the free-choice-of-physician process more effective and to help return employees to full or light duty at the earliest possible time, we recommend that the Secretary of Labor actively encourage employing agencies to develop programs for working with employees and their physicians, including contacting the employee's physician at the earliest possible opportunity and working with the physician in determining the best resolution of an employee's claim and length and extent of the disability.

CHAPTER 4

EMPLOYING AGENCIES NEED MORE AUTHORITY TO DEAL WITH COP CLAIMS

Since passage of the 1974 amendments to the act, employing agencies have been responsible for making COP payments to injured employees. While this has reduced the payment processing workload at OWCP, it has placed the employing agencies in a more prominent role in managing traumatic injury claims. We believe, however, that OWCP has not provided employing agencies with the authority needed to go along with their responsibility. As a result employing agencies are to make COP payments but cannot obtain the assurance needed that employees receiving payments are entitled to them.

EMPLOYING AGENCY RESPONSIBILITIES

Employing agencies, as well as OWCP, have a role to play in administering COP. The employing agency initially is responsible for providing the injured employee with the proper report forms, advising the employee of the right to elect COP or to use leave, and sending the completed forms to OWCP.

The employing agencies are also responsible for authorizing an injured employee to obtain the required medical treatment at Government expense. The employee must ask the treating physician when he/she can return to work. The physician must complete a duty-status report as often as required by the employing agency and send it to the employing agency and OWCP. If the employee's disability is partial and suitable light duty is available, the employee must accept the work. Employing agencies are responsible for determining whether suitable light duty can be provided.

Under OWCP regulations employing agencies may challenge or controvert COP claims which they believe are unjustifed, based on information submitted by the employee or obtained by the agency's investigation. These regulations permit the employing agency to controvert and terminate an employee's pay only if the controversion is based on one or more of nine categories. (See ch. 1.) If the controversion is not based on one of these categories, regulations require the employing agency to continue the employee's pay until the controversion is sustained by OWCP.

The regulations also provide that COP shall not be terminated until

--the agency receives medical information from the attending physician that shows that the employee is no longer disabled, or

--the agency receives notification from OWCP that pay should be terminated, or

--the 45 days of COP expires.

Should OWCP, after reviewing the claim, determine that some or all of COP should be denied, the agency is notified and required to make the necessary adjustment--usually to the employee's sick or annual leave balance.

The Postal Service has recently been granted exceptions to the above regulations. OWCP has given the Postal Service the authority to withhold COP for claims where there is no medical evidence to support the claimed disability and to terminate COP when the employing agency receives medical information which provides that the employee can return to light duty. These are discussed in more detail later in this chapter.

EMPLOYING AGENCIES NEED MORE AUTHORITY TO TERMINATE COP

Labor's regulations provide employing agencies with the authority to withhold COP only if a claim falls into certain regulatory exceptions. In particular, employing agencies are not permitted to withhold COP while waiting for medical documentation or to terminate COP when partially disabled employees refuse available light duty.

During our review of the free-choice-of-physician provision we found many instances where the employing agencies could have reduced abuse had they authority to terminate COP. (See ch. 3.)

Several officials of employing agencies have stated that they believe they need more authority to help them effectively manage the COP program. For example, OWCP did respond to a request for more authority from the Postal Service.

In September 1978 OWCP gave the Postal Service authority to withhold COP when a medical opinion states that the employee has sufficiently recovered to do available light duty. OWCP instructed the Postal Service that COP could be terminated in this regard if

--the agency has a position available for the employee, with no reduction in pay;

--the agency has medical information from the employee's physician indicating that the employee can perform the duties of that position; and

--the employer gives ample prior notice to the employee of such a position and a reasonable reporting date.

Also, in February 1979 OWCP gave the Postal Service the authority to withhold COP until medical evidence is obtained.

An issue still of concern to the Postal Service, TVA, and the Department of Agriculture's Forest Service is with temporary employees incurring disabilities shortly before their scheduled separation dates and collecting COP past their separation dates. Once it is determined by OWCP that there are COP overpayments, these employees may have been separated for some time, making the overpayments difficult to collect.

TVA, for example, employs about 29,000 hourly workers. These employees are contracted with through union agreements and do not accrue sick or annual leave during the contract period. If one of these employees is injured on the job and OWCP later denies the claim, it is often difficult to collect the COP overpayment because the union contract period may have expired and the employees may have been terminated. A TVA official estimated that, because of the number of temporary employees, the agency recovers only about 10 percent of denied claim payments.

Suggested solutions from officials of these agencies included exempting temporary employees from COP and processing their claims through the normal compensation route, or providing COP up to the scheduled separation date and then giving the employing agencies the authority to withhold the remainder of their COP and compensation until after their claims have been approved.

In summary, employing agencies are required to provide COP in claims of questionable disability, and they cannot terminate this pay during the 45 days unless the agency receives medical information from the attending physician that the employee is no longer disabled or until the agency receives notification from OWCP that pay should be terminated. Until Labor gave the Postal Service the authority, all employing agencies had been restricted from terminating COP because of available light duty compatible with the treating physician's diagnosis of partial disability, without notification from OWCP.

AGENCIES NEED MORE AUTHORITY TO RESTRICT COP PAYMENTS IN QUESTIONABLE CLAIMS

Authority to delay COP until a claimant has provided medical evidence certifying a disability and authority to terminate COP when medical information indicates that the employee is sufficiently recovered to do available light duty are two tools frequently mentioned by employing agency officials as needed for managing COP claims. These tools are important for assuring complete and timely medical evidence for more informed OWCP adjudication, and for improved employee cooperation with agency light-duty programs.

Withholding COP pending adequate medical documentation

Unless agencies can withold COP until an employee obtains medical evidence supporting the disability, we believe there is little incentive for employees to conscientiously obtain this information in a timely manner and to keep the agency informed of his/her status. In our analysis of 410 claims we found that

--12 claims (about 3 percent) appeared unsupportable as to their work relatedness and

--68 claims (about 17 percent) appeared abusive because available medical evidence indicated that the claimants could have returned to work earlier. (See ch. 3 for specific examples.)

The Safety Director for the Sharpe Army Depot, for example, testified in 1977 hearings before the Subcommittee on Compensation, Health and Safety, House Committee on Education and Labor, that after COP was enacted many employees would

be absent from work without the supervisor knowing the status of the injured employee or what type of pay status the person should be in. Also, the depot doctor would have to call the attending physicians to try to obtain the employees' medical status and prognosis.

As a consequence, the Safety Director developed rules for the injured employees to follow in order to gain an immediate medical examination, treatment, and adequate medical information for OWCP and agency monitoring purposes. The leverage used to assure employee compliance with these rules was the depot's requirement that the employee would be considered absent without leave as long as the employee refused to submit to, or in any way obstructed, any examination by the depot surgeon or the employee's free-choice physician. The Safety Director reported that, as a result, there has been little or no problem with obtaining timely and useful medical information, that overall communications and cooperation between the employee, employing agency, and physicians have greatly improved, and that there have been no controversions by the depot in the past 2 years while this program has been in operation.

The Postal Service expressed a desire to also implement such controls, but it was under the impression that OWCP must first grant such authority. Accordingly, it requested from OWCP and received authority to withhold COP for claims where there is no medical evidence to support the disability based on the allegation of an unwitnessed or highly questionable job-related traumatic injury. Prior to OWCP approval, however, at least one supervisor within the Postal Service had been requiring medical evidence before authorizing COP, and had reported this requirement to be successful in getting the necessary medical evidence.

Terminating COP upon
recovery from total disability

Employing agencies have been making more and more use of light-duty assignments as a way of returning partially disabled employees to work as soon as possible; some have had substantial success with this program. One important element to a successful light-duty program, however, is agency authority to terminate COP when the employee is able to return to light duty, rather than having to wait long periods of time for OWCP to review the evidence and make the decision.

We found that, out of our sample of 410 claims:

--For 36 claims (about 9 percent) the physician recommended light duty but the employee failed to or was unable to take advantage of the opportunity.

--For 45 claims (about 11 percent) light duty was neither recommended by the physician nor used by the employee, but we believe information in the claims files indicates that light duty could have been used. (See ch. 3 for specific examples.)

Terminating COP when the employee refuses to return to light duty has also been an important ingredient in the Sharpe Army Depot program. Should the employee refuse light duty and OWCP later determine that continued absence was medically supportable, the employee would be entitled to any COP withheld after the light duty was offered. Recognizing the importance of this, OWCP granted permission to the Postal Service to take such action.

The Safety Director at the Sharpe Army Depot reports that its light-duty program is working very effectively; the program takes a positive approach, emphasizing rehabilitation of the injured employee and the continuous monitoring of the employee's recovery. The Safety Director also noted that the employees and treating physicians have cooperated and that no employees have refused light-duty assignments over the past 2 years.

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

The 1974 amendments to the act have resulted in the employing agencies having a great deal of responsibility for managing COP claims, and the amendments have placed a great burden on agencies' administrative resources.

We believe that, to achieve more effective program management, OWCP needs to give all employing agencies the authority to withhold COP in controversial cases, for claims which lack adequate medical evidence, and when medical evidence indicates that the employee is able to return to light duty, but the employee refuses to return.

Commenting on our report, Labor stated that:

--It recognizes the need to avoid claimant abuse and is considering steps in the direction of our recommendation that employing agencies be given authority to controvert and withhold COP for controversial claims or claims for which they have found a basis for denial. Labor added however, that the solution is more likely to lie in the increase of economic incentives for employees to minimize the time away from work, and that it is considering a legislative approach to providing such incentives.

--It does not agree that employing agencies should be allowed to withhold COP until adequate medical evidence is received because (1) it is not realistic to expect employing agencies to receive medical reports from attending physicians in less than a week or 10 days after the employee's visit, (2) it would require a complicated administrative scheme to assure uniform and equitable processing standards, and (3) currently the opportunity for claimant abuse is limited because the employing agency can recover overpayments.

--Its present policies on terminating COP when an employee refuses to return to suitable light duty are generally consistent with our recommendation.

We recognize that the receipt of timely medical evidence has been a problem at OWCP and has resulted in delays and backlogs of claims. However, if employing agencies become more involved in the free-choice-of-physician process (as recommended in ch. 3), we believe that delays in obtaining medical evidence at the employing agencies would be minimal. Even if a delay should occur, employees could use sick or annual leave until adequate medical evidence was provided.

The feasibility of such a program has already been demonstrated at the Sharpe Army Depot. Its efforts to obtain timely and useful medical information have been very successful. (See p. 40.) Also, the Postal Service requested and received authority from Labor to withhold COP for claims where there is no medical evidence to support the disability based on the allegation of an unwitnessed or highly questionable job-related traumatic injury.

In granting this authority, Labor stated

"* * * just as OWCP requires medical reports to establish the fact of a job-related injury and injury-related disability, the Postal Service also may reasonably require a medical report in questionable cases to support the employee's request for COP. Such practice on the part of the Postal Service would not only be reasonable, but would indeed be prudent."

Regarding Labor's statement about the limited opportunity for claimant abuse because the employing agency can recover overpayments, our review showed that the employing agencies were not effectively recovering COP overpayments. (See p. 38.) Thus, we continue to believe that there is a need for employing agencies to have the authority to withhold COP until the employee provides sufficient medical evidence to substantiate his/her claim.

With regard to Labor's policy of withholding COP when an employee refuses to return to work, we continue to believe that a change is needed. Labor's policy provides that COP should continue until OWCP determines whether it should be terminated. We believe that employing agencies should have the authority to terminate COP immediately if the employee refuses suitable light duty. This, we believe, would reduce administrative problems and result in a reduction of improper COP payments.

As previously noted, Sharpe Army Depot has been successful in implementing a procedure whereby COP is terminated when an employee refuses to return to light duty. The Postal Service believed that the use of this additional procedure--to withhold COP when an employee refuses suitable light duty--was important enough that it requested and received approval from Labor for its implementation. We believe that such authority should be given to all employing agencies.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To make the COP program more effective and to provide employing agencies the authority they need to effectively handle their responsibilities, we recommend that the Secretary of Labor require the Assistant Secretary for Employment Standards to instruct OWCP to:

--Give employing agencies the authority (in addition to the nine regulatory categories to which they are now limited) to controvert and withhold COP in controversial claims or in claims for which the agencies have found a basis for denial. Labor should give priority adjudication to these controverted claims.

--Provide all employing agencies with the authority to withhold COP (1) until employees have provided employing agencies with sufficient medical evidence to substantiate their claims and (2) when the employee refuses to return to work on a suitable light-duty assignment when such an assignment is in accordance with the attending physician's diagnosis.

CHAPTER 5

DELAYS IN PROCESSING, A LACK OF COORDINATION, AND THE INADEQUATE REVIEW OF CLAIMS BY OWCP

We found, during our review of seven OWCP district offices, that OWCP has been unable to effectively manage COP claims. This has resulted in long delays in processing COP and regular compensation claims, untimely responses to employing agencies, the closing of claims based on insufficient data, and giving COP claims, especially those of shorter duration, low priority.

OWCP district offices have been slowed down by minor and frivolous claims since 1974. (See ch. 2.) Also, we have been informed by OWCP personnel that incomplete agency and medical reports have slowed down claims processing. Although there have been increases in OWCP staffing, the increases in claims have been of such a magnitude that the staffing increases have been unable to handle them.

The result has been large backlogs and processing time lags causing (1) delays in the adjudication of claims for more serious injuries, (2) OWCP being unable to respond to employing agency problems in a timely manner, and (3) shortcuts in the adjudication of claims by OWCP district offices in an attempt to keep up with the large number of claims filed.

INCREASED DELAYS IN CLAIMS PROCESSING

As the COP caseload increased, OWCP district office claims examiners experienced severe problems with the timely completion of their primary responsibility of examining and developing COP claims. The claims examiner is authorized to obtain any additional information considered necessary for the proper disposition of a COP claim. However, as the claims backlog increased, the workload of the individual examiners increased to the extent that the examiners were unable to request and process information on pending claims in a timely manner.

The understaffing of OWCP district offices, combined with the large increase in COP claims, substantially contributed to the total backlog of about 212,000 open claims by the end of 1978 for both traumatic and nontraumatic injuries. Of these, about 107,000 had been reviewed by OWCP and were awaiting additional information requested by the claims examiners

before further action could be taken. The other 105,000 were either in active processing or were awaiting further OWCP review.

Each of these backlog categories has more than doubled since the end of 1973. At that time there were 91,000 open claims, of which 43,000 were awaiting additional information and 48,000 were in process or awaiting OWCP action.

In the district offices we reviewed, the backlog of open claims at the end of 1978 was:

District office	Backlog
Boston	14,730
Cleveland	19,853
Jacksonville	11,374
Chicago	10,393
Seattle	7,040
Washington, D.C.	29,459
National office's Branch of Special Claims	5,145
Total	97,994

The effects of the staffing shortage can be further demonstrated by evaluating the time it takes to process a claim. In 1973 Labor data showed the average time lag for OWCP processing (the time from when OWCP received the claim to when it approved or denied compensation) to be 28 days for all claims and 19 days for traumatic injury claims. One of the major causes for this internal lag was reported to be inadequate staffing. For the sampled claims we reviewed, the average OWCP time lag for processing traumatic injuries had increased to about 74 days.

Since 1973, Labor's staffing for the program increased to 832 full-time and 211 temporary employees by the end of calendar year 1978--an increase of about 151 percent. The number of claims, however, for compensation (including COP) grew by about 300 percent, and the backlog of claims increased by 133 percent. A significant portion of OWCP's staffing increase was in calendar year 1978, and this may reduce both the backlog and internal time lag in the future.

Our analysis of the sampled claims filed during the period April 1977 to March 1978 showed that the average processing time lag within the district offices and for the agencies was:

District office	Average processing time lag (days)		
	District office	Agencies	Total
Boston	56.7	31.5	88.2
Cleveland	62.1	31.1	93.2
Jacksonville	111.2	40.5	151.7
Chicago	73.8	34.9	108.7
Seattle	37.1	32.9	70.0
Washington, D.C.	100.9	31.2	132.1
National office's Branch of Special Claims	76.4	53.1	129.5
Average for claims analyzed	73.9	35.4	109.3

It should be noted that the average agency time lag (the time from the date of the injury until the claim was received by OWCP) reported by Labor in 1973 for traumatic injuries was 51 days. As can be seen from the above chart, the agency time lag appears to have improved.

Questionnaire results

We asked in our questionnaire what effect COP had on the overall processing time for all lost-time injury claims at the OWCP district offices. Their opinions were:

	OWCP	Agencies	Union
Processing time had increased	63%	49%	37%
Processing time had not changed	7	15	34
Processing time had decreased	20	8	9
No basis to judge	10	28	20

When asked if any specific problems had been created at the OWCP district offices due to COP, the respondents were of the opinion that a need for staff was a primary problem. Also identified were the difficulties in enforcing OWCP criteria and OWCP's communication and cooperation with employing agencies.

BETTER COORDINATION IS NEEDED BETWEEN OWCP AND THE EMPLOYING AGENCIES

Employing agency officials expressed a general lack of confidence in OWCP's ability to respond to their problems in a timely manner because of the large backlog. Also, we noted that quite often OWCP was unable to respond to the employing agencies' needs because of a lack of information from physicians and/or the employing agencies.

During our review, we found that this lack of confidence and communication has contributed to

--employing agencies having little success in controverting claims and

--OWCP's failure to reply to employing agencies in a timely manner.

Greater efforts are needed in the processing of controverted claims

Labor instructions for implementing the 1974 amendments state that:

> "(1) The District Office will separate all incoming CA-1 [notice of traumatic injury and claim] forms into 'terminated,' 'controverted' and 'noncontroverted' categories.
>
> "(2) ALL CASES IN WHICH PAY HAS BEEN TERMINATED SHALL BE GIVEN PRIORITY. CONTROVERTED CASES MUST ALSO BE GIVEN SPECIAL ATTENTION. THESE CASES MUST NOT BE BACKLOGGED." (Underlining added.)

We found that many employing agencies were reluctant to controvert claims because OWCP did not uphold the controversions. Other employing agencies seemed to controvert many claims, but, because their rationale for challenging the claims was erroneous or because they did not explain their reasons for controverting, the controversions were not sustained by OWCP.

The Norfolk Naval Shipyard is one employing agency that has been unsuccessful in having controverted claims sustained by OWCP. The shipyard controverted 308 claims from January 1977 to December 1978. OWCP had acted on 113 of the controversions by sustaining only 13. Even though OWCP instructions require priority treatment for controversions, at the

close of our review in December 1978 195 controverted claims at Norfolk were still outstanding. A high percentage of the controverted claims were for back strains. The shipyard contends that these are progressive injuries caused by a particular repeated motion and therefore are not eligible for COP. OWCP has informed us that, even though the conditions for a traumatic injury may have developed over a period of time, if the claimed injury can be identified to a specific time and place, then, according to the regulations, the injury qualifies for COP.

The OWCP Chicago district office did not process and adjudicate most of the priority COP claims in our sample in a timely manner. However, district office officials stated that they believe that employing agency delays in submitting needed information contributed to the OWCP delay in processing some COP claims. Our review of nine controverted claims showed that only three were approved or denied by OWCP within 47 days of receipt, five required from 93 to 333 days, and one remained open after 340 days. Among the eight COP claims in our sample with related claims for continued compensation (after COP), only three were adjudicated within 46 days, and the balance were adjudicated in 62 to 223 days.

Generally, employing agencies have not been successful with controverting claims. OWCP claims examiners consider factors which are dictated by law or are mostly provided by the claimant or his physician. No consideration is given to factors such as the employee's character, dependability, work record, number and type of previous claims filed, or leave balance. In many cases these factors are not relevant; however, we believe that these facts are important in questionable claims and might be considered by a claims examiner when evaluating the integrity of questionable claims. Also, situations which exist at an installation such as the Norfolk Naval Shipyard need to be clarified.

Officials at employing agencies such as the General Services Administration and the Veterans Administration believe that more guidance is needed from OWCP on how to controvert questionable claims. If this guidance were given, we believe that this information would help employing agencies do a better job of investigating and documenting questionable claims in the future. To help employing agencies provide more sufficient information to support their controversions, OWCP has begun a series of 3-day training seminars.

However, we were informed by a Postal Service official that, during a training seminar for Postal Service supervisors in Seattle, an OWCP official told the supervisors that they should controvert only those claims for which the employing agency could stop an employee's pay; i.e., the nine categories specified in the Federal regulations. The OWCP official supported his position by providing the participants with a Labor handbook entitled "Training for Federal Employing Agency Compensation Specialists," that states:

> "* * * The OWCP office will generally not accept reasons for controversions other than the 9 given in the Federal Regulations. * * *"

The Labor handbook also lists the nine acceptable reasons for employing agency controversion of a COP injury claim, but it does not specify, as does paragraph (b) of section 10.202 of the U.S. Code of Federal Regulations, that the employing agency can also controvert a claim without stopping an employee's pay for other than the nine cited reasons. As a result, we believe OWCP has actively discouraged Seattle Postal Service supervisors from controverting questionable claims.

Many questionnaire responses indicated that employing agencies do not controvert COP claims as often as justified. The reasons most often cited for employing agencies not controverting COP claims was a lack of expertise in this area on the part of the employing agencies and OWCP's failure to support such controversions. Also considered to be factors were a lack of staff and the employing agencies' lack of rights to appeal or follow up on claims.

OWCP needs to respond to agencies in a timely manner

OWCP's review of claims frequently occurs long after an employee's work absence. For short absences, the claims notice probably will not be received until after the employee returns to work. In other instances, employing agencies may be slow in sending OWCP proper claims notifications. Also, as discussed earlier in this chapter we found that, depending on the OWCP district office, it takes from an average of 37.1 days to 111.2 days after OWCP receives a COP claim for OWCP to complete its review of the claim.

This lengthy time from the date of receipt by OWCP to completion of its review also hampers OWCP's effort to prevent claimants' abuse of COP. Problems which can be foreseen include

--a second medical opinion may be impractical, since most injuries would have healed; and

--it would be very difficult to investigate such matters as the job relatedness of the injury, obtain additional information from the examining physician, or prove the malingering of the claimant.

As a result, the claims adjudication process is limited in preventing abuse by the very fact that the process is so time consuming.

The degree to which this delay can be extended was demonstrated by our review at OWCP's Washington, D.C., district office. Out of 66 claims reviewed at that location we found 6 with no indication that final action had been taken as of November 28, 1978. The average time from the filing date for these claims was 446 days, ranging between 294 and 605 days.

The primary reason for these long delays was, we believe, the failure of the district's call-up process. When a claims examiner believes a claim needs additional information, a request is made for the information and a call-up notice is entered so that the claim will be recalled after 90 days to be reviewed again. Our review showed that this process had failed to recall claims in the Washington, D.C., district office. Without this call-up process functioning, OWCP examiners may never recall many claims which they had originally questioned. In effect, claimants whose claims were not recalled and who received COP from their employing agency have an approved claim.

Our review of 66 claims at the Jacksonville district office showed that OWCP had not yet adjudicated 8 claims in our sample. As of December 31, 1978, these eight claims had been open for an average of 429 days, ranging from 289 to 620 days.

INADEQUATE REVIEW BY OWCP DISTRICT OFFICES

We believe that a large number of COP claim files either contain errors or lack sufficient information for proper adjudication and that, despite these problems, OWCP does not question these claims. We believe that the reasons for this lack of evidence include

--carelessness or a misunderstanding of the COP process by OWCP, employing agencies, physicians, and employees; and

--the failure of some district offices to take COP claims seriously.

Errors or lack of evidence in many closed or adjudicated claims

We performed a detailed review of the evidence in the case files and discussed our findings with district office officials. In our opinion, about 214 claims (about 52 percent) of the 410 claims in our sample lacked sufficient evidence or contained errors when they were closed or adjudicated. The problems most often consisted of insufficient medical evidence, but they also included a lack of required forms and errors in the tabulation of COP days.

The most common deficiency in OWCP claims files is the lack of medical evidence. This lack of evidence was more fully discussed in a previous report by our office. 1/ Physician reports frequently contained ambiguous descriptions of the claimant's injury, its severity, and the resulting medical findings. We noted many claims where the physician would simply mark "not fit for duty" in the space allotted for the physician's appraisal of the duration of the injury.

Also, the evidence in the files often failed to specify how long an employee should stay off work or when or even if the employee might be available for light duty. In other instances, the files showed that employees were staying off work longer than authorized by the attending physician.

Other problems noted in the closing of many claims included

--the form CA-16 (Request for Examination and/or Treatment) was not provided,

--agencies did not provide complete and accurate information on the CA-1 (Federal Employee's Notice of Traumatic Injury and Claim for COP), and

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1/"Improvements Still Needed in Administering the Department of Labor's Compensation Benefits for Injured Federal Employees" (HRD-78-119, Sept. 28, 1978).

--agency controversions of claims for COP were inadequately supported.

Following are examples of claims which we identified as lacking medical evidence or being erroneously adjudicated:

--A postal clerk injured her left great toe when a tray fell on her foot. The Public Health Service physician diagnosed a contusion and recommended 4 days off. Upon return she filed a recurrence claim and a written request to be treated by her private physician. She returned to work the day after the 45-day COP period ended. The Post Office failed to immediately notify OWCP about the requested physician change; it also failed to require disability reports before paying COP for the recurrence period.

OWCP received the claim package, including the request to change physicians, 25 days after the injury date but failed to act on that request. After the 45 days of COP, the claims examiner requested the employee to provide medical reports (a prerequisite for paying the private physician's bill for services) and to explain whether the Public Health Service had referred her to the private physician. When no response was received, the claims examiner approved 45 days of COP without medical evidence of disability for the 41-day recurrence.

OWCP officials agreed that the recurrent disability was not documented, and they agreed to take corrective action. The claimant will be required to provide medical reports and explain the circumstances that justify the change of physician. If the employee voluntarily chooses treatment by the Public Health Service, OWCP approval is required before the claimant can change physicians. Further, OWCP will deny 41 days of COP if the disability is not properly documented for the recurrence.

--The claimant, a repairman for the Social Security Administration (SSA) began to have pains in the lower part of his back. He went to the hospital the following day and the physician diagnosed lower back pain. The physician's examination revealed previous surgery and degenerative changes in the spine. The physician recommended absolute rest for 1 week. Even though

this injury clearly was not traumatic (as defined by the regulations), OWCP approved COP for 7 days. We discussed this case with a claims examiner, who informed us that the claim should have been denied because (1) it was not traumatic and (2) no causal relationship of the injury to work was shown.

Processing procedures are not adhered to by all district offices

During our review at the district offices, we interviewed several OWCP personnel concerning their treatment of COP claims. We were informed that, in some district offices, COP claims, because they are generally of shorter duration and less complicated, are given special treatment or are simply closed while still lacking evidence. According to OWCP procedures, the special treatment of these COP claims is not in compliance with OWCP's requirements for adequate evidence in reaching decisions on claims.

At the Washington, D.C., OWCP district office, a special process is used for examining COP claims that is not used for compensation claims. According to the Assistant Deputy Commissioner of that district, a COP claim may be closed rather than adjudicated if the claim is for an absence of 10 days or less. "Closing" means all the information appears to support the claim, but medical information is lacking. This process has been adopted because district management believes small COP claims are not worth pursuing as vigorously as other work in the district office. Our review of COP claims in this district confirmed this closing policy and also revealed that the policy, in practice, was extended by claims examiners to include many cases over 10 days long.

In the Cleveland, Ohio, district office, the quality of processing had diminished because of the backlog of claims. According to a district OWCP claims examiner, virtually all claims under 10 days are automatically approved for COP whenever there is a push to adjudicate claims.

At the Seattle, Washington, district office, OWCP officials stated that COP claims are subject to the same adjudicative processes as are other claims. However, our review disclosed that, except for obtaining medical evidence, OWCP claims examination is essentially a technical compliance function (i.e., no concerted effort is generally made to resolve potential or questionable issues).

We were informed by a Seattle district office official that the primary reasons for this are

--the ever-increasing backlog of claims,

--little incentive exists to pursue COP issues when examiners are faced with compensation claims for thousands of dollars, and

--it should not be necessary for OWCP to "babysit" an employing agency's administration.

The above processes are considered acceptable by OWCP officials in the respective district offices because they believe that COP claims have a small financial effect.

However, we discussed the evidence required for adjudicating a COP claim with OWCP officials in Washington, D.C. They stated that COP claims involving lost time are required to contain as much evidence as any other claim for compensation. They stated that a COP claim lacking any of the required evidence should not be approved.

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

The large backlog in claims at OWCP district offices has hindered the effective operation of the COP program. Claims processing has been delayed and shortcuts have been taken in order to try to maintain control of COP claims. This has resulted in erroneous and unsupported claims getting through the system. Furthermore, this backlog has increased the processing time for claims in the OWCP district offices and, therefore, has reduced OWCP's ability to respond to employing agencies in a timely manner.

If the recommendation in chapter 2 (to establish a 3-day waiting period for COP) is implemented, we believe that a significant reduction in the backlog at OWCP district offices will result, and the delays being experienced in the adjudication of COP claims will be alleviated.

We also believe that, in order for more effective management of the program to be realized, there is a need for better coordination between OWCP and employing agencies so that they may be more effective and uniform in dealing with controversial or questionable claims.

Some OWCP district offices are approving COP claims without sufficient evidence. This practice is contrary to the established OWCP policy for approving claims. The policy of these district offices, we believe, is not only resulting in the approval of COP claims which are not sufficiently supported, but also provides an invitation for other employees to abuse COP.

Responding to our report, Labor stated that OWCP policy is consistent with our recommendation that it require claims examiners to obtain sufficient evidence before rendering final decisions. Labor stated that it has been making strenuous efforts to upgrade the quality of its claims processing to assure that OWCP policies are implemented. This is being accomplished through the hiring of more staff, intensive training courses for all its claims examiners, and the revision of its Claims Procedure Manual.

We believe that, since the issuance of our report, "Improvements Still Needed in Administering the Department of Labor's Compensation Benefits for Injured Federal Employees," (HRD-78-119, Sept. 28, 1978), Labor has taken some corrective actions in claims management and through the addition of staff. However, we found during our review that OWCP employees are not following established OWCP policies. At the conclusion of our review (in December 1978) we found responsible district office officials who still believed that COP claims, especially those of shorter duration, could be closed without sufficient medical evidence. We therefore believe that additional improvements are needed in the application of the established OWCP policies.

RECOMMENDATION TO THE SECRETARY OF LABOR

To improve the quality of COP claims processing, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards instruct OWCP to require district office claims examiners to obtain sufficient evidence for all COP claims before rendering final decisions.

CHAPTER 6

EMPLOYING AGENCIES LACK UNIFORM ADMINISTRATIVE PROCEDURES

As part of our review, we were requested by the Manpower and Housing Subcommittee, House Committee on Government Operations, to examine how well employing agencies control COP cases and to evaluate the management techniques at the installations we visited. Our review of the management of COP by employing agencies has shown that the degree of management varies widely. We believe that the primary reason for this is OWCP's lack of guidance to employing agencies on how to manage COP claims.

Due to this lack of guidance, employing agencies are managing COP claims in different ways. Some agencies, because of their limited capacity for dealing with COP and a lack of awareness of the costs and the potential savings involved, have developed little, if any, concern for COP management. Other agencies, because of their visibility and the magnitude of COP costs involved, have developed extensive programs and committed extensive resources to manage COP.

From our review it is apparent that proper management of COP claims should include

--making maximum use of light-duty assignments and advising physicians of their availability,

--establishing policies and procedures to investigate and challenge suspected abusers,

--coordinating the components involved with COP (including personnel, safety, and health services),

--alerting supervisors to their responsibilities of informing employees about COP and of managing the resulting claims, and

--following the progress of claims--this includes collecting overpayments resulting from OWCP denials of claims.

MANAGEMENT PROGRAMS VARY

Many of the employing agencies reviewed had not fully developed programs for handling COP. We found that management was lacking in various degrees in the employing agencies.

For example, based on our review it appears that the District of Columbia is doing little to lower its COP costs. For one thing, COP instructions have been issued to the District's departments and agencies which contained no advice on the use of light duty to reduce COP absences.

We discussed these problems with a District of Columbia official, who stated that OWCP had discouraged the District from contesting claims because it was "wasting our time." District officials also cited the District's diverse organizations involved in COP management as a problem.

Some employing agencies have realized COP's impact, but we believe they have not yet fully developed their programs. We believe that the effective management of COP at the employing agencies should include the combined involvement of the safety offices, personnel offices, and health units. Some employing agencies, if they had all the above components, lacked a central unit to oversee COP management or, if they had one, it was not functioning well:

--At the Government Printing Office all of the above functions were involved in the management of COP, but no single unit had a grasp of the COP program and all its ramifications.

--A situation similar to the above existed at SSA, but steps are being taken to correct this situation.

Also, we found that several employing agencies were not effectively using light-duty programs. (See ch. 3.) Several employing agencies we reviewed (such as the Naval Avionics Center, Wright-Patterson Air Force Base, and an Internal Revenue Service office) did not have formal light-duty programs in place, although they stated that they were making some light duty available.

Educating supervisors

The supervisor is important for providing an effective COP program, because he/she is in the front line of management. The supervisor is responsible for submitting the form

reporting the injury; typically, it is also the supervisor who conducts initial investigations, informs employees of reporting procedures, and advises employees of their eligibility for COP. The supervisor also has responsibility for providing good safety attitudes and detecting unsafe conditions.

Despite the importance of supervisors in managing COP, we believe many supervisors are unfamiliar with the COP program and need training on procedures. An SSA task force report dated March 1978 concluded that some supervisors are unaware of when to place employees on COP and, instead, place them on leave without pay.

While selecting our 410 sample claims, we found 43 lost-time injury cases for which employees used leave instead of COP to cover their absences. We discussed why these employees used sick leave with an official of the OWCP National Office. This official stated that these employees generally used sick leave because they were not aware of COP.

In following up on some of these cases we found several employees who stated they were not aware of COP at the time of their injuries; others did not follow the proper procedures required for filing a COP claim. Some claimants responded as follows:

--A Postal Service plant manager was not aware that COP could be claimed, and he used sick leave.

--An Air Force plumber was unaware that COP could be claimed, and he was not advised about it by Air Force personnel. He used 4 days of sick leave.

EXAMPLES OF SOUND MANAGEMENT PROGRAMS

During our review we noted that many sound management programs are being used by employing agencies for dealing with COP. We found that some employing agencies (such as the Portsmouth Naval Shipyard, TVA, the Postal Service, and others) have adopted some especially effective monitoring and management programs for handling COP claims.

Portsmouth Naval Shipyard

The Portsmouth Naval Shipyard's parent command, the Naval Sea Systems Command, became concerned about COP costs and required quarterly reports from the shipyard to track compensation costs. The Command instructed the shipyard to reduce COP costs by

--increasing investigations of COP claims,

--emphasizing light-duty assignments, and

--reviewing COP claims at the shipyard's medical facility and employing departments.

In addition, the shipyard's Commander sent letters to all private physicians located within a 50-mile radius of the shipyard and to all its employees. The letters were to inform the physicians and the employees of the availability of light-duty assignments and to request their cooperation in reducing the use of COP.

The shipyard is also improving the effectiveness of its medical facility by

--contacting the employee's physician to determine why medical opinions differ about whether an injured employee should be placed on light duty;

--reexamining an injured employee every 7 days, or whenever appropriate, to keep apprised of the employee's condition on a timely basis; and

--taking official positions on whether or not the shipyard agrees with the employee's physician that the employee should be absent from work.

Most of these management practices were put in place only recently, or are shortly to become effective. Therefore, we were unable to determine their effect on COP claims.

Tennessee Valley Authority

TVA employs about 49,000 people in Tennessee and in sections of bordering States. Because TVA covers such a small area, the agency has been able to concentrate its resources in critical areas. TVA employs about 18 doctors and up to 200 nurses, which enables it to operate four area medical offices, smaller medical offices at seven construction sites, and more than a dozen health stations. Consequently, most TVA injuries are treated by TVA doctors. If the employee does see a private physician, TVA makes the appointment for about 90 percent of its claims. TVA believes that this has developed a better rapport with the local medical community. TVA officials believe that the above practices help minimize

the overuse of COP and compensation. Also, TVA has its own rehabilitation specialists, and it recently started physical education classes for back injuries.

TVA officials believe that two medical activities help minimize the overuse of COP and compensation:

--Most claimants are treated by TVA doctors. Agency physicians are more familiar with employee job requirements and can better determine a claimant's ability to perform light-duty work.

--If an employee chooses a private physician, TVA nurses closely monitor the patient's progress.

We discussed how these management practices reduce costs with a registered nurse in TVA's Division of Medical Services. She believed that these practices were reducing the rate of the increase in the number of claims and the duration of lost time. However, she also believed that additional personnel and resources are needed before TVA can effectively reduce the program's cost.

Postal Service--Seattle

The Postal Service's Seattle Injury Compensation Control Office monitors COP claims for the Seattle Management Sectional Center, which provides service to approximately one-third of the State of Washington, including Postal stations in Seattle. In addition to the direct continual monitoring of injury claims, in December 1978 the Control Office implemented several procedures to reduce employee injury costs. Some of the more important of these procedures are:

--Supervisors must immediately contact the Control Office to report each employee off work due to an on-the-job injury.

--All notices of injury (fully documented) are to be sent to the Control Office within 24 hours of the supervisor's receipt of a Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/ Compensation.

--Supervisors must furnish the Control Office with the treating physician's name and address for each employee off work due to an alleged injury, so that the Control Office can immediately send a duty status report and other appropriate documents to the physician.

--All COP must be approved by the Control Office before entering an injury into the Postal Service's data system.

--Supervisors are to send all injured employees seeking medical treatment (except for emergencies) to the Seattle Postal Service's Medical Unit/Control Point. The appropriate forms will be completed by the Medical Unit. If the employee wishes to receive treatment from a private physician, the Medical Unit/Control Point is required to make the initial medical appointment with the physician.

--Injured employees are required to obtain a duty status report from the Medical Unit before each followup medical appointment with their treating physician.

--All injured employees must be cleared through the Medical Unit/Control Point whenever there is a change in their duty status due to an alleged injury.

--Limited duty is to be provided to all injured employees with medical restrictions. If a limited-duty assignment is not available in the employee's regular work area, the Control Office is to be promptly contacted so that work in another unit can be quickly located.

--The Postal Service's Work Recovery Program (Postal Employee training) is to be used when possible when limited duty is temporarily not available to employees.

Apparently because of the success that the Seattle Injury Control Office has had in holding down employee injury costs, about 1 year ago the Postal Service's Western Region established an Injury Control Office in Oakland, California. The Seattle supervisor stated that Oakland was selected because of its extremely high COP costs--$7,568 per 100 employees, versus Seattle's $1,177.

EMPLOYING AGENCIES NEED TO PURSUE THE COLLECTION OF COP OVERPAYMENTS

When an employee reports an injury and loses time from the job, the law requires that the employing agency continue the employee's regular pay. If the employee's claim is later denied by OWCP, the employee can convert the COP paid to annual or sick leave. If leave is not elected, employing

agencies may declare the salary received for the period to be an overpayment subject to recovery under section 5584 of Title 5, United States Code. The recovery of COP is a cumbersome task, and sometimes agencies do not choose to or are not able to recover overpayments, as noted by the TVA situation reported on page 38.

As part of our review of the management practices of employing agencies, we found that, when claims are denied by OWCP, employing agencies are reluctant to collect the resultant salary overpayments. During the selection of our random sample we found 11 claims for which OWCP had denied COP (these claims were not included in our sample). In following up on these claims we found that the employing agencies had recovered COP for only 4 of the 11.

An example of a denied claim for which COP was not recovered occurred at the Howard University Hospital. An employee at the hospital filed a claim in July 1977 for an injury which had taken place the prior March. The employing agency granted the employee 26 days of COP. The claim was denied in July 1978 by OWCP because written notice was not given within 30 days. In December 1978 we contacted the Howard University Hospital to see if the 26 days of COP which OWCP had denied had been recovered. We were informed that, because of the confusion about the claim, the hospital did not plan to recover the 26 days of COP.

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

The tremendous increase in the number of lost-time injury claims has imposed a burden on the administrative resources of employing agencies as well as on OWCP.

We believe that, in order to realize more effective program management, employing agencies need to develop uniform guidelines for management policies on matters such as what constitutes adequate adjudicative evidence, the requirements of an effective light-duty program, employing agency responsibility in coordinating and communicating with the physician and the injured employee, and the importance of investigating and documenting a COP claim.

We also believe that employing agencies should pursue the recovery of incorrectly paid COP as soon as possible once OWCP determines that the employee does not qualify for COP.

Labor commented that it has greatly increased its efforts to assist employing agencies in the development of

uniform policies for dealing with all claims. Its efforts have included seminars, meetings with officials of the employing agencies, and prototype projects.

We acknowledge that Labor has made progress in informing employing agencies about the need for improved claims management. However, during our review we found several employing agencies that had not yet begun to develop programs to deal with their COP problems. Also, we found other employing agencies that, although they acknowledged some of the concepts of good COP management, had very limited programs to deal with these claims. Therefore, we believe there is a need for Labor to further intensify its efforts to instruct and encourage employing agencies to establish uniform policies for dealing with COP.

RECOMMENDATION TO THE SECRETARY OF LABOR

To make the COP program more effective and to help assure prompt and consistent adjudication of claims, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards instruct OWCP to assist employing agencies with establishing uniform policies for dealing with COP. These policies should include provisions for investigating questionable claims, monitoring the progress of an employee recovering from an injury, contacting the employee's physician, developing a light-duty program, and recovering the COP paid for denied claims.

CHAPTER 7

WORKERS' COMPENSATION

OUTSIDE THE FEDERAL GOVERNMENT

At the request of the Manpower and Housing Subcommittee, we contacted officials of workers' compensation programs outside the Federal Government to ascertain what policies they advocated for administering workers' compensation and obtained their comments on the Federal system. The officials we contacted were with the Alliance of American Insurers, the State of New York's Legislative Commission on Expenditure Review, and the General Motors Corporation.

These officials suggested that, in order for COP to be managed more effectively:

--A waiting period needs to be instituted before paying COP.

--A quicker and more thorough investigation of claims is needed.

--A Government physician needs to become involved in the employee's examination, at least where some doubt exists about the diagnosis.

THE ALLIANCE OF AMERICAN INSURERS

The Alliance of American Insurers is a major association of property and casualty insurance companies. They have member companies that write workers' compensation insurance in all 50 States and the District of Columbia. Their members include some of the largest workers' compensation insurers in the country and many that were organized specifically to provide compensation coverage. Alliance companies underwrite about 25 percent of the workers' compensation business provided by insurance companies in the United States.

Prompt reporting of an injury by the employer and expeditious handling of the claim by the insurance carrier are two of the points most emphasized by Alliance in claims management. In all lost-time injuries it is generally expected that the investigator in a claimant's geographic area will visit the claimant within 48 hours of learning of the case and within 5 to 6 days of the injury.

The initial contact with the claimant is considered to be the most important; a rapport with the claimant is established before frustration builds and the claimant begins to seek help from an attorney. This contact is used to inform and assure the claimant, learn about the circumstances of the injury, interview witnesses, if any, and obtain as many other details as possible.

The investigator interviews the employer to substantiate the claimant's story and gather any other available information. The claim is then discussed with the claimant's physician to gather any additional information and to inform the physician of all of the circumstances surrounding the accident and of the insurer's reporting requirements. Claims that are being treated by a physician of the employee's choice are more closely monitored than those being treated by a company doctor.

If the investigator has any problems with the treating physician's diagnosis, the investigator will arrange for the claimant to be examined by a physician from a list of specialists recommended by the carrier. The large carriers generally have a list of highly regarded specialists. These examinations generally take place within a week of the request. If a contradiction exists between the diagnoses of the two physicians, the carrier's physician attempts to work out any apparent differences with the claimant's doctor.

In claims where disagreement remains, the carrier will terminate compensation payments, based on the date the carrier's physician says the employee can return to work. The carrier's physician will often accomodate a claimant's physician for a while, but will set a final determination date if an agreement cannot be reached in a reasonable amount of time. The employee can appeal such decisions.

Light- and limited-duty programs are encouraged as an effective means of getting employees back to work and back to their original jobs as soon as possible.

GENERAL MOTORS

The General Motors Corporation is the largest private self-insurer 1/ for on-the-job injuries. General Motors places great importance on the satisfactory resolution of work-related injuries and, as a result, has a large staff assigned to design and carry out activities for the satisfactory handling of claims.

Each General Motors plant has a workers' compensation staff which is assigned and trained to handle on-the-job injuries. When an on-the-job injury occurs, staff at that particular plant are responsible for handling all aspects of the claim. We were advised that the workers' compensation staff are trained to handle claims in a manner that is fair both to the employee and to General Motors. Employees are informed of all the benefits due to them at the earliest opportunity; however, the compensation staff is also aware of its responsibility to General Motors to control and minimize costs. A plant compensation staff member is made accountable for, and expected to be active in, the entire claims process, including any appeal of the company's decision by the employee.

A General Motors plant or appointed physician, whenever possible, makes the initial treatment and diagnosis of the employee's injury. A complete report is prepared at this first contact, including any comments from the employee. General Motors officials stated that every effort is made to provide appropriate medical care so that the employee will choose to remain under the care of a General Motors or General-Motors-appointed physician.

State laws regarding the free choice of physician vary. In Michigan, for example, an employee can be required to remain under the treatment of a General Motors or General-Motors-appointed physician for at least 10 days. After this period the employee may consult with a physician of his/her own choice for treatment.

Workers' compensation claims are thoroughly investigated at the earliest possible opportunity by a plant representative, in order that all information related to the injury can be fully documented. The results of this investigation are

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1/A self-insurer provides its employees with protection with the organization's assets rather than purchasing this protection from an insurance company.

evaluated in conjunction with the physician's diagnosis and are used to evaluate and adjudicate the claim. Laws vary among States as to when claimants begin to receive compensation. For example, Michigan and California require that the employee begin receiving compensation payments within 14 days of the injury. General Motors officials stated that they meet this deadline about 90 percent of the time.

Throughout this process, General Motors attempts to maintain frequent contact with the employee. Extensive efforts are made through the training and onsite evaluation of company workers' compensation personnel to refine the skills needed to successfully handle workers' compensation claims. The ojective of the General Motors workers' compensation effort is to remain active in each claim at the closest possible administrative level. The key to success is a coordinated effort between the plant administration, the physician, and the employee.

All General Motors plants have active light- or limited-duty programs. Also, jobs are reengineered through great efforts to provide employment to partially disabled employees. These jobs are engineered and identified to return an employee to work at the earliest possible opportunity. This gives plant personnel the chance to maintain an ongoing dialogue with the injured employee.

THE STATE OF NEW YORK

Several years ago New York liberalized the leave provisions relating to its compensation system for State employees. As a result, it experienced a large, significant, and continuous increase in the growth of claims between 1970 and 1977. The State has since instituted a waiting period which appears to have reduced claims.

State employee labor negotiations beginning in early 1970 resulted in Labor contracts with a liberalization of the on-the-job injury leave provisions of the attendance rules for State employees. Before signing these contracts, rules for workers' compensation for eligible State employees provided for workers' compensation leave at the discretion of the State agency, instead of the mandatory leave policy contained in the labor contracts. The contracts, besides providing more liberal mandatory leave policies, also assured that the provisions could not be amended or canceled unilaterally by administrative action.

In summary, the contracts provided that an injured employee who was allowed workers' compensation leave from his/her position for the period of his/her absence caused by the injury was (1) granted compensation leave with full pay without charge to leave credits for up to 6 months, (2) upon exhausting leave with full pay benefits, allowed to draw accrued leave credits, and (3) upon exhausting leave with full pay benefits under (1) and (2), was allowed sick leave at half pay for which he/she may have been eligible during such leave. Furthermore, any employee who used accrued leave credits during a workers' compensation leave was entitled to have such leave credits restored if a compensation award was made and credited to New York State.

Since 1970 a substantial increase has occurred in the number of work-related accidents reported for State employees. This has been accompanied by a rise in the number of compensable claims for which medical expenses and disability benefits have been paid to State employees.

The total number of accidents of all employees covered by workers' compensation insurance in New York State had dropped from 704,000 in 1970 to 599,000 in 1975--a decrease of 14.9 percent. In contrast to this downward trend, the number of accidents reported for State employees evidenced a substantial increase. The number of State employee accidents reported grew from 16,998 in 1970 to 29,139 in 1975--a gain of 71.4 percent. During that time the rate of on-the-job injuries reported by State employees rose from 96 accidents per 1,000 workers to 152 accidents per 1,000.

This dramatic increase in the injury rate and the resulting costs became a matter of great concern to the State of New York. These problems were outlined to the State legislature in a study by the State Legislative Commission on Expenditure Review.

As a result of ensuing labor negotiations, effective July 1977 the workers' compensation provisions were amended so that the first 10 days of absence due to an on-the-job injury must be charged to available sick leave credits or, in the absence of such credits, to other accrued or advanced leave. State officials believe that a waiting period deterrent, along with continued good management of the program, is needed to cut down on workers' compensation abuse. Some concern was expressed that a 10-day waiting period covered by use of leave was still not sufficient to deter many employees.

The State has just finished conducting a study to determine the extent that the 10-day waiting period has affected the State's injury rate. We talked to a State official about the results of this study in March 1979. While he could not disclose the results of this study until upcoming union negotiations had been completed, he indicated that the study showed a decrease in injury incidences of almost 40 percent in those labor units for which the 10-day waiting period was established. By contrast, we were informed that the labor units without such a waiting period showed virtually no change in the incidence of injuries over the same period.

We also discussed the principle of a waiting period with a representative of a New York State employees' union. He agreed that, without a waiting period, there had been abuse of the compensation program. He also agreed that there is need for some kind of waiting period, but that a 10-day waiting period covered by leave was too high a price to pay when an employee suffers a legitimate job-related accident. He believed that the union would attempt to reduce the waiting period during the next round of contract talks.

During the 1979 Labor negotiations the employees' union sought and was granted certain exceptions to the 10-day waiting period; this may lead to another increase in the number of reported accidents.

CHAPTER 8

SCOPE OF REVIEW

A primary objective for our review was to develop a profile of the COP caseload. To accomplish this objective we selected a statistical sample of COP cases for a 1-year period. To make our sample statistically valid it was necessary to select 7 OWCP district offices for review. The selection of these offices was generally random, but it was somewhat influenced by several factors (including OWCP comments on the quality of administration, the size of the caseload, logistics, and national coverage). Within these seven district offices we randomly selected for detailed review 410 lost-time claims filed from April 1, 1977, to March 31, 1978. The selection of 410 claims provides a sample large enough that our results can be projected to the entire COP caseload. Our review included the analysis of OWCP and agency case files, contacts with the employing agencies, and, in some cases, interviews with the claimants.

We also developed a questionnaire for obtaining the views of individuals closely involved with the workers' compensation program. We sent 225 questionnaires to personnel in OWCP headquarters, OWCP district offices, 15 employing agencies, and nine unions representing Federal employees. Overall, 190 of our questionnaires were returned for a response rate of 84 percent.

The groups questioned responded as follows:

Group	Questionnaires sent	Responses	Response rate
Agency	100	94	94%
OWCP	75	60	80%
Union	50	36	72%
Totals	225	190	84%

We made our review from August 1978 to January 1979 at OWCP Headquarters in Washington, D.C., and at its district offices in Boston, Massachusetts; Jacksonville, Florida; Cleveland, Ohio; Chicago, Illinois; Seattle, Washington; Washington, D.C.; and the National Office's Branch of Special Claims in Washington, D.C. 1/

We reviewed the act and its legislative history; Labor's regulations pertaining to the act, and OWCP's implementing policies and procedures; Labor's internal audit reports; and other Labor and OWCP reports pertaining to the act's administration.

At the OWCP district offices we interviewed officials that included assistant deputy commissioners, chief claims examiners, and claims examiners. We reviewed the administrative workload, evaluated the claims processing procedures, and other available data.

We interviewed personnel and performed review work at employing agencies and installations. At these sites we reviewed specific case files, management policies, techniques, and guidelines. These installations and agencies included post offices, Veterans Administration hospitals, SSA offices, Naval shipyards, a Naval Avionics Center, the Government Printing Office, TVA, the General Services Administration, the Forest Service, the Menominee Tribal Enterprises of the Department of Interior, the Department of Defense, the District of Columbia Government, the National Marine Fisheries Service, an Internal Revenue Service Office, an Air Force Base, and the Navy Public Works Center.

We also interviewed:

--Physicians of the Public Health Service, in private practice, and at agency installations.

1/This is OWCP's District Office #50; it is reponsible for adjudicating claims for personnel at the Department of Labor, including OWCP employees and their relatives who are Federal employees; Legislative Branch employees; Federal employees working overseas; non-Federal law enforcement officers acting in Federal jurisdiction cases; and other specificially designated groups.

--New York State officials, representatives of General Motors, and the American Alliance of Insurers, to obtain information about their procedures, practices, and experience concerning State workers' compensation programs.

The cases in our random sample for which our auditors questioned the medical evidence were reviewed by our consultant, a medical doctor, and to some extent by district office personnel. Our consultant reviewed the cases in detail, considering such facts as the adequacy of the medical evidence to support the length and/or the validity of the disability.

APPENDIX I

225-6751

NINETY-FIFTH CONGRESS

Congress of the United States

House of Representatives

MANPOWER AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-A
WASHINGTON, D.C. 20515

July 20, 1978

Mr. Elmer B. Staats
Comptroller General of
the United States
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Staats:

As you are aware, the Department of Labor's administration of the Federal Employees' Compensation Act (FECA) has come under considerable criticism by members of Congress, agency officials, injured employees, and the press. The Government Operations Committee issued a report based on hearings held by our subcommittee, and the House Education and Labor Subcommittee on Compensation, Health and Safety recently held its own hearings.

One of the major objections raised by agency officials about the program is a 1974 amendment that gave the injured employee the option to have his or her pay continued for up to 45 days of disability in lieu of receiving workers' compensation at a reduced, but non-taxable rate. Agency officials allege that while this has partially served its intended purpose of closing the time delay in receiving compensation (during the 45-day period), the omission of a waiting period has led to substantial abuse of the program, as may be indicated by the tripling of claims for disability since the amendment.

We are requesting that GAO evaluate the impact of the continuation-of-pay (COP) provision on the program, particularly its cost, its impact on the administrative workload, and whether it has contributed to abuse of the program by claimants. We would like a report on the results of such an evaluation by February, 1979, to enable us to commence any needed oversight action with the new Congress.

APPENDIX I

In a separate but related area, we are also concerned about the development and implementation of the data processing systems that support the FECA program. To assist in our assessment of the progress of FECA automated Data Processing (ADP) systems development, it would be helpful to have an appraisal of the current effort. (See GAO not below.)

We would appreciate your office evaluating ADP systems development in support of FECA with particular attention to whether:

a. information needs are described adequately during the ADP system development cycle;

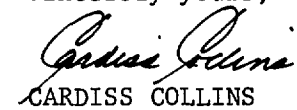
b. actions taken during the FECA ADP systems development cycle have been cost justified; and

c. program accounting and audit controls are included as a part of the FECA systems design. (See GAO note below.)

We would appreciate your response to this second request whenever it is available. (See GAO note below.)

Thank you again for your assistance. Please let us know of any additional clarification you might need. We would, of course, appreciate any observations and recommendations you may have. (See GAO note below.)

Sincerely yours,



CARDISS COLLINS
Chairwoman, Manpower and
Housing Subcommittee

CC:jls

GAO note: These issues have been addressed by a separate GAO effort.

APPENDIX II

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SUBCOMMITTEE ON
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June 19, 1978

Mr. Elmer B. Staats
Comptroller General
of the United States
General Accounting Office
441 G Street, Northwest
Washington, D. C. 20548

Dear Mr. Staats:

I am alarmed by the burgeoning costs and caseload in the Federal Employees Compensation Program in the aftermath of the 1974 amendments to the Federal Employees Compensation Act (F.E.C.A.). Last February, I introduced legislation (HR 11133) which would reinstate a three-day waiting period prior to eligibility for continuation-of-pay (COP). This bill would also provide agency supervisors with discretionary authority to request an injured employee to be examined by a doctor employed by the U. S. government or a private physician approved by the supervisor. In April, I testified in support of my bill before the House Education and Labor Subcommittee on Compensation, Health, and Safety during oversight hearings on the F.E.C.A.

As you are aware, the Department of Labor's administration of the F.E.C.A. is a source of growing concern on the part of several members of Congress, agency officials, injured employees, and the press. Some very thorough reports from the Government Operations Committee, the Investigation Subcommittee of the House Appropriations Committee, and an internal audit by the Directorate of Audit and Investigations of the Office of the Assistant Secretary for Administration and Management of the Department of Labor have heightened concerns.

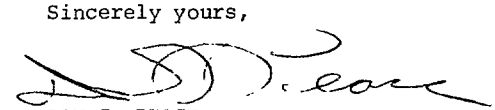
One of the major objections raised by agency officials and a particular concern of mine is a 1974 amendment that gave the injured employee the option to have his or her pay continued for up to 45 days of disability in lieu of receiving workers' compensation at a reduced, but tax-free rate. Agency officials have testified on several occasions that while this COP provision has partially fulfilled its intended purpose of closing the time delay in receiving compensation (during the 45-day period), the omission of a waiting period prior to COP eligibility has led to substantial abuse of the program. It is a fact that disability claims have tripled since adoption of the amendment without a corresponding increase in the size of the federal work force.

I am writing to request that GAO evaluate the impact of the COP provision on the program, particularly its cost, its impact on the administrative workload, and whether it has contributed to abuse of the program by claimants. Similarly, I request that GAO evaluate the impact of that provision adopted in 1974 which allows claimants to exercise free choice of a physician and that you assess the utility of authorizing discretionary authority for agency officials to request a second medical examination of injured claimants.

I would like a report on your findings by January, 1979, to be used in deliberation on the F.E.C.A. in the new Congress. Please let me know of any additional clarification you might need. I look forward to receiving your findings and recommendations in this important matter.

Thank you for your assistance and cooperation.

Sincerely yours,



DON J. PEASE
Member of Congress

DJP:gbt

U. S. Department of Labor

Inspector General
Washington, D C 20210

MAY 11 1979

Mr. Gregory J. Ahart
Director
Human Resources Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is to provide the Department's comments to the GAO draft report entitled "Problems Caused By The 1974 Amendments To The Federal Employees' Compensation Act".

The draft report accurately described some of the serious, long-term problems of this compensation program. Since the beginning of the Administration, we have been actively engaged in a series of administrative measures to improve this program. However, there are some areas that may require legislative action. The Administration has under active consideration legislative proposals to amend the FECA which will probably address many of the problems to which this report is directed. I will be glad to furnish you with a copy of these proposals as soon as they are submitted to Congress.

Our specific comments are set forth below.

Recommendation to Congress (page 26)

The draft recommends that "to reduce the number of minor and frivolous claims which are presently diverting Labor's efforts from more serious claims, reduce the cost to the taxpayers, and provide Federal employees with an incentive to return to work, we recommend that the Congress require that the 3-day waiting period for traumatic injuries be applied prior to the payment of COP, rather than 45 days later."

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Comment:

The Department recognizes that some of the claims for which compensation is sought may seem minor, but in our opinion the use of the term "frivolous" by GAO is inappropriate in a generalization about employee claims.

The Department is making an extensive examination of the feasibility of some adjustment in the application of the waiting period. It is appropriate to consider claims that some might characterize as minor. However, these lesser claims should not consume processing resources which might otherwise be devoted to more serious illnesses and injuries. We note that most State compensation systems require a waiting period at the outset of the disability.

Recommendation to Congress (page 48)

The draft recommends that "to assist employing agencies in the timely monitoring of traumatic lost-time injury claims for the purpose of returning employees back to work at the most opportune time, we recommend that the Congress provide employing agencies with authority, if there is reason to question the initial diagnosis of any employee's injury, to require an employee to submit to a second medical examination by a medical officer of the United States or a physician designated by the Secretary of Labor to act in behalf of the United States."

Comment:

In the Department's view employing agencies now have sufficient authority to deal with such problems under the existing FECA statute and under the Office of Personnel Management regulations for fitness-for-duty examinations.

Under FECA implementing regulations, employing agencies have the authority to request that the DOL obtain a second medical opinion when there is reason to question the initial diagnosis of the employee's injury or length of disability. It should be noted that FECA regulations provide employing agencies substantial opportunities to be involved in the medical decision-making process. The FECA regulations expressly invite agencies to submit affidavits

and other evidence, both factual and medical, at any time, relating to claims filed by their employees. Many agencies, however, have failed to take advantage of these opportunities. To overcome this deficiency OWCP is undertaking a major training program for employing agency compensation specialists. This program is discussed more fully in the comment to Recommendation #4, below.

In addition to their authority to arrange for a second medical examination through a request to OWCP, agencies have a means by which they can be assured that employees not at work for health reasons are in the proper status. Agencies can, under regulations of the Office of Personnel Management, require employees to undergo fitness-for-duty examinations. The examination is independent of the FECA claim processing. It is conducted primarily to determine an employee's ability or inability to continue his or her employment regardless of the causes of any assumed disability. However, this authority enables agencies to achieve the results to which the GAO recommendation is directed.

Recommendation to the Secretary #1 (page 48)

The draft recommends that "to make the free choice of physician process more effective and to aid in returning employees to full or light-duty at the earliest possible time, we recommend that the Secretary of Labor actively encourage employing agencies to develop programs for working with employees and their physicians, including contacting the employee's physician at the earliest possible opportunity and working with the physician in determining the best resolution of an employee's claim and length and extent of disability."

Comment:

Over the past several years OWCP has undertaken a number of program initiatives consistent with the objectives of this recommendation. They include quarterly meetings with top

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management of the employing agencies, technical assistance to employing agencies, and a comprehensive training program on FECA procedures for agency compensation specialists. These initiatives are discussed in the comment under GAO Recommendation #4, below.

To assure the return of the injured employee as soon as medically possible, it is very important that the employing agency provide an attending physician with a description of the physical requirements of an injured employee's duties, and with an inquiry as to whether the employee is yet fit for duty. OWCP is currently modifying some of its report forms to increase the assurance that these activities will be carried out. OWCP is also developing a national Medical Program to improve the cooperative efforts among OWCP, all employing agencies, and the medical community, including employing agency medical personnel, to implement this program. Among other things, the Medical Program will serve to (a) improve communication with agency medical personnel to enhance their understanding of compensation issues and the role they play in the FECA compensation process, and (b) reach out to the general medical community which serves FECA claimants to assure acceptance of the compliance with FECA procedures.

These OWCP initiatives will have an indirect effect on the short-term disabilities which are the subject of this recommendation because they will improve the cooperative relationship between the employing agencies and the medical community. However, the direct effect will undoubtedly be small because of the time needed by an employing agency to develop, with the employee and attending physician, the kind of plan for medical rehabilitation and reporting contemplated by this recommendation. In many, if not most, COP cases it is likely that the employee will be back to work before the plan could be negotiated or implemented.

Recommendation to the Secretary #2 (page 60)

The draft recommends that "to make the COP program more effective and to provide employing agencies the authority they need to effectively handle their responsibilities, we recommend that the Secretary have the Assistant Secretary for Employment Standards instruct OWCP to:

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-- give employing agencies the authority, in addition to the nine regulatory categories to which they are now limited, to controvert and withhold COP in controversial claims or in claims for which the agencies have found a basis for denial. Labor should give priority adjudication of these controverted claims.

-- provide all employing agencies with authority to withhold COP (1) until employees have provided employing agencies with sufficient medical evidence to substantiate their claims and (2) when the employee refuses to return to work on a suitable light-duty assignment when such an assignment is in accordance with the attending physician's diagnosis."

Comment:

Implementation of the first of this set of recommendations, to provide employing agencies with the authority to withhold the pay of an employee with a controverted claim until an adjudication is made by DOL, must be scrutinized very carefully because the purpose of the 1974 Amendments was to continue pay long enough to provide a reasonable period for the adjudication to take place. However, the Department recognizes the need to avoid claimant abuse. It is considering some steps in the direction of this recommendation, with perhaps some modification of its regulations. But it also appears at this point that the solution is more likely to lie in the increase of economic incentives for employees to minimize the time away from work. The use of such employee incentives would reduce the need for OWCP administrative controls to assure that uniform and equitable standards in withholding pay are met by all employing agencies. We are considering a legislative approach to providing such incentives.

Second, GAO recommends that the employing agencies be provided with authority to withhold an employee's pay until he or she presents sufficient medical evidence to substantiate the claim. In the long run, of course, no employee's claim should be approved unless the claimant provides sufficient medical evidence to substantiate the claim. However, it is not realistic to expect that the medical reports prepared and submitted by the attending physician will be delivered to responsible agency officials in less than a week or ten days after the employee's visit to the physician. In the

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vast majority of cases such a requirement would unnecessarily deny the employee the benefit of the uninterrupted income assured by the 1974 Amendments. A second problem with this recommendation is that it also would require a complicated administrative scheme to assure uniform and equitable standards in processing claims. Finally, under current procedures the opportunity for claimant abuse is limited because in almost all cases the claimant returns to work and the employing agency is in a position to recover any overpayments.

The third of this set of recommendations is that the employing agency be provided with authority to withhold the employee's pay when he or she refuses to return to work on an assignment which is light-duty and in accordance with the attending physician's diagnosis. OWCP's present policies are generally consistent with this recommendation. The employing agencies not only have the authority but also have the responsibility to seek such an assignment for all injured employees so that they can return to work as soon as medically possible. Those employees who refuse to return to light-duty employment, provided that it is within medically prescribed physical limitations, may have their COP terminated by the employing agency.

Recommendation to Secretary #3 (page 80)

The draft recommends that "to improve the quality of COP claims processing, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards instruct OWCP to require district office claims examiners to obtain sufficient evidence for all COP claims before rendering final decisions."

Comment:

The established OWCP policy is consistent with the recommendation, as the draft report itself indicates. For the past two years the Employment Standards Administration (ESA) has made strenuous efforts to upgrade the quality of its claims processing to assure that OWCP policies are implemented.

The OWCP staff has been increased by over 370 employees. This includes raising the number of the claims examiners to 366 from 218, an increase of 68 percent.

However, during the fourteen-and-one-half months between April, 1977 and mid-June, 1978, when most of the 410 claims which were the subject of a GAO detailed audit were adjudicated by OWCP, only about a third of the new claims examiners had been hired, and the newly hired examiners had been on the job less than a year.

Intensive training courses have also been established for all claims examiners, including the newly hired. All experienced claims examiners have been provided both a basic and an advanced training course within the last year. Similarly, all newly hired examiners now attend a basic training course soon after their employment, and subsequently an advance course.

Finally, the Claims Procedure Manual for this program has been recently revised to provide the staff with a more useful resource instrument, and the internal accountability procedures developed over the past several years, including performance standards, are used to improve adherence to FECA policy.

Recommendation to the Secretary #4 (page 93)

The draft recommends that "to make the COP program more effective and to assure prompt and consistent adjudication of claims, employing agencies should be permitted by Labor to more fully participate in the management of the program. To achieve these goals, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards instruct OWCP to assist employing agencies in establishing uniform policies for dealing with COP. These policies should include provisions for investigating questionable claims, monitoring the progress of an employee recovering from an injury, contacting the employee's physician, developing a light-duty program, and recovering COP paid for denied claims."

Comment:

Since 1977 ESA has greatly increased its efforts to assist employing agencies in establishing uniform policies for dealing with all claims, including COP. There is growing evidence that the agencies are, as a result, more interested in upgrading the quality of their processing of FECA claims and are more concerned about returning the injured employee to work as soon as medically possible.

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Seminars are regularly conducted by the Department's OWCP personnel for employing agencies across the country. In the last several years this program has been greatly expanded. In 1979 the seminars are being provided at the rate of 250 a year.

As indicated above, ESA has introduced during the past two years regular quarterly meetings with top national officials of the employing agencies. These meetings are to develop cooperative efforts to improve the administration of FECA. In the last year they have been extended to the regional level. A number of important cooperative projects have emerged from these sessions. A pilot project has been developed with the Postal Service for more efficiently returning injured employees to light-duty assignments compatible with their injury-related disabilities. Cooperative arrangements have been made with the U.S. Air Force Logistics Command and the Tennessee Valley Authority, which substantially improved the processing of claims from these agencies. The Department regards these projects as prototypes for those it seeks to undertake with other employing agencies and is using the interagency conferences as a vehicle to accomplish this objective.

The largest effort to assist employing agencies to carry out their role in the FECA program is the comprehensive training program on FECA policies and procedures which ESA is providing for the compensation specialists of the employing agencies. In the last nine months over 140 training sessions have been held for about 1,500 agency personnel. The program has been well received by the agencies. There is a waiting list of about 1,800 other compensation specialists to whom we will deliver the course this year. A major portion of the course is devoted to COP procedures, including instructions on submitting evidence in questionable claims, monitoring the capacity of injured employees to return to work, and recovering COP paid for claims which were subsequently denied.

We appreciate the opportunity to comment upon this draft report. If we may be of further assistance please let us know.

Sincerely,

R. C. DeMarco

R. C. DeMarco
Inspector General - Acting

GAO note: The page references in this appendix may not correspond to the page numbers in the final report.

* U.S. GOVERNMENT PRINTING OFFICE: 1979 - 620-167/201

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