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Report to Congressional Requesters

February 1994

FEDERAL EMPLOYEES' COMPENSATION ACT

No Evidence That Labor's Physician Selection Processes Biased Claims Decisions

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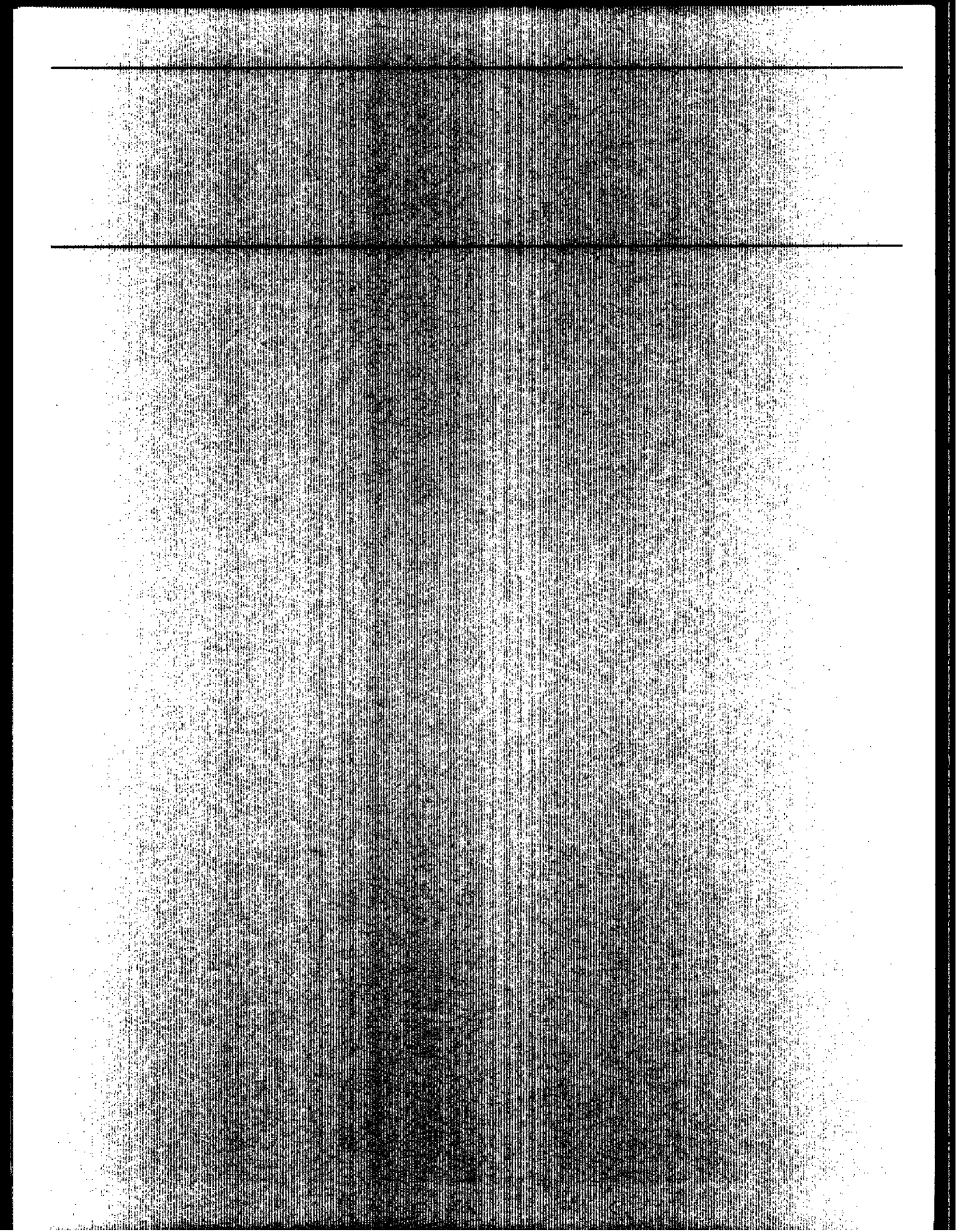

GAO

United States
General Accounting Office
Washington, D.C. 20548

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General Government Division

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February 11, 1994

The Honorable William D. Ford
Chairman, Committee on Education and Labor
House of Representatives

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

This report responds, in part, to your August 1991 request for a comprehensive review of the administration of the Federal Employees' Compensation Act by the Department of Labor's Office of Workers' Compensation Programs (OWCP). You asked that we focus our review primarily on issues related to the timeliness and objectivity of processing claims, OWCP's compliance with program regulations, and whether the Employees' Compensation Appeals Board conducts fair and objective reviews of OWCP decisions.

Following discussions with your offices, we agreed to focus our initial work on how OWCP obtains and uses medical evidence from doctors it selects to assist its claims examiners in adjudicating and managing claims under the act. Your offices had received allegations from claimants or their representatives that OWCP was not objective and "shopped" for physicians who would be willing to examine claimants and be predisposed against supporting their claims for workers' compensation benefits. We agreed with your offices that following issuance of this report, we would discuss additional work that may be needed to respond to your initial request.

Physicians selected by OWCP are called upon to conduct "second-opinion medical examinations" and "impartial medical—i.e., referee—examinations" (IME) to help OWCP determine (1) whether claimants have suffered work-related injuries and should receive benefits or (2) whether these benefits should be adjusted due to the claimants' vocational rehabilitation or their partial or complete medical improvement. As further agreed with your offices, we did not attempt to evaluate the medical conclusions reached in physicians' reports to OWCP. Instead, we focused on determining if OWCP obtained and used medical evidence supplied by these physicians in ways that minimized the possibility of bias against claimants.

We also agreed to provide information on (1) the timeliness of medical payments made to these physicians and to the physicians retained by claimants, (2) the amounts paid to second-opinion and IME physicians, and (3) OWCP's efforts to recruit additional physicians who would be willing to conduct second-opinion exams and IMEs.

For this review, we visited 5 of OWCP's 12 district offices[1] that processed federal workers' compensation claims, interviewed officials about their procedures and practices for selecting physicians that conducted second-opinion exams and IMEs, reviewed questionnaire responses from the 12 districts on their efforts to increase the number of physicians willing to conduct IME and second-opinion exams, and reviewed selected medical expense data from OWCP's bill payment system. We also reviewed samples of cases to determine whether OWCP followed its procedures for selecting IME physicians and whether, and if so, why, OWCP terminated compensation benefits following second-opinion exams. Our objectives, scope, and methodology are discussed in more detail in appendix I.

Results in Brief

We found no basis to conclude that OWCP was shopping for doctors who would be predisposed against claimants. For the offices we visited, most of the cases in which OWCP terminated benefits following second-opinion exams were terminated because of factors generally unrelated to conflicts in medical evidence. In addition, OWCP's Physician Directory System (PDS)[2] provided a reasonable level of certainty that IME physicians were selected in an unbiased manner.[3] PDS data for the districts we visited showed that about 1,000 physicians conducted 1,435 IMEs. Finally, nationwide bill payment data suggested that OWCP was not relying on a small group of hand-picked physicians to conduct second-opinion exams and IMEs but rather used about 6,700 physicians or group practices to conduct them.

In the 5 districts we visited, we reviewed 126 randomly selected cases. These cases were selected from a universe of 378 cases with a second-opinion exam but no IMEs in which claimants' compensation

[1]We visited the Seattle, Jacksonville, San Francisco, Philadelphia, and Washington, D.C. district offices. Other OWCP district offices that handle claims under the act are Chicago, Boston, Cleveland, Dallas, Denver, New York, and Kansas City, MO.

[2]PDS is an automated system developed and implemented by OWCP in 1990 and 1991 to assist its staff in the scheduling of IMEs and to ensure systematic rotation and impartial selection of physicians for IME cases.

[3]OWCP's district offices are not required to use PDS for selecting second-opinion physicians.

benefits were terminated in the period following their second-opinion exams:

- In 85 of these cases (67 percent), schedule award[4] benefits ended after OWCP made the last in a series of predetermined payments to the individuals receiving them.
- In 35 cases (28 percent), OWCP terminated benefits when, among other things, claimants died, elected retirement benefits in lieu of workers' compensation benefits, improved medically, or returned to work.
- In six cases (5 percent), the benefits were not increased or were terminated because OWCP's claims examiners—at least in part—gave more weight to second-opinion physicians' medical reports than to claimants' physicians' reports.

In most cases in which claims examiners accorded equal weight[5] to second-opinion physicians and claimants' physicians conflicting medical evidence, OWCP used PDS to sequentially select IME physicians.[6] For the 15-month period ending September 1992, OWCP used PDS to schedule 1,039 (89 percent) of the IMEs in the districts we reviewed. Districts did not use PDS to schedule all of the cases needing IMEs in part because of the unique characteristics of some cases or the dearth of physician specialists in selected geographic areas. However, none of the districts had established procedures to ensure impartial physician selection when PDS was not used.

Our analysis of PDS data also showed that OWCP did not repeatedly use the same physicians for IMEs in the districts we visited. Nearly 95 percent of the IME physicians did three or fewer exams from the time the districts implemented PDS to September 1992. Moreover, nationwide medical bill payment information showed that OWCP paid over 98 percent of the physicians or groups that conducted these IMEs and second-opinion exams less than $10,000 each during fiscal years 1991 and 1992 combined.

[4]A schedule award is an award of compensation payable for a set number of weeks for a permanent impairment to certain parts of the body. The length of the award is determined by a schedule provided for in 5 U.S.C. 8107, which specifies the parts of the body for which OWCP will pay these awards. For example, a claimant with the complete loss of hearing in one ear would be entitled to compensation for 52 weeks even though the claimant may return to work during that period.

[5]According to the OWCP procedures manual, medical evidence is of equal weight when the attending and second-opinion physicians have equal medical credentials, their reports are based on accurate medical and factual background information, and both opinions are well rationalized.

[6]PDS is based on information from the Directory of Medical Specialists, published by Marquis Who's Who. The Directory is a comprehensive listing of physicians certified by the 23 individual boards of the American Board of Medical Specialists. The Directory is arranged first by specialty, second by geographic location, and last in alphabetical order within each location. In November 1993, OWCP was updating its existing database of physicians.

While OWCP took longer to reimburse claimants' physicians than to reimburse physicians they selected to conduct IME and second-opinion exams, OWCP paid over 95 percent of these bills within the established standards of 60 days for claimants' physicians and 30 days for IME and second-opinion physicians.

In discussions with district officials and in responses to our questionnaire, most districts indicated that they had difficulty increasing the number of physicians in selected medical specialties to conduct second-opinion exams and/or IMEs. To address this problem, districts used such methods as (1) mailing form letters to physicians, (2) telephoning individual doctors or specialty groups, and (3) visiting physicians' offices to encourage additional physicians to participate in these exams.

Background

Between July 1991 and June 1992, OWCP paid about $1.7 billion in compensation, death benefits, and medical expenses on behalf of nearly 260,000 federal workers with job-related injuries or occupational diseases and approved over 88 percent of all workers' compensation cases either initially or upon appeal. About $5.3 million of the $424 million in medical payments during this period was for approximately 14,600 second-opinion exams and IMEs, according to OWCP medical bill payment information.

Upon receiving a claim for workers' compensation benefits, OWCP claims examiners are to determine if the claim meets the conditions for approval.[7] In most cases, the medical evidence submitted by the claimant's physician is sufficient for an OWCP claims examiner to adjudicate or subsequently manage the claim. For more complicated cases or for cases in which claimants apply for workers' compensation benefits for occupational diseases such as asbestosis and hearing loss, development of additional medical evidence is often needed to adjudicate or manage the claim. In these cases, OWCP's claims procedures allow claims examiners to have the case files reviewed either by physicians who work for OWCP or by physicians whom OWCP pays on a case-by-case basis. When the medical opinions of these physicians are the same as those of claimants' physicians, claims examiners can generally consider the medical evidence sufficiently developed to continue with claims processing.

If, however, questions about the medical evidence remain following case file reviews, examiners' options for clarifying this evidence include

[7]Conditions for approval include the timely filing of a claim, employee coverage under the act, occurrence of an injury or disease in the performance of duty, and disability or death caused by the injury.

requesting additional information from claimants' physicians or scheduling claimants for exams by second-opinion physicians. Second-opinion exams may also be conducted (1) when surgery is recommended for certain medical conditions and (2) to determine the extent to which an injured worker has lost the partial or complete use of a body part (e.g., an arm) or function (e.g., hearing).

OWCP has discretion in choosing qualified private physicians to conduct second-opinion exams. Claimants must submit to these exams as frequently and at such times and places as OWCP considers reasonably necessary. Two of the five districts, Seattle and Washington, D.C., used PDS to select almost all second-opinion physicians; however, these offices did not necessarily use the rotational feature of PDS to select physicians. The other three districts generally used either a manual card file, their own automated database systems, or other sources to select second-opinion physicians.

Following a review of the second-opinion physician's report, a claims examiner may find that the second-opinion physician and the claimant's physician agree and, in these cases, continue with the adjudication process. If, however, the views of the second-opinion physician and the claimant's physician are of equal weight and quality and they disagree, regulations require OWCP to resolve this conflict by appointing a board-certified physician with no previous connection with the case to conduct an IME to resolve the medical issues.

In selecting IME physicians, the act has been interpreted as requiring OWCP to select physicians in an impartial manner. The importance of impartiality in OWCP's selection of physicians has been reinforced by the board, which has jurisdiction to consider and decide appeals of final decisions made by OWCP on claims filed under the act. In a 1986 appeals case,[8] the board refused to give the special weight ordinarily accorded to IME opinions to evidence from an IME physician because OWCP had not selected the physician in accordance with its established procedures for ensuring impartiality. OWCP's procedures manual for claims examiners states: "only if the selection procedures which were designed to achieve [the impartial selection of IME physicians] are scrupulously followed may the selected physician carry the special weight accorded to an impartial specialist."

[8]Leonard W. Wagoner, 37 ECAB 676. In this case, the Board remanded the case to the district because the physician who examined the claimant was an associate of the physician selected to perform the IME.

By 1991, all districts had replaced their existing manual or computer-based systems and were using PDS to select physicians for IMEs. The initial basis for OWCP's PDS database was the independently prepared Marquis' Directory. District offices may update the PDS database by adding and deleting specialists. According to OWCP, the system ensures impartial physician selection because it automatically sequentially selects physicians listed alphabetically by specialty and geographic location on the basis of the first three digits of the postal zip code.

When OWCP schedulers successfully identify a physician who is willing to examine a claimant, they are to enter the appointment date and time in the system, and PDS automatically creates a record of the scheduled appointment. When a physician either refuses or is too busy to see a claimant in a timely manner or has previously treated or examined the claimant, schedulers are to enter bypass codes into PDS and contact the next physician that the system identifies.

In November 1993, OWCP improved PDS by adding features that allow for (1) better record keeping when physicians are not selected, (2) automatically searching the next highest postal zip code when a physician cannot be located in the primary zip code area, and (3) identifying the group practice, if any, in which the physician is a member.

Benefit Adjustments Generally Unrelated to Medical Evidence Provided by Second-Opinion Physicians

Of the 4,126 cases with terminated benefits in the 5 districts reviewed, we identified 378 cases with a second-opinion exam but no IME in which benefits were adjusted in the period following the second-opinion exam. In 120 of 126 cases we reviewed, these adjustments were generally unrelated to conflicts in medical evidence between the claimants' physicians and second-opinion physicians. In the remaining six cases, OWCP either did not increase or terminated benefits citing the weight of the evidence supplied by the second-opinion physician. Table 1 contains information on our sample results; details on how this sample was selected are contained in appendix I.

Table 1: Reasons OWCP Terminated or Did Not Increase Claimants' Benefits

Reasons benefits terminated or not adjusted	Cases
Payments for schedule award benefits ceased.	85
Medical reports indicated the claimants' medical conditions improved, and they either returned to or refused to return to work.	25
Claimants died, elected retirement benefits in lieu of workers' compensation benefits, or did not cooperate with OWCP in scheduling an exam.	10
Subtotal[a]	**120**
OWCP placed more weight on medical evidence provided by second-opinion physicians than on the evidence provided by claimants' physicians.	6
Total	**126**

[a]Benefit adjustments unrelated to conflicting medical evidence.

Source: GAO review of OWCP case management system and case files.

In reviewing the six cases with conflicting findings between second-opinion and claimants' physicians, claims examiners included with their recommendations to not increase or to terminate benefits such comments as (1) the claimant's physician's report lacked supportive findings, whereas the second-opinion physician's report was supported by a thorough physical exam and detailed pulmonary function studies of the patient; (2) the second-opinion physician's report was comprehensive and well rationalized, and the weight of the medical evidence in the file therefore rests with this physician; and (3) the claimant's physician's report was based on subjective complaints with no objective findings to support them as compared to a well-rationalized medical report by the second-opinion physician. For each of these cases, district offices provided claimants with the required written notice of the claim decision and their right to appeal the decision within 30 days.[9]

Districts Generally Used PDS to Minimize Bias in Selecting IME Physicians

OWCP's PDS provided a reasonable level of certainty that IME physicians were generally selected without bias, considering the zip code and medical specialty constraints imposed by the system. From July 1991 to September 1992, PDS records showed that the 5 districts we visited used PDS to select IME physicians 1,039 times, an estimated 89 percent of the time an IME was requested. However, in situations in which PDS was not used, we also found that OWCP did not have internal controls to help ensure that its selection of IME physicians in these cases was impartial.

[9]In one of these cases an OWCP hearing examiner subsequently overturned the decision to terminate benefits when the second-opinion report was not provided for use in reviewing the claimant's appeal.

Our tests of PDS software showed that the system operated as specified to select IME physicians and schedule claimants' exams. That is, for the medical specialty and zip code area for which a physician was needed, PDS software identified the last physician who was contacted for a referral and then selected the next physician listed in alphabetical order. After the last physician on the list was contacted, the system returned to the beginning of the alphabetical list.

Although OWCP's guidelines required district offices to use PDS to select and schedule all IME physicians, we found that it was not always possible to do so. For the 5 districts we visited, our comparison of information from OWCP's bill payment system and PDS identified an additional 877 cases that were coded as IMEs but did not appear to be scheduled with PDS.

We reviewed a sample of 231 of these cases and found that 196 cases were either (1) miscoded in the bill payment system as IMEs instead of as second-opinion exams or exams by claimants' physicians, (2) scheduled using PDS but the claim numbers entered into PDS were incorrect, (3) scheduled before the districts implemented PDS, (4) scheduled with physicians in districts other than the district managing the case,[10] or (5) rescheduled with the same IME physician when claimants missed their original appointments or when additional information was needed. On the basis of the remaining 35 IMEs, which were not scheduled using PDS, we estimated that in the 5 districts we visited OWCP scheduled 129 IMEs (±39) without using PDS.

According to district officials, following are some of the reasons OWCP did not use PDS to schedule 26 of the 35 IMEs:

- The PDS database did not include physicians in all medical specialties.
- Claimants lived in geographic areas in which there were no physicians in the required specialty, or the physician identified by PDS had previously examined or treated the claimant.
- Claimants' medical conditions required more than one physician specialist (i.e., a panel) to conduct the IME.
- Claimants asked OWCP if they could participate in the IME physician selection process.

In 9 of the 35 cases, district officials could not recall reasons for not using PDS.

[10]Except for nationwide PDS databases maintained by the Kansas City and Washington, D.C., districts, other OWCP districts' PDS databases are relevant only within their boundaries.

According to district officials, in cases where OWCP needed a specialist in one of the medical specialties not included in PDS,[11] district office schedulers used information from the Marquis' Directory that had not been entered into PDS, other directories of physicians, or other sources relevant to a particular location to identify specialists with whom IME appointments could be scheduled. Schedulers also used the above sources to schedule IMEs when claimants lived in rural or remote geographic areas with specialists who were either not willing to conduct IMEs or not in a position to examine claimants because they had previously examined them.

For cases requiring physicians willing to participate in a panel exam of a claimant, an official in one district office said that PDS could not be used easily because it did not identify physicians willing to participate on such panels. Panel exams involve the exam of a claimant by several physicians who each have different medical specialty training. Panels are used to examine claimants with complex medical conditions to reach a collective opinion that fully addresses the claimant's work-related medical conditions. While PDS guidelines were silent on the use of panels, one district office demonstrated that PDS could be used in the panel selection process by selecting a lead physician to conduct the IME who would agree to recruit other physicians for the panel exam.

For cases in which claimants asked to participate in the selection of the IME physician, district offices prepared a list of three specialists acceptable to OWCP. At the claimants' request, OWCP can also include a physician who is a minority on this list. According to OWCP's procedures, the claimant then selects one of the three specialists to conduct the IME.

The reasons stated for not using PDS appeared reasonable. However, without guidance specifying when it would be appropriate to select IME physicians without using PDS and how to do so, OWCP's process for selecting IME physicians might be more subject to challenge from claimants or their representatives.

[11]In scheduling IMEs, the PDS used at the time we completed our review contained information for the following 11 specialties and subspecialties: allergy and immunology, cardiovascular diseases, dermatology, gastroenterology, neurology, neurological surgery, occupational medicine, orthopedic surgery, otorhinolaryngology, pulmonary diseases, and psychiatry. Specialties and subspecialties to be added as part of the PDS improvements include physical medicine and rehabilitation, hand surgery, vascular surgery, and thoracic surgery.

Individual IME Physicians Were Not Used Repeatedly

Our analysis of PDS data in the five districts also indicated that OWCP did not repeatedly use the same physicians to do IMEs. From the dates district offices implemented PDS to September 1992, OWCP used 1,002 physicians to conduct 1,435 IMEs. As shown in table 2, nearly 95 percent of the physicians who conducted IMEs did so on three or fewer occasions. Further, less than 2 percent of the physicians conducted six or more IMEs during this period.

Table 2: Frequency Physicians Were Used for IMEs (From Dates Implemented to September 1992)

Number of IMEs conducted	Number of physicians	Percent of physicians
1	782	78
2	113	11
3	52	5
4	25	3
5	16	2
6	10	1
7 or more	4	[a]
Total	**1,002**	**100**

[a]Less than 1 percent.

Source: GAO analysis of PDS data.

OWCP Did Not Pay Substantial Medical Fees to Most Physicians or Groups for IME and Second-Opinion Exams

As shown in table 3, during fiscal years 1991 and 1992, 78 percent of the physicians who conducted IMEs and second-opinion exams were paid less than $1,500 each for these exams, according to OWCP bill payment data. Further, 98 percent of them were paid less than $10,000 each from OWCP for these 2 fiscal years combined.

Table 3: Amounts Received by OWCP-Selected Physicians During Fiscal Years 1991 and 1992

Amounts of reimbursements for IME and second-opinion exams	Number of physicians or groups[a]	Percent of physicians or groups
0 to $1,499	5,255	78.4
$1,500 to $2,499	618	9.2
$2,500 to $4,999	494	7.4
$5,000 to $9,999	207	3.1
More than $10,000	133	2.0
Total	**6,707**	**100.0[b]**

[a]OWCP's medical bill payment system is unable to distinguish whether the reimbursement was made to a sole practitioner or to a group practice or to firms that provided only vocational rehabilitation services.

[b]Total does not add due to rounding.

Source: GAO analysis of OWCP medical bill payment information.

Of the 19 physician and group practices that received more than $25,000 in a year, 17 were group practices. And, although one group practice earned about $121,775 during the 2-year period, the overall data do not, in our opinion, suggest that OWCP-selected physicians and practices received substantial fees for second-opinion exams and IMEs.

Timeliness of Medical Bill Payments

OWCP took longer to reimburse claimants' physicians than to reimburse physicians that it selected to conduct IME and second-opinion exams and case file reviews. Differences in times for paying claimant's physicians can be attributed to OWCP procedures that include controls for ensuring that medical bills submitted by these physicians are not paid before OWCP's acceptance of the claim. In contrast, for physicians selected by OWCP, the Prompt Payment Act (39 U.S.C. 3901 et seq.) requires OWCP to pay interest when bills from these physicians are not paid within 30 days.

For claimants' physicians, OWCP's procedures for reviewing bills are designed to ensure that (1) medical services are provided only to authorized claimants, (2) medical services provided are related to claimants' injuries, (3) OWCP has not already paid the medical bill, and (4) amounts billed are allowed under OWCP's medical fee schedule.

OWCP's standard is to pay 95 percent of claimants' physicians' bills within 60 days. Our analysis of OWCP medical bill payment data for nearly 1.15 million bills submitted by claimants' physicians showed that during

fiscal years 1991 and 1992 OWCP paid almost 82 percent within 30 days and about 95 percent within 60 days. In contrast, OWCP paid about 98 percent of the 54,471 bills subject to the Prompt Payment Act within the required 30 days.

Districts' Efforts to Increase the Number of Physicians to Conduct IME and Second-Opinion Exams

Most districts that responded to our questionnaire indicated that they have had problems recruiting physicians in selected medical specialties to conduct second-opinion exams and/or IMEs. To ensure that district offices can rotate IMEs among a sufficient number of physician specialists, each OWCP district office has made efforts to increase the number of physicians used to conduct these exams. According to OWCP's Medical Director, each district office is responsible for deciding the number of physicians needed for an adequate rotation.

Some district offices attempted to increase their number of physicians by sending form letters to all physicians in needed specialties and geographic areas. These letters explained the second-opinion and IME programs and OWCP's policy to promptly pay physicians' bills. The national office prepared form letters that the districts could use in their recruiting efforts. In 1991 for example, the San Francisco district office sent more than 7,000 letters to all physician specialists in its district encouraging them to accept second-opinion and IME referrals. The Philadelphia office, in contrast, sent recruitment letters just to physicians in selected specialties and geographic areas.

Other efforts by district offices to increase the number of physicians included telephoning or visiting physicians' offices. For example, in 1992 and 1993, the Seattle and Washington, D.C., district medical directors made recruiting trips to clinics and practitioners' offices to increase the pool of physicians available to conduct second-opinion exams and IMEs.

According to district officials, recruiting was also conducted on an "as needed" basis when PDS failed to identify physicians who practiced in locations near claimants or who had not previously examined claimants. District office staff telephoned physicians whose names did not appear in PDS, explained the need for impartial physician specialists, and encouraged physicians to allow their names to be added to the PDS database.

District officials cited several difficulties in obtaining physicians to participate in second-opinion exams and IMEs. They said some physicians are reluctant to participate because they have concerns about issues such

as (1) OWCP's promptness in paying medical bills, (2) fear of litigation or tort action, (3) the adversarial and unpleasant nature of these types of exams, and (4) the amount of time case file reviews and exams take away from their own patients.

OWCP national and district office officials said they believed that in some cases these physicians' concerns were not warranted. For example, an official said that while some physicians were concerned about defending their decisions in court, litigation or tort action was rare under the act. In addition, because medical bills for second-opinion exams and IMEs are subject to the Prompt Payment Act, OWCP has been relatively successful in paying these bills within the 30 days required by this act.

Conclusions

OWCP did not appear to be selecting physicians who would examine claimants and be predisposed against supporting their claims for compensation benefits. When claimants' benefits were terminated following a second-opinion exam, these adjustments were usually unrelated to conflicts in medical evidence that would have required an IME. Also, OWCP had an automated system in place to provide a reasonable level of certainty that IME physicians were selected in an unbiased manner. Finally, given the number of IMEs conducted by individual physicians and the amounts paid to those who conducted both second-opinion exams and IMEs, it does not seem likely that OWCP was attempting to repeatedly use the same physicians to achieve predetermined results.

Yet, there have been, and likely will continue to be, situations in which districts are unable to use PDS for selecting IME physicians. It seems to be in OWCP's best interest to establish controls to help ensure the impartial selection of IME physicians whenever methods other than PDS are used to schedule IMEs because (1) the board has placed a great deal of importance on the manner in which OWCP selects IME physicians and (2) exceptions to the use of PDS could lead to continued perceptions of bias by claimants whose benefits are terminated.

Recommendations to the Secretary of Labor

To further ensure unbiased selection of IME physicians and to reduce the potential for perception of bias, we recommend that the Secretary of Labor direct OWCP to provide guidance on

- how IME physicians are to be selected when they are unable to use PDS and

- when to obtain supervisory approval before using selection methods not specified by the guidance.

We also recommend that the Secretary direct OWCP to prepare documentation in all cases in which PDS is not used to schedule IMEs.

Agency Comments

In commenting on a draft of this report, Labor agreed to expand its procedures to explicitly address situations in which physicians must be selected outside of PDS (see app. II for a copy of Labor's January 3, 1994, letter).

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of this letter. At that time, we will send copies of this report to the Secretary of Labor, the Director of the Office of Management and Budget, and interested congressional committees. Copies will also be made available to others upon request.

The major contributors to this report are listed in appendix III. If you have any questions about this report, please contact me on (202) 512-5074.

Nancy Kingsbury
Director
Federal Human Resource Management
Issues

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Abbreviations

OWCP	Office of Workers' Compensation Programs
IME	impartial medical examinations
PDS	Physician Directory System

Objectives, Scope, and Methodology

As agreed with the Committee and Subcommittee, our objectives were to (1) determine if OWCP districts obtained and used medical evidence prepared by physicians conducting second-opinion exams and IMEs in ways that minimized the possibility of bias against claimants, (2) examine OWCP procedures and practices for selecting physicians to conduct IMEs and second-opinion exams, (3) analyze information on the timeliness and amounts of OWCP payments to OWCP-selected physicians and claimants' physicians, and (4) describe OWCP's efforts to increase the number of physicians willing to conduct second-opinion exams and IMEs. We also agreed that we would not evaluate the medical conclusions reached by claimants' physicians or OWCP-selected physicians.

For this review, we visited 5 of OWCP's 12 district offices that handled federal workers' compensation cases. We selected these offices (Seattle, San Francisco, Jacksonville, Philadelphia, and Washington, D.C.) to obtain a mix of large and small offices in different geographic areas of the country. These offices were responsible for adjudicating and managing 56 percent of the cases that OWCP opened in the 12-month period ending in June 1992. In each office, we reviewed samples of cases and interviewed district office officials about their procedures and practices for selecting and recruiting second-opinion and IME physicians.

We also interviewed OWCP headquarters officials and reviewed records on such matters as the development of PDS and its system requirements and statistical information on the number of claimants and amounts of workers' compensation payments. We did not verify the statistical data obtained from OWCP's bill payment and case management systems. Further, we developed and administered a questionnaire to each of OWCP's 12 districts to obtain information on PDS activities and district offices' efforts to increase the number of physicians who could conduct second-opinion exams and IMEs.

To determine whether OWCP districts inappropriately terminated benefits following a second-opinion exam, we used OWCP's case management system to identify claimants whose cases were closed and benefits terminated during fiscal years 1991 and 1992. From this list of claimants, we used PDS and the bill payment system to select, in the offices we visited, samples of cases that had second-opinion exams but no IMEs.[1] For the 126 cases we reviewed, we determined why OWCP terminated

[1]Because the Philadelphia, Jacksonville, and San Francisco district offices did not generally use the PDS to schedule second-opinion exams, we used information from OWCP's bill payment system to identify claimants with terminated benefits who received only second-opinion exams.

compensation benefits or otherwise closed the case. Table I.1 contains details about this sample.

Table I.1: Cases Selected for Review

District office	Cases with terminated benefits	Cases with terminated benefits with a second-opinion exam but no IME	Schedule award cases	Cases reviewed
Seattle	725	23	19	21
Washington	953	28	22	26
Philadelphia	553	117	80[a]	23
San Francisco	1,153	112	96	47
Jacksonville	742	98	79[a]	9
Total	**4,126**	**378**	**296**	**126**

[a]After determining that benefit terminations following the expiration of the schedule award period were generally automatic, we did not continue our review of such cases in Philadelphia and Jacksonville.

Source: GAO analysis of OWCP's case management and bill payment systems.

We used interval sampling techniques to identify cases for review, and for the 126 cases selected, we reviewed documentation prepared by the claims examiners that discussed the rationale for recommending benefit adjustments. The number of cases reviewed in each district depended on such factors as the length of our visit and the availability of case files for review. Some cases had been transferred to other district offices or to the federal records center.

To determine if OWCP shopped for a particular opinion from IME physicians, we assessed whether PDS and other methods for selecting physicians in the five districts that we reviewed provided a reasonable level of certainty that physicians were selected in an unbiased manner. We compared OWCP's bill payment and PDS databases to identify cases that did not appear to be scheduled using PDS. We sampled 231 of 877 cases identified in this manner and asked district officials for explanations after we determined that PDS was not used. In addition, we examined PDS software to assure ourselves that it selected physicians on a rotational basis and that each physician listed in the PDS system was contacted with the same relative frequency. In sampling from the universe of cases, we are 95 percent confident that PDS was used between 86 and 92 percent of the time.

We also attempted to identify claimants who received two or more IMEs and whose benefits were terminated following the second IME exam. We found no such cases in the five districts that we reviewed.

To determine the timeliness and amounts OWCP paid physicians, we analyzed data from the bill payment system for fiscal years 1991 and 1992. We determined the length of time OWCP took to pay claimants' physicians and physicians selected by OWCP to examine claimants or conduct case file reviews. We also determined amounts OWCP paid physicians who conducted these exams or reviews. We analyzed PDS in the five districts to determine the number of times physicians conducted IMEs from the time the districts implemented PDS to September 1992.

To obtain information on OWCP's efforts to increase the number of physicians available to conduct IMEs and second-opinion exams, we analyzed the 12 districts' responses to our questionnaire and interviewed officials from the 5 district offices visited and OWCP headquarters officials.

We conducted our review between March 1992 and December 1993 in accordance with generally accepted government auditing standards.

Comments From Labor

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Washington, D.C. 20210

File Number:

JAN 3 1994

Nancy Kingsbury, Director
Federal Human Resources Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Kingsbury:

Thank you for the opportunity to read and comment on the General Accounting Office draft report concerning the Labor Department's selection of physicians in its management of claims. We have reviewed the findings and conclusions, and are pleased to see that GAO's study confirmed that OWCP district offices were appropriately selecting physicians to conduct impartial evaluations, and that there was no basis to conclude that OWCP was choosing physicians who would be predisposed against supporting claims for benefits.

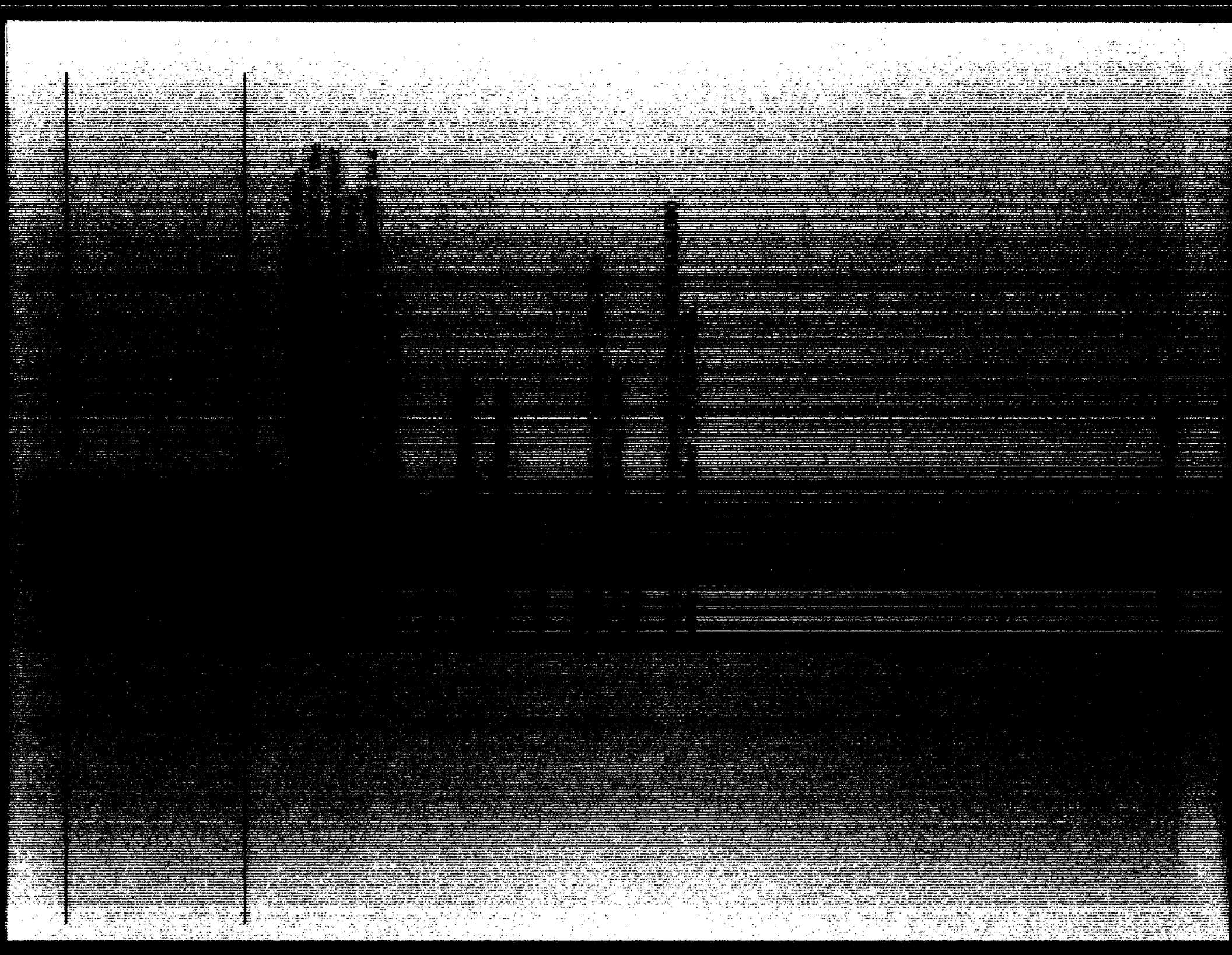
In keeping with GAO's recommendations in the draft report, we are expanding FECA procedures to explicitly address situations in which a physician must be selected outside the automated Physician Directory Systems (PDS), which was designed to ensure a fair rotation among available qualified specialists. We are also enhancing the capabilities of the PDS, as the report notes, to cover more situations.

Sincerely,

LAWRENCE W. ROGERS
Director, Office of Workers'
Compensation Programs

Major Contributors to This Report

General Government Division, Washington, D.C.	Larry H. Endy, Assistant Director, Federal Human Resource Management Issues Edward R. Tasca, Assignment Manager
Seattle Regional Office	Neil T. Asaba, Regional Management Representative Donald A. Praast, Evaluator-in-Charge Matthew W. Byer, Site Senior
Office of the General Counsel, Washington, D.C.	V. Bruce Goddard, Senior Attorney



United States
General Accounting Office
Washington, D.C. 20548

[redacted]

Address Correction Requested

[redacted]