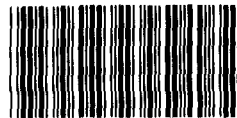


March 1990

# WORKERS' COMPENSATION

## The Impact of 1984 Amendments on the Longshore Program



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**Human Resources Division**

B-238155

March 8, 1990

The Honorable Austin J. Murphy  
Chairman, Subcommittee on  
Labor Standards  
Committee on Education and Labor  
House of Representatives

The Honorable George Miller  
House of Representatives

On December 23, 1988, you requested that we review the Longshore and Harbor Workers' Compensation Act Amendments of 1984 (P.L. 98-426). In particular, you asked us to determine whether the applicable amendments were effective in expediting or improving the processing of claims involving occupationally induced diseases.

The 1984 amendments increased the permanent membership of the Benefits Review Board (BRB) from three to five and authorized the Secretary of Labor to appoint up to four administrative law judges as temporary members. This expansion of BRB was designed to expedite case processing and to reduce the backlog in cases awaiting hearings or appeals at BRB. The amendments also: (1) extended the statute of limitations for filing occupational disease claims, (2) clarified what wage rates were to be used in computing benefits for retirees who are victims of occupational diseases, (3) changed the provisions concerning eligibility for survivor benefits, and (4) extended benefit coverage for retirees.

Overall, our work at three Labor district offices—San Francisco, Boston, and Jacksonville (Florida)—indicated that the amendments have not reduced average case processing time or the backlog of cases at BRB. Also, employers and claimants continue to dispute many other issues, such as the cause and extent of injuries and who is the liable employer when employees have worked for more than one employer. Employers routinely contest claims involving occupational diseases and seldom provide benefits voluntarily. In addition, at the offices we visited, the majority of claims filed since the 1984 amendments are still pending resolution. Labor officials told us that most of the cases were pending either because the attorneys representing the parties were still developing evidence or they were awaiting resolution from third parties, such as asbestos manufacturers.

We are providing additional information concerning the BRB operation in a separate report on the Black Lung Program. We decided to address the

BRB issues in another report because (1) BRB is responsible for adjudicating claims under both the Longshore Act and the Black Lung Benefits Act and (2) the major BRB work loads and backlog involve black lung claims.

This report summarizes the results of our work, on which we briefed your staff on November 2, 1989. It includes information on the

- claims filing and appeals process (pp. 10 to 11),
- extent of voluntary compensation and resolutions (pp. 12 to 14),
- benefits of the 1984 amendments (pp. 15 to 16),
- processing times on appeals (pp. 17 to 18), and
- recordkeeping practices at district offices (pp. 19 to 20).

We did not obtain written comments on this report from Labor. However, we did discuss its contents with agency officials and incorporated their views where appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to other interested congressional committees and the Secretary of Labor. We also will make copies available to others on request.

Please call me on (202) 275-1793 if you or your staff have any questions about this briefing report. Other major contributors to the report are listed in appendix I.



Franklin Frazier  
Director, Income Security Issues  
(Disability and Welfare)



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**Abbreviations**

ALJ	Administrative Law Judge
BRB	Benefits Review Board
DO	District Offices
GAO	General Accounting Office
OALJ	Office of the Administrative Law Judge

# Workers' Compensation: The Impact of 1984 Amendments on the Longshore Program

Figure 1

## GAO Study Objective

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- To Evaluate the Impact of 1984 Amendments on Occupational Disease Claims

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### Study Objective

In 1984, the Congress enacted legislation to reform the Longshore and Harbor Workers' Compensation Act, which was initially enacted in 1927. One of the purposes of the 1984 amendments was to improve the operation of the program and to better ensure coverage to victims of

occupational diseases.<sup>1</sup> The Chairman, Subcommittee on Labor Standards, Committee on Education and Labor, and Congressman George Miller asked us to review the effectiveness of the 1984 amendments in improving the processing of occupational disease claims.

The Secretary of Labor is responsible for administering the compensation program authorized by the Longshore and Harbor Workers' Compensation Act. The act provides compensation (for lost wages and medical expenses) to workers who are injured on the job or who have contracted an occupationally induced disease during the course of employment in the maritime industry.<sup>2</sup> It also provides survivor benefits to families of workers who died of work-related injuries or diseases.

Labor's Office of Workers' Compensation Programs administers the act through its Division of Longshore and Harbor Workers' Compensation. This division is headquartered in Washington, D.C., and has 13 district offices nationwide. The district offices' primary functions are to mediate claims and to monitor benefits provided by employers or their insurance carriers to ensure that injured employees receive required medical treatment and that employees, or their survivors, receive compensation due them under the act. Although not part of the Office of Workers' Compensation Programs, Labor's Office of the Administrative Law Judge (OALJ) and the Benefits Review Board (BRB) are authorized to hear cases that cannot be resolved at the district offices.

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<sup>1</sup>Victims of occupational diseases are workers who die or incur employment-connected disabilities as a result of exposure to hazardous conditions that arise naturally out of maritime employment, as opposed to a single injury or event. Some occupational diseases include: (1) communicable diseases, such as pulmonary tuberculosis and hepatitis; (2) asbestosis, silicosis, or carbon tetrachloride poisoning brought on by dust, smoke, and fumes in the work environment; and (3) other diseases from environmental conditions that are naturally incident to maritime employment involving stress or strain, or exposure to radiation, or acoustic trauma.

<sup>2</sup>The maritime employees generally include longshoremen and some other persons engaged in longshoring operations, and any harbor worker, such as a ship repairman, shipbuilder, and ship breaker.



Figure 2

## GAO Scope and Methodology

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- Visited San Francisco, Boston, & Jacksonville District Offices
- Interviewed Officials at OALJ and BRB
- Interviewed Union Officials, Claimants' and Employers' Attorneys
- Reviewed Case Files in San Francisco & Jacksonville

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### Scope and Methodology

- To obtain the necessary data, we
- visited Labor's district offices in San Francisco, Boston, and Jacksonville;<sup>3</sup>
  - interviewed officials at OALJ and BRB;

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<sup>3</sup>Congressman Miller's office specifically asked that we include the San Francisco office in our review. We selected the Jacksonville office for review because it has the largest number of occupational disease claims in the country. We also visited the Boston office to gain additional perspective on the claims process.

- interviewed (in person or by phone) attorneys from 13 law firms representing claimants and employers in California, Washington, Florida, Connecticut, Alabama, Mississippi, and Georgia;
- interviewed union officials in San Francisco and Jacksonville; and
- reviewed case files on all occupational disease claims<sup>4</sup> in the San Francisco office and a statistically representative sample of case files in the Jacksonville office. The cases we reviewed included active and closed ones.<sup>5</sup> Our review focused primarily on cases that had been resolved since the 1984 amendments.

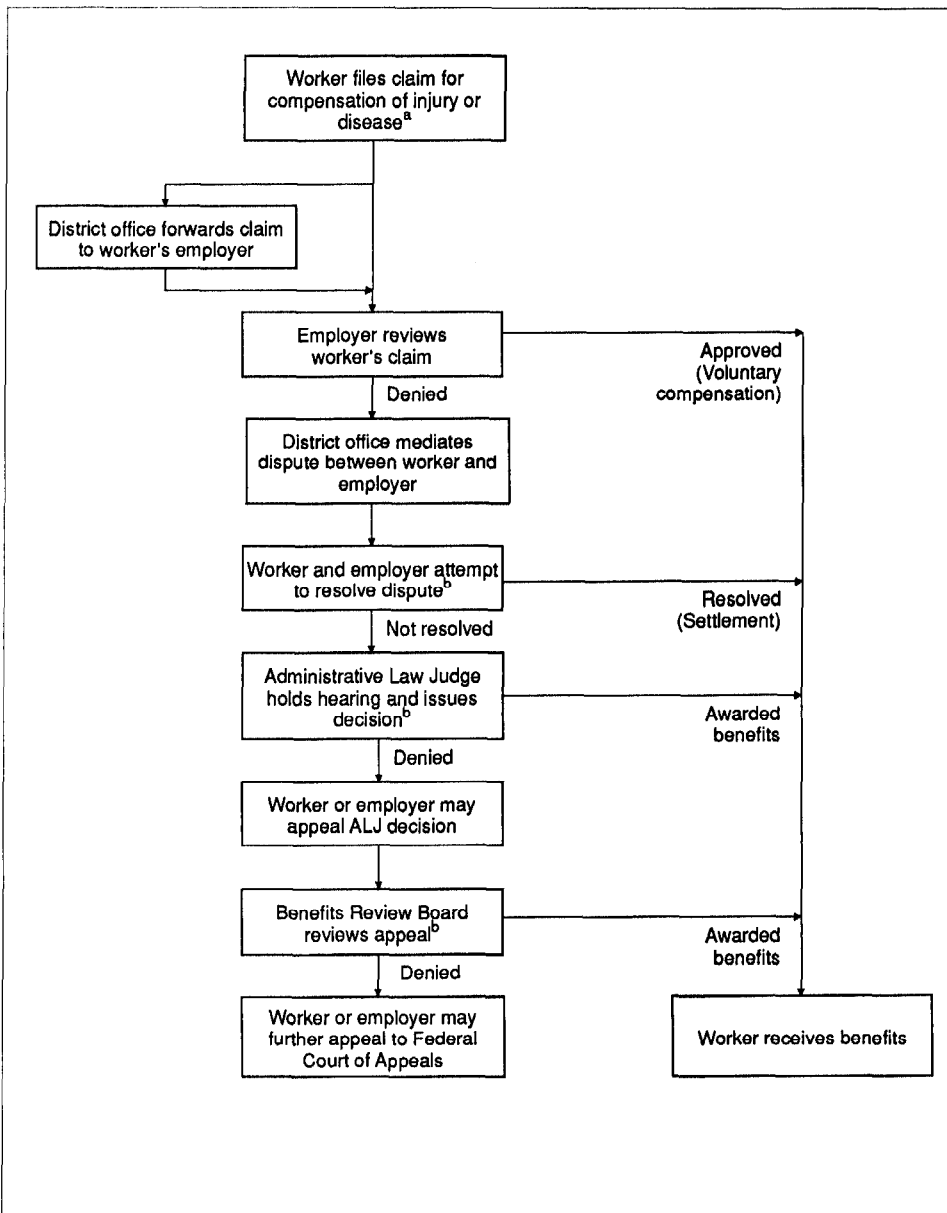
We performed our field work from April through October 1989. Our work was conducted in accordance with generally accepted government auditing standards.

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<sup>4</sup>As agreed with Congressman Miller's office, we excluded claims involving hearing loss from the scope of our review, as the issues surrounding them are very different from those of other occupational disease claims.

<sup>5</sup>Closed cases are usually held at the district offices for a minimum of 2 years from the date of closure and subsequently stored at a federal records center. Among the closed cases, we reviewed only those still being held at the district offices.

Figure 3: Claims Filing and Appeals  
Process



<sup>a</sup>If a job related injury or disease has caused the death of a worker, the worker's dependents may file a claim for survivors benefits.

<sup>b</sup>At any step in the process, a worker and an employer may agree to settle with the approval of the district office or ALJ.

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## Claims Filing and Appeals Process

A claim begins when an employee reports a work-related injury to his or her employer and presents a claim to a Labor district office. A surviving dependent of an employee can also file a claim for survivor's benefits when such an injury or disease causes death of the employee. If the employer does not contest the claim, it must pay for the medical treatment and/or provide compensation for lost wages. If the employer denies the claim, it must advise Labor of its reasons.

District offices (DOs) mediate claims disputed by employers or their insurance carriers. As the first step of the mediation, DOs generally hold an informal conference with the parties to ascertain the facts and to bring the parties into agreement on issues leading to the final resolution of the claim. If the parties do not agree, the claim is referred to OALJ for a formal hearing and decision. If still not satisfied, the parties can appeal successively to BRB and the federal court of appeals.

At any step of the process, the parties can decide to settle their disputes without a formal decision from OALJ or BRB. Unlike voluntary compensations, a negotiated settlement discharges the future liability of the employer or its insurance carrier and has to be approved by either DOs or OALJ. District officials told us that settlements often occur on occupational disease claims as a result of claimants recovering damages from a third party, such as an asbestos manufacturer.

Figure 4

## GAO Few Voluntary Compensations & Resolutions at DOs

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- Employers Routinely Contest Occupational Disease Claims
- Majority of Claims Filed Since 1984 Amendments Still Pending Resolution

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### Few Voluntary Compensations and Resolutions at District Offices

For occupational disease claims, employers seldom accept claims and provide benefits voluntarily; they routinely dispute issues such as the cause and extent of injuries and who is the liable employer (when employees have worked for more than one employer). In addition, at the office we reviewed, the majority of claims filed since the 1984 amendments are still pending resolution.

We reviewed all occupational disease case files (except hearing loss cases) that were maintained by the San Francisco district office as of

April 30, 1989. We identified 728 cases that either were pending resolution or had been resolved since the 1984 amendments became effective on September 30, 1984. Over 90 percent of these were asbestos-related cases. District officials said that their total caseload since 1984 was somewhat greater than the 728 that we identified because some cases had been closed<sup>6</sup> and sent to the federal records center for storage. They did not know, however, how many there were.

At the Jacksonville district office, we reviewed a statistically representative sample of 203 cases to estimate the caseload. We estimate that as of July 13, 1989, a total of approximately 3,560 cases either were pending or had been resolved since the 1984 amendments became effective. Over 97 percent of these were asbestos-related claims. Similar to the San Francisco situation, these total caseloads are also understated because cases that were closed before July 1987 had been sent to the federal records center and could not be identified for our review.

Based on the cases we reviewed, in both the San Francisco and Jacksonville district offices, there have been few instances (only about 1 percent) where employers voluntarily provided compensation (that is, employers agreed to pay claims without contesting them). Employers routinely dispute occupational disease claims. The disputed claims are resolved through either negotiated settlements between the parties or adjudication by OALJ or BRB. Employers and claimants have been able to resolve their disputes only in about 14 percent of the cases in San Francisco and 11 percent of the cases in Jacksonville. Most of the resolutions were accomplished through settlements. Also, about 12 percent of the San Francisco cases and 1 percent of the Jacksonville cases were administratively closed as the result of claimants' inactivity or withdrawal. The remaining 73 percent of San Francisco cases and 86 percent of Jacksonville cases were pending resolution as of April 30, and July 13, 1989, respectively. (See table 1.)

<sup>6</sup>District offices closed cases when final payment had been made or final action had been taken. San Francisco district office officials said that cases that were closed before July 1986 had been sent to the federal records center.

**Workers' Compensation: The Impact of 1984  
Amendments on the Longshore Program**

**Table 1: Status of Occupational Disease  
Claims at San Francisco and  
Jacksonville District Offices Since 1984  
Amendments**

In percent		
<b>Status</b>	<b>San Francisco</b>	<b>Jacksonville<sup>a</sup></b>
Voluntary compensation	1	1
Administrative closures	12	1
Dismissal	0	1
Resolved	14 <sup>b</sup>	11 <sup>b</sup>
Pending	73 <sup>c</sup>	86 <sup>c</sup>
<b>Total</b>	<b>100</b>	<b>100</b>

<sup>a</sup>The percentage of cases in each category for the Jacksonville district office is estimated from a sample of cases selected for our review. The sampling errors for all categories except pending cases are within 1 percentage point or less. The sampling error for the pending cases is within 3 percentage points. These sampling errors were calculated at the 95-percent confidence level.

<sup>b</sup>About 75 percent of the San Francisco resolved cases and 90 percent of the Jacksonville cases were resolved through settlements between the parties without adjudications (by OALJ or BRB).

<sup>c</sup>About 92 percent of San Francisco pending cases and over 99 percent of Jacksonville pending cases were pending at the district office level.

At both offices, cases were pending because the parties had not fully developed the evidence or had not requested formal hearings. With the exception of one case, claimants were represented by attorneys on the cases that we reviewed. District officials told us that most of the cases were pending because the attorneys either were still developing evidence or were awaiting resolution from third parties (such as asbestos manufacturers).

Figure 5

## GAO 1984 Amendments Helpful in Some Areas

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- Statute of Limitations for Occupational Disease Claims
- Wage Determinations for Retirees
- Eligibility for Survivor Benefits
- Coverage for Voluntary Retirees

---

### 1984 Amendments Helpful in Some Areas

Most of the claimants' and employers' attorneys we interviewed agreed that the 1984 amendments have been beneficial. They said that the amendments were particularly beneficial in the following areas:

1. Statute of limitations: The amendments extended the required period for notifying employers of occupational injury or death from 30 days to 1 year, and extended the claims filing period from 1 to 2 years from the date the employee or claimant becomes aware of the relationship between the employment, the disease, and the death or disability. Claimants' attorneys said that the additional time is helpful because the



period between occupational injury and manifestation of the disease is often lengthy and claimants often need additional time to identify potentially liable employers.

2. Wage determination for retirees: Before the amendments, confusion existed over what wage rate to use in computing disability benefits for employees who filed occupational disease claims long after they retired. The amendments specified that the national average weekly wage applicable at the time of the injury<sup>7</sup> should be used for occupational disease claims if the injury occurs more than 1 year after the employee has retired. Claimants' and employers' attorneys stated that retirees' average weekly wages can now be established without disputes and litigation, and employers can better determine potential liabilities to aid in negotiating settlements.

3. Eligibility for survivor benefits: The amendments changed the provisions for survivors' benefits by requiring that the death of the employee must be attributable to a work-related injury or disease in order for survivors to be eligible for benefits. Before the amendments, survivors of employees who were receiving benefits at the time of the death were entitled to benefits regardless of the cause of death. Although fewer survivors now qualify for benefits as the result of the causal requirement, claimants' attorneys stated that this change was reasonable, fair, and consistent with other workers' compensation programs. We did not find this issue disputed in our review of adjudicated cases.

4. Coverage for retirees: Before the amendments, BRB decisions had ruled that employees who retired voluntarily, rather than as a result of occupational diseases, did not qualify for disability benefits because they did not suffer wage loss. The amendments, as interpreted, extended the coverage to voluntary retirees because retirees could incur medical and other expenses as the result of occupational diseases. During our case review, we did not find this issue being disputed.

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<sup>7</sup>For occupational disease claims, the act specified that the time of the injury is the date on which the claimant becomes aware of the relationship between the employment, the disease, and the death or disability.

Figure 6

## GAO Lengthy Processing Times on Appeals, Particularly at BRB

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- Complaints about Delays at ALJ and BRB
- No Timeliness Standards
- Average Processing Time Appears Lengthy, Particularly at BRB

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### Lengthy Processing Times on Appeals, Particularly at BRB

Claimants' attorneys said that ALJs and BRB take too long to resolve appeals. Our case reviews showed that the average processing time at the ALJ level (from the date that the cases were referred to the ALJs to the date of first ALJ decision) was about 12 months for San Francisco cases and 22 months for Jacksonville cases. The average processing time at BRB was about 34 months for San Francisco cases. We did not estimate the average processing time at BRB for Jacksonville because we only found three cases in our sample that had been adjudicated by BRB. The processing time for these cases ranged from 25 to 46 months. (See table 2.)

**Table 2: Average Processing Time at Each Adjudication Level—San Francisco and Jacksonville Cases Adjudicated Since 1984 Amendments**

Adjudication level	Average processing time	
	San Francisco	Jacksonville <sup>a</sup>
District office	30	21
ALJs	12	22
BRB	34	— <sup>b</sup>

<sup>a</sup>The average processing time for the Jacksonville district office is estimated from the processing time of the sample cases selected for our review. The sampling errors for our estimates of the average processing time are plus or minus 6 months at the district office level and plus or minus 4 months at the ALJ level. These sampling errors were computed at the 95-percent confidence level.

<sup>b</sup>In the Jacksonville district office we only found three cases in our sample that had been adjudicated by BRB. The processing time for those cases ranged from 25 to 46 months. Because of its small number, we did not estimate the average processing time at BRB.

For the San Francisco cases, we computed the average processing time based on 44 cases that had been adjudicated by ALJs and 12 cases adjudicated by BRB. For Jacksonville, we estimated the average processing time at the ALJ level based on the processing time of 16 sample cases that had been adjudicated by ALJs.

Although the act does not specify time standards for ALJ and BRB decisions, we believe that the processing times are too long, particularly at the BRB level. The delays in processing beyond the ALJ level, in most cases, do not adversely affect claimants. When an ALJ's decision is in favor of a claimant, the law generally requires that employers/carriers begin benefit payments regardless of whether they decide to further appeal the decision.<sup>8</sup> Some claimant attorneys said that BRB delays had been a problem to them because their fees and expenses were not paid until the case was finally decided.

As shown in table 2, we also computed the average processing time at the district office level. For San Francisco, of the 60 cases that were processed beyond the district office level, it took an average of about 30 months for a case to be developed and forwarded to OALJ. For Jacksonville, the average processing time at the district office was about 21 months. According to district officials, processing time at the district offices is determined largely by claimants and employers. The parties may delay processing their claims under the act due to actions pending in a third-party lawsuit.

<sup>8</sup>If an ALJ decides against a claimant and the decision is subsequently reversed by BRB, the delays in processing time at the BRB level could delay the claimant's receipt of benefits. During our case reviews, however, we found very few such occurrences.

Figure 7

## GAO Recordkeeping at District Offices Needs Improvement

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- Limited Case Mgmt. System
  - Unable to Keep Track of Status of Cases
  - Unable to Produce Data on Processing Times
  - Unable to Generate Statistical Data on Caseloads and Trends
- Reliability of Data Questionable
- Lack of Training of DO staff

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### Recordkeeping at District Offices Needs Improvement

District offices are supposed to use Labor's Longshore Automated Case Management System to manage and control their claims. While the system is capable of providing limited data on the status of claims (for example, active or closed), it is inadequate in some areas. For example, none of the district offices we visited could provide us data on

- the number of occupational disease cases at the district office, OALJ, BRB, or circuit court of appeals;
- the processing times for cases at any of these locations; or
- any statistical data on caseloads and trends.

In addition, the reliability of the data in the system is questionable. We found many discrepancies between the data in the case files and the automated records. As a result, we were unable to rely on the automated records and had to gather information from the case files. District officials acknowledged that they may not have entered all claims into the system or that some information may have been entered incorrectly. They said that they used claims examiners and temporary hires to perform data entry without verifying its accuracy.

Some district officials also said that they had not been adequately trained on how to use the system. According to them, when the system was installed and the records were automated in 1985, they did not receive any training. They had to learn the system on their own.

The San Francisco district office made more use of the system than the others we visited. The office was able to generate summary listings of caseloads and was using the system's word processing features to correspond with claimants, employers, and attorneys. The Boston and Jacksonville district offices, however, were unable to provide us summary listings without the help of headquarters staff. Jacksonville officials said they did not use the system to generate form letters because it required too many steps and was too time consuming.



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