BY THE COMPTROLLER GENERAL

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Report To The Congress

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OF THE UNITED STATES

Compensation For Federal Employee Injuries: It's Time To Rethink The Rules

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Over the years, Labor Department decisions have provided an expansive interpretation of what constitutes a compensable injury under the Federal Employees' Compensation Act.

Labor criteria for determining compensable injuries are not always clear. Broad definitions, inadequate guidelines on the work relatedness of diseases, and uncertainty about the causes of many diseases have expanded program coverage. This report discusses several problems, their effect on the compensation program, and some solutions for them.

Labor basically agrees with GAO's recommendations and is developing guidelines similar to those recommended in the report. GAO acknowledges that Labor's actions should substantially improve program administration but believes the improvements should be implemented in a more timely manner.

GAO stresses that the central issue is whether liberal interpretation of the Act and liberal application of its provisions have resulted in the type of compensation program the Congress actually wants.

HRD-79-78
AUGUST 22, 1979

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

B-157593

To the President of the Senate and the
Speaker of the House of Representatives CWD 00001

This report discusses several problems that have arisen as a result of an expansive interpretation of the definition of a compensable injury under the Federal Employees' Compensation Act. In addition to affecting program costs, expansion may cause doubt about whether the act's intent is being met. We offer some suggestions to help clarify the scope of the act's coverage.

We made our review because of widespread congressional and public interest in the program and because of the increase in program growth.

Copies of this report are being sent to the Director, Office of Management and Budget, and the Secretaries of Labor and Health, Education, and Welfare.

ACTING Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

COMPENSATION FOR FEDERAL EMPLOYEE INJURIES: IT'S TIME TO RETHINK THE RULES

D I G E S T

If an employee of the Federal Government is injured or killed on the job, the worker or his/her survivors are entitled to benefits under the Federal Employees' Compensation Act. However, several factors are resulting in

--uncertainty over how far the Government's liability should extend and

--inconsistent decisions on compensable injuries.

As program costs rise, these problems which add to program growth will become more acute. Labor estimates program costs will amount to $1 billion annually by 1980.

Increased costs are caused by increased employee salaries, increasing costs of medical care, and inflation. However, another basic cause is the expanding concept of a compensable injury. (See p. 2.)

Coverage under the act has expanded because Labor and the Employees' Compensation Appeals Board have not systematically established criteria for compensability and have liberally interpreted existing criteria. Present criteria are, however, generally consistent with State and court criteria in administering State workers' compensation programs. GAO prepared this report to air some problems with compensable injury determinations and to stimulate interest in rethinking compensation rules. (See pp. 3 and 4.)

COMPENSABILITY NOT SYSTEMATICALLY DETERMINED

From the beginning of the program, accidental injuries have qualified employees for compensation. Over the years, however, that easily defined concept has given way to more subtle and increasingly liberal determinations of work-related injuries. Legislation and increased knowledge of health hazards in the workplace have also added to the growing list of compensable injuries. (See p. 6.)

The act's sole guideline for determining compensability is that the United States shall "pay compensation * * * for the disability or death of an employee resulting from an injury sustained while in the performance of his duty"; such injury includes, "in addition to injury by accident, a disease proximately caused by the employment." Over the years, application of this guideline on a case-by-case basis has tended to broaden coverage under the act. (See p. 6.)

The growing awareness that many diseases are caused by or linked to occupational factors may give additional impetus to program growth. Although the incidence of exposure to harmful agents in the workplace is unknown, several sources maintain that occupational illnesses and diseases are a major problem in today's industrial environment. (See p. 12.)

COVERAGE OF DISEASES AFFECTED BY UNCERTAIN CAUSES

Program magnitude and its cost implications are only part of the problem relating to disease coverage. Questions on the cause and effect of diseases such as heart disease, cancer, and arthritis are difficult, if not impossible, for medical science to answer conclusively. Yet medical opinion on work relatedness is

the key factor in establishing a claim for benefits. Further, the long latency period of many diseases complicates medical opinions on cause and effect because effects of some agents in the workplace may not be realized until years after exposure. For example, a 10-year followup study of 17,800 asbestos-related cases showed that the latency period between asbestos exposure and death was at least 10 years for lung cancer and 15 years for mesothelioma. (See p. 18.)

Despite uncertainties surrounding the causes of many diseases, physicians offer opinions based on whatever conclusions the evidence will permit and perhaps on their experience. Where medical opinions differ or are only tentative, workers' compensation law provides for accepting a contributing cause rather than the specific cause as justification for awarding benefits. Thus, the finding that work aggravated a disease such as atherosclerosis or arthritis can constitute grounds for awarding an employee benefits. (See p. 20.)

Aggravation has no generally accepted medical definition. Because, under workers' compensation law, an employer takes a worker "as is," preexisting diseases "aggravated" by the employee's work are compensable, regardless of the degree of work relatedness. Other causative factors such as age, congenital defects, heredity, and obesity are generally excluded from consideration. (See p. 21.)

Additional difficulties arise when assessing aggravation of chronic diseases--the causes, courses, and eventual outcome of these are usually unknown or poorly understood. Moreover, their symptoms seem to appear in the middle years, further complicating assessment of aggravation. For example, in cases involving diseases of the heart and major arteries, claims are most often based on work having aggravated the underlying pathology. (See p. 22.)

Although various studies have attempted to define the relationship between heart disease and the effects of work, stress, emotions, and other factors, they have produced inconclusive and often conflicting results. (See p. 22.)

CRITERIA UNCLEAR FOR DISEASE COVERAGE

The act's 1924 provision makes diseases "proximately caused" by employment compensable. Labor's implementing guidelines for determining proximate cause are frequently inadequate. Without adequate guidelines, compensation determinations can be inconsistent and, on occasion, less than equitable. (See p. 27.)

For example, in one such case, a 40-year-old mailhandler suffered a heart attack at home on a non-workday and attributed the attack to his work. Two physicians' opinions differed on causal relationship. Labor denied benefits on the basis that the attack was not job related. (See p. 30.)

In another case, a 59-year-old employee relations specialist for the Air Force died from a heart attack. His widow believed that job stresses were responsible. Initially, Labor denied her claim because medical evidence supported death from arteriosclerosis. During appeal of this decision, two of three independent physicians believed work was not a factor in the employee's heart attack; the other physician was uncertain, but he speculated that work could be involved. Labor's Branch of Hearings and Review awarded benefits to the widow. (See p. 32.)

Thus, the outcome differed in two cases involving heart disease of uncertain or unknown cause, even though the weight of medical evidence supported neither claim. Adequate guidelines could help avoid such inconsistency and could result in decisions more equitable to both the employees and the taxpayers.

INTERPRETATION OF LEGAL PRINCIPLES CAN BROADEN INJURY COVERAGE

Unlike cases involving disease, accidental injuries generally present few problems; usually their cause-effect relationships are rather straightforward. However, borderline cases do occur; and liberal interpretation of what constitutes a compensable injury tends to expand the coverage in these cases. (See p. 48.)

For example, injuries sustained in the performance of duty include those occurring on the job premises, either before or after working hours, when employees are going to and from work. Injuries occurring off the premises normally are not compensable, unless employment required the employee to be off premises or the journey was made in the employer's vehicle. Applying this principle, Labor awarded benefits to an employee who amputated the tip of her left thumb when she closed her car door on her hand. Labor ruled that the employee was on the employment premises and had to close the door in order to report to work. (See p. 48.)

In another case, a widow was awarded benefits when an employee who received a transportation allowance was killed in an automobile accident enroute to work, some 50 miles from his place of employment. (See p. 49.)

Injuries during horseplay constitute another category of borderline situations which may qualify for coverage under the act. If an employee's actions did not constitute an abandonment of duty, the employee may receive benefits for such injuries.

In one case, an employee who was at a gymnasium to obtain information about its renovation, on impulse, swung up on some parallel bars, struck his head on a low ceiling, and was injured. Labor awarded benefits because the trip to the gymnasium was work related and the employee's action

was not significant enough to take him from the scope of his employment. (See p. 52.)

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To aid Labor's determinations of causal relationships, the Secretary should establish guidelines that have at least minimal factual and medical standards for developing and evaluating evidence and for deciding whether an injury is compensable under the act. With diseases suspected of being employment related, the Secretary should consult with the Secretary of Health, Education, and Welfare and other appropriate employer and employee organizations. (See p. 57.)

GAO also recommends that the Secretary determine whether specific guidelines can be established for cases of aggravation or whether an alternative system for occupational diseases might be possible.

In the meantime, to help assure consistent and equitable handling of cases involving aggravation and occupational disease, the Secretary should codify specific instructions on approved policies, procedures, and practices for determining causal relationships.

Cases involving aggravation should be removed from eligibility unless it is clear that employment materially interacted with a disease to bring about disability or death. (See p. 58.)

To better understand the occupational disease problem and its effect, the Secretary should evaluate the Federal workers' compensation system for

--the number of claims, types of diseases, related cost, and other pertinent information, and

--the potential effects of the occupational health problem on the system. (See p. 58.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should review Labor's determinations of what constitutes a compensable injury and provide any needed guidance on the Government's liability under the act. (See p. 58.)

The Congress should also review Labor's guidelines for causal relation--in particular, for disease. To better understand the guidelines' meaning and effect, the Congress should enact legislation directing the Secretary of Labor to report the results of the guidelines' application and to document his report by specific references to cases. (See p. 58.)

AGENCY COMMENTS

Labor agreed with the basic concept underlying each of the recommendations and stated that it has given high priority to developing guidelines similar to those recommended. (See app. III.)

GAO acknowledges that Labor is taking actions that should improve program administration. However, GAO believes that Labor has failed to approach these efforts with the sense of urgency they demand--improvements have not been timely. Labor's lack of action on two prior GAO reports illustrates this. (See p. 61.)

GAO stresses that the central issue is not whether Labor has made progress in revising its administrative practices, but whether liberal interpretation of the act and liberal application of its provisions have resulted in the type of compensation program the Congress actually wants. (See p. 63.)

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ABBREVIATIONS

GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
OWCP	Office of Workers' Compensation Programs

CHAPTER 1

PROBLEMS IN DETERMINING COMPENSABLE INJURIES: AN OVERVIEW

The Congress passed the Federal Employees' Compensation Act (5 U.S.C. 8101, as amended) in 1916 to compensate Federal civilian employees injured or killed by work-related causes. As provided for by the act, the Department of Labor is responsible for administering the compensation program. (App. I explains the benefits that are available under the act, how workers apply for them, Labor's program organization, and program funding.) Senate and House reports 1/ have established that the act's intent is to provide Federal employees with the most complete protection possible against job-related injuries. The Congress provided for paying benefits to prevent economic hardship and injustice to Federal employees. Given this legislative intent, Labor believes that:

--The act, like all workers' compensation laws, is social legislation and remedial in nature. Throughout its history the legislation has been intended and interpreted to provide adequate benefits and protections for injured employees and their survivors.

--The act is administered in keeping with the intent and spirit in which it was designed. Its provisions are broadly and liberally construed to favor the employee--not to erode the employee's rights.

The program has grown significantly since its inception. In 1918, with 854,500 Federal employees, 2/ about 2,840 injuries were reported for each 100,000 employees; 12,621 claims were filed for benefits, and $706,258 was paid in compensation. In 1977, with an average of 2,901,973 Federal employees, about 7,159 injuries were reported for each 100,000 employees; 30,301 claims were filed for benefits, and $545,820,254 was paid in benefits. Even though Federal employment has remained fairly constant since 1970, the program has grown dramatically. From fiscal year 1970 through fiscal year 1977

1/See S. Rept. 515, 64th Cong., 1st Sess. 7 (1916) and H. Rept. 678, 64th Cong., 1st Sess. 7 (1916).

2/Actual number of employees as of June 30, 1918.

--annual injuries reported by employees increased by 72.1 percent--from 120,625 to 207,615,

--annual claims increased by 70.3 percent--from 17,795 to 30,301, 1/

--persons drawing compensation for extended periods increased by 90 percent--from 23,462 to 44,576, and

--annual benefits paid increased by 315.1 percent--from $131.5 million to $545.8 million.

Labor estimates that if growth continues to increase at this rate annual benefit costs will amount to $1 billion by 1980.

FACTORS AFFECTING PROGRAM COSTS

Labor has cited several factors it believes are responsible for increased program costs. Among these are (1) recent amendments to the act, which raised the benefits level, (2) increased base salaries for Federal employees, higher medical costs, and inflation, and (3) increased awareness among Federal employees of the available benefits. While these factors have added to costs, we believe that another basic factor underlying the increase is the expanding concept of a compensable injury. Though costs should not dictate how the program is administered, continued expansion of the act's coverage threatens to make the act, in effect,

--a general pension scheme (in 1916 and again in 1923, Members of Congress, while debating the act's provisions, expressed concern that liberal interpretation could lead to this situation) or

--a mechanism that compensates for the effects of disease regardless of the degree to which work-related factors cause or aggravate a condition (benefits are awarded on an all-or-nothing basis; no apportionment is made according to the relationship between work- and nonwork-related causes of disability or death).

1/As a result of the 1974 amendments to the act, many reported injuries do not become claims for compensation but are continuation-of-pay cases. For example, in fiscal year 1977 there were about 82,000 such cases, compared to 30,301 compensation claims.

CAUSES UNDERLYING THE EXPANDED COVERAGE

The act's coverage has expanded because of a failure to systematically establish criteria for compensability and a liberal interpretation of existing criteria. The act authorizes compensation for "personal injury sustained while in the performance of duty," and it defines injury as "a disease proximately caused by the employment." No other legislative criteria are available for determining what qualifies as a compensable injury.

Criteria established by Labor and the Employees' Compensation Appeals Board 1/ for determining compensable injuries are generally consistent with State and court criteria in administering State workers' compensation programs. For the most part, however, these criteria have evolved on a case-by-case basis, and previous decisions on compensability become precedents used in adjudicating subsequent claims for benefits. Handling claims on a case-by-case basis has resulted in a large and complex body of case law, under which a compensable injury is not easily defined and which, overall, favors awarding benefits in cases involving disputed or less-than-certain cause-effect relationships.

Legislative changes to the act and an increasing awareness of health hazards in the workplace have contributed to broadening the range of compensable injuries as well. However, liberal interpretation of the act's provisions has figured most significantly in extending the act's coverage over the years. Such a policy, applied to the mass of decisional law governing compensable injuries, tends to further extend the act's coverage, even though the legislative definition of a compensable injury has not changed since 1924.

COMPENSATION FOR DISEASES MAKES CONTINUED PROGRAM GROWTH LIKELY

The issue of compensability often must include a discussion of whether an employee's disease has been caused or aggravated by work. Employees are increasingly claiming

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1/Employees dissatisfied with the decision on their claims may appeal to the Employees' Compensation Appeals Board. (App. I further discusses the appeals process.)

that diseases such as heart disease, cancer, and arthritis are causally related to their employment. Labor uses medical opinion to help decide such claims, and physicians generally will provide an opinion, even though medical science has not yet determined the cause of many diseases. Given Labor's liberal interpretation of compensability, reliance on such opinions (which often acknowledge at least a possibility of work relatedness) tends to further extend the act's coverage.

PROGRAM GROWTH: A CAUSE FOR CONCERN

The history of workers' compensation shows that compensation laws were enacted as a humanitarian measure--to establish liability for an injury that is job related in a liberal, humane fashion and with a minimum of litigation. (App. II discusses the origin and growth of workers' compensation.) During the past 60 years, workers' compensation policy has generally achieved its humanitarian goals. This report is not to criticize the criteria for determining compensable injuries, but it is to air some problems with determinations and to stimulate interest in rethinking compensability rules. The report does not discuss all controversy over compensable injuries, but it attempts to show how the act is interpreted for compensation payments, and the consequences of such interpretations.

SCOPE OF REVIEW

We made this review to further explore some of the problems with determining compensable injuries. It continues our earlier work in reviewing the administration of the act 1/ and focuses on determining how workers' compensation legislation provides economic protection for Federal civilian employees who are injured while performing their duties.

We reviewed the act and its legislative history; Labor's regulations pertaining to the act's administration; the Office of Workers' Compensation Programs' (OWCP's) implementing policies and procedures; and decisions of the Employees' Compensation Appeals Board. We also researched the history,

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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).

theory, and growth of workers' compensation laws in general from legal periodicals and textbooks. Our authoritative source for the legal principles of compensation law was Dr. Arthur Larson's treatise, "Workmen's Compensation Law," which Labor also uses as an authoritative source.

Some of the case examples cited in chapters 4 and 5 come from case files reviewed during our earlier work. However, most of the examples come from actual case decisions of the Employees' Compensation Appeals Board.

Our medical consultant concurs with the discussion of the medical issues in this report.

CHAPTER 2

THERE IS NO SYSTEMATIC APPROACH TO THE DETERMINATION OF WORK-RELATED INJURIES

Increasingly, society has come to recognize a responsibility for people disabled or killed by work-related causes. The growth of workers' compensation programs reflects acceptance of such programs as the preferred method for discharging this responsibility, but where an injured employee's rights to compensation benefits should begin and end has been a major concern for administrators of compensation law. The history of decisions on the question has significantly expanded the definition of a work-related injury; however, neither program administrators nor the courts have attempted to systematically approach the issue.

From the beginning, an injury was thought to be compensable if, while working, an employee suffered immediate effects from an accident. For instance, if an employee working from a scaffold falls and breaks his leg, the cause is easily recognized and the effect is immediate and identifiable. Over the years, however, that easily defined concept has given way to more subtle and increasingly liberal determinations of cause and effect. For example, a coronary thrombosis, though suffered at home, can be attributed to the stress and strain of the employee's job. In other words, the job does not have to be the principal or direct cause, but only contributory, and the degree of the job's contribution to the injury is of little importance.

Legislative changes to the act, increased knowledge about exposure to harmful agents in the workplace, and changes in primary disabling categories from traumatic to the non-traumatic type (such as heart disease and cancer) have broadened the concept of work relatedness. However, perhaps the most important cause of program expansion has been Labor's interpretation of the act's provisions.

CRITERIA FOR WORK RELATEDNESS

Aside from the provision that "the United States shall pay compensation * * * for the disability or death of an employee resulting from an injury sustained while in the

performance of his duty," and the definition of "injury" as including "in addition to injury by accident, a disease proximately caused by the employment," the act contains no criteria for determining what constitutes a work-related injury. In implementing this provision, Labor's policy is to follow the principles of workers' compensation law as found in the opinions of the Supreme Court, the Federal Circuit Courts of Appeal, and the District Courts of the United States. In addition, Employees' Compensation Appeals Board decisions on individual cases become precedents to consider when adjudicating later claims for benefits. There were 28 volumes of the Board's decisions and 5 digest volumes as of February 1979.

Additional guidance and criteria on the nature and extent of evidence required to establish the relationship between an employee's disability or death and his/her employment are contained in the program's Federal Procedure Manual. Numerous bulletins and more than 200 program memorandums issued by program headquarters supplement this manual.

INTERPRETATION OF THE CRITERIA

Because the language of the act for compensable injuries is necessarily general, it does not limit the degree of coverage in advance and prevents the act from being too restrictive in coverage. In practice, those who implement and administer the act determine whether its intent is carried out. The attitude of the adjudicator--whether he tends to favor the employee or give him the benefit of a doubt--affects the outcome of a case; and Labor's adjudicators, like the State and Federal courts, use a liberal interpretation in workers' compensation law. The prevailing attitude has always been to interpret the law to protect the interests of the injured employee and his/her dependents.

In 1912, the Solicitor for the Department of Commerce and Labor commented on the interpretation and application of the 1908 act 1/ in his letter of transmittal to the Secretary of Commerce and Labor:

1/This act, which was the predecessor to the 1916 law, provided certain Federal employees the right to compensation. See also app. II.

> "As between a liberal construction and a strict construction of the statute, the former rule has naturally prevailed throughout these opinions. This was in accordance with your settled policy of administration in this and similar matters, repeatedly expressed and was, moreover, incontestably the true rule to follow on legal principle in dealing with an essentially remedial statute * * *."

The percentage of claims paid when the act was first in effect indicates the extent that the liberal interpretation policy was adhered to. In the first year, 1,805 claims were submitted, of which 1,689 (about 94 percent) were allowed. In the second year, 2,624 claims were submitted, and 2,499 (about 95 percent) were allowed. At first, certain injuries were not considered work related. For example, benefits were denied to an employee who contracted lead poisoning as a result of chipping lead-painted compartments aboard ships. The basis for the denial was that a disease contracted in the course of employment was not an injury within the act's intent, but this situation soon changed.

The U.S. Employees' Compensation Commission (then responsible for administration of the act) issued its first annual report in 1917. Following precedents established by the previous administration and the States of Massachusetts and California, that Commission continued to support a liberal interpretation of the act. However, it added to the meaning of compensable injuries by maintaining that the act covered bodily injury or disease in addition to accidents resulting from employment.

The Commission adopted the following decision as a guide for adjudicating compensable injury claims:

> "A personal injury sustained by a civil employee of the United States while on the industrial premises of a navy yard, arsenal, or other place of employment, provided such employee is on such premises for the purpose of going to or returning from his work or performing duties connected with or incidental to his work, and is not on such premises merely for the purposes of his own, shall be an injury sustained 'while in the performance of his duty' within the meaning of that phrase as used in Section 1 of the Compensation Act of September 7, 1916 * * *."

Application of this decision resulted, for example, in benefits for an employee who had completed his day's work but fractured his right arm when he slipped on ice and fell within the navy yard enclosure. On the other hand, benefits were denied to an employee who, on his way to work, was injured when he fell on ice that was on a public sidewalk adjacent to his job site.

The Commission also awarded benefits to several employees suffering from diseases, including 23 cases of lead poisoning and 16 cases of dermatitis from fulminate of mercury. In a case involving heart disease, it awarded benefits to an employee who had a severe spell of dizziness and fluttering of the heart. This disabling condition was brought on--so the Commission found--by a severe shock to the employee's nervous system when the employee had to rush from a boiler to avoid incoming hot water.

Both the Employee's Compensation Appeals Board and the Bureau of Employees' Compensation, 1/ which succeeded the Commission in 1946, continued to use a liberal interpretation. In its first decision, the Board established the context of the act's provision concerning "personal injury sustained while in the performance of his duty." In remanding the case to the director for further development and review in light of the applicable principles of workers' compensation law, the Board stated that:

> "To give the act practical application and effect, and to employ the useful principles recognized in the field of workmen's compensation law, the quoted phrase is regarded as the equivalent of the commonly found prerequisite in workmen's compensation laws, namely, 'arising out of and in the course of employment.' Thus construed, it is possible to make the statute actively effective in those situations generally recognized as properly within the scope of the protection of a workmen's compensation law." (1 Empl. Comp. App. Bd. 1 (1947)).

Precedents established by the Board over the years have continued to encourage liberal interpretation of the act:

1/Now OWCP.

--Compensation acts should be liberally construed in favor of the injured employee or his dependent family (4 Empl. Comp. App. Bd. 21 (1950)).

--A universally recognized and elementary principle of workers' compensation law is that such laws should be construed liberally in favor of the employee and, conversely, strictly against eroding his rights (4 Empl. Comp. App. Bd. 39 (1950)).

--The act is a remedial statute and should be broadly and liberally construed in favor of the employee to achieve its purpose and not erode the employee's rights. The primary rule of statutory construction is to make legislative intent effective, and it is well settled that, in arriving at intent, the words in a statute should be construed according to their common usage (13 Empl. Comp. App. Bd. 88 (1961)).

--The act is remedial legislation and should be broadly and liberally construed in favor of the employee and his dependents, and not to erode their rights (18 Empl. Comp. App. Bd. 431 (1967)).

THE DEFINITION OF "INJURY" HAS BEEN EXPANDED BY LEGISLATION

Questions about what constitutes a compensable injury arose early in the act's administration. From the beginning, the U.S. Employees' Compensation Commission construed the act to cover not only injuries resulting from accidents but also injuries from diseases which bore a direct causal relationship to employment. In 1923, however, the Comptroller General ruled that the act applied only to injuries resulting from accidents. His decision prohibited the payment of benefits to employees whom the Compensation Commission had determined were disabled by employment-related diseases.

The Congress, in its 1924 amendments to the act, provided that the definition of injury included, in addition to injury by accident, a disease proximately caused by the employment. Thus, occupational disease 1/ became a compensable injury under the act, and its determination was left solely to the judgment of the act's administrators.

1/The term "occupational disease," as used in this report, means a disease proximately caused by employment, as defined in the act (5 U.S.C. 8101(5)).

However, the term "occupational disease" was intentionally omitted from the act because of the difficulty with defining it. Members of the House Committee on the Judiciary (64th Cong., Jan. 28, 1916) were concerned about distinguishing between occupational diseases and those that would be contracted regardless of working conditions. In essence, their concern was that, if the Commission was too liberal in interpreting an occupational disease provision, the act might turn into a general pension scheme because some officials would, in effect, be able to pay compensation for practically any condition.

The administration's view was that the Commission could depend on officials to use judgment, discretion, and common sense when administering the act. Its position was that, since the States of California and Massachusetts were compensating for occupational diseases and had experienced little or no increases in costs, a Federal provision would result in relatively few cases of occupational disease.

In deciding whether to amend the act, the House Committee on the Judiciary (67th Cong., Feb. 7, 1923) debated the meaning of "proximate cause." A member of the U.S. Employees' Compensation Commission defined it as "* * * the last cause without which the disability would not have resulted" and said that the test of work relatedness was whether the disease resulted beyond a reasonable doubt from employment conditions.

But, as with "occupational disease," committee members were concerned about the vagueness of the term. Loosely construed, whether by program administrators or medical experts, it could result in almost any disease--the common cold, for example--being considered work related. In defining the two terms--"occupational disease" and "proximate cause"--Labor generally follows the decisions of the Employees' Compensation Appeals Board, which has ruled that:

> "If it [the injury] arises gradually, with no particular happening to attribute it to, it falls within the category of a disease and the question then to be determined is whether the condition is proximately caused by the employment, not whether the claimant has shown an untoward or fortuitous event. Term 'disease' must thus be broadly defined so as to include any lesion, malfunction, or departure from a state of health." (6 Empl. Comp. App. Bd. 368 (1953.))

"'Proximate cause' is used in its normal legal sense, that which, in a natural and unbroken sequence produces the injury, and without which the injury would not have occurred." (4 Empl. Comp. App. Bd. 311 (1951.))

Labor does not maintain a recordkeeping system that readily identifies trends in primary types of conditions for which compensation is claimed. However, the Assistant Secretary of Labor, testifying about workers' compensation in April 1978 before the Subcommittee on Compensation, Health, and Safety, House Committee on Education and Labor, noted that there has been an increasing awareness of occupational disease in recent years. As a result, claims involving heart attacks, hearing losses, lung diseases, and nervous problems were more prevalent. He estimated that about one-third of the claims filed for compensation benefits are for disease-related conditions. Labor also does not know the acceptance rate of claims being filed under the act. Labor officials, however, estimate that from 90 to 98 percent of claims are awarded compensation benefits.

AN INCREASED AWARENESS OF HEALTH HAZARDS IN THE WORKPLACE

Suspicions that the workplace contained health hazards were documented as early as 1775, when an English surgeon attributed scrotal cancer in English chimney sweeps to long exposure and intimate contact with soot. Since the industrial revolution began in the United States, there has been an increasing awareness that workers' illnesses and diseases are often occupationally related.

Health hazards in the workplace received national attention in 1970, when the Congress passed the Occupational Safety and Health Act (29 U.S.C. 651). The act was to assure, as far as possible, safe and healthful working conditions for every worker in the Nation. In its report on the occupational safety and health bill, 1/ the Senate Committee on Labor and Public Welfare called attention to the problem:

"Occupational diseases which first commanded attention at the beginning of the Industrial Revolution are still undermining the health

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1/S. Rept. 91-1282, 91st Cong., 2d Sess. 2 (1970) on S. 2193, which was enacted as the 1970 act.

of workers. Substantial numbers, even today, fall victim to ancient industrial poisons such as lead and mercury. Workers in the dusty trades still contract various respiratory diseases. Other materials long in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. Carcinogenic chemicals, lasers, * * * beryllium metal, epoxy resins, pesticides, among others, all present incipient threats to the health of workers. Indeed, new materials and processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with. It is estimated that every 20 minutes a new and potentially toxic chemical is introduced into industry. New processes and new sources of energy present occupational health problems of unprecedented complexity.

"Recent scientific knowledge points to hitherto unsuspected cause-and-effect relationships between occupational exposures and many of the so-called chronic diseases--cancer, respiratory ailments, allergies, heart disease, and others. In some instances, the relationship appears to be direct: asbestos, ionizing radiation, chromates, and certain dye intermediaries, among others, are directly involved in the genesis of cancer. In other cases, occupational exposures are implicated as contributory factors. The distinction between occupational and nonoccupational illnesses is growing increasingly difficult to define."

Increased awareness of the relationship between the workplace and an employee's illness has serious and disturbing implications for State and Federal workers' compensation programs, particularly regarding the magnitude of the occupational disease problem.

THE OCCUPATIONAL HEALTH PROBLEM

For the Nation's 80 million workers the incidence of exposure to harmful chemical, physical, and biological agents in the workplace is unknown. Several sources, however,

maintain that a significant amount of the illness and disease from which workers suffer today is of occupational origin.

No systematic attempt to collect data on the incidence of occupational illness and disease had been made before 1970. As a result of the Occupational Safety and Health Act, new recordkeeping and reporting practices now require employing establishments to record each occurrence of occupational illness and disease among their workers. Available statistical evidence, although varying as to the extent, definitely indicates that occupational illness and disease is a major problem.

Figures compiled by the Department of Labor's Bureau of Labor Statistics 1/ show that, from July 1, 1971, to December 31, 1971, 133,000 cases of occupational illness were reported, and 600 deaths were attributable to occupational disease. The Public Health Service, Department of Health, Education, and Welfare (HEW), estimated in 1976 that each year about 500,000 new cases of occupational illness occur and as many as 100,000 workers die from occupational disease.

Evidence indicates that the incidence rate has increased for particular diseases, and researchers and environmentalists are attributing part of the increase to the work environment. Among the leading diseases in this category are coronary heart disease and cancer.

Coronary heart disease

In 1900, tuberculosis caused more American deaths than any other disease, but coronary heart disease is now recognized as the Nation's leading cause of death. HEW's National Heart, Lung, and Blood Institute estimates that over 640,000 persons died in 1976 from heart disease and that about 30 million Americans have diseases of the heart and blood vessels. The American Heart Association estimates that more than 40 million people have some major form of heart and blood vessel disease and that about 1 million persons die each year as a result.

1/"Occupational Injuries and Illnesses By Industry, July 1 to December 31, 1971," Bureau of Labor Statistics Bulletin No. 1978, table 4c, p. 114.

The causes of most forms of cardiovascular disease are medically unknown, and there is considerable uncertainty about what can activate a latent diseased condition. Research, however, has implicated work-related stress as either a cause or a precipitating factor.

The National Heart, Lung, and Blood Institute has identified risk factors--traits, habits, or conditions in individuals--which are associated with an increased risk of developing heart disease. Diabetes mellitus, high blood pressure, cigarette smoking, and high levels of blood lipids (fats) are among the major risk factors, and several researchers have linked stress at the workplace with the development of some of these and other risk factors. For example, in a study 1/ of 162 married blue-collar workers employed for at least 3 years before their plant closed, significant correlation was found between the employee's loss of a job and increases in his blood pressure. Researchers have also associated severe occupational stress with sudden, profound increases of serum cholesterol and with marked acceleration in blood coagulation time. 2/ A reseacher from the Massachusetts Institute of Technology stated that causes in heart disease deaths can be explained by known physiological and environmental risk factors in only 25 percent of the cases. 3/ He also stated that a substantial portion of the unknown causes could be related to stress present in the workplace and the general environment.

In addition to known risk factors, some chemicals adversely affect the heart and the cardiovascular system. HEW's National Institute for Occupational Safety and Health has reported that:

1/"Blood Pressure Changes in Men Undergoing Job Loss: A Preliminary Report," Psychosomatic Machine, Vol. 32, 1970.

2/"Problems in Occupational Safety and Health: A Critical Review of Select Worker Physical and Psychological Factors," National Institute for Occupational Safety and Health, Nov. 1974, Robert B. Sleight.

3/"Work in America," report of a Special Task Force to the Secretary of HEW, MIT Press, Cambridge, Massachusetts, 1974.

"* * * Aniline and nitrobenzine are myocardial [heart muscle] depressants. Ethylene, chloroform, and trichlorethylene are myocardial irritants. The azides produce severe vasodilation. Carbon disulfide induces atherosclerosis. Carbon monoxide, cyanide, certain insecticides, can have damaging effects on individuals with impaired cardiac function or reduced cardiac reserve. Pulmonary irritants, such as ammonia, chlorine, phosgene, and sulfur dioxide can be quite hazardous to the person with heart impairment. Silicosis, asbestos, and other pneumoconioses may result in right heart failure * * *. Heat, cold, and electrical shock can seriously affect the impaired heart."

Cancer

Cancer, the second leading cause of death in the United States, is a word used to describe a group of diseases afflicting both human beings and animals. Its main characteristics include an abnormal, seemingly unrestricted growth of body cells, with the resultant mass compressing, invading, and destroying contiguous normal tissues. Occurring most often in middle-aged and older people, cancerous tumors can affect virtually any part of the body.

The incidence rate for cancer has risen rapidly with industrialization. In 1900, 3.7 percent of all deaths in the United States were due to cancer; by 1968 that proportion had increased to 16.5 percent. 1/ HEW's National Institutes of Health estimates that, of the 212 million people in the United States (1973 data), approximately 665,000 will develop cancer during 1 year; approximately 350,000 will die of cancer during 1 year. In other words, the annual crude incidence and mortality rates of cancer are 313 and 165 per 100,000, respectively. As with most forms of heart disease, the cause of cancer in human beings is medically unknown. However, exposure to toxic substances in the workplace is believed to be a major factor in causing the disease. In 1975, the National Institute for Occupational Safety and Health published a list identifying about 1,500 substances as suspected carcinogens (cancer-causing agents). It has also reported or predicted grave consequences from exposure to certain specific substances. For example:

1/Congressional Record, Vol. 118, No. 108, June 30, 1972.

--About 300,000 of the 1 million current and former asbestos workers can be expected to die of cancer.

--Thousands of coke-oven workers in the steel industry are inhaling toxic substances emitted from the ovens. The lung cancer rate for these workers is 10 times the rate for other steel workers.

--About 1.5 million workers are exposed to inorganic arsenic. The lung cancer death rate among such workers is from 2 to 8 times the national average.

The general consensus among cancer researchers and environmentalists is that occupational factors either cause or contribute to causing cancer.

CHAPTER 3

CAUSALITY IS THE CRITICAL QUESTION FOR OCCUPATIONAL DISEASE COVERAGE

Medical opinion is the key factor in establishing whether an employee's disease is related to his/her employment. In contrast to traumatic injuries (an amputated hand, for example) diseases often raise subtle, complicated questions of cause and effect that are difficult, if not impossible, for medical science to answer conclusively. The act's statutory definition of injury, "in addition to injury by accident, a disease proximately caused by the employment," does not clearly indicate how close the relationship between disease and employment should be in order to be compensable; compensation law provides for accepting "a" cause rather than "the" cause. Thus, finding that a condition of employment aggravated an employee's preexisting disease--regardless of the degree--becomes sufficient legal justification for awarding benefits. This is true even though medical opinions may differ or be inconclusive as to whether an employment factor(s) aggravated a disease; heart disease and cancer, for example, often give rise to such disagreements.

DISEASES PRESENT DIFFICULT QUESTIONS OF ETIOLOGY

Establishing probability that a cause-effect relationship exists between a disease and an agent in the workplace requires medical evidence confirming that the employee has the disease and that its cause or aggravation appears to have been exposure to a particular agent in the workplace. Epidemiologic studies have associated certain diseases with various substances found in workplaces. For example, research indicates that prolonged exposure to coal mine dust can cause pneumoconiosis in coal miners, and studies have demonstrated the cancer-causing properties of such agents as asbestos, arsenic, and beryllium.

Although epidemiologic studies point up possible associations, they do not prove cause-effect relationships. Judgments that a cause-effect relationship exists are frequently complicated because many diseases (especially chronic diseases) have long latency periods, and their effects may not be realized until years after exposure to some particular agents in the workplace. For example, a 10-year followup

study 1/ of 17,800 asbestos insulation workers showed that the latency period between exposure to asbestos and death was at least 10 years for lung cancer and 15 years for mesothelioma (a rare malignant tumor of the membrane which lines the chest and the abdominal cavity).

Epidemiologic studies themselves are not always easy to conduct; data on exposure may not even exist or, if available, may be incomplete and not subject to verification. Occupational health standards would facilitate both gathering information on potentially dangerous agents in the workplace and recording incidents of exposure. In 1977, we reported 2/ that Labor had established standards for only 15 out of thousands of dangerous substances, in spite of HEW's estimate that 1,500 are suspected of being cancer causing.

Other factors further complicate epidemiologic studies. Research has shown that not all individuals react in the same way to similar exposure to harmful agents and that disease may result from the interaction of both occupational and nonoccupational agents. The effects of cigarette smoking best illustrate this interaction. One of the first well-defined studies 3/ of the effect that smoking has on "occupational disease" demonstrated that the incidence of bronchitis among gold miners depended upon whether or not they also smoked cigarettes. Miners who did not ran no greater risk of contracting bronchitis than similar adult males in the same community. Bronchitis was more prevelant among miners who smoked than among nonminer smokers.

The National Institutes of Health have reported that deaths from lung cancer are about six times more frequent among men who smoke tobacco regularly in any form than among nonsmokers, and that deaths from lung cancer are 60 times more

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1/Research by the Director of the Environmental Sciences Laboratory at the Mount Sinai School of Medicine, New York, from Jan. 1, 1967, to Dec. 31, 1972.

2/"Delays in Setting Workplace Standards for Cancer-Causing and Other Dangerous Substances," (HRD-77-71, May 10, 1977).

3/"Chronic Bronchitis in Miners and Non-Miners: An Epidemiological Survey of a Community in the Gold Mining Area in Transvaal," British Journal of Industrial Medicine, 24:1-12, 1967.

frequent among men who smoke more than two packs of cigarettes a day than among nonsmokers. Moreover, the Institutes report that smoking can increase the incidence of crippling lung disease; accelerate and increase deaths from heart disease; and is associated with cancer of the oral cavity, larynx, esophagus, and the urinary bladder. Changes that are due to the aging process and other nonoccupational factors also affect the contraction of disease. For instance, respiratory diseases are among the most common workplace illnesses. The National Institute for Occupational Safety and Health reports that, beyond agents in the workplace or agents that contribute to a cause, such diseases may arise due to the employee's age, smoking habits, and hereditary factors. Moreover, air pollution, an infection, or the general climate may contribute to the development of these diseases.

THE LEGAL CONCEPT OF CAUSATION

The legal concept of causation in workers' compensation law is related to determining whether an employee's work environment contributed to the incurrence of a disease or its aggravation. In medical literature, on the other hand, causation is usually related to etiology, and to the physician the term etiology means the factor or factors which produce a particular disease. Many communication problems are caused because physicians frequently are not informed that all that is required to justify compensation is a finding that any cause, regardless of degree, which leads to the conclusion that a disease or its aggravation arose "out of and in the course of" an employee's occupation is sufficient. The law does not weigh the relative importance of cause nor does it look for primary or secondary cause. It merely inquires into whether the employment was a contributing factor; if it was, benefits can be awarded.

The difficulties in determining causation are best illustrated in cases involving degenerative diseases such as arteriosclerosis and arthritis. Medical science generally treats these diseases as having an unknown etiology because the biological mechanisms by which they originate and develop are not adequately known. However, workers' compensation law generally awards benefits for such diseases, usually under the concept of "aggravation" of the preexisting disease.

AGGRAVATION OF THE PREEXISTING DISEASE

The medical profession has no generally accepted definition of "aggravation." Workers' compensation law provides that aggravation includes making worse, intensifying, or increasing the severity of any disease known to exist before the involvement of an occupational factor. The Employees' Compensation Appeals Board, as well as various courts, have consistently held that to hasten or worsen a preexisting disease is the same as to cause it.

A widely accepted premise in workers' compensation law is that an employer takes a worker "as is"; that is, with preexisting diseases which might be aggravated by the employee's work, the law generally allows administrators to exclude causative factors that are inherent in the individual (i.e., age, congenital defects, heredity, obesity, and sex). Therefore, administrators have to deal only with exposure to environmental factors--mechanical, chemical, physical, or biological--which may occur at work or in the general environment when considering the "cause" of the aggravation of a disease. If the conditions of employment constitute the precipitating cause of disability or death, the Board has ruled that it is compensable, just as if it had resulted from an accidental injury arising out of the employment.

Another widely accepted principle of compensation law is that, when aggravation is involved, no attempt need be made to weigh the "percent contribution" of various causative factors. In cases involving a disability precipitated through aggravation of an underlying condition, the disability is compensable regardless of the degree of aggravation directly attributable to the employment. Therefore, workers' compensation law does not apportion between a preexisting disease and aggravation of that disease.

When assessing "aggravation" of chronic diseases, the physician and the administrator face additional difficulties--the causes, courses, and eventual outcome of these diseases are usually unknown and poorly understood. As chronic diseases progress, they exhibit irregular periods of worsening and improving. Although medical personnel should monitor several of these cycles to determine the aggravating agent, workers' compensation law is concerned with that period during which the employee is allegedly unable to work because of the aggravation of his/her preexisting disease by the employment.

Furthermore, determining "aggravation" in chronic diseases can be even more complicated, depending on the time of life when the symptoms seem to appear. Generally, medical science recognizes that both the degenerative processes of aging and the appearance of chronic diseases are associated with the middle years.

Coronary heart disease

The majority of workers' compensation claims involving diseases of the heart and major arteries allege that employment aggravated the underlying pathology. Aggravation of the underlying disease can lead to angina pectoris--chest pain caused by a disproportion between the supply and demand of fresh blood for the heart muscle; coronary insufficiency--an intermediate condition between angina pectoris and myocardial infarction; and myocardial infarction itself--a heart attack.

Medical science has not determined the fundamental cause of coronary heart disease. The consensus is that in most instances atherosclerosis brings about the onset of acute symptoms. Atherosclerosis is a slow, progressive disease which may begin in childhood but produces no symptoms for 40 years or longer. It causes formation of small mounds of material that are deposited within the walls of the blood vessels, thereby diminishing the flow of blood in the affected vessels. Symptoms of the underlying disease appear as the blood vessel becomes occluded.

Heart disease causes problems for workers' compensation law because of the difficulty in determining what factor or factors are responsible for "aggravating" the symptoms of the underlying disease or for precipitating the acute episode. Although various studies have attempted to define the relationship between heart disease and the effects of work, stress, emotions, and other factors, they have produced inconclusive and often conflicting results. Some physicians theorize that strain or stress set in motion the coronary occlusion. However, such theories are speculative and, generally, medical science maintains that no valid evidence supports them. In addition, the many conflicting opinions regarding etiology, even in a specific patient at a particular moment, further demonstrate the uncertainty on this point.

In 1947 the American Heart Association set up a committee to study the medical and legal problems surrounding heart disease. This committee stated in a 1962 report:

> "That in view of the current absence of acceptable scientific confirmation, heart disease, except in the rare instances mentioned, shall not be considered as arising out of employment and that presumptive legislation affirming causal relationship of heart disease to any type of employment is unjustified by present scientific evidence.
>
> "That heart failure * * * shall be considered related to physical or emotional exertion only if the heart failure occurs during the actual period of stress clearly unusual for the individual involved.
>
> "* * * reported cases show considerable conflict in medical testimony with respect to the causative factors in cardiac disease. * * * In view of the multitude of factors influencing the constantly changing physical status of a cardiac patient, especially a sufferer from coronary disease, it is recommended that an unusual strain for the given individual be the only acceptable injury recognized as aggravating, or revealing, underlying cardiac disease.
>
> "The courts and commissions of a number of States place undue emphasis on the exact phraseology employed by medical witnesses, such as whether they use the word 'possibility' or the word 'probability' in speaking of causative factors * * *."

The Heart Association appointed another committee in 1970 to generally review and update the 1962 report. In the updated report, approved in 1976, the committee concluded that:

"Long-term, repetitive strenuous physical effort regularly performed by an individual cannot be regarded as a causal element in the development of atherosclerosis. Such activity, if having any role, is believed to be beneficial.

"Long-term repeated strenuous physical effort in some persons with underlying heart disease may result in the onset of congestive heart failure sooner than might have occurred without such effort expenditure. However, at the present stage of medical knowledge it is not possible to determine precisely when cardiac insufficiency would have occurred during the natural history of the underlying disease or from normal 'wear and tear of life' without the indicated stress.

"Continued emotional stress to which an individual may be subjected over a period of months or years has come under scrutiny as possibly playing a causative or worsening role in the acceleration of the progression of atherosclerotic disease. This postulated relationship is not an established scientific fact, although the possibility of some contribution cannot be excluded in some instances. Recent investigation concerning the possible role of psychological factors in atherogenic heart disease point to the effects of such stress, if any, as dependent to a large extent upon the personality makeup of the individual rather than on the specific quality of the psychological experience.

"A single isolated episode of stress (physical or emotional) in individuals rendered susceptible because of underlying heart disease, if of sufficient intensity and duration, appears capable of eliciting adverse responses which might trigger or hasten certain cardiac lesions and dysfunctions. These may include angina pectoris, a cardiac dysrhythmia, acute congestive failure or possibly myocardial infarction.

"The shorter the time interval between the exposure to a potentially noxious stimulus and the appearance of clinical or pathologic evidence of new heart disease or dysfunction, the more

likely is there to be a causal relationship. Conversely, the farther apart they are in time, the less likely is a cause and effect relationship.

"The exposure of a person with underlying heart disease to a stimulus potentially harmful does not necessarily mean that a harmful cardiovascular response will be elicited, even when such exposure would be advised against medically because of the possibility of resulting harm."

In 1976, the National Institute for Occupational Safety and Health reported in "A Guide To The Work-Relatedness of Disease" that rarely can a physician state the cause of a heart attack. Further, some 1/ believe that heart attacks should never be compensable and, since they have such complicated etiologies, they should be removed from the compensation system.

Arthritis

Arthritis is a chronic disease of the joints characterized by certain alterations in the membranes lining the capsule of a joint, cartilages, structures surrounding a joint, and sometimes by new bone formation or bone destruction. Arthritis is found among people of all occupations, living environments, and ages. In the older age group, arthritis is almost universally present.

As in the case of heart disease, medical science does not know the exact cause of arthritis. Its effect can range from nuisance aches to severe crippling. Among factors believed to cause its development are age, heredity, infectious processes within the body, and systemic disease. In arthritis-related compensation claims, questions frequently arise concerning the relationship of trauma to arthritis, the relationship between trauma and productive arthritic changes, and the prolongation of complaints.

1/The National Institute for Occupational Safety and Health, citing the "Compendium on Workmen's Compensation" of the National Commission on Workmen's Compensation Laws, 1973.

Hypertrophic (thickening of muscle fibers) arthritis or degenerative osteo-arthritis (destruction of articular cartilage, overgrowth of bone), which cause painful, restricted movements in the joints, are often found in workers over 40 years of age. The consensus among medical authorities is that trauma cannot produce hypertrophic arthritis. Workers' compensation law provides that the causal relationship between an employee's arthritis and his/her occupation is established if factors of the occupation aggravated the underlying condition. Not only can trauma be cited as the aggravating agent but, compensation law holds and medical authorities concur, repeated motions or extensive use of the affected joints can also aggravate the underlying condition.

CHAPTER 4

BETTER GUIDELINES NEEDED FOR DETERMINING OCCUPATIONAL DISEASES

The act's provision that diseases are compensable if "proximately caused" by employment does not provide adequate guidance, especially for diseases that present difficult etiological problems. For many diseases in this category--heart disease, nervous and psychiatric irregularities, and respiratory or circulatory conditions, for example--where work is often cited as an aggravating factor, Labor's implementing guidelines are not sufficient for determining the causal relationship between the disease and the work.

Inadequate guidelines can lead to uncertainty over the compensability of diseases, inconsistent determinations, and, on occasion, less than equitable settlements. If determinations are overly strict, injured employees may be denied benefits that are legally due to them. On the other hand, very loose determinations can result in awarding benefits when entitlement does not exist and cause taxpayers to pay compensation for a condition that has no relation to the employee's work.

CRITERIA FOR OCCUPATIONAL DISEASES

When settling claims involving diseases, Labor generally follows (1) the legal principles found in Larson's treatise, "Workmen's Compensation Law" and (2) precedents set by decisions of the Employees' Compensation Appeals Board. According to Larson's treatise (sec. 12.20), an employee's preexisting disease does not disqualify a claim under the legal requirement "arising out of employment," if the employment aggravated, accelerated, or combined with the disease to produce death or disability. This principle is sometimes expressed by saying that the employer takes the employee as he finds him.

Rulings of the Employees' Compensation Appeals Board have upheld this principle and offer other guidance on causality:

--This act does not authorize the recognition of only certain causes-in-fact, nor does it exclude any particular causes, as, for example, worry or other mental strain causing a disability (2 Empl. Comp. App. Bd. 208 (1949)).

--For conditions of employment to aggravate preexisting disease, the employment factors must cause acceleration of the disease--rather than merely to retard recovery (1 Empl. Comp. App. Bd. 18 (1947) and others).

--Where the record supports aggravation or acceleration of an underlying condition which precipitates disability, the resultant disability is compensable regardless of the precise quantum of disability directly attributable to the employment (9 Empl. Comp. App. Bd. 333 (1957)).

In order to apply legal criteria, Labor seeks medical opinion to help determine whether an employee's disease is related to his/her work. Usually, more than one opinion is available in a case, and the opinions may or may not agree on the question of causal relation. Sometimes the medical opinions reflect uncertainties about etiology. If either conflicting opinion or uncertainty is involved, the Employees' Compensation Appeals Board has ruled that:

--Qualified medical statements based on surmise and conjecture, standing alone, are not sufficient to justify the reversal of an adverse compensation order, particularly when the order is supported by positive medical opinion (5 Empl. Comp. App. Bd. 417 (1953)).

--Medical opinion "that there is a causal relationship to injuries sustained," without giving a basis for this opinion, is of but little probative value (4 Empl. Comp. App. Bd. 75 (1950)).

--When assessing medical evidence, the number of doctors supporting one position or another is not controlling, but the weight of such evidence is determined by its reliability, its probative value, its convincing quality, the opportunity for and thoroughness of the examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion (10 Empl. Comp. App. Bd. 560 (1959)).

--The opinions of physicians who have special training and knowledge in a specialized medical field have greater probative force on the question of causal relationship of a condition peculiar to that field

than the opinions of nonspecialists or others who have no training in the particular field (5 Empl. Comp. App. Bd. 171 (1952) and others).

CASE DECISIONS

Actual decisions involving claims for disability or death due to disease can best illustrate Labor's treatment of what constitutes a compensable disease. In the following sections, we present some of the major legal principles as found in Larson and some of the noteworthy precedents established by the Employees' Compensation Appeals Board. We have used case decisions involving heart conditions, cancer, arthritis, and mental and nervous conditions as examples because they typically (1) present the most difficult questions of causal relationship and (2) illustrate the divergence in interpreting and applying criteria on compensable diseases.

Heart conditions

Legal principle

Larson covers heart cases under the general principle of injury from usual exertion or exposure and notes that heart cases dominate the category of "routine exertion causing injury from generalized conditions." The usual-exertion rule regards an injury as compensable if it is caused by the strain of the worker's usual exertions or his/her routine performance of duty. According to Larson (Sec. 38.30), the positions adopted in the various jurisdictions may be placed under three headings: (1) acceptance of the usual-exertion rule in heart cases, (2) rejection of the usual-exertion rule, and (3) adoption of some other test for drawing the line between compensable and noncompensable heart attacks. Most jurisdictions now accept the usual-exertion rule in heart cases--three for every one that rejects it. Labor leans toward the usual-exertion rule. However, State court and Employees' Compensation Appeals Board decisions are not always consistent in applying these rules.

Board decisions

When ruling on cases involving heart conditions, the Board has studied each case and reached its decisions based on concepts such as:

--Bridging symptoms--There was no incident proximate to his death with bridging symptoms which was competent to aggravate the underlying condition and hasten death, and medical evidence showed that his death was consistent with the normal progression of a long-standing cardiovascular condition (12 Empl. Comp. App. Bd. 534 (1961)).

--Common-sense situation--Once the medical significance of the conditions of employment is known, the determination on whether the conditions caused the disability within the statutory language is a legal question to be determined on the basis of similar precedents and the common sense of the situation (4 Empl. Comp. App. Bd. 483 (1951)).

--Relative circumstances--Where in coronary pathology cases there is a fundamental difference in medical opinion regarding both the etiology of the disease and the part played by stress, strain, and hard work, the Board has relied on a test of the relative circumstances of the case, taken in conjunction with medical evidence, to determine whether the evidence strongly suggests a cause and effect relationship (4 Empl. Comp. App. Bd. 477 (1951) and numerous others).

Case examples

The following cases illustrate the effects that a lack of uniform policy and adequate guidelines have on determining whether a causal relationship exists between employment and the disability or death resulting from a heart condition. Although the etiology is uncertain in most cases, physicians usually provide an opinion on causal relation. When deciding whether a causal relationship exists, Labor is not always consistent from case to case.

A 40-year-old mailhandler suffered a heart attack at home on a non-workday; he attributed it to "years of lifting mail and unloading sacks and dumping mail out of sacks." One physician said that, while the relationship of the employee's work to his heart attack was speculative, it was a well-known fact that exertion by susceptible individuals can precipitate major coronary events. However, according to a specialist in cardiovascular diseases, the employee's usual work was not a factor in producing his heart attack, which was due entirely

to the underlying coronary arteriosclerosis. The Board affirmed OWCP's denial of benefits because the employee had not met his burden of proving that the heart attack was job related.

In another case, the death of a 57-year-old automobile mechanic employed by the Forest Service was attributed to a heart attack. His widow filed for benefits, based on the claim that a job-related head injury which occurred about 9 months before the heart attack contributed to her husband's death. After OWCP denied payment of benefits for a lack of causal relation, the widow presented medical evidence from a neurosurgeon arguing that:

> "* * * if [the employee's physician] had an [electrocardiogram] indicating a healthy heart only a year before his death it would seem strong evidence to support your posision. I do not see a brain injury despite residuals directly causing a heart attack. However, it might sufficiently stress a person so as to make a 'weak heart' give up and die."

The Board remanded the case to OWCP for review on the merits of the claim, and the Board then ruled that the new medical evidence, although brief and ambiguous, offered sufficient support for the widow's claim. The Board interpreted the neurosurgeon's opinion as not indicating an intent to negate a causal relationship:

> "The doctor could have meant, and we are inclined so to construe his words, that if the employee's heart was shown to be in a healthy condition a relatively short time before his death, then such death would not be due to a cardiac condition but instead would be due to something else, namely, the * * * head injury. Also, his statement that a brain injury might impose sufficient stress on a person with a weak heart to make him 'give up and die' furnishes some support, even though slight, to the claim."

The Board maintained that, while the claimant has to establish an entitlement to benefits, OWCP has an obligation to see that justice is done by sharing the responsibility for developing the evidence. Justice in this case:

> "* * * is not served by giving a strict and technical interpretation, which results in denying the claim, ambiguous language which is equally susceptible of being construed liberally in favor of the claim."

The widow of another heart attack victim, a 59-year-old employee relations specialist for the Air Force Department, filed for benefits on the grounds that her husband's death was related to job stress. OWCP's San Francisco District Office denied benefits because the medical evidence showed that death was due to arteriosclerosis--not due to the employee's job. On appeal, OWCP's Branch of Hearings and Review noted that:

> "* * * there are stresses and anxieties connected with a personnel position of the type held by the claimant. * * * that he was an energetic, dedicated employee who always disciplined himself to turn out the very best job he was capable of doing. He would work after quitting time and on (weekends) in order to get the job done. * * * that the Personnel Section of the office was faced with constant upheaval, major changes and tremendous workloads."

Therefore the Branch referred the case to a cardiologist for an opinion on causal relation. The cardiologist concluded that the employee's heart attack was unrelated to "undue, extraordinary, or change in mental or emotional stress." After OWCP's medical director rejected this opinion because the cardiologist had "not based his judgment on the accepted facts but developed his own facts from review of the record," a second cardiologist was consulted. OWCP's medical director accepted this cardiologist's conclusion that the "accepted facts of the case do not substantiate that the myocardial infarction was caused, aggravated, precipitated, or excellerated [sic] by the accepted factors of employment." The medical director stated that, considering "* * * his status and credentials and the well written report, I can take no exception to his opinion." The employee's widow then asked that the file be referred to a physician of her choice for an opinion on a causal relationship. According to the board-certified internist of her choice, the employee may have been under a great deal of emotional stress and strain during the 48 hours prior to his death, but no objective

evidence existed that would alter the second cardiologist's opinion on a causal relationship. Although agreeing that a causal relationship could not be established, the physician also remarked that:

> "* * * at this time, one cannot exclude the possibility that emotional stress and strains suffered in an individual's occupation may, in the susceptible individual, contribute significantly to the progression of the coronary atherosclerotic process and to the final development of an acute myocardial injury."

OWCP's medical director therefore reversed his earlier decision. In his review of the case file, he ruled that "the claimant's symptoms began during employment and the stress and strains of his employment precipitated his anginal symptoms which progressed to infarction and demise within 24 hours." The Branch awarded benefits to the widow; it concluded that:

> "There are grounds for indecision. However, in order to find favorably for the widow it is not necessary that every shadow of doubt be removed. This degree of absolute certainty is not necessary when the evidence, considered as a whole, leads to a sound logical conclusion that death was causally related to work."

Cancer

Legal principle

Larson explains that cancer has been found to result from certain job conditions, such as usual strain (Sec. 38.30), repeated impacts (Sec. 39.10), and exposure to specific substances (Sec. 41.70).

According to Larson, "aggravating the disease" applies to cancer cases in which malignant growth is ruptured or spread by occupational exertions or in which its development is hastened by strains, impact, inhalations, or accidents in the course of employment. Larson states that, since the legal principle of "the employer takes the employee as he finds him" is so widely accepted, in practice most problems in this area are medical rather than legal, and medical controversy chiefly accounts for the large number of cases

in this category. For example, not all experts agree that trauma causes or aggravates the spread of cancer. As cited by Larson,

> "* * * [a physician] has written that trauma as an inciting or aggravating mechanism does not have a place in cancer development, and schooled pathologists do not include injury as a mechanism by which cancer is initiated or stimulated."

Denials of benefits in cancer-related cases are almost entirely the result of not offering sufficient evidence to establish that employment contributed to the injury or death. The relative contribution of the injury and the prior disease are not weighed, except by a rare statute in only six States, nor is the shortened life expectancy of the employee because of the disease considered. Even if the employee would probably have died of cancer in any case, for compensation purposes the employment is deemed the cause of death if, because it hastens the cancer, the employee dies today instead of 6 months from now. "'To hasten death is to cause it.' We must all die some day, therefore the most that any injury can do, in a sense, is to hasten inevitable death." (Larson, Sec. 12.20.)

Board ruling

Over the years, relatively few cancer-related cases have come before the Board. Its trend in deciding these cases has been conservative. For example, of the 75 cases that the Board decided during the 27-year period (1946 to 1973), it rejected 68 for the absence of causal relation, found 4 related to conditions of employment, and remanded 3 to OWCP for further development of the issue of causal relation. For the most part, in denying claims, the Board has cited insufficient medical evidence to support a causal relationship between the employee's cancer and his/her job.

Case examples

In satisfying the requirement for adequate medical evidence of the causal relationship between cancer and employment, the Board has established a precedent of looking to "relative circumstances" to find a causal relationship.

In 1950 a welder for the Department of the Interior died as a result of bronchogenic carcinoma (cancer originating in the bronchi) of the right lung, complicated by metastatic (transfer from site of disease to another part of the body) carcinoma of the liver, kidneys, and adrenal glands; arteriosclerosis, and congestive heart failure. The attending physician believed that a fairly extensive silicosis adjacent to the cancerous lung may have contributed to death or to the onset of the cancer. The employee's widow filed for benefits on the basis that the job's conditions caused or aggravated her husband's lung condition. For approximately 4 years--between 1920 and 1924--the employee had been exposed to various metals (including brass, bronze, copper, steel, iron, and aluminum) and to fluxing materials; he had also worked in an inadequately ventilated room that contained operations such as a smelting pit.

Medical evidence showed that the employee's health began to fail about 26 years before his death. Eight physicians agreed that medical evidence did not support the original diagnosis of pulmonary tuberculosis; furthermore, they could not agree on the exact nature of his post-employment disease. They held different opinions on the possibility of a causal relationship between employment and the employee's carcinoma, but all acknowledged that the etiopathogenesis (origin and development) of the carcinoma was still unsettled.

In awarding benefits, the Board found that the relative circumstances of the case supported a cause-effect relationship. It ruled that

> "Although compensation awards must be based on evidence and not on mere speculation, surmise, or conjecture, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.
>
> "It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist."

Even though the employee was 67 years old at the time of death and exposure had occurred 26 years before his death, the Board concluded that his job conditions were likely

to have produced respiratory difficulties and that, eventually, he did contract an employment-related lung ailment which persisted until his death.

If medical evidence does not support a causal relationship between cancer and job conditions, the Board will generally deny benefits, as the following case illustrates. A 43-year-old letter carrier died in 1966 from generalized carcinomatosis (the condition of having a cancer anywhere in the body) of the brain, right adrenal gland, and liver. His widow filed for benefits on the grounds that her husband's adrenal carcinoma (cancer of or near the adrenal gland) with metastasis (transfer to another part of the body) was related to a fall at work 7 years before his death. He had slipped, fallen and landed on his left hip and back and continued to have back problems until his death.

One physician supported the validity of the claim:

> "The adrenals lie adjacent to the spinal canal and on top of either kidney. It is a known fact that direct injury to this region when a tumor is present can and does cause tumor cells to be dislodged into the blood stream both the arteries and veins which have direct connections with the liver and brain."

Another physician, a board-certified specialist in internal medicine, dissented from this opinion and held that the malignancy was unrelated to the injury. Based on his own study of the case, a third physician, a board-certified specialist in pathologic anatomy, likewise concluded that the back injury did not contribute to the cause or spread of the cancer. The Board did not find the medical evidence sufficient for establishing that the back injury caused or hastened the employee's death. Moreover, it did not consider the facts and circumstances of the case, particularly the 7-year time lapse between the injury and his death, to be a persuasive cause-effect relationship.

Arthritis

Legal principle

Basically, the legal principles applicable to employment-related arthritis are the same as for cancer. In most instances the question is whether the job conditions aggravated the underlying disease.

Board ruling

When determining whether arthritis is employment related, especially when the issue is aggravation, the Board has generally looked at the degree of aggravation and the duration of the effects; i.e., whether they were temporary or permanent. However, it has not always been consistent with handling questions about causal relationships, as the following cases illustrate.

Case example

In the case of a 56-year-old letter carrier the Board considered only whether employment "proximately caused" his arthritis and did not concern itself with the issue of aggravation; as a result, it denied benefits.

The employee contracted hypertrophic arthritis of the lumbar spine and became disabled for work after 24 years of employment. He filed for benefits on the grounds that his disability resulted from years of walking and carrying a heavy load of mail in all kinds of weather. Medical evidence concerning the "cause" of the arthritis was uncertain but indicated that continued employment would aggravate his condition. After reviewing the case file, OWCP's medical staff concluded that evidence supported neither claims of employment as the cause nor claims of employment as the aggravating agent of the condition. However, a member of OWCP's medical staff did recommend that the employee be shifted to lighter work because the "work he now does may cause symptoms."

The Board ruled:

> "* * * it is appellant's burden to show that the actual conditions of his employment caused or materially aggravated the disease * * *. In support of his contention as to causal relationship appellant relies upon the statements of his two private physicians to the effect that State compensation commissions would allow a claim such as this. However, these statements have little, if any, probative value as evidence of causal relationship. It is the role of medical opinion evidence to convey to the trier-of-the facts the causal significance of that which

> he finds. When this is done the determination of whether the condition caused a disability within the meaning of the act is a legal question for the trier to determine on the basis of similar precedents and the common sense of the situation."

In denying benefits, the Board stated the progressiveness of the disease, not his employment, had caused the employee's disability. It made no mention of aggravation in its report, even though the medical evidence had specifically stated that the employee's condition would be aggravated by his work.

However, in the case of another mail carrier the Board did examine medical evidence for indications that work activities aggravated the employee's arthritis. The employee had degenerative osteoarthritis affecting the cervical and dorsal spine, both shoulders, and both elbows. At issue was whether repetitive movements at work had either caused or aggravated the condition in the right shoulder. While sorting mail for 2 hours each morning the employee had to extend his right arm a minimum of 2,000 times; he also spent about an hour readying the sorted mail for delivery and then delivering it to 641 patrons (114 stops) for the remainder of the day.

A board-certified orthopedic surgeon reviewed the case file and examined the employee. He concluded that the work activities did not have permanent adverse effects upon the underlying arthritic condition, but he did find that use of the right arm to sort mail had caused some temporary aggravation.

Citing the medical evidence, the Board ruled that:

> "It appears that the underlying condition generally causes pain, regardless of activity. However, on occasion the work activities materially and temporarily adversely affect his condition, as reflected by significant symptomatology; the episodes of swelling following continuous use of the right arm demonstrate temporary aggravations of the underlying condition. When the work activities aggravate an underlying condition so as to require treatment, the aggravated condition, even though temporary, is compensable and appellant is entitled to reimbursement for medical expenses for treatment of such temporary periods of aggravation."

Mental and nervous injury

Legal principles

Larson indicates that the largest volume of recent litigation on the meaning of "injury" has involved various mental and nervous conditions--most often one of the following:

--Physical injury caused by mental stimulus (Sec. 42.21).

--Nervous injury caused by physical trauma (Sec. 42.22).

--Nervous injury caused by mental stimulus (Sec. 42.23 and 42.24).

Board ruling

If caused or aggravated by employment, mental and nervous conditions generally qualify as injuries within the meaning of the act. The Board primarily relies upon medical opinion to support a causal relationship and to determine whether the disability for work has resulted from that injury.

The Board has ruled:

--Where working conditions (severe and constant pressure with tension, anxiety, and worry) aggravated a claimant's preexisting disposition to mental illness and precipitated his illness--diagnosed as schizophrenia--his claim was compensable (12 Empl. Comp. App. Bd. 213 (1960)).

--Disabilty due to psychoneurosis precipitated by trauma is compensable (4 Empl. Comp. App. Bd. 317 (1951) and others).

--Even though the task is burdensome, because neuroses typically arise from underlying psychological conditions preceding an injury, prima facie medical evidence must nonetheless be present to establish that a neurosis is "traumatic" in a true causal sense when a case involves an injury allegedly caused by neurotic factors (4 Empl. Comp. App. Bd. 317 (1951)).

Case examples

In one case, sufficient causal relation was found when a stressful incident at work permanently aggravated an employee's hypertensive disease. The employee, an Air Force reservist recalled to active duty in 1950, died in 1955 from subarachnoid hemorrhage (an abnormal discharge of blood below the middle of the three membranes which cover the brain and spinal cord) caused by hypertensive vascular disease (a dysfunction of the blood system associated with a rise in blood pressure) which had allegedly been aggravated by his service on active duty.

The Board remanded the case to OWCP to further investigate whether a bomb demolition incident, with its associated emotional tension, was causally related to a concurrent episode of hypertensive encephalopathy (a dysfunction of the brain marked by a rise in blood pressure). In 1952, while stationed in Korea, the employee had volunteered to personally supervise a demolition team clearing unexploded bombs from a drop zone. He was not a demolition expert, nor was this work part of his regular duties. On the day of the incident, after becoming suddenly ill, the employee was hospitalized; the hospital reports indicated that he was suffering from moderately severe hypertensive vascular disease with hypertensive encephalopathy. The employee retired because of physical disability, and approximately 3-1/2 years later he suffered a cerebral vascular attack and died.

After reviewing the case file, a specialist in cardiovascular diseases stated that the employee's death was not causally related to the bomb demolition incident. He noted, that if the symptoms on that day were related to the incident, "certainly the relationship was one of aggravating a disease that was already present. Most probably the same acceleration of his disease would have occurred had he never entered active duty in 1950." Another specialist in cardiovascular diseases, representing the widow, believed that the emotional tension of being on active duty was sufficient to precipitate the sudden acceleration in the hypertensive state, the serious cardiovascular complications which occurred on the day of the incident, and the elevated blood pressures which continued until the employee's death.

OWCP determined that, while the bomb demolition incident caused a temporary aggravation of the disease, approximately 5 months following the incident the employee's hypertensive

condition had returned to the same level that existed before his recall to active duty; therefore, it found his death due to normal progression of the disease and neither caused nor accelerated by the incident or his service on active duty.

However, the Board, in deciding in favor of the widow, concluded that both OWCP's acceptance of temporary aggravation and the medical evidence in the record supported the contention that the bomb demolition incident caused a permanent aggravation of the hypertensive disease and that the employee's death was causally related to the residual effects of that incident.

Other cases also illustrate that an employee is entitled to benefits under the act if an employment-related injury causes or aggravates a disabling emotional disorder. For example, an employee, a clerk for the Public Health Service, slipped and fell down two or three steps at work. OWCP rejected her claim for continuing compensation because "the claimant has had no compensable disability as a result of her injury subsequent to April 30, 1950." On a previous appeal, the Board remanded the case to OWCP to further study whether the fall at work had aggravated the employee's preexisting nervous disorder.

Medical evidence showed that the employee became hysterical immediately after the fall and that her extreme nervousness failed to subside after she attempted to return to work. In October 1949, about 3 months after her first hospital stay, the employee was readmitted because of her nervous state, diagnosed as "hysteria and neurasthenia" (exhaustion of the nerves) and considered unrelated to the fall. Following her discharge, the employee's private physician reported that he found her suffering from menopausal dysfunction and nervousness due in part to the accident. In 1950, she was hospitalized again because of back pains, frequent headaches, the loss of sensation in her right leg, and emotional upset. The discharge diagnosis was coccygodynia (pain in the area of the small bone at the base of the spinal column), involutional melancholia (depressive psychosis which occurs during menopause), and involutional anxiety (uneasiness of mind over impending menopause). One month later, in connection with an application for disability retirement under the Civil Service Retirement Act, she was hospitalized a fourth time. An orthopedic consultant found no organic disease of the spine and diagnosed her complaints as due to

hysteria; a neuropsychiatrist believed that she was suffering from "a post traumatic neurosis, i.e., hysteria following a fall."

In attempting to determine the employee's mental and nervous condition before the fall at work, OWCP found that she was particularly efficient and agreeable until about January 1949. At that time, it became known that, due to an impending transfer of its functions, the employee's office was scheduled to be abolished and she would lose her job. Apparently this news resulted in a general feeling of anxiety and tension throughout the staff, but this employee in particular felt that she was being treated unfairly as a result of the situation, although she eventually accepted another position at a lower grade. Her supervisors and coemployees noticed a change in her personality--she became irritable and exceedingly nervous which worsened after the fall.

In awarding benefits, the Board ruled that a disability is compensable when an employee's preexisting disease or emotional disorder is aggravated or precipitated to a disabling degree by working conditions or injuries sustained in the performance of duty. It concluded that the weight of the reliable, probative, and substantial evidence was persuasive that the fall at work resulted in a disabling aggravation of the preexisting, but minor, emotional disturbance.

Another case involved a 19-year-old clerk for the Post Office who suffered a muscle sprain of the mid-back when she fell at work in September 1971. She worked intermittently from the date of the injury until August 1974 and received compensation benefits for the time she missed work. In August 1974 the Chicago District Office referred the employee to an orthopedic specialist for an evaluation of her ability to work. The specialist concluded that the employee was not disabled and was capable of returning to work; her personal physician, however, continued to report that she was unable to work.

To resolve the conflict in medical evidence, the employee was referred to a second orthopedic specialist, who reported:

> "After talking with [the employee] and conducting the physical examination, and reviewing the x-rays it was my opinion, that in all probability, based upon a reasonable degree of medical certainity [sic] that [she] has sustained a mild contusion to the

lumbar muscles on the right side when she fell in 1971. Since that time it is my opinion based on a reasonable degree of medical certainty that [the employee] has developed a conversion hysteria reaction to the injury. At the present time I can find no evidence of injury and can find no orthopedic reason why these symptoms should persist to the extent that they do. It is my opinion based upon a reasonable degree of medical certainity [sic] that [the employee] has no residual from the low back contusion."

Since the specialist mentioned a possible "conversion hysteria reaction," the employee was evaluated by a psychiatrist. The psychiatrist reported:

"The patient presents with 1) history of inability to separate from her mother and what appears to be a very pathologically mutually dependent relationship between the two of them, 2) a somatic delusion (back pain), and 3) evidence of thought disorder with ideas of reference, vagueness, and marked difficulty in logical reasoning, some suggestion of magical thinking.

"My diagnostic impression is that the findings are most consistent with the diagnosis of schizophrenic reaction. * * * It's my belief that the patient's psychiatric illness predated her employment. Her injury has served as a focus to allow her to maintain a pathologically dependent relationship to her mother and also to stay at home. At an unconscious level I believe the patient's present level of adaption is one which she finds most comfortable and which she has little desire to change except perhaps for obtaining some form of compensation.

"<u>Recommendation:</u>

"In relation to the questions raised by the Department of Labor, it is my opinion that, (1) the patient does have a psychiatric illness, but I believe it predated her injury; I do believe, however, that the injury has become involved in the illness in a significant way. * * * (3) I recommend that the patient be told

> clearly that no further disability payments are forthcoming and that she be referred to a vocational training program."

In assessing the employee's mental status, the psychiatrist stated, "Her thinking style is such that she seems to believe that by constantly reiterating her claim that she will indeed get what she wants from the government." On the basis of the psychiatrist's report the District Medical Director concluded that the employee's psychiatric condition was not related to her employment, and the district office rejected the August 1974 claim for compensation because medical evidence did not show any employment-related disability beyond the date.

The employee in turn requested reconsideration by OWCP's Branch of Hearings and Review. The claims examiner for the branch concluded that the psychiatrist's report "* * * appears to indicate he is supporting aggravation of a preexisting condition"; the examiner therefore referred the file to the OWCP Medical Director for an opinion. After reviewing the case the Medical Director stated:

> "He [the psychiatrist] feels her psychiatric illness predated her injury but he believes however that injury has become involved in the illness in a significant way. I interpret this to indicate that her preexisting illness was aggravated by the injury."

On the basis of the Medical Director's opinion, the District Office's decision to terminate compensation was reversed and the employee's compensation reinstated.

Other cases illustrate that injuries within the meaning of the act can include disabling nervous disorders resulting from concern or worry about working conditions.

An Army supply specialist alleged that her nervous condition was precipitated by notice that she would have to work night shifts occasionally; her regular duty hours were from 8 a.m. to 4:30 p.m., Monday through Friday. Citing a longstanding fear of being alone, she requested exemption from night shift duty. The employing agency denied her request on October 28, 1964, and notified her on October 31, 1964, that from November 15 to November 28, 1964, her duty hours would be 4 p.m. to 12:15 a.m., Tuesday through Saturday. She stopped working on October 30, 1964, and returned on February 1, 1965.

The employee's private physician supported her claim of a longstanding fear of being alone. He explained that a similar situtation occurred in 1956; i.e., the employee came to him in a very agitated condition brought about by a change in work shift. At that time, he diagnosed an anxiety-type psychoneurosis, moderately severe, manifested by the fear of being alone, the etiology of which was unknown. Concerning the 1964 incident, the physician reported:

> "The present condition has been precipitated by a requirement that she must be alone on a night shift at work. This night shift also entails her traveling alone in a bus and being left alone at a bus terminal, 5 miles from home, late at night * * * the thought of this situation is at present producing a severe physical reaction."

After examining the employee, a board-certified psychiatrist concluded that she

> "* * * is suffering from a well-defined neurotic condition which imposes limits on her ability to function adequately under certain circumstances. Whenever she is placed in a situation which stimulates the phobic ideas I am sure she will become anxious and unable to perform adequately."

He believed that her disability was brought on by the change to the night shift. The Board found that evidence supported the employee's claim for benefits.

In a similar case, a personnel clerk for the Post Office alleged that a nervous disorder, brought on by undue pressure and harrassment in her job, disabled her for work. She had begun working in 1959, and toward the end of 1962 a new postmaster was appointed; in October 1964 she stopped working because of gastrointestinal and other complaints. After returning to work in 1965, she filed for benefits on the grounds that her condition resulted from the unpleasant relationship between her and the new postmaster.

In reaching its decision, the Board found sufficient evidence to establish that the employee's working conditions, including her relationship with the postmaster, were disagreeable, and that she was subjected to some degree of pressure and harassment.

The employee's private physician, who had treated the employee as early as 1958 for nervous tension, supported a causal relationship:

> "This is apparently a condition which can be classified a psychoneurosis conversion reaction moderately severe and apparently originated from job difficulties since her home, financial and social conditions are all excellent. There is a definite connection in time between the onset of the symptomatology and the beginning of her difficulties at her place of employment according to her statement.
>
> "* * * I believe that this condition can be remedied by correction of her job environment either through different employment or by removal of irritance from her present employment.
>
> "* * * This lady is definitely high strung, she has had extensive training and a high level of intellect and is rather sensitive about her mostly imaginary weight problems. I am quite sure that this idea of fighting the few pounds of overweight she has is part of the symptom complex of a person who wants perfection in everything she does and is satisfied with nothing less and this of course would release a full blown psychoneurotic reaction in a condition where she cannot do her job as perfectly as she would like to do it. 1/
>
> "* * * This is definitely a neurosis and not a psychosis and therefore should be most amenable to environmental changes."

A board-certified psychiatrist who examined the employee concluded that she was suffering from a personality trait disturbance and an emotionally unstable personality. In his opinion:

> "A work situation cannot create the condition from which [the employee] suffers,

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1/This physician noted that in 1958 he treated the employee for marked nervousness. She had been taking reducing pills.

> the condition pre-exists in the basic personality of such an individual, and is simply ojected by them onto some facet of their environment--their home, their neighborhood, their work."

Another specialist in psychiatry and neurology also examined the employee and concluded that she did sustain a "psychophysiologic accompaniment during the period of stress" at the employing establishment, a gastrointestinal manifestation of stress which was a psychosomatic symptom. This specialist did not believe that the employee's symptoms were sufficient to justify her taking off from work, nor that she had any resulting disability.

The Board ruled that the weight of evidence was sufficient to establish that the employee's work caused a temporary aggravation of a preexisting emotional condition which resulted in her disability. Concerning her disability, the Board accepted the medical findings and conclusions of the employee's private physician--i.e., that conditions of stress and tension on the job caused a substantial increase in her blood pressure--and it awarded her benefits for the duration of her disability.

Injuries resulting from a suicide attempt can also be compensated under the act. An employee of the Panama Canal Company tried to commit suicide by either leaping or falling from a bridge. Unsuccessful, he filed for benefits on the grounds that the suicide attempt was a reaction to an investigation of irregularities in his employment, irregularities generally relating to taking property and using time of employees for purposes unrelated to their work.

The employee had been detailed on special assignment for the sole purpose of replying to the allegations of irregularities, which were cited in an audit report. Two months into the special assignment, he attempted suicide. Three psychiatrists supported a causal relationship between the special assignment and the employee's disability.

OWCP rejected the employee's claim on the basis that his mental illness did not arise out of and in the course of employment. However, the Board ruled that, under the circumstances (i.e., being removed from his own normal duties and devoting all of his time to preparing a reply to the allegations of irregularities), the employee's disability did arise out of and in the course of the assigned duties and therefore constituted an injury within the meaning of the act.

CHAPTER 5

OTHER PROBLEMS WITH DETERMINING WORK-RELATED INJURIES

Unlike cases involving diseases, those involving injuries "sustained in the performance of duty" generally present few problems because of their rather straightforward cause-effect relationships and because they normally involve accidental injuries. However, borderline cases do occur, notably, when an employee is injured while going to and from work, making trips that benefit both the employee and employer, deviating from an assigned route for personal reasons, performing acts for his/her personal comfort, participating in recreational and social activities, engaging in horseplay, or working at a temporary duty site. For each of these categories, we draw upon a case history to illustrate some of the current thinking on compensable injuries and how that thinking can result in inconsistent and inequitable application of current criteria.

GOING TO AND FROM WORK

Legal principle

Employees who work fixed hours at a fixed place may receive benefits if they are injured on the premises while going to and from work, either before or after working hours or at lunchtime. If the injury occurs off the premises, it is normally not compensable, unless the journey itself is part of what the worker is employed to do, or the journey to and from work is made in the employer's vehicle.

Board ruling

The Board has generally followed the above legal principle in its decisions, but it has recognized several exceptions. For example, one major exception extends the term "industrial premises" to include certain hazardous conditions proximate to the premises.

Case examples

The following cases illustrate how Labor has interpreted the above principle, thus establishing precedents for finding an injury compensable under it. One case involved an employee of the Naval Air Station at Pensacola, Florida, who closed her car door on her hand, amputating the tip of her left thumb. OWCP awarded benefits because the employee was on the premises of her workplace and had to close the door in order to report to work. In a similar case, a Veterans Administration hospital employee, after getting out of her car on the hospital parking lot, twisted her left ankle, fell, and broke the ankle. OWCP awarded benefits because the incident occurred on the premises, the employee was on her way to work, and the accident did not result from idiopathic causes (unknown causes or those peculiar to the individual).

The Board's rulings in other cases have expanded coverage under this principle. In one case, for example, the Board found payment of a transportation allowance of $2 per day pursuant to a union agreement sufficient cause for awarding benefits to an employee who, while enroute to work, died in an automobile accident some 50 miles from his place of employment. In another case, an Air Force employee worked a schedule which required him to return to the base during off-duty hours in order to comply with base regulations to register his car. While on this errand, his car door closed on one of his fingers, amputating part of the finger; the Board ruled the injury compensable. The Board has also awarded benefits for injuries suffered on public thoroughfares separating the workplace from the parking area, provided the public thoroughfare was normally used by employees to get to work.

DUAL-PURPOSE TRIPS AND DEVIATIONS-- THE SPECIAL-ERRAND EXCEPTION

Legal principle

Other recognized exceptions to the going-to-and-from rule involve the special-errand exception: (1) trips encompassing both personal and business purposes and (2) deviations from a business route for personal reasons. Generally, employees injured during such trips can receive benefits if they were performing a service for the employer during the trip. However, a deviation for personal reasons can take the employee so far out of the normal business route that he becomes ineligible for benefits if injured.

Board ruling

Generally, if an injury is to qualify for coverage under the special-errand exception, an agreement to undertake a special task must have been in effect. Coverage begins from the time the employee leaves home and may extend to the time at home, if work done at home is continuous with that done at the regular workplace. When an employee is injured while deviating from a business trip for personal reasons, the Board requires that the whole contemplated deviation be considered in determining eligibility for benefits.

Case example

The following cases not only illustrate Labor's application of the special-errand rule, they also show the degree of latitude possible in determining what conditions qualify an injured employee for benefits under the concept. In one instance, a postal employee's car, which he had used to deliver mail, broke down as he was leaving for work. He substituted another vehicle, finished the day's mail delivery, and injured himself while attempting to repair the broken car. The Board ruled his injury not compensable--it had occurred at home, after his workday had ended, and therefore was not sustained in the performance of duty. However, had he been injured while repairing the vehicle at the beginning of the workday, his injury would have occurred during the performance of duty, according to the Board's ruling.

In a related case, postal officials contracted to use an employee's vehicle for mail delivery after his agency-furnished vehicle was involved in a traffic accident. Subsequently, as he was emerging from his car after delivering the day's mail, he slipped and fell on his snow- and ice-covered driveway. OWCP determined that the employee had sustained his injury during the course of duty because (1) a valid contract existed for the use of his vehicle and (2) the act of emerging from the vehicle after the day's work caused the fall.

In another case, an employee who had taken separate taxis on two personal errands was injured while walking to catch a third taxi to return to the office. Despite the two personal stops, the Board ruled that the employee's deviation had ended when she completed her personal business and that she was engaged in going to a cab on the "original direct route to her office building" when the accident occurred. In a dissenting opinion, however, one Board member held that the deviation was substantial, had subjected her to the street hazards of

a pedestrian on two occasions, and had removed her from the act's protection.

PERSONAL COMFORT DOCTRINE

Legal principle

Injuries that occur while employees are ministering to their personal comfort are compensable, unless in doing so the employee intended to temporarily abandon his job or chose a method so unusual or unreasonable that he in effect removed himself from the scope of his employment.

Board ruling

The board has ruled that this doctrine applies to accidents occurring while employees are on the way to or from toilet facilities or engaged in relieving themselves. Moreover, the Board holds that an employee is performing duty even when drinking beverages or eating a snack during work hours.

Case example

The following case shows how the personal comfort doctrine can be applied. Moreover, this case illustrates that Labor can construe evidence for an employee's benefit without identifying the risk or aggravating agent that converts a purely personal act into a work-related injury.

Shortly after reporting to work, an employee went to the restroom; upon rising from the toilet, his left knee locked. Agency physicians who examined the employee's knee 5 hours after the incident believed the swelling and tenderness were indicative of a 12-to-15-hour-old injury. The Board ruled that

> "* * * the medical evidence establishes that the act of rising from the toilet resulted in the locking of the knee and the torn meniscus. Although there is evidence suggesting that appellant may have injured the knee in a horseback riding incident, * * * the evidence is clear that before the call of nature incident he was not limping any more than usual, whereas after the incident his limp was quite apparent."

Therefore, the Board concluded that the condition constituted an injury within the meaning of the act. The chairman, however, dissented from the majority ruling:

"* * * Under the facts of this case, the act of normally arising from a toilet seat without some intervening hazard of the employment, does not create a relationship between the personal act and the employment * * *."

RECREATIONAL AND SOCIAL ACTIVITIES

Legal principle

An employee injured while participating in recreational or social activities can qualify for workers' compensation, if the injury occurs on the work premises and it is incident to a period regularly set aside from employment for recreational or social activity; if the employer expressly or implicitly permits such activities; or if the employer derives substantial direct benefit from the activity.

Board ruling

In following this principle, the Board has determined that the specific advantage to the Government must be sufficient for satisfying a reasonable mind that such activity is beneficial to the agency's function.

Case example

The following case illustrates the wide applicability of this principle and indicates the significant number of people it brings under the act's coverage. An employee was injured during a softball game sponsored by an employee recreation association which the employing agency supported. The incident occurred on agency premises, after working hours. According to the employee, he participated in order to increase rapport with his coworkers. OWCP denied payment of benefits because (1) the injury occurred after working hours, (2) the agency did not require his participation, and (3) the activity primarily benefited the employees and was common to all kinds of recreation. However, the Board ruled that, after careful consideration of the legal principles and the leading cases relating to this type of situation, the circumstances of the case were such that the employee's injury occurred in the performance of duty.

HORSEPLAY

Legal principle

Injury to a nonparticipating victim of horseplay is compensable. Those employees injured while engaging in horseplay

may receive benefits if their actions did not constitute an abandonment of duty.

Board ruling

In applying this legal principle, the Board has recognized that benefits may be denied if the employee's conduct was willful, he intended to bring about injury or death to himself or others, or his intoxication was the proximate cause of injury.

Case examples

The following cases illustrate Labor's attitude toward compensable injuries related to horseplay at work. While at a gymnasium to obtain information about its planned renovation, a librarian, on an impulse, swung up on some parallel bars, struck his head on a low ceiling, and was injured. In awarding benefits, the Board found that the employee's trip to the gymnasium was related to his work and that his action was not significant enough to remove him from the scope of his employment. In a similar case, an employee left his work area, mounted an unattended tractor, and was injured while attempting to stop it. His duties did not entail the use of any powered vehicle, and he did not have a license to drive a tractor. Nonetheless, the Board awarded benefits, ruling that the employee had merely acted on an impulse and was only "goofing off," neither of which was sufficient to remove him from the scope of his employment.

EMPLOYEES IN TRAVEL STATUS

Legal principle

Employees whose work requires travel away from the job premises generally are within the course of their employment for that period of travel unless they do something considered a distinctly personal errand.

Board ruling

The Board has determined that the act covers employees on temporary assignment or a special mission on a 24-hour basis. However, the employee can remove himself from the act's coverage by doing something, personal or otherwise, that deviates from his normal job-related activities and that is not incidental to his employment.

Case examples

The following cases illustrate the striking divergence that can characterize interpretations and applications of this principle. An employee on temporary assignment was killed when the car he was driving collided with a tractor-trailer as he pulled out of a parking lot. His blood alcohol level at the time was 175 mg. percent; a coroner stated that 100 mg. percent was considered evidence of intoxication. A board-certified pathologist agreed that, given a blood alcohol level of 175 mg. percent, the employee was under the influence of alcohol; the pathologist noted that his visual acuity, judgment, reflexes, and coordination would have been impaired at that level. Prior to the accident, a hotel porter had observed the employee leaving the hotel bar and described him as "pretty high." The accident occurred on a straight, level, dry highway; however, there were no highway lights and the night was dark and cloudy. The Board was not convinced that the accident was a result of the employee's intoxication: "He was not driving at unreasonable hours; he was only 5 miles from his hotel; and it might well be that he had only gone for some fresh air." In awarding benefits, the Board found the facts insufficient for establishing that the employee was engaged in an activity which removed him from the act's coverage. In another case, however, the Board denied benefits to an employee injured while returning to his hotel after visiting his fiance. Although his fiance lived in the same city where the employee was on a temporary assignment, the Board concluded that his activities were purely personal and recreational and, thus, the deviation removed him from the act's coverage.

CHAPTER 6

DEALING WITH THE UNCERTAINTIES SURROUNDING COMPENSABLE INJURIES

CONCLUSIONS

From the preceding chapters it is clear that, since passage of the Federal Employees' Compensation Act in 1916, the meaning of "compensable injury" has expanded. At first largely restricted to accidental injuries, it has come to include diseases contracted in the workplace and diseases and conditions aggravated by work-related factors. Expansion of the range of compensable injuries has occurred because of legislation specifically mandating coverage of occupational disease and because of an increased knowledge of how hazards in the workplace cause and contribute to disease. However, Labor's interpretation of the act's provisions governing compensable injuries, in our opinion, is most responsible for expanding the concept.

Because Labor has not handled compensation claims systematically and adjudicated them against a set of standard criteria, but has determined the standards anew for each case and made judgments on a case-by-case basis, uncertainty has arisen over exactly what injuries the act should cover. Most perplexing are questions of whether certain diseases--especially diseases of the heart and blood vessels--are causally related to the employee's work; etiological problems often do not permit medical science to answer such questions conclusively. Since Labor follows the historic principle of liberal interpretation when administering the act, benefits are sometimes awarded when the relationship between an employee's injury or disease and his work appears to be questionable. If Labor continues to follow this policy, growth of the program will continue and add substantially to costs.

Several measures could help clear up the uncertainty about criteria for compensable injuries. We do not believe that any one solution or a combination of solutions will completely settle the issue of what is a job-related injury or disease. We do believe, however, that improvements in the compensation program are both possible and desirable.

Clarify interpretation of the criteria

Since current legislative criteria are not clear concerning either what constitutes a compensable injury (especially with diseases proximately caused by employment) or what is

"liberal interpretation," congressional clarification on both issues would help Labor fix the Government's liability under the act. In order that no doubt arises as to the congressional intent, clarification should be in clear and precise terms. Specifically, we believe that the issues before the Congress are (1) whether actual administrative practices conform to legislative intent, (2) whether the Government's program is meeting its stated objectives, and (3) whether the circumstances that existed at the beginning of the century (see app. II) are relevant and appropriate today as guides for administering the act.

Establish better guidelines for compensable injuries

Claims examiners (and physicians who provide medical evidence) need meaningful guidelines that establish minimal factual and medical standards to be met before an injury or disease can be considered compensable. Specifically, if the question is whether an injury was sustained in the performance of duty, guidelines in layman's language should disclose for each major category (1) the generally accepted practice in workers' compensation law with appropriate references to the legal source, (2) Labor's interpretation of that principle and the way it should be applied to the Government's program, and (3) reference to precedents that Labor believes best illustrate the Government's liability in such cases.

Guidelines for so-called "occupational diseases," insofar as possible, should follow the same pattern under a categorical breakdown by disease. Such guidelines are especially needed in cases in which a death or disability is alleged to be the result of work-induced cardiovascular disease, respiratory disease, neuroses, and other cases that have difficult cause-effect relationships. If, given medical uncertainty over the cause of many diseases, meaningful guidelines are not possible, the basic question of whether a particular disease should be covered by the act may require a policy decision by the Congress. When the etiology is uncertain, we believe that the Congress should decide whether and under what conditions a particular disease will be covered by the act.

Define aggravation and its application

The concept of aggravation also needs better definition and clearer guidelines as to its applicability in workers' compensation. In some cases, it is clearly applicable when, for example, a job-related accidental injury renders an

already impaired limb useless. Other cases are not so simple and much more subjective, especially those involving pre-existing diseases (e.g., arthritis, heart conditions, and mental problems); such diseases are often aggravated by both job- and nonjob-related factors. If the disease is chronic and degenerative and disability or death is inevitable, does "aggravation" make the inevitable more inevitable. How can it be determined that aggravation hastened a disability or shortened a life? Even more difficult is trying to distinguish aggravation due to (1) conditions at work, (2) conditions of the off-duty environment, and (3) personal habits both at work and off duty. Apportionment between employment and nonemployment factors is possible, but could result in the same unsystematic and necessarily arbitrary guesswork already involved in claims based on aggravation. We believe that a more feasible solution is to remove cases involving aggravation of chronic, degenerative disease from eligibility for workers' compensation unless it is clear that employment materially and significantly interacted with the disease to bring about disability or death.

Determine the effect of occupational disease on the program

The magnitude of the occupational health problem will cause substantial costs to the Government's compensation program. However, very little is known about the actual or potential effect this problem has on the program, and no readily available data exist to properly manage and control this problem. For example, the identification of trends in diseases for which compensation is claimed would help the program administrators, who could use the data for assessing whether particular emphasis is needed when establishing guidelines for a causal relationship. Also, the rate of acceptance or rejection of claims relating to specific diseases would give some indications as to how a causal relationship is being handled. Such considerations are fundamental to any managerial actions that may be required to protect the rights of injured employees and the interests of taxpayers.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To aid Labor's determinations of causal relationships, we recommend that the Secretary of Labor establish guidelines that have at least minimal factual and medical standards for developing and evaluating evidence and for deciding whether an injury is compensable under the act. With diseases suspected of being employment related, the

Secretary should consult with the Secretary of Health, Education, and Welfare and such other appropriate employer and employee organizations. Once guidelines are established, they should appear in the Federal Register for comment and evaluation by interested groups and, after evaluating the comments, should become the basis for entitlement to the act's benefits.

We also recommend that the Secretary of Labor determine whether specific guidelines can be established for cases of aggravation or whether an alternative system for occupational diseases might be a possibility. In the meantime, to help assure that Labor consistently and equitably handles cases involving aggravation and occupational disease, we recommend that the Secretary of Labor codify specific instructions on approved policies, procedures, and practices for determining causal relationships. We recommend that cases involving aggravation be removed from eligibility unless it is clear that employment materially interacted with a disease to bring about disability or death.

Further, to better understand the occupational disease problem and its effect, we recommend that the Secretary of Labor evaluate the Federal workers' compensation system (1) for the number of claims, types of diseases, related cost, and other pertinent information and (2) for the potential effects of the occupational health problem on the system.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress review Labor's determinations of what constitutes a compensable injury and provide any needed guidance on the Government's liability under the act. We believe that the Congress should consider whether (1) actual administrative practices conform to current legislative intent, (2) the Government's program is meeting its stated objectives, and (3) the circumstances that existed at the beginning of the century are relevant and appropriate today as guides for administering the act.

We also recommend that the Congress review Labor's guidelines for causal relationships--in particular, for diseases. To better understand their meaning and effect, we recommend that the Congress enact legislation directing the Secretary of Labor to report the results of the guidelines' application and document his report by specific reference to cases.

AGENCY COMMENTS

HEW, in response on May 5, 1979, to our draft report, stated that it had no comments on our findings and recommendations. (See app. IV.) Labor, in its response of May 16, 1979, (see app. III) stated that it agrees with the basic concept underlying our recommendations; and it indeed has, over the past 2 years, given high priority to developing guidelines similar to those we recommend.

Labor stated that its efforts were thoroughly discussed with us, and was disappointed that our draft made no mention of Labor's progress to date in developing guidelines and offered no constructive suggestions on how this effort might be improved. Labor cited the following actions it has planned or taken over the past 2 years.

Guidelines

Two years ago OWCP convened a series of panels of medical specialists, to develop the guidelines for development of medical evidence and determination of the work relatedness of four medical conditions which account for a significant portion of claims: ischemic 1/ heart disease, pulmonary, low back conditions, and psychiatric conditions. Guidelines, based on the findings of these medical panels and supplemented with searches of medical literature, are now being field tested for asbestosis (under the pulmonary guidelines). Labor stated that it is concurrently developing new procedures and forms to operate the other guidelines which OWCP plans to begin pilot testing in one office sometime this fall, to determine their efficacy before proceeding to national implementation. Labor is also considering regulatory procedures appropriate to these guidelines.

In the development of these guidelines, Labor stated that it has worked closely with the Social Security Administration. The Social Security Administration has provided advice and has reviewed OWCP's guidelines and implementation plans. OWCP has also worked with top officials of the National Institute for Occupational Safety and Health and has consulted with Labor's Occupational Safety and Health

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1/Localized tissue anemia due to obstruction of the inflow of arterial blood.

Administration in developing an implementation approach. In addition, a half dozen prominent medical doctors serve as consultants on this project.

The Employment Standards Administration is soliciting proposals for a comprehensive study to determine the diagnostic and exposure standards which will lead to the most equitable compensation of Federal employees for hearing loss. Contract awards are expected this summer. Currently, Ohio State University is examining whether adjustments should be made in the hearing loss benefit formula under the act for presbycusis (normal reduction of hearing because of aging), tinnitus (ringing in the ears), or recruitment (abnormal growth of loudness). Since hearing loss claims currently represent the largest group of occupational disease claims under the act, this research has received a high priority.

Labor stated, that in conjunction with the National Institute for Occupational Safety and Health and a number of private researchers, it expects to complete by September 1979 an exhaustive study of the occupational disease and workers' compensation problems in the United States. This research, authorized by the Black Lung Benefits Reform Act of 1977, emphasizes respiratory diseases. The findings are expected to indicate the extent and severity of occupational respiratory and pulmonary diseases in this country, the causes, symptoms, and medical characteristics of occupationally-related respiratory diseases, the adequacy of compensation for respiratory diseases which stem from hazards in the workplace, and the adequacy of current Federal programs for preventing occupational respiratory disease. Labor expects that these findings will be of use in determining whether other occupational disease standards should be designed and, if so, how.

Research

Labor stated that OWCP is presently studying the feasibility of convening a second set of medical panels to develop specific guidelines for cases of aggravation, primarily focusing--at least at first--upon cardiac and orthopedic conditions.

Labor stated that its exhaustive study of the occupational disease and workers' compensation problems, particularly the respiratory and pulmonary diseases described above, will address the feasibility of establishing alternate systems for all occupationally related pulmonary and respiratory diseases. The study should produce an estimate of the

incidence of occupationally induced respiratory diseases, including asbestos-related diseases. Labor will also develop current information on how the individual States and some foreign countries are handling occupational diseases under workers' compensation. In addition, analyses are being undertaken of (a) compensation laws regarding the removal of workers from workplace exposure and income protection for such workers and (b) data on negligence litigation relating to toxic substances.

Labor's interim procedures to cover aggravation and occupational diseases will be developed in accordance with the guidelines discussed above.

Evaluation

Labor stated that it has given a high priority to developing an evaluation process for all workers' compensation programs. An automatic data processing system is being installed and data bases are being established to provide an efficient capacity to collect and to retrieve information on the number of claims by type and disease, and other critical information needed for evaluation.

Labor stated that accomplishment of the second part of our recommendation, on the evaluation of the potential effects of the magnitude of the occupational health problem on the workers' compensation system, in part depends on the development of an automated data base. The task is also very large, requiring the combined efforts of many organizations, including the National Center of Health Statistics, the National Institute of Safety and Health, the National Cancer Institute, and a number of other public and private health organizations. Labor is now exploring the opportunities for this kind of undertaking and the extent to which its resources would permit a study of this magnitude.

OUR EVALUATION

We acknowledge that Labor is taking actions that should result in major improvements in the program's administration. However, we believe that Labor has failed to approach these efforts with the sense of urgency they demand, and improvements have not been implemented in a timely manner. The following actions by Labor on two previous reports by us illustrate this lack of timeliness in implementing improvements.

Commenting on a prior report, 1/ Labor informed us in July 1978 that, to address the problems presented by the increased number of claims involving occupational diseases, OWCP was developing expertise on the unique characteristics and symptoms of certain illnesses (such as hearing loss). In addition, in the summer of 1977 OWCP established panels (of medical specialists in orthopedic, cardiac, pulmonary, and psychiatric medicine) that reviewed current OWCP medical standards and impairments to employment factors. A report issued in December 1977 with their recommendations was being integrated into a new OWCP medical procedure manual which OWCP stated was to be issued shortly. As of May 24, 1979--about 1-1/2 years after the issuance of its report--OWCP had not issued its new medical procedure manual.

In another prior report, 2/ we recommended that, in view of the lack of scientific justification for Labor's modifications of the hearing impairment formula developed by the American Academy of Ophthalmology and Otolaryngology and the resulting substantial increase in costs to the Federal Government, OWCP immediately adopt the Academy's formula. In commenting on this report on April 10, 1978, Labor stated that the Academy was in the process of revising its formula, and Labor was to shortly open bidding on an extensive hearing impairment research project. Labor believed that the wise course of action would be to await the results of Labor's planned research project and the Academy's actions before considering changes to the formula.

The Academy has since revised its formula and, as of May 31, 1979, Labor had still not awarded a contract to scientifically study the hearing impairment formula.

We believe that Labor should give higher priority to its research and studies of occupational diseases and establish goals for the timely implementation of procedures resulting from its research and studies.

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

2/"To Provide Proper Compensation for Hearing Impairments, the Labor Department Should Change Its Criteria" (HRD-78-67, June 1, 1978).

The main point of this report, however, is the seemingly open-ended concept of what constitutes a compensable injury and the implications of that open-endedness for current and future costs. Lack of adequate guidelines are helping to extend coverage under the concept, but we believe a more fundamental cause of program growth is Labor's interpretation of the provisions and intent of the act. Labor's policy of liberal interpretation generally has resulted in continued expansion of the act's coverage. The central issue in this report is not whether Labor has made progress in revising its administrative practices, but whether liberal interpretation of the act and liberal application of its provisions have resulted in the type of compensation program the Congress actually wants.

Labor did not comment on our recommendations to the Congress.

THE FEDERAL EMPLOYEES' COMPENSATION PROGRAM: BENEFITS, ORGANIZATION, PROCEDURES, AND FUNDING

Benefits under the act include compensation for losses of wages, dollar awards for bodily impairment or disfigurement, medical care for an injury or disease, rehabilitation services, and compensation to survivors. An employee suffering an injury or death in the performance of duty is entitled to compensation unless the injury or death was

--caused by the willful misconduct of the employee,

--caused by the employee's intention to bring about the injury or death of himself or of another, or

--proximately caused by the intoxication of the injured employee.

The act defines "injury" to include, "* * * in addition to injury by accident, a disease proximately caused by the employment * * *." It defines the term "compensation" to include both the money allowances payable to an employee or his dependents and other benefits provided by the act. The act provides two kinds of money allowances:

--Payments for specified periods of time (called scheduled awards) for loss, or loss of use, of a member or a function of the body (for example, loss of an arm or loss of hearing).

--Monthly payments for wage losses for as long as the disability continues.

The basic money allowance is 66-2/3 percent of the employee's monthly pay in cases of total disability and 66-2/3 percent of the difference between the employee's monthly pay and wage-earning capacity, as determined by the Secretary of Labor, in cases of partial disability. The allowance increases to 75 percent for injured employees with one or more dependents. If the employee dies as a result of work-related injuries, compensation is payable to the spouse, children, and certain dependents. The maximum amount payable is about $2,969 each month (75 percent of the maximum pay for a Federal employee at the GS-15 level); the minimum is either the employee's actual pay or about $464 each month (75 percent of the minimum pay for a Federal employee at the GS-2 level), whichever is less.

Noncash benefits under the act include providing, or paying for, medical services and medical appliances and supplies (including necessary and reasonable transportation and other expenses incident to obtaining such services, appliances, and supplies) and vocational rehabilitation services.

An employee who has incurred a work-related traumatic injury may request continuation of his/her regular pay for up to 45 days by the employing agency. Money allowances for compensation cannot be paid to an injured employee during any period for which the employee receives continuation of pay. Money allowances are not payable for the first 3 days of temporary disability unless the period of disability exceeds 14 days or the temporary disability is followed by permanent disability.

About 3 million Federal employees and certain non-Federal employees (such as law enforcement officers) injured in connection with Federal crimes are eligible for receiving benefits under the act for a work-related injury. In general, the act covers all civil officers and Federal employees. To obtain benefits an employee must report any injury sustained on the job to the employing agency and to the Department of Labor. Labor is responsible for adjudicating the claim and for paying any benefits due.

ORGANIZATIONAL RESPONSIBILITIES

The Secretary of Labor has delegated the responsibility for administering the act to the Office of Workers' Compensation Programs (OWCP) in Labor's Employment Standards Administration. Within OWCP, a headquarters Division of Federal Employees' Compensation (which develops policies and procedures) and 15 district offices administer the program. Generally, the district offices adjudicate and service claims. However, the Branch of Special Claims in the division is responsible for examining, developing, and adjudicating unusually complex or confidential claims, regardless of where the injury occurred. In 1976 a special Hearing Loss Task Force was established in the national office to help adjudicate the backlog of hearing loss claims filed before January 1976.

Appeals process

The U.S. Employees' Compensation Commission administered the act prior to 1946. Its actions were final, so that an injured employee receiving an adverse decision had no legal means for obtaining an independent review of his/her case.

This Commission was abolished in 1946, and the administration of the act was given to the Bureau of Employees' Compensation. 1/ With this change, a formal appellate procedure became available, under which the Bureau's decisions could be reviewed by the quasi-judicial Employees' Compensation Appeals Board, which is composed of three members appointed by the Secretary of Labor. The Board has the authority to hear and make final decisions on appeals from OWCP determinations and awards.

The act provides that allowing or denying a payment under the act by the Secretary of Labor or his designee is final and conclusive for all purposes and with respect to all questions of law and fact, and is not subject to review by another U.S. official or by a court. Since 1946 all Secretaries of Labor have taken the position, based on interpretation of the legislative history, that this provision applies to the Board's decisions. As a result, the Board's decisions on all questions of law and fact are final and conclusive, and they are binding on all parties. Board decisions represent citable precedents for adjudicating subsequent claims.

The Congress amended the act in 1966 to add an informal hearings process for employees dissatisfied with OWCP decisions. The Branch of Hearings and Review in the Division of Federal Employees' Compensation holds such hearings when an employee dissatisfied with the findings of a district office, the Branch of Special Claims, or the Hearing Loss Task Force requests them. The Branch of Hearings and Review also issues compensation orders sustaining, modifying, reversing, or remanding the decisions of the district offices. Decisions of the Branch are binding on the district offices; the district offices generally treat them as precedents for adjudicating later claims.

PROCEDURES FOR ADJUDICATING AND SERVICING CLAIMS

To obtain benefits under the act, an employee generally must submit to the appropriate OWCP district office (1) a statement concerning the nature and extent of the injury and the employment circumstances that resulted in it, (2) a statement from his/her immediate supervisor concerning the employee's injury, duties, responsibilities, and working conditions, and (3) a statement from his/her attending physician concerning the nature and extent of the injury and the prognosis for recovery.

1/Now OWCP.

A claims examiner in the OWCP district office examines and develops the claim and decides whether the claimant is entitled to benefits. The claims examiner is authorized to obtain any additional information considered necessary for proper disposition of the claim, whether from the claimant, witnesses, the employing agency, the attending physician, or a consulting physician(s) of the claims examiner's choice. Each OWCP district office has a district medical director who is a physician, and the claims examiner may seek his advice on the medical aspects of an employee's injury and the work relatedness of such injury; but the final decision on the claimant's entitlement to benefits is the claims examiner's responsibility.

Claims examiners are also to monitor the condition and status of injured employees who are awarded money allowances for wage losses. Their monitoring activities include obtaining medical reports on the employee's condition, referring injured employees for appropriate vocational rehabilitation services, initiating wage-earning capacity determinations when medical reports indicate that the employee has regained the capacity for some work, and decreasing or terminating the awards as appropriate.

PROGRAM FUNDING

Benefits awarded under the act are paid from the Employees' Compensation Fund, which is maintained by Labor and consists of money that the Congress has appropriated for or has transferred to it.

After each fiscal year Labor is required to furnish to each Government agency a statement of the total cost of benefits paid from the Fund during the fiscal year for the injury or death of that agency's employees. The agency must then request in its budget for the next fiscal year an appropriation equal to the reported costs and, after receiving the requested appropriation, transfer that amount to the Fund. Agencies not dependent on an annual congressional appropriation (the Postal Service, for instance) must transfer the requested amount from funds under their control.

The act also provides that, in addition to the cost of benefits paid, 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. Administrative costs reimbursed to Labor are deposited in the Treasury as miscellaneous receipts. The act also authorizes Labor to receive annual appropriations from the Congress to cover the expenses of administering the act.

ORIGIN AND GROWTH OF WORKERS' COMPENSATION

The Federal Employees' Compensation Act, like similar laws for the 50 States, seeks to

--provide certain, prompt, and reasonable income and medical benefits to injured workers or income benefits to their survivors;

--provide a single remedy for recovering losses due to work-related injuries;

--relieve charitable institutions of financial drains;

--eliminate paying fees to lawyers and witnesses as well as time-consuming trials and appeals;

--encourage safety and worker rehabilitation; and

--promote studying the causes and preventions of accidents.

The rationale for these objectives becomes clearer with some understanding of the history, theory, and growth of U.S. workers' compensation law.

RECOGNITION OF THE NEED FOR WORKERS' COMPENSATION PROGRAMS

Workers' compensation law originated from efforts to replace the common law and employers' liability statutes, neither of which adequately protected employees; it was based on an entirely new economic and legal principle. That principle--liability without fault--allocates to the employer the costs of personal injuries incurred on the job, not because the employer is responsible for every injury, but because industrial accidents are one inevitable hazard of modern industry.

The theory behind the principle holds that industry should bear the cost of caring for and rehabilitating workers injured on the job, just as it bears the cost of replacing worn-out or broken machinery during the production processes. Ultimately, this is passed on to the consumer of industry's products, thereby equitably distributing the burden of providing for injured workers. The law also provided social justice for injured workers, whose rights to compensation had been too long and too easily defeated by pro-employer defenses implicit in common law practices and employers' liability statutes.

The United States was the last great industrial nation to recognize that society has an interest in work-related injuries. Germany had evolved workers' compensation legislation in 1884, and by 1911 the other principal European countries had also adopted workers' compensation. The definition of work-related injury developed by England at this time--"personal injury by accident arising out of and in the course of employment"--has remained the basis for determining compensable injuries to the present day.

In the first years of the 20th century the United States began to recognize that the old common law system of employers' liability failed dismally to protect the injured worker. From 1902 onward, both State and Federal legislators called for laws similar to those Europe had already enacted. Their reason was that the mechanization of this country had made injuries inevitable; that industry, not charity or savings, should pay for industrial injuries; and that simple justice required the abolition of the old common law defenses for industrial injuries.

THE INADEQUACY OF COMMON LAW PROTECTION

Before workers' compensation legislation, an employee had to bring a case to court and win it in order to obtain indemnity for industrial injury and wage loss. However, odds were heavily against the success of such suits, and many workers could not afford so costly a venture. Even if successful, the award was often inadequate for meeting the injured workers' needs. Walter F. Dodd, in his book, "Administration of Workmen's Compensation," (1936) estimated that 80 percent of the cases were lost or uncompensated and that, in the 20 percent that were successful, lawyers' fees, doctors' bills, and other expenses often used a substantial portion of the award.

Nineteenth century legal theory regarding employer liability derived from the common law of negligence or tort liability. Implicit in common law was the assumption that someone was always at fault in occupational injuries, and he/she should bear the costs. The courts were to ascertain who had been at fault. Only if the employer was responsible for the accident could he be held liable for the payment of damages to the injured worker.

The burden of proof for establishing the employer's negligence fell upon the worker, but facts were often difficult to obtain or demonstrate. Fellow workers were reluctant to testify against an employer for fear of losing their jobs.

On the other hand, the employer had only to defend himself successfully against the allegation of negligence and had several defenses available: (1) contributory negligence--the worker could not recover if he/she had been negligent in any degree, regardless of the extent of the employer's negligence, (2) the fellow-servant doctrine--the employee could not recover if it could be shown that the injury had resulted from the negligence of a fellow worker, and (3) the assumption of risk--the injured worker could not recover if the injury was due to an inherent job hazard of which he/she had, or should have had, advance knowledge.

ABANDONMENT OF THE COMMON LAW SYSTEM

By the latter part of the 19th century, public concern had heightened over the high rate of serious injury in industry, the social effect of uncompensated losses on injured workers and their families, and the delays and unfairness often involved in private litigation. Many industrial towns were supporting large numbers of maimed workers and their families as public charges; as a kind of retribution, juries periodically reacted by awarding large damage awards. By 1908, most States had some sort of law qualifying one or another of the common law defenses, but nearly all were severely limited in their application. Generally, they aimed at the removal of the fellow-servant doctrine and were confined to railroad workers and a few other unusually hazardous occupations (such as mining). Disappointment with employers' liability legislation culminated in the widespread establishment of State and Federal investigatory commissions to study the alternatives to common law and the employers' liability.

These commissions--some 40 in 36 jurisdictions during the period 1909-1913--found employers' liability statutes at variance with society's thinking and inconsistent with the realities of an industrial society. Their findings, which resulted in an almost unanimous recommendation for workers' compensation, included:

--The three common law defenses were antiquated--based on pre-industrial revolution conditions no longer applicable in modern industrial society. Accidents were no longer necessarily due to anyone's negligence but often due to the conditions characterizing modern industry--its complexity, mechanization, speed, and use of toxic materials.

--Even after enacting employers' liability statutes, most injured employees received little or no compensation. Wage earners individually bore at least nine-tenths of the cost of work-related injuries, and only one-fourth of the meager sums paid out by employers in damages and liability premiums reached the victims of industrial accidents.

--Neither settlements nor awards followed consistent standards or patterns; most were slight, but some were excessive, as measured by either the wage loss or the needs of the injured worker.

--Unconscionable delays occurred in settling cases; in Ohio and Illinois, for example, it often took as long as 3 years to settle cases. Settlements sometimes required as long as 6 years in New York.

--Little incentive existed to take accident prevention measures. Premiums for employers' liability insurance were low because they were related to the amount of damages employers had to pay.

--Injured workers who received inadequate or no compensation frequently became burdens on public or private relief agencies or on other individuals. Charity cases had a widespread demoralizing effect on the worker, his or her family, and on the community in general.

GROWTH OF WORKERS' COMPENSATION PROGRAMS

The Federal Government gave workers' compensation a major impetus when the Congress enacted the first effective compensation law in 1908. Although limited in application (covering less than 100,000 of the Federal Government's approximately 400,000 civilian employees) and rough in construction, this act gave Federal leadership and prestige to the movement and stimulated more active interest in many States.

However, workers' compensation did not find easy acceptance. Insurance companies and carriers, employers, and even labor unions, for a short while, opposed its adoption. The courts, however, presented the most formidable obstacle to passing compensation laws--on grounds of constitutionality. Maryland had passed the first compensation law in 1902, but it was declared unconstitutional (Franklin v. United Railways and Electric Co. of Baltimore, 2 Baltimore City Rep. 309 (1904)) on the grounds that it ignored the constitutional

guarantees of (1) the right to trial by jury and (2) the right of each citizen to legal recourse for injury to his person or property. The courts found New York's 1910 compensation law unconstitutional as well (Ives v. South Buffalo Railway Co., 201 New York 271 (1911)). But despite legal setbacks, 30 States enacted compensation laws by 1915.

The shadow of unconstitutionality hung over the movement until 1917, when in three separate decisions the U.S. Supreme Court affirmed the constitutionality of three prevailing types of laws: (1) New York's 1913 compulsory law (N.Y. Central Railroad Co. v. White, 243 U.S. 188 (1917)), (2) Iowa's elective law (Hawkins v. Bleakley, 243 U.S. 210 (1917)), and (3) the Washington law, which included an exclusive State insurance fund (Mountain Timber Co. v. Washington, 243 U.S. 219 (1917)). Although in all three cases the due-process and equal-protection clauses of the 14th Amendment had been invoked against the laws, the Supreme Court cited the States' police power in upholding the constitutionality of the legislation.

The Supreme Court decisions in effect completely vindicated the principle of liability without fault. Within 2 years after the decisions, nine more jurisdictions passed workers' compensation laws; by 1920, all but six States had such legislation. Today, each of the 50 States has a workers' compensation law. Employees in nationwide maritime work are protected by the U.S. Longshoremen's and Harbor Workers' Compensation Act. This act also applies to private employees in the District of Columbia due to incorporation of its provisions in the District of Columbia Workmen's Compensation Act.

WORKERS' COMPENSATION HAS RECEIVED RECENT EMPHASIS

Under the Occupational Safety and Health Act of 1970, the Congress established the National Commission on State Workmen's Compensation Laws to "undertake a comprehensive study and evaluation of State workmens' compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation." This Commission issued its report to the Congress on July 31, 1972. It concluded that the States' laws were not living up to their potential and made 84 recommendations, 19 of which were considered essential for improving State laws. Many of the 84 recommendations were also applicable to the Federal workers' compensation program, and the Congress responded by amending the Federal Employees' Compensation Act in 1974. The recommendations included:

--That a period of no more than 14 days be required to qualify for retroactive benefits for days lost.

--That the minimum weekly benefit for death cases be at least 50 percent of the State's average weekly wage.

--That the worker be permitted the initial selection of his physician.

--That the time limit for initiating a claim be 3 years after the date the claimant knows or, by exercise of reasonable diligence should have known, of the existence of the impairment and its possible relationship to his employment.

In 1974 the President established an interdepartmental policy group to review the National Commission's 19 essential recommendations. The policy group supported these recommendations in its "white paper" and further recommended formation of a task force to provide technical assistance to States seeking ways to improve workers' compensation. In January 1977 the policy group reported to the President and the Congress its conclusion that:

> "A sharp reordering of priorities and a new mode of operation will be necessary if workers' compensation is to achieve its traditional goals. Without such changes in emphasis, workers' compensation is in danger of becoming more expensive, less equitable, and less effective."

The Congress has responded to these studies and recommendations by introducing bills to establish minimum Federal standards--most recently, the National Workers' Compensation Standards Act of 1979 (Feb. 9, 1979, S. 420, 96th Cong., 1st Sess. (1979)). This bill, if enacted, would create a series of Federal minimum standards for the States' workers' compensation programs. These standards follow closely the 19 essential recommendations of the 1972 National Commission on State Workmen's Compensation Laws.

APPENDIX III

U. S. Department of Labor

Inspector General
Washington, D C 20210

MAY 16 1979

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

Dear Mr. Ahart:

This is to respond to the GAO draft report entitled "Workers' Compensation For Federal Employees: It's Time To Rethink The Rules". The report is "...to air some of the problems surrounding the (compensation) determinations and to stimulate interest in rethinking the rules that govern compensability determinations." There are three recommendations to the Secretary of Labor.

The Department agrees with the basic concept underlying each of the three sets of recommendations. Indeed the Department has, over the past two years, given high priority to developing guidelines similar to those recommended by GAO. Inasmuch as these efforts were thoroughly discussed with GAO auditors, we are disappointed that the draft report makes no mention of the Department's progress to date in developing guidelines and offers no constructive suggestions on how this effort might be improved.

The efforts which the Department has made in developing medical guidelines follow in the response to GAO's recommendations.

Recommendation #1

The draft report recommends "that the Secretary of Labor establish guidelines that have at least minimal factual and medical standards for developing and evaluating evidence and for deciding whether an injury is compensable under the Act. With respect to diseases suspected of being employment-related the Secretary should consult with the Secretary of Health,

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Education, and Welfare and such other organizations of employers and employees as are appropriate. Once guidelines are established they should appear in the Federal Register for comment and evaluation by interested groups and, after evaluation of these comments, should become the basis for entitlement to the Act's benefits."

Response:

Development of factual and medical standards for injuries and all potentially compensable occupational diseases is a major undertaking requiring substantial time and resources. While considerable research exists both in and outside of government on the etiology of diseases, there is no comprehensive set of guidelines covering the work-relatedness of diseases which can readily be adopted to FECA. Notwithstanding these problems, the Department began the development of guidelines some time ago. Three efforts are currently underway.

First, two years ago the Office of Workers' Compensation Programs (OWCP) convened a series of panels of medical specialists, to develop the guidelines for development of medical evidence and determination of the work-relatedness of four medical conditions which account for a significant portion of claims: ischemic heart disease, pulmonary, low back conditions, and psychiatric conditions. Guidelines, based on the findings of these medical panels and supplemented with searches of medical literature, are now being field tested for asbestosis (under the pulmonary guidelines). Concurrently, we are developing new procedures and forms to operationalize the other guidelines which OWCP plans to begin pilot testing in one office sometime this fall, to determine their efficacy before proceeding to national implementation. We are also considering regulatory procedures appropriate to these guidelines.

In the development of these guidelines the Department has worked closely with the Social Security Administration of the Department of Health, Education, and Welfare. The Social Security Administration has provided advice and has reviewed OWCP's guidelines and implementation plans. OWCP has also worked with top officials of the National Institute for Occupational Safety and Health (NIOSH) and has consulted with the Department's Occupational Safety and Health Administration in developing an implementation approach. In addition, a half dozen prominent medical doctors serve as consultants on this project.

Second, the Employment Standards Administration is soliciting proposals for a comprehensive study to determine the diagnostic and exposure standards which will lead to the most equitable compensation of Federal employees for hearing loss. Awards of contracts are expected this summer. Currently, Ohio State University is examining whether adjustments should be made in the FECA hearing loss benefit formula for presbycusis (normal reduction of hearing because of aging), tinnitus (ringing in the ears), or recruitment (abnormal growth of loudness). Since hearing loss claims currently represent the largest group of FECA occupational disease claims, this research has received a high priority.

Third, the Department, in conjunction with NIOSH and a number of private researchers, expects to complete by September of this year an exhaustive study of the occupational disease and workers' compensation problems in the United States. This research, authorized by the Black Lung Benefits Reform Act of 1977, emphasizes respiratory diseases. The findings are expected to indicate the extent and severity of occupational respiratory and pulmonary diseases in this country, the causes, symptoms, and medical characteristics of occupational-related respiratory diseases, the adequacy of compensation for respiratory diseases which stem from hazards in the workplace, and the adequacy of current Federal programs for preventing occupational respiratory disease. The Department expects that these findings will be of use in determining whether other occupational disease standards should be designed, and, if so, how.

Recommendation #2

GAO recommends "that the Secretary of Labor initiate research into whether specific guidelines can be established for cases of aggravation or whether an alternative system for occupational diseases might be a possibility. During the meantime, to help insure that Labor consistently and equitably handles cases involving aggravation and occupational disease, we recommend that the Secretary of Labor codify specific instructions as to approved policy, procedure, and practice for determining causal relation."

Response:

OWCP is presently studying the feasibility of convening a second set of medical panels to develop specific guidelines for cases of aggravation, primarily focusing - at least at first - upon cardiac and orthopedic conditions.

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The Department's exhaustive study of the occupational disease and workers' compensation problems, particularly respiratory and pulmonary diseases, described in response to Recommendation #1, above, will address the feasibility of establishing alternate systems for all occupationally-related pulmonary and respiratory diseases. It is intended that the study will produce an estimate of the incidence of occupationally induced respiratory diseases, including asbestos-related diseases. The Department will also develop current information on how the individual States and some foreign countries are handling occupational diseases under workers' compensation. In addition, analyses are being undertaken of (a) compensation laws regarding the removal of workers from workplace exposure and income protection for such workers; and (b) data on negligence litigation relating to toxic substances.

The Department's interim procedures to cover aggravation and occupational diseases will be developed in accordance with the guidelines discussed in connection with Recommendation #1, above.

Recommendation #3

GAO recommends "that the Secretary of Labor evaluate the Federal workers' compensation system (1) with respect to number of claims, types of diseases, related cost, other pertinent information; and (2) potential effects of the magnitude of the occupational health problem on the system."

Response:

The Department has given a high priority to developing an evaluation process for all workers' compensation programs. An automatic data processing system is being installed and data bases are being established to provide an efficient capacity to collect and to retrieve information on numbers of claims by type and disease, and other critical information needed for evaluation purposes.

Accomplishment of the second part of the recommendation, on evaluation of the potential effects of the magnitude of the occupational health problem on the system, is in part dependent upon development of an automated data base. The task is also a very large one, requiring the combined efforts of many organizations, including the National Center of Health Statistics, and National Institute of Safety and

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Health, the National Cancer Institute, and a number of other public and private health organizations. The Department is now exploring the opportunities for this kind of undertaking and the extent to which its resources would permit a study of this magnitude.

Sincerely,

Marjorie Fine Knowles

MARJORIE FINE KNOWLES
Inspector General

APPENDIX IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

MAY 5 1979

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

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Workers' Compensation for Federal Employees: It's Time To Rethink the Rules."

Responsible officials who reviewed the report advise that they have no comments on its findings and recommendations. We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Thomas D. Morris
Inspector General

(20158)

*U.S. GOVERNMENT PRINTING OFFICE: 1979 620-167/286 1-3

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