

GAO

Report to the Chairman, Subcommittee
on Government Efficiency, Financial
Management and Intergovernmental
Relations, House of Representatives

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OFFICE OF
WORKERS'
COMPENSATION
PROGRAMS

Further Actions Are
Needed to Improve
Claims Review



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Abbreviations

ABMS	American Board of Medical Specialties
BHR	Branch of Hearings and Review
DOL	Department of Labor
ECAB	Employees' Compensation Appeals Board
FECA	Federal Employees Compensation Act
IG	Inspector General
OWCP	Office of Workers' Compensation Programs
PHS	Public Health Service



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

May 9, 2002

The Honorable Stephen Horn
Chairman, Subcommittee on Government Efficiency,
Financial Management and Intergovernmental Relations
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

During fiscal year 2000, the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) paid about \$2.1 billion in workers' compensation benefits to federal employees, including wage loss, death, and medical benefits stemming from job-related injuries and OWCP received approximately 174,000 new injury claims. When a federal employee incurs expenses or misses significant time from work due to on-the-job injury or illness, the employee may submit a claim to OWCP for workers' compensation. If all or a portion of the claim is denied by OWCP, the claimant may appeal the decision. During the last few years, a number of issues related to OWCP's adjudication process for appealed claims decisions have been raised in related congressional hearings, including instances where federal employees felt their claims had been improperly denied. As a result, you requested that we examine and provide you with information on selective aspects of the OWCP adjudication process, specifically:

- the frequency and primary reasons why appealed claims decisions are reversed or remanded to OWCP district offices for additional consideration;¹
- the extent to which OWCP is complying with the Federal Employees Compensation Act's (FECA) requirement to inform claimants within 30 days about the outcomes of appeal hearings;

¹A reversal means the current decision on the claim was determined to be incorrect and the decision was changed, while a remand means the claim was sent back to the district office or BHR for additional work and a new decision and does not necessarily indicate that the current decision was incorrect.

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- the extent to which OWCP is using certified and licensed physicians to provide opinions on injuries claimed and whether the physicians' areas of specialty appear to be consistent with the injuries they evaluate; and
 - methods OWCP uses to identify customer satisfaction and potential claimant fraud.

Results in Brief

We estimate that approximately 25 percent of 8,100 appealed claims, for which decisions were rendered during the period May 1, 2000, through April 30, 2001, were either reversed or sent back (remanded) to OWCP district offices for further development due to questions about or problems identified with the initial decisions. OWCP claims decisions summaries indicated these problems predominantly involved either (1) improper evaluations of medical or nonmedical evidence or (2) mismanagement of claim files. When claims are initially denied and then later approved upon appeal, claimants must manage without benefits during the appeals process, which can involve significant periods of time and additional expenses to the claimant, such as representatives' fees, that are not reimbursable. OWCP monitors reversed or remanded claims decisions to identify trends and problems with district office decisions and provides information to claims examiners on reversals and remands. However, OWCP does not have information on the frequency of specific reasons for these reversals and remands. Such information might better enable OWCP and its district offices to understand factors contributing to these reversals and remands and to address their underlying causes, possibly reducing current levels of reversals and remands. We are recommending that the secretary of labor require the director of OWCP to examine steps now being taken to determine whether more can be done to identify and track specific reasons for remands and reversals—including improper evaluation of evidence and mismanagement of claim files—and address their underlying causes.

FECA requires OWCP to inform claimants of their decision on appeals within 30 days after the related hearing. OWCP has interpreted this requirement in a manner which allows certain administrative steps to occur over a longer period of time. They have factored in time to allow both the claimants and employing agencies to comment on hearing transcripts and conduct other activities it believes are important to complete following the hearing date before rendering its final decisions on appeals. Considering these factors, OWCP has established a goal of notifying nearly all claimants

of final claims decisions within 110 days of the hearing date. We estimate that 92 percent of claimants are notified within this timeframe.

While FECA does not require contracted physicians used by OWCP to be board certified or state licensed, our review found that OWCP is generally adhering to its own requirements that physicians it uses to settle disagreements between a claimant's and OWCP's second opinion physicians are (1) certified by medical boards in their areas of medical specialty, and (2) licensed by state authorities. In addition, we estimate that 98 percent of the time, OWCP-contracted physicians were specialists in medical areas that were appropriate for the types of claimant injuries they examined.

OWCP has used surveys and focus groups to monitor customer satisfaction. Regarding the overall program, a survey taken in 2000 resulted in a 52 percent satisfaction rate and a 47 percent dissatisfaction rate. The level of claimant satisfaction indicated in their survey responses for specific issues or aspects of the program has been largely mixed (i.e., more positive responses for some questions and more negative responses for other questions).

To prevent and deter fraudulent activity, DOL's Office of the Inspector General (IG) follows up on concerns raised by examiners and other sources and, where appropriate, conducts investigations of claimants and medical providers suspected of defrauding the program. For fiscal years 1998 through 2001, approximately 500 investigations were opened, resulting in 212 indictments and 183 convictions.

Background

FECA (5 USC 8101, et seq.) authorizes federal civilian employees compensation for wage loss and medical and death benefits for treatment of injuries sustained or for diseases contracted during the performance of duty. OWCP is responsible for administering and adjudicating the federal workers' compensation program.² During fiscal year 2000, OWCP's paid workers' compensation totaled about \$2.1 billion including wage loss,

²OWCP is also responsible for adjudicating and administering claims authorized by the Longshore and Harbor Workers' Compensation Act, which covers employees engaged in maritime employment, and for recipients of black lung compensation. In addition, OWCP administers the Energy Employees' Occupational Illness Compensation Act.

medical, and death benefits stemming from job-related injuries and OWCP received approximately 174,000 new injury claims.

A workers' compensation claim is initially submitted to an OWCP district office and is evaluated by a claims examiner. The examiner must determine whether the claimant has met all of the following criteria for obtaining benefits:

- The claim must have been submitted in a timely manner. An original claim for compensation for disability or death must be filed within 3 years of the occurrence of the injury or death.
- The claimant must have been an active federal employee at the time of injury.
- The injury, illness, or death had to have occurred in a claimed accident.
- The injury, illness, or death must have occurred in the performance of duty.
- The claimant must be able to prove that the medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, illness, or death.

Since medical evidence is an important component in determining whether an accident described in a claim caused the claimed injury and if the claimed injury caused the claimed disability, workers' compensation claims are typically accompanied by medical evidence from the claimant's treating physician. Considerable weight is typically given to the treating physician's assessment and diagnosis. However, should the OWCP claims examiner conclude that the claimant's recovery period seems to be outside the norm or that a better understanding of the medical condition is needed to clarify the nature of the condition or extent of disability, the examiner may obtain a second medical assessment of the claimant's condition. In such instances, a second opinion physician, who is selected by a medical consulting firm contracted by an OWCP's district office, reviews the case, examines the claimant, and provides a report to OWCP.

If the second opinion physician's reported determination conflicts with the claimant physician's opinion regarding the injury or condition, the claims examiner determines if the conflicting opinions are of "equal value."³ If the claims examiner considers the two conflicting opinions to be of equal value, OWCP appoints a third or "referee physician" to evaluate the claim and render an independent medical opinion.

Claims may be approved in full or part, or denied. For example, a claimant may be paid full wage loss benefits and provided physical and vocational rehabilitation services, but denied a request for a medical procedure. When all or part of a claim is denied the claimant has three avenues of recourse: (1) an oral hearing or a review of the written record by the Branch of Hearings and Review (BHR), (2) reconsideration of the claim decision by a different claims examiner within the district office, or (3) a review of the claim by the Employees Compensation Appeals Board (ECAB).

Under the first appeal option, the claimant can request an oral hearing or a review of the claim's written record by a BHR hearing representative. At an oral hearing, the claimant can testify in person, be represented by a designated representative, or submit written evidence. The employing agency may attend but not participate unless invited to do so by the BHR hearing representative or the claimant. For either a hearing or review of the record, the hearing representative decides whether to affirm the initial decision, reverse the initial decision and administer benefits to the claimant, or remand the claim to the district office for a new decision.

A second option to the claimant is to request reconsideration of the decision at the district office. During reconsideration, the district office reevaluates its initial decision and the decision-making process to ensure that it properly considered all facets of the claim. This reconsideration is typically performed by a senior claims examiner who played no role in making the original decision. After the entire record and resulting decision are reevaluated, the claims examiner decides whether to affirm the initial decision denying all or part of the claim or to modify the initial decision.

³OWCP's regulations state that to determine if the medical evidence is of equal value, each physician's opinion is to be considered against the following factors: (1) whether the physician involved in the case is a specialist in the appropriate field relevant to the claimant's injury or illness, (2) whether the physician's opinions are based upon a complete and accurate medical and factual history, (3) the nature and extent of findings on examination of the claimant, (4) whether the physician's opinions are rationalized, and (5) whether the physician's opinion is stated unequivocally and without speculation.

Generally the final appeal available to the claimant is made to the ECAB. The ECAB consists of three members who are appointed by the secretary of labor. The board was created within DOL but outside OWCP to give federal employees the same administrative due process of law and appellate review that most nongovernment workers enjoy under workers' compensation laws in most states. While regulations prohibit the claimant from submitting new evidence during this phase, the ECAB is not limited by previous "findings of fact" by the district office or BHR and can therefore reevaluate the evidence and determine if the law was appropriately applied. As with the other appeals levels, ECAB renders decisions that affirm the district office's decision, remand all or part of the claimant's appealed decision to the district office for additional review, or reverse the district office's decision.

While OWCP regulations do not require claimants to exercise these three methods of appeal in any particular order, certain restrictions apply that, in effect, encourage claimants to file appeals in a specific sequence—first going to the BHR, then requesting another review at the OWCP district office, and finally involving the ECAB. For example, the regulations state that a claimant seeking a BHR hearing on a decision must not have previously requested reconsideration of that decision regardless of whether the earlier request was granted. However, the BHR director said that claimants may, and sometimes do, choose to request a district office reconsideration first because the decisions on claims appealed through reconsideration are made in a more timely manner.⁴ Notwithstanding the regulatory provision, OWCP explained that a claimant may request a discretionary oral hearing by BHR after receiving a reconsideration decision and both OWCP procedures and ECAB precedent require OWCP to exercise its discretion in considering such a request.

Appendix I contains a graphic presentation of OWCP's claims adjudication process.

Scope and Methodology

We performed our work in Washington, D.C., from March 2001 through April 2002 in accordance with generally accepted government auditing standards. To assist us in addressing the objectives, we reviewed a statistical sample of more than 1,200 of the estimated 8,100 appealed claims

⁴Our sample and analysis focused on decisions by the BHR and ECAB on appealed claims. We did not include requests for reconsideration by district offices.

for which a decision was rendered by OWCP's BHR or DOL's ECAB during the period from May 1, 2000, through April 30, 2001, to determine the following: (1) the primary reasons why appealed decisions were reversed or claims were remanded to the OWCP district offices for further development, (2) the amount of time OWCP took to inform claimants of hearing decisions, (3) whether OWCP used certified and licensed physicians whose areas of specialty were consistent with the injuries evaluated, and (4) the methods OWCP uses to identify customer satisfaction and potential claimant fraud. Additional information on the scope and methodology of our review and approaches for addressing these and other objectives is presented in appendix II and confidence intervals and other statistical information regarding our work are presented in appendix III.

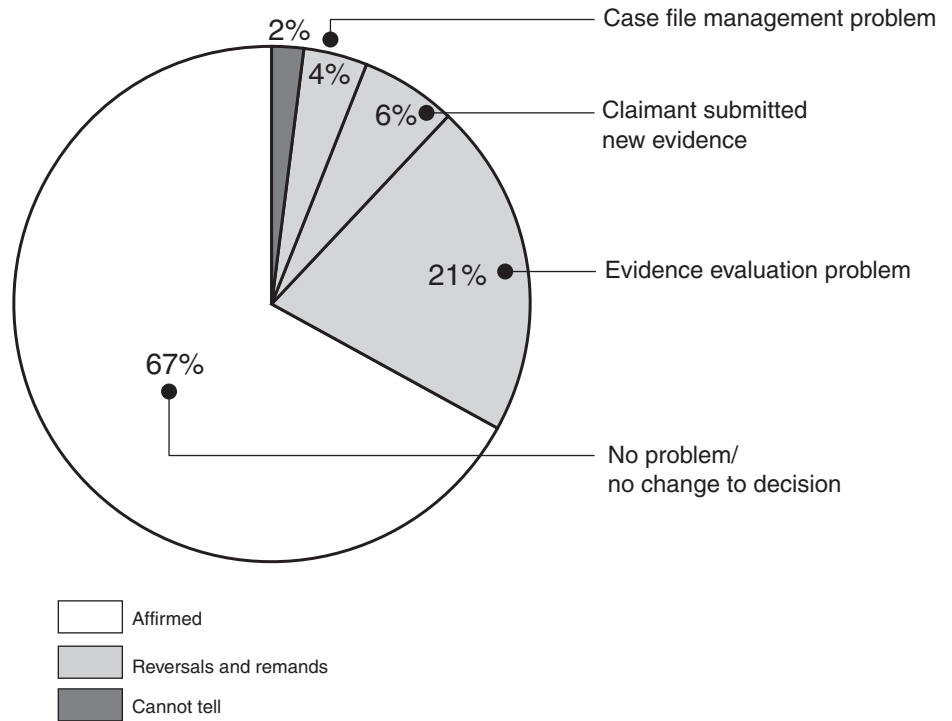
Evaluation Problems, Case File Mismanagement, and New Evidence Are Reasons Appealed Claims Decisions Are Reversed or Remanded

From May 1, 2000, to April 30, 2001, decisions were rendered by BHR or ECAB on approximately 8,100 appealed claims. BHR or ECAB affirmed an estimated 67 percent of these initial decisions as being correct and properly handled by the district office, but reversed or remanded an estimated 31 percent of the decisions⁵—25 percent because of questions or problems with OWCP's review of medical and nonmedical information or management of claims files, and 6 percent because of additional evidence being submitted by the claimant after the initial decision.

The following figure characterizes the outcome of BHR and ECAB reviews of appealed claims. For those claims decisions that were reversed or remanded, the figure shows the reason, including (1) evaluation of evidence problems, (2) mismanagement of claims file problems, or (3) new evidence submitted by the claimant.

⁵The remaining 2 percent of the decision summaries we examined did not include information regarding what decision was reached on the claimant's appeal or the rationale for the decision.

Figure 1: Percentage of Appealed Claims Decisions Affirmed, Remanded, and Reversed by BHR or ECAB during Period from May 1, 2000, through April 30, 2001



Source: GAO analysis of ECAB and BHR appealed claims decisions.

About One-fourth of the Appealed Claims Decisions Were Reversed or Remanded Due to OWCP Evaluation Problems or Claims File Mismanagement

Based on a statistical sample of appealed claims decisions made during the period May 1, 2000, through April 30, 2001, we estimate that 25 percent of the appealed claims decisions (approximately 2,000 of 8,100) were reversed or remanded because of questions about or problems associated with the initial decision by OWCP. These included problems with (1) the initial evaluation of medical evidence (e.g., physicians' examinations, diagnoses, or x-rays) or nonmedical evidence (e.g., coworker testimonies) or (2) management of the claim file (e.g., failure to forward a claim file to ECAB in a timely manner). Problems in evaluating medical evidence frequently involved OWCP failing to properly identify medical conflicts between the conclusions of the claimant's physician and OWCP's second opinion physician, and therefore not appointing a referee physician as required by FECA. OWCP has interpreted the FECA requirement to apply

only when the opinions of the two physicians involved are of equal value, that is, when both physicians have rendered comparably supported findings and opinions.

Other initial claims decisions were reversed or remanded when BHR or ECAB determined that nonmedical evidence had not been properly evaluated. One example of this involved the OWCP provision that when suitable work is found for the claimant, benefits will terminate. For example, based on its review of a job offer to a claimant who had work restrictions—such as not being able to lift over 50 pounds—an OWCP district office decided that the job represented suitable work and terminated the claimant’s compensation. However, when that decision was appealed by the claimant, BHR identified a flaw in the job offer. In order for OWCP to meet its burden of showing that an offered job is suitable for a claimant, both the duties and physical requirements of the job need to be fully described in the job offer. For this claim, the job offer had only set forth the duties, such as inputting social security numbers on a keyboard. The BHR representative decided that the offer did not describe the physical requirements associated with the job and thus, did not “allow the district office to properly determine whether the offered job was suitable work within the claimant’s work restrictions.” BHR concluded that the district improperly terminated the claimant’s compensation and directed that the claimant’s monetary compensation be reinstated. We estimate that 21 percent of appealed claims were remanded and reversed due to problems with evaluating medical or nonmedical evidence.

Some remands and reversals result from OWCP failing to administer claims files in accordance with FECA or OWCP guidance for claims management. The guidance includes (1) a description of the information that is to be maintained in the claim file and transmitted by OWCP to the requestor (i.e., BHR or ECAB) and (2) requires claims files to be transmitted within 60 days after a request is received. Failure to meet this 60-day requirement was one of the more common deficiencies in claims file management in our sample. For example, ECAB initially requested a claim file for one injured worker from OWCP on April 29, 2000. On December 19, 2000 (almost 8 months later), the Board notified OWCP that the claim file had not been transferred and that if the file was not received within 30 days, ECAB would issue orders remanding the case to the relevant district office for “reconstruction and proper assemblage of the record.” As of March 12, 2001—more than 10 months after the initial ECAB request—the claim file had still not been transferred and the claim was remanded back to the

district office. We estimate that 4 percent of appealed claims were reversed or remanded by the BHR or ECAB for claims file management problems.

For claims that were initially denied and then the decisions were reversed by the BHR or ECAB due to problems identified with the initial evaluation of evidence or mismanagement of claims files, there are delays in claimants receiving benefits to which they were entitled. According to OWCP, the average amount of time that elapsed from the date an appeal was filed with BHR or ECAB until a decision was rendered was 7 months and 18 months, respectively, in fiscal year 2000. Thus, while claimants are provided benefits retroactively to the date of the initial decision when a claim is reversed, they may be forced to go without benefits for what can be extended periods and may have to incur additional expenses, such as representatives' fees, during appeals that are not reimbursable.

New Evidence Submitted after OWCP Rendered Decision Also Resulted in Reversals and Remands

We also found that 6 percent of appealed claims decisions were reversed or remanded because of new evidence being submitted by the claimant after the initial decision was made. OWCP regulations allow claimants to submit new evidence to support their claims at any time from the rendering of the initial claim decision until 30 days—or more with an extension—after the BHR hearing or review of the record occurs.⁶ Additional evidence could include medical reports from different physicians or new testimonial evidence from coworkers that in some significant way were expected to modify the circumstances concerning the injury or its treatment and make the previous decision by OWCP now inappropriate. Upon appeal of the earlier district office decision, the BHR representative determines whether the new evidence is sufficient to remand the claim back to the district office for further review, or to reverse the initial decision.

OWCP Has Taken Some Actions to Identify and Address the Causes of Reversals and Remands

OWCP monitors remands and reversals by the BHR and ECAB to identify certain trends in appeals decisions. Steps OWCP says it takes include reviewing ECAB decisions and preparing an advisory calling claims examiners' attention to selected ECAB decisions which may represent a pattern of district office error or are otherwise instructive. Where more notable problems are identified through ECAB reviews, a bulletin

⁶Most reversals and remands resulting from the claimants submitting new evidence were made by the BHR.

describing the correct procedures may be issued or training might be provided. While OWCP similarly monitors reasons for BHR reversing and remanding claims decisions, this information, or any suggested corrective actions are not disseminated to claims examiners in as systematic a manner as is done for ECAB decisions.

Clearly, these actions are providing some information on remands and reversals, which might be helpful to OWCP and its district offices. However, this information is not fostering a full understanding of the underlying reasons for remands and reversals occurring at their current rates and what other actions might be taken to address those factors. For example, OWCP might detect that a district office is failing to appoint referee physicians when required. OWCP might then notify district offices that such a problem was occurring, but with the information currently available, it would not be able to identify how frequently the problem was occurring or the underlying reasons— (1) are inexperienced claims examiners not sufficiently aware of the requirement for a referee physician when a conflict of medical opinions of equal value occurs, or (2) are examiner's experiencing difficulty in determining whether two physicians' opinions were of equal value? Without such information on causes, it would be difficult to address these problems.

We believe that OWCP needs to examine the steps now being taken to determine whether more can be done to identify and track specific reasons for claims decision remands and reversals. With such information, OWCP may be able to act to address those underlying causes and in so doing, reduce remand and reversal rates.

OWCP officials told us that they have not conducted such an overall examination of its current process. Instead OWCP said they continue to adjust their monitoring and communication process (circulars and bulletins) based on available information. Finally, OWCP indicated that the rate of OWCP remands and reversals was similar to that of other compensation organizations. They provided us a comparison of four organizations whose rates were similar or greater than theirs; the four were DOL's Black Lung Program, the Social Security Administration's Disability Program, and the North Dakota and Washington states' workers' compensation programs. Except for the SSA program, no information was provided nor do we have information concerning how comparable the programs are; thus we cannot determine the validity of such a comparison. Regarding SSA, their reversal rate may not be comparable to OWCP's because of considerable emphasis on SSA physicians' testimony for initial claims decisions and the claimants' and their physicians' testimony during adjudication hearings, resulting in high reversal rates.⁷

OWCP Has Established a Hearing Standard That Allows 110 Days for Claimant Notification

FECA requires that OWCP notify claimants in writing of hearing decisions "within 30 days after the hearing ends." OWCP's interpretation of the hearing process allows up to 110 days before almost all claimants are to be notified of decisions.

In establishing guidelines for meeting this provision of the act, the BHR director told us that the hearing record is not closed until two separate but concurrent processes are completed.

1. Printing and reviewing of hearing transcript: The time needed to print and review the hearing transcript could range from as few as 25 days to as many as 47 calendar days from the hearing date. A contractor prints the hearing transcript, which generally takes from 5 to 7 calendar days.⁸ The claimant and the claimant's employing agency then review the transcript of the hearing for up to 20 calendar days. If the employing agency provides comments, OWCP provides the claimant with the

⁷*Social Security Disability: SSA Must Hold Itself Accountable for Continued Improvement in Decision-making* (GAO/HEHS-97-102, Aug. 1997).

⁸The hearing transcript is generally a verbatim description of the hearing proceedings and only on rare occasions includes a preliminary decision by the BHR.

agency's comments and an additional 20 calendar days to respond to those comments.

2. Submitting new evidence: OWCP gives the claimant 30 calendar days from the date of the hearing to submit additional medical evidence. If the claimant needs additional time to provide more medical evidence, the regulations allow the OWCP hearing representatives to use their discretion to grant a claimant a one-time extension period, that may be for up to several months. OWCP officials stressed the importance of all the evidence being considered before a decision is made since if the decision is appealed to ECAB any subsequent review by the ECAB is limited to the evidence in the claim record at the time of the preceding decision.

Given the potentially wide variance in the number of days before OWCP can close a hearing record, an OWCP official said they have attempted to establish realistic standards for notifying claimants of hearing decisions. OWCP has established two goals for the timing of notifying claimants of final hearing decisions: (1) notifying 70 to 85 percent of the claimants within 85 calendar days, and (2) informing 96 percent of claimants within 110 calendar days following the date of the hearing. Based upon our review of the applicable legislation, we determined that OWCP has the authority to interpret the FECA requirement for claimant notification in this manner.

Of an estimated 2,945 appealed claims for which BHR rendered a decision on a hearing during our review period, notification letters for an estimated 2,256 (or 77 percent) were signed by OWCP officials within 85 days of the date of the hearing and an estimated 2,716 (or 92 percent) of the claims were signed within 110 days of the hearing date.⁹ OWCP officials signed an estimated 158 (or 5 percent) of the claimants' notification letters from 111 to 180 days after the hearing date and 70 claims (or 2 percent) from 181 to more than 1 year after the hearing date.¹⁰

⁹Our analysis reflects only appeals for which necessary dates were available in the claims decision files. We estimate that the dates we used to determine the length of time required to provide decision information to a claimant were available in the decision files for 95 percent of the BHR appeals with hearings.

¹⁰The percentages of claims decision notifications signed within 110, 111 to 180, and 181 days or more of the hearing date do not total 100 percent due to rounding.

OWCP’s Physicians Were Board Certified, Licensed, and Had Specialties Consistent with the Injuries Examined

Our review showed that OWCP referee physicians were board certified and licensed in their specialties. In addition, we found that OWCP’s second opinion and referee physicians had specialties that were appropriate for claimant injuries in nearly all the cases we examined.

Most of OWCP’s Physicians Were Board Certified and Had State Medical Licenses

Although neither FECA nor OWCP’s procedures manual require second opinion physicians to be board certified, the procedures manual states that OWCP should select physicians from a roster of “qualified” physicians and “specialists in the appropriate branch of medicine.” The manual further requires that for referee physicians “the services of all available and qualified board-certified specialists will be used as far as possible.” The manual allows for using a noncertified physician in special situations, stating “a physician who is not board-certified may be used if he or she has special qualifications for performing the examination,” but the OWCP medical official making that decision must document the reasons for the selection in the case record.

Based on our statistical sample, we estimate that at least 94 percent of OWCP's contracted second opinion physicians and at least 99 percent of the contracted referee physicians were board certified.¹¹ In making these determinations, we used information from the American Board of Medical Specialties (ABMS), the umbrella organization for the approved medical specialty boards in the United States. In addition, OWCP provided documentation verifying certifications of some of the physicians in our sample.¹² For the remaining 6 and 1 percent of the second opinion and referee physicians in our sample, respectively, we lacked information to determine whether they were or were not certified.

Although neither FECA nor OWCP regulations specifically require either second opinion or referee physicians to be licensed by the state in which they practice, OWCP officials stated that OWCP expects that all physicians will have state medical licenses. Based on our sample of physicians, we estimated that at least 96 percent of the second opinion physicians and at least 99 percent of the referee physicians had current state medical licenses. For the 4 and 1 percent of the remaining physicians respectively, we did not have sufficient information to determine whether or in what state they were licensed.

Second Opinion and Referee Physicians Had Specialties That Were Relevant to Injuries Evaluated

An estimated 98 percent of OWCP's second opinion and referee physicians appeared to have specialties relevant to the types of claimant injuries they evaluated. While there is no requirement for referee physicians to have specialties relevant to the types of injuries evaluated, OWCP officials told us that a directory is used to select referee physicians—with appropriate specialties—to examine the type of injury the claimant incurred. For the remaining physicians in our sample, that is the remaining 2 percent, the

¹¹We were only able to search for board certification and licensing for—and consequently only included in our sample—those physicians for whom we could identify a first and last name and an area of medical specialty from the claims decisions summaries. Our estimates regarding board certification and licensing cover about 63 percent of second opinion and 85 percent of referee physicians.

¹²One reason why neither OWCP nor we were able to determine if a small proportion of physicians—for whom we had the necessary information (i.e., first and last name and specialty)—were board certified and state licensed is that some of the medical examinations by the physicians in our sample occurred during or prior to the period from May 1, 2000, through April 30, 2001. Each of the state medical boards and the ABMS web sites that we used to check the status of the board certifications and licenses only provided information on current status.

conclusion was that they had specialties which were not appropriate for the type of injuries examined. For example, a cardiologist—acting as a second opinion physician—examined a claimant for residuals of hypertension that were aggravating the claimant’s kidney disease. The claimed injury appeared to be associated with kidney rather than heart disease. Therefore, it would have been appropriate for the claimant to be treated by a nephrologist (kidney specialist).

For assistance in reviewing relevancy of physician specialties, we contracted with a Public Health Service (PHS) physician. With that assistance, we were able to review our sample of claimants’ injuries and the board specialties of the physician(s) who evaluated them to determine if the knowledge possessed by physicians with a specific specialty would allow them to fully understand the nature and extent of the type of injury evaluated.¹³

OWCP Uses Several Methods to Identify Customer Concerns and Assists DOL’s IG in Addressing Potential Claimant Fraud

OWCP uses surveys of randomly selected claimants and focus groups to monitor the extent of customer satisfaction with several dimensions of the claims program, including responsiveness to telephone inquiries. OWCP claims examiners and employing agencies serve as primary information sources for identifying potentially fraudulent claims. When such potential fraud is detected, DOL’s IG investigates the circumstances and, if appropriate, prosecutes the claimants and others involved.

¹³We were not able to attempt to evaluate the appropriateness of the physician’s specialty in comparison to the injury for some claims because the claims decisions summaries did not contain the type of injury or the physician’s specialty. We estimate that the information needed to evaluate the appropriateness of the specialty was available in the summaries we used for an estimated 61 percent of second opinion physicians and 83 percent of referee physicians.

Customer Satisfaction with the Claims Process

OWCP obtains information concerning customer satisfaction with the handling of claims through surveys of claimants and conducting focus groups with employing agencies. Since 1996, OWCP has used a contractor to conduct customer satisfaction surveys via mail about once each year to determine claimants' perceptions on several aspects of the implementation of the workers' compensation program, including overall service, for example, whether claimants knew their rights when notified of claims decisions and the timeliness of written responses to claimants' inquiries.¹⁴ The questionnaires did not include questions specific to the appealed claims process, but some of the respondents may have based their responses on experiences encountered when appealing claims.

In the 2000 survey, customers indicated a 52 percent satisfaction rate with the overall workers compensation program, and a 47 percent dissatisfaction rate.¹⁵ The level of claimant satisfaction indicated in their responses for specific issues in the surveys have been largely mixed (i.e., more positive responses for some questions and more negative responses for other questions). For example, survey responses in fiscal year 1998 showed that 34 percent of the respondents were satisfied with the timeliness of responses to their written questions to OWCP concerning claims, while 63 percent were not, and 35 percent were satisfied with the promptness of benefit payments, while 26 percent were not satisfied. Based on these and previous survey results, OWCP took actions including creating a committee to address several customer satisfaction issues, such as determining if the timeliness of written responses could be improved.¹⁶

In fiscal year 2001, OWCP took two additional steps to measure customer satisfaction. First, OWCP used another contractor to conduct a telephone survey of 1,400 claimants focused on the quality of customer service provided by the district offices. As of March 25, 2002, a contractor was still evaluating the results of this survey. Second, OWCP held focus group meetings with employing agency officials in the Washington, D.C., and

¹⁴The claimants were selected on a random sample basis and the surveys were conducted in 1996, 1997, 1998, and 2000.

¹⁵The remaining 1 percent did not provide information on overall satisfaction level.

¹⁶Prior GAO testimony (*Office of Workers' Compensation Programs: Goals and Monitoring Are Needed to Further Improve Customer Communications*, GAO-01-72T, Oct. 3, 2000) addresses deficiencies in the goals OWCP set for customer satisfaction and the evaluative data collected for measuring progress in improving customer satisfaction.

Cleveland, Ohio, district offices' jurisdictions. An OWCP official stated that this effort provided an open forum for federal agencies to express concerns with all aspects of OWCP service. In the Washington D.C. focus group, employing agency officials expressed their belief that some of the claims approved by OWCP did not have merit. The report on that meeting did not specify whether this concern applies to appealed claims decisions. The report documenting the Cleveland focus group effort indicated that employing agencies were frustrated about not being informed of OWCP claims decisions and several agencies said they continued to put through medical bills only to be told by the employees that their claims had been denied.

OWCP Examiners and the DOL IG Monitor Claimant Fraud

The DOL's IG—using information from claims examiners and other sources—monitors, investigates, and prosecutes fraudulent claims made by federal workers. The IG's office provides guidance to claims examiners for identifying and reporting claimant fraud, including descriptions of situations or "red flags" that could be potentially fraudulent claims. Red flags include such items as excessive prescription drug requests and indications of unreported income. DOL's *Audits and Investigations Manual* requires claims examiners and other employees to report all allegations of wrongdoing or criminal violations—including the submission of false claims by employees—to the IG's office.

Once a potentially fraudulent claim is identified, the IG will review information submitted by the claimant, coworkers, physicians, and others. The IG may also conduct additional investigations of claimants and medical providers suspected of defrauding the program, such as surveillance of claimants and undercover operations aimed at determining if a physician is knowingly participating in fraudulent claims. For example, an IG agent—wearing a transmitter—might pose as a postal worker and visit a doctor who has been identified as providing supporting opinions for OWCP claimants with questionable injuries. The agent could then tell the doctor that the claim of injury is in fact false but that they need time off for personal reasons, for example to get married. If the doctor agrees to support such a false claim, the doctor would then be charged with fraud. Of approximately 600,000 workers' compensation claims filed with district offices from fiscal years 1998 through 2001, the IG opened 513 investigations involving potential fraud. Of these, 212 led to indictments and 183 resulted in convictions against claimants and physicians.¹⁷

Conclusions

One out of four OWCP initial claims decisions (approximately 25 percent) was either reversed or remanded upon appeal because of questions about or problems with either OWCP's evaluation of medical and nonmedical evidence or improper management of claims files. For the appealed claims that were eventually reversed because of problems with the initial decision, benefits to which claimants were entitled are delayed. While benefits are usually granted retroactively in such cases, going without those deserved benefits for what might be extended periods might create hardships for claimants. Further, representatives' fees and some other additional expenses that claimants might incur during the appeals process are generally not reimbursed by OWCP.

While OWCP monitors certain information on BHR and ECAB remands and reversals to identify problems in district office decisions, and distributes much of this information to district offices, that information does not fully identify underlying causes of the problems. An examination of the monitoring steps OWCP is currently taking and a determination of what other information could help OWCP and its district offices to address underlying causes could result in a reduction of the rate of remands and reversals.

¹⁷A number of the cases involved more than one claimant or physician.

Recommendation for Executive Action

We recommend that the secretary of labor require the director of OWCP to examine the steps now being taken to determine whether more can be done to identify and track specific reasons for remands and reversals—including improper evaluation of evidence and mismanagement of claim files—and address their underlying causes.

Agency Comments and Our Evaluation

We obtained comments on this report from the Assistant Secretary for Employment Standards, Department of Labor. The Assistant Secretary agreed with our conclusions regarding the timing of notifying claimants on hearing results; physician certification, licensing and specialties; and processes used by OWCP to monitor customer satisfaction and potential claimant fraud. The Assistant Secretary raised concerns, however, with our conclusions related to the frequency of and reasons for reversals and remands of initial OWCP claims decisions when appealed by the claimant. Following is a presentation of key comments from the Assistant Secretary and our responses to those comments.

OWCP Comment

A principal comment regarding the report and its conclusions relates to the use of BHR and ECAB decision summaries to determine the rate of remands and reversals due to (a) introduction of new information, (b) mismanagement of case files and (c) district office problems in evaluating claim evidence. In short, OWCP asserts that BHR and ECAB summary decisions are inadequate to make such determinations. The Assistant Secretary also expresses the belief that a “large portion” of decisions that our review showed were reversed or remanded because of questions about or problems with the initial decision (as opposed to new evidence being submitted), were in fact reversed or remanded because of new evidence being submitted.

GAO Response

We disagree. Decision summaries we reviewed clearly indicated specific reasons for each reversal or remand and our analysis fully accounted for remands and reversals that were ordered by the BHR and ECAB due to the introduction of new information by the claimant. For example, in the summary of one decision remanded by the ECAB due to an evidence evaluation problem, the BHR had originally decided that a claimant was not entitled to benefits. The BHR decision was based on a second opinion

physician's report and several reports from the claimant's two physicians' all of which preceded the BHR decision. The BHR "representative found that the opinions of the (claimants) attending physicians could not be afforded any great weight as their opinions were based on the fact that the (claimant) was performing duties requiring repetitive shoulder movements, and this was not true." In remanding the decision, ECAB determined that there were "discrepancies between the opinions of the (claimant's physicians) and the (second opinion physician) that there is a conflict in the medical opinion evidence as to the cause of the (claimant's) current condition and, therefore, the case will be remanded" for the appointment of a referee physician. An example of a decision where new evidence was submitted, was an ECAB decision summary that stated that the decision was remanded back to the OWCP district office "because (claimant) submitted relevant and pertinent evidence not previously considered by the office."

OWCP Comment

Cases are frequently reviewed by claims examiners on arrival and may be remanded if late arriving evidence is sufficient to meet the claimant's burden of proof. These claims examiner remands prior to hearing are frequently based on the review of evidence not available to the district office examiner. It appears that the GAO investigators entirely excluded these cases from their sample.

GAO Response

OWCP is incorrect. Our sample, as indicated in our report, was drawn from all appealed case decisions made during a 1-year period and therefore encompassed all affirmations, remands and reversals that were made before hearings, after hearings and those for the record during that 12 month period.

OWCP Comment

The percent of appeals reversed or remanded by the ECAB may be the purest indicator of district office oversight or error.

GAO Comment

We note that, based on our sample, the rate of ECAB remands and reversals was approximately 23 percent, which closely approximates the composite remand and reversal rate for both BHR and ECAB of 25 percent.

OWCP Comment

The report also conflates its analysis of remands and reversals. Remands and reversals must be distinguished. A remand does not reverse the denial of a claim and direct the examiner to pay the denied benefit. It may, for example, direct the examiner to ask further questions of the reporting physician, after which the district office issues a new decision that considers the doctor's further response. The new decision may reinstate the original denial or award the benefit.

GAO Response

We have added wording to our report to make the distinction clear. However, because our analysis focused on the same issue for both, i.e. questions about or problems with initial claims decisions made at OWCP district offices, we believe it is appropriate to use reversals and remands as a combined indicator.

OWCP Comment

In summary, the report's presentation of the ratio of remands and reversals caused by new evidence, as opposed to "errors" in the original decision, is seriously flawed. We have attached a chart that provides the actual outcomes from the two appeal bodies for FY 2001. Following the actual procedures we have described, we believe that all (BHR) decisions in which a hearing was held reflect new information to some degree. As for the other categories, our experience is that half the remands/reversals prior to hearing and most of the remands/reversals following reviews on the record are based on the submission of new evidence. This analysis yields the conclusion that well over half of the (BHR) remands/decisions reflect the consideration of new evidence or new argument.

GAO Response

We agree that new evidence is submitted and considered in many cases throughout the life of a claim, which may involve a number of separate

appeals. However, our review of decision summaries clearly showed the reasons for remand or reversal of initial claims decisions when appealed. Those reasons, which also were provided to claimants in explaining why the decision on their claim was being remanded or reversed, included (1) questions about or problems with the availability or consideration of evidence at the time of the initial decision, or (2) problems with case file management; and (3) new evidence or information being introduced. The chart provided by OWCP does not present any information on such specific reasons for remands and reversals. In fact, in response to our request for such specific information at the end of our review, we were told by OWCP officials that OWCP did not have such information.

OWCP Comment

The report characterizes four percent of cases as due to “mismanagement of claim files.” This phrase is not defined and only one example is offered. With no definition and only one example, the phrase “mismanagement” appears to be unsupported.

GAO Response

We believe the discussion concerning “mismanagement of claim files” adequately defines the issue. In addition, the example provided is for illustrative purposes.

OWCP Comment

GAO’s recommendation appears to be based on (1) the substantial overestimation of the contribution of OWCP errors to the remand/reversal rate and (2) a generalization that no systematic study of the “underlying causes” of remands and reversals has been undertaken by OWCP. OWCP explained its many and varied approaches to decision monitoring and quality improvement to the GAO team, and we do not understand the basis for this generalization. In fact, OWCP does react to data showing trends from ECAB decisions and hearing decisions, provides appropriate training to claims examiners, and is fully committed to continuing to monitor the outcomes of appeals.

GAO Response

While we agree that OWCP takes a number of actions to monitor decision reversals and remands, and in fact we recognize many of these in our

report, our estimates of the rates and reasons for remands and reversals are statistically valid. Our recommendation is based upon (1) the importance of ensuring that claimants receive benefits to which they are entitled as promptly as possible; (2) the level of initial claims decision remands and reversals upon appeal; and (3) our conclusion that there may be opportunities for OWCP to better identify the reasons for and address the underlying causes of remands and reversals.

OWCP Comment

GAO acknowledged the basis for OWCP's application of a hearing standard which allows for 110 days for hearing decision notification, including time for the claimant's review of testimony and opportunity to comment.

GAO Response

Our report describes how OWCP has interpreted the FECA requirement and established a target of notifying most claimants of the decision on their appeal within 110 days of the date of the hearing. We did not assess whether this is an appropriate target.

Finally, DOL indicated that, consistent with our recommendation, they would review and enhance their systems for monitoring results of its claims adjudication process "to better achieve improvements in our claims review."

DOL also provided technical comments which we incorporated in the report as appropriate. DOL's comments are reprinted in appendix IV.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the ranking minority member and to the secretary of labor. We will also make copies available to others on request at that time.

Major contributors to this report were Boris Kachura, Assistant Director; Thomas Davies Jr., Project Manager; Ellen Grady, Senior Analyst; Chad Holmes, Analyst; and Karen Bracey, Senior Operations Research Analyst.

Sincerely yours,

A handwritten signature in black ink that reads "George H. Stalcup". The signature is written in a cursive style with a large initial "G" and a long, sweeping underline.

George H. Stalcup
Director, Strategic Issues

OWCP's Claims Process

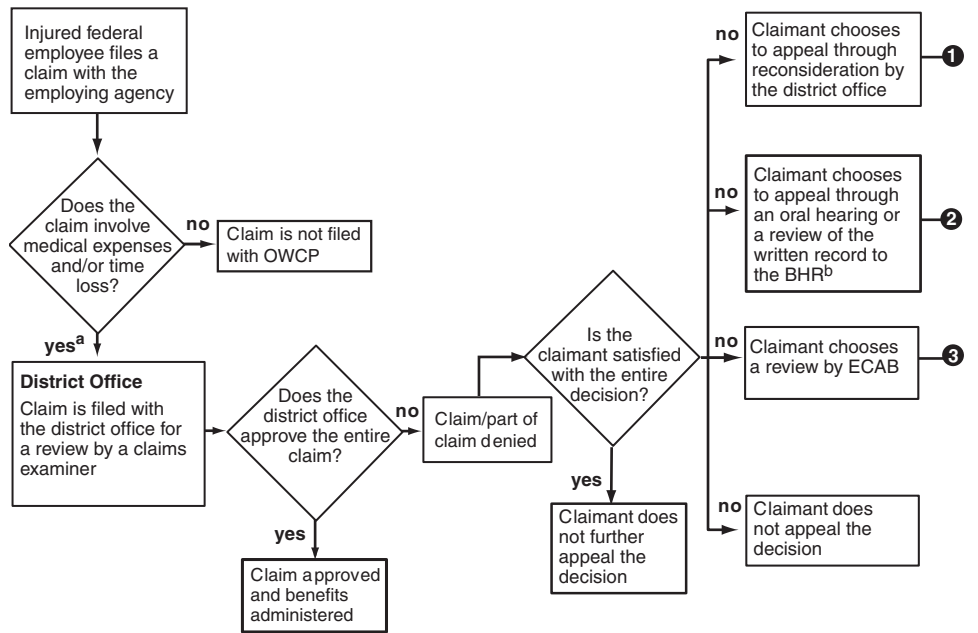
Based on interviews with OWCP officials and reviews of OWCP operational guidance, when a federal employee is injured at work and becomes disabled, the employee files a claim with the employing federal agency. All claims that involve medical expenses or lost work time or both are then forwarded by the agency to 1 of OWCP's 12 district offices.¹⁸ Figure 2 characterizes OWCP's claims process, including the claims adjudication process.

¹⁸For uncontested traumatic injury claims, if the claim is for medical expenses that did not exceed \$1,500 and the employee missed less than 45 days of work as a result of the injury, an OWCP claims examiner can reimburse the claimant for the medical expenses incurred and provide the claimant with continuation of pay benefits. An OWCP official said the claims examiner would then administratively close the claim without a determination of entitlement.

Appendix I
OWCP's Claims Process

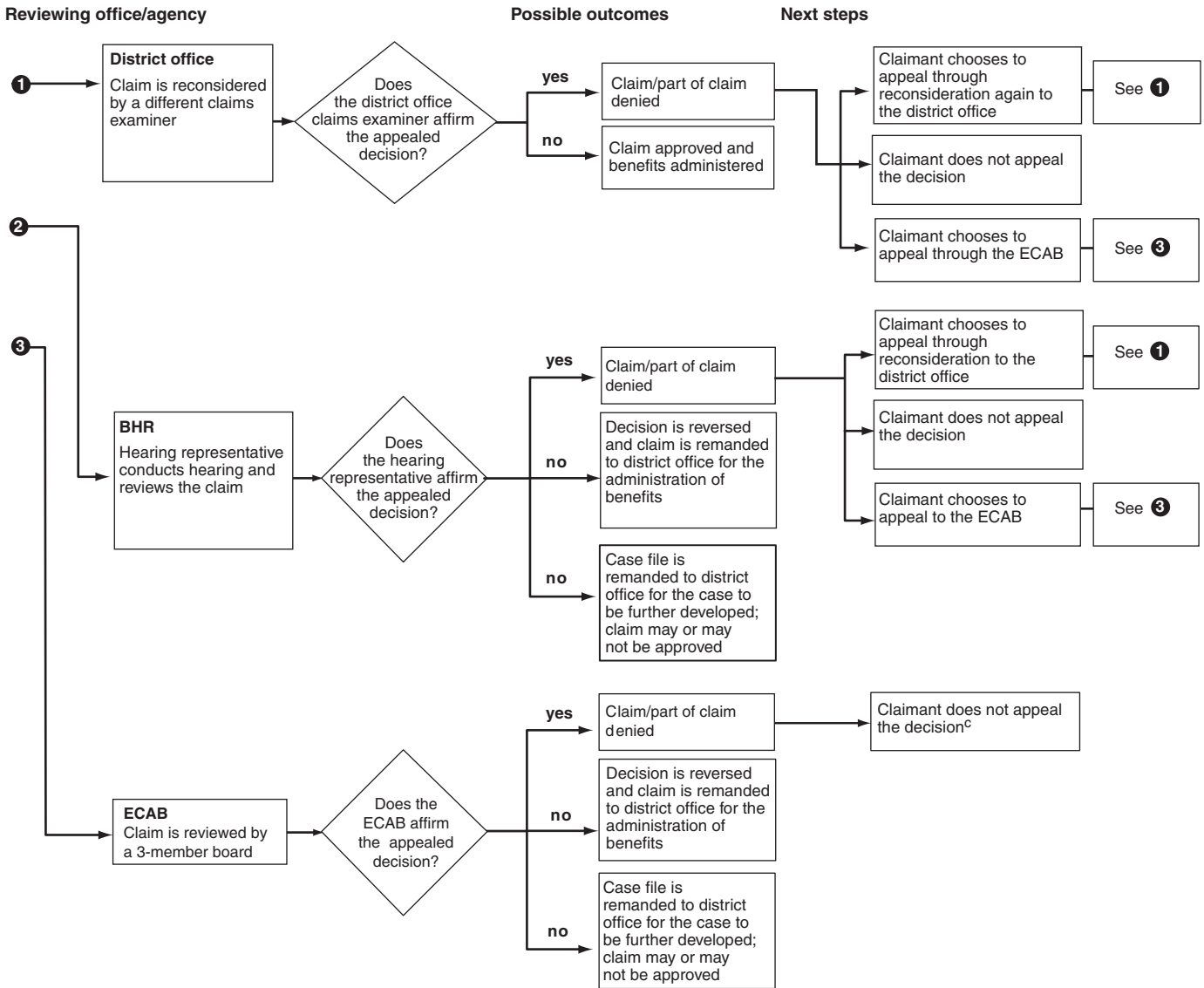
Figure 2: Claims Process

Initial claim adjudication process



**Appendix I
OWCP's Claims Process**

Claims appeal/review process



^aA portion of uncontested traumatic injury claims are administratively closed without a determination of entitlement, which allows for continuation of pay and limited medical expenses.

^bThe appellant loses the right to a hearing before a BHR representative if a reconsideration has already been conducted by the district office. However, BHR has the discretion to hear the matter.

^cBy law, claims can not be appealed to the U.S. Federal Court of Appeals, outside of DOL.

Source: GAO review of OWCP's claims process.

Scope and Methodology

In your March 2001 letter, you asked GAO to examine several issues related to OWCP's workers' compensation claims adjudication process. To meet this objective, we reviewed a probability sample of over 1,200 decision summaries from about 8,100 ECAB and BHR claims appeal decisions made between May 1, 2000, and April 30, 2001, on claimant appeals.

As part of our review of the decisions made by BHR and ECAB on appeals, we first categorized the decisions in our sample into three groups: (1) affirmed (the decision made on the initial claim was not changed), (2) remanded (the claim was sent back by either ECAB or the BHR to the cognizant district office for additional review or action and a new decision), or (3) reversed (the initial decision made on the claim by the district office or BHR was determined by BHR or ECAB to be incorrect and was therefore changed—in most cases a claim or portion of a claim that had been denied was changed to an approval). For each claim that had been remanded or reversed, we then analyzed the decision summaries to determine the basis for the BHR or ECAB decision.

To determine the extent to which OWCP was complying with FECA's requirements that (1) a referee physician be appointed to resolve conflicts in medical opinions between claimant physicians and OWCP's second opinion physicians and (2) claimants be informed of the outcome of hearings in a timely manner, we performed several steps.

For the first of these two objectives, we reviewed FECA legislation and OWCP regulations and interviewed OWCP officials to identify the specific requirements related to referee physicians. From our statistical sample of claims appeal decisions, we then identified decisions in which at some point during the history of the claim, there had been a conflict in the medical opinions between the claimant's attending physician and an OWCP second opinion physician. For this subset, we relied upon the decisions of the BHR and ECAB as reflected in decision summaries to determine the extent to which referee physicians were appointed as required. In addition, we identified the frequency that claims were remanded or reversed by the BHR and ECAB because a referee physician should have been but was not appointed.

Regarding the length of time taken by OWCP to notify claimants about hearing outcomes, we reviewed the relevant FECA requirement and OWCP's guidelines and goals and interviewed OWCP officials. We limited our review on this objective to claims decisions rendered by BHR, because ECAB decision summaries did not contain the dates needed for our

analysis. Accordingly, we selected a subset of BHR cases from our sample, and calculated the number of days between the date of the hearing and the date of the final hearing decisions. In making our calculation, we used the date of the BHR decision letter as the claimant notification date.

To determine whether the physicians involved in reviewing claims were board certified, we used another subset of claims appeal decisions from our sample, and relied on information from the American Board of Medical Specialties' (ABMS) website (www.abms.org). ABMS is the umbrella organization for approved medical specialty boards in the United States. We compared the names and specialties of the second opinion and referee physicians to the database to determine whether these physicians were board certified. We looked for an exact or close match of names while allowing for obvious spelling errors in the name or other minor discrepancies, such as missing initials. Although most of the board certification verifications were done by querying the ABMS website and printing copies of the certifications, when necessary we also contacted ABMS by telephone to obtain verbal verification on board certifications or used ABMS' directory book for calendar year 2002. For those physicians whose certifications we were not able to readily verify, we asked OWCP to provide documentation of the board certifications, which they did for a number of physicians.

In determining whether second opinion and referee physicians used by OWCP had state licenses, we used the same sample subset as we used in verifying board certifications. In making the state license determinations, we generally focused on the state in which the employee resided for BHR decisions, and the state in which the employing agency was located in for ECAB decisions. We relied on a variety of resources in that search, including www.docboard.org (a public service site) and individual state medical board web sites for printed documentation. We also phoned staff in various state medical board offices for verbal confirmation for some physicians. We again looked for an exact or close match of name while allowing for spelling and other minor differences. In addition, since physicians are required to have state medical licenses in order to become board certified, any physicians whom we could not verify as licensed through state sources were considered to be licensed if we had determined the physicians were board certified. Also, while the dates of physician involvement on individual cases could have taken place anytime during or even preceding the May 1, 2000, through April 30, 2001 period of our review, we made our determinations for state licenses as of December 31, 2001.

We also determined whether second opinion and referee physicians contracted for by OWCP possessed the appropriate medical specialty to evaluate and fully understand the nature and extent of the claimant's particular illness or injury. To do this, we drew another subset of the appealed claims decisions for which we could determine that a second or referee physician was involved, and that we could identify the nature of the claimant's injury and the physician's medical specialty. We contracted with a Public Health Service (PHS) physician to review the injuries of the claimants in this sample and determine whether the board specialties of the physician(s) who evaluated those injuries were appropriate.¹⁹

To determine how OWCP identifies problems with its appeals process, levels of customer satisfaction, and potential claimant fraud, we interviewed OWCP officials—including the deputy director and director of BHR—and reviewed documentation provided by OWCP, including reports from several annual customer (claimant) surveys and focus groups of federal agencies. In addition, we interviewed officials in DOL's IG, analyzed IG guidance on detecting and investigating potential fraudulent activity, and reviewed IG annual reports that discussed the identification and prosecution of claimant fraud.

We did our work in Washington, D.C., from March 2001 through April 2002. Our work was done in accordance with generally accepted government auditing standards.

¹⁹We were not able to evaluate the appropriateness of the physician's specialty in comparison to the injury for some claims because the decision summaries did not contain the type of injury or the physician's specialty.

Sampling and Estimation Methods and Sampling Errors

To help accomplish some of our objectives we reviewed a probability sample of over 1,200 ECAB and BHR decisions issued between May 1, 2000, and April 30, 2001. This appendix describes how we selected decisions for review and provides the sampling error of estimates presented in this report that we made from our sample.

ECAB and BHR cases were sampled separately. We obtained a list of ECAB decisions issued between May 1, 2000, and April 30, 2001. The listed decisions were classified as either remands or nonremands and a simple random sample of each of the two classifications was selected. BHR decision files covering the period of our review were stored in folders in three filing cabinets. Each folder was divided into two compartments. We took separate systematic samples from the front and back compartments of the folders in the cabinets. Since the file cabinets contained some decisions that fell outside our review period, we estimated, based on our sample, the number of decisions in the three filing cabinets that were issued between May 1, 2000, and April 30, 2001.

Using these sampling methods described above, we obtained a sample of over 1,200 decisions. Each sampled decision was weighted in our analysis to account statistically for all appealed claims decisions issued between May 1, 2000, and April 30, 2001, including those that were not sampled. The estimates we made from our sample and the sampling errors associated with these estimates are given in the table below.

**Appendix III
Sampling and Estimation Methods and
Sampling Errors**

Table 1: Sampling Error of Estimates for Appealed Claims Decisions to ECAB and BHR between May 1, 2000, and April 30, 2001^a

Description	Estimate	Sampling error of estimate	Confidence interval
Result of BHR/ECAB appeal review			
a. Percent of decisions that were affirmed	67	± 2	65-69
b. Percent of decisions that were reversed	10	± 2	8-12
c. Percent of decisions that were remanded	22	± 2	20-24
d. Percent of decisions where review result could not be determined	1	± 1	0-1
e. Percent of decisions that were remanded or reversed due to questions about or problems with case management or evaluation problems	25	± 2	23-27
f. Number of decisions that were remanded or reversed due to questions about or problems with case management or evaluation problems	2,026	± 174	1,852-2,201
g. Percent of decisions that were remanded or reversed due to new evidence	6	± 1	5-7
Physicians' board certification and licensing			
a. Percent of second opinion physicians reviewed for board certification and licensing	63	± 4	59-68
b. Percent of referee physicians reviewed for board certification and licensing	85	± 8	77-94
c. Percent of second opinion physicians who were board certified	94	± 3	91-96
d. Percent of referee physicians who were board certified	99	± 1	98-100
e. Percent of second opinion physicians who were licensed	96	± 2	94-98
f. Percent of referee physicians who were licensed	99	± 1	98-100
Relevance of physician specialty to claimant injury			
a. Percent of second opinion physicians reviewed for appropriateness to claimant injury	61	± 4	57-65
b. Percent of referee physicians reviewed for appropriateness to claimant injury	83	± 8	75-91
c. Percent of second opinion and referee physicians who had appropriate specialties for the claimed injuries	98	± 1	96-99
Claimant notification time after hearing			
a. Percent of hearing summaries reviewed	95	± 2	93-97
b. Number of appealed claims in which an oral hearing was held and BHR rendered a decision on between May 1, 2000 and April 30, 2001	2,945	± 71	2,874-3,015
c. Percent of claimants notified of hearing outcome in less than or equal to 85 days	77	± 4	72-81
d. Number of claimants notified of hearing outcome in less than or equal to 85 days	2,256	± 199	2,057-2,456
e. Percent of claimants notified of hearing outcome in less than or equal to 110 days	92	± 3	89-95
f. Number of claimants notified of hearing outcome in less than or equal to 110 days	2,717	± 202	2,515-2,918
g. Percent of claimants notified of hearing outcome in 111 to 180 days	5	± 2	3-8
h. Number of claimants notified of hearing outcome in 111 to 180 days	158	± 65	93-223
i. Percent of claimants notified of hearing outcome in 181 days to more than 1 year	2	± 1	1-4
j. Number of claimants notified of hearing outcome in 181 days to more than 1 year	70	± 44	26-114

^aSampling error and confidence intervals are based on the 95 percent confidence level.

Source: GAO analysis of appealed claims decisions.

Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



APR 30 2002

Mr. George H. Stalcup
Director, Strategic Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Stalcup:

Thank you for the opportunity to review and provide comments to the draft report to the Chairman of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, Committee on Government Reform, U.S. House of Representatives entitled: "Office of Workers' Compensation Programs – Further Actions Are Needed to Improve Claims Review," GAO-02-637. On behalf of Secretary Chao, the Employment Standards Administration (ESA), Office of Workers' Compensation Programs (OWCP) has reviewed the report.

The GAO report examined selective aspects of the OWCP adjudication process. Specifically:

- the frequency and primary reasons why appealed claims decisions are reversed or remanded to OWCP district offices for additional consideration;
- the extent to which OWCP is complying with the Federal Employees' Compensation Act (FECA) requirement to inform claimants within 30 days about the outcomes of appeal hearings;
- the extent to which OWCP is using certified and licensed physicians to provide opinions on injuries claimed and whether the physicians' areas of specialty appear to be consistent with the injuries they evaluate; and
- methods OWCP uses to identify customer satisfaction and potential claimant fraud.

Our response to each of these items follows, in reverse order as presented above.

GAO Item: Methods OWCP uses to identify customer satisfaction and potential claimant fraud.

Response. The GAO report comments on some of OWCP's extensive work to improve customer services in the Federal Employees Compensation Program and on our cooperation with the Office of Inspector General to identify potential claimant fraud. As to customer service satisfaction, we appreciate the GAO's recognition that OWCP has taken steps to survey customer satisfaction over the past few years, and to take action to address specific areas where needed.

Working to Improve the Lives of America's Workers

Appendix IV
Comments from the Department of Labor

U.S. Department of Labor Response to GAO Report GAO-02-637.

In addition, we consider the monitoring of potential claimant fraud an essential part of the OWCP program and appreciate the acknowledgment by GAO that a cooperative relationship exists with the DOL's Inspector General for this purpose.

GAO Item: The extent to which OWCP is using certified and licensed physicians to provide opinions on injuries claimed and whether the physicians' areas of specialty appear to be consistent with the injuries they evaluate.

Response. We are pleased that GAO was able to confirm in nearly all the cases in its large sample that second opinion and referee specialists are Board certified in an appropriate specialty, and that none was found to lack this credential.

GAO Item: The extent to which OWCP is complying with the Federal Employees' Compensation Act (FECA) requirement to inform claimants within 30 days about the outcomes of appeal hearings.

Response. GAO acknowledged the basis for OWCP's application of a hearing standard which allows for 110 days for hearing decision notification, including time for the claimant's review of testimony and opportunity to comment. GAO also acknowledges that OWCP has the authority to interpret the statutory requirement in this manner. We also note that the Employees' Compensation Appeals Board has supported this interpretation.

GAO Item: The frequency and primary reasons why appealed claims decisions are reversed or remanded to OWCP district offices for additional consideration.

Response. The GAO investigators reviewed a large sample of decisions (more than 1,200 of 8,100) issued by the Branch of Hearings and Review (H&R) and the Employees' Compensation Appeals Board (ECAB) on appeals from decisions by the OWCP district offices, during a one-year period ending in April 2001. The GAO report concludes from this review that in a high percentage of these decisions, the case was reversed or remanded to the district office due to district office error in the evaluation of evidence or administrative errors in handling the record. We believe that the method used in this review was not well designed, and that the conclusions, particularly those concerning outcomes of the hearing process, are not supported by the findings.

Especially with respect to cases appealed to H&R, the percentage of cases resulting in remand and reversal cannot be simply converted into an "error rate." In the first instance, it is important to note that, as even the GAO report indicates, "medical evidence is an important component in determining whether an accident described in a claim caused the claimed injury and if the claimed injury caused the claimed disability." Workers compensation cases, by their very nature, involve a continuum of medical evidence. As such, a reasonable level of remands and reversals from H&R should be expected. Moreover, such remands and reversals are an indication of a robust and independent evaluation of cases, and, hence, of appropriate due process and protection of claimants' rights. The H&R hearing process was designed expressly to give claimants the opportunity to adduce new evidence.

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A claimant who receives an adverse decision on any benefit may file a request for a hearing within 30 days. Additional evidence often arrives in the district office after the decision was issued, and may be added to the record by the claimant at any time during the process, at the time of the hearing request, and at any time up until the record is closed after the hearing. The claimant may also provide additional evidence through testimony, and may call witnesses, at the hearing. In presenting his or her case, the claimant has the opportunity to emphasize or explain evidence that may not be clear in the record. In fact, the hearing representative has a special obligation to make sure that the claimant fully understands the basis for the district office decision, and has an opportunity to perfect the record with additional evidence. The purpose of the hearing right is to make sure that the claimant has had every opportunity to make the best case.

For all these reasons, the record on which the hearing examiner's decision is based is always a different and fuller record than the one available to the OWCP district office at the time of its decision.

Although GAO investigators reviewed many hearing decisions, they read and catalogued only the written decision. Written decisions are generally a few pages which summarize the evidence and conclusions of law. Neither the case files nor the hearing transcripts were examined by the GAO team. Thus, in many cases the GAO team was not in the best position to judge whether the hearing decision was based solely on information that was available to the claims examiner. This bears directly on whether a remand or reversal reflects, "district office error in evaluation." For example, a decision by the Hearing Representative to weigh the claimant's personal testimony more heavily than the written statement of the employer does not necessarily indicate an error of evaluation on the part of the district office. In fact, issues of credibility and presentation are the primary reason that oral hearings are held. The face-to-face hearing allows the hearing representative the ability to assess credibility, a duty which the ECAB has noted in its decisions is of utmost importance.

To provide prompt decisions and benefits to claimants, OWCP has timeliness requirements for decisions of different complexity, and sometimes a requested medical report reaches the file after a decision is issued and the case is transferred to H&R in Washington. Cases are frequently reviewed by claims examiners on arrival and may be remanded if the late-arriving evidence is sufficient to meet the claimant's burden of proof. These claims examiner remands prior to hearing are frequently based on the review of evidence not available to the district office examiner. It appears that the GAO investigators entirely excluded these cases from their sample.

The GAO report concludes that only 6% of appeals decisions are remands and reversals stemming from receipt of additional evidence, while 25% are remands/reversals caused by OWCP error. For the reasons just stated, we believe that a large portion of the cases placed in the second category attributed to OWCP error, in fact, should have been categorized as remands and reversals attributed to receipt of additional evidence. Thus, the report significantly understates the real percentage of "new evidence" remand/reversals, and significantly overstates the "error" category. Although we do not have sufficiently detailed information about how the

Appendix IV
Comments from the Department of Labor

U.S. Department of Labor Response to GAO Report GAO-02-637.

GAO team categorized decisions by the various reasons, the report discusses the 6% figure in the context of a paragraph regarding the procedure which allows claimants to submit new evidence after a hearing has already been held. Such instances are clearly far less frequent than the numerous situations discussed above – especially during the hearing itself – where new evidence is submitted or differently argued. In any case, the 6% determination is inaccurate on its face, and given the methodology of the review a valid assessment of this ratio was not possible. Absent a complete review of the case file, we believe it is impossible to assess with any degree of accuracy which cases were remanded or reversed due to new evidence or an interpretation of evidence based on credibility assessment.

The foregoing addresses appeals to H&R, a process that was established expressly to elicit new evidence. However, an additional difficulty with the analysis in the GAO report is its combining of reversals and remands from H & R with reversals/remands from the Employees' Compensation Appeals Board (ECAB). Unlike H&R, the Employees' Compensation Appeals Board (ECAB) does not accept changes to the record. Even at the ECAB, however, the claimant has an opportunity to submit written arguments and/or to present oral argument. The percent of appeals reversed or remanded by the ECAB may be the purest indicator of district office oversight or error (for this reason this smaller subset of decisions is monitored more closely and formally by OWCP). Even here, however, the ECAB may be taking a new position on an issue that has not previously been considered, and may essentially be establishing a new interpretation of the Federal Employees' Compensation Act (FECA). Only a careful review of the context can determine the nature of the remand or reversal.

(Even when there is no new ground broken in an ECAB decision, it is important to note that the Board and its legal staff have the benefit of an extensive period to review the facts and legal argument in each case, as well as any pleadings or oral argument filed on behalf of the claimant or OWCP. It should not be surprising, nor is it always an indication of initial error, that in some percentage of cases, especially in complex areas of the law, the ECAB will arrive at a different conclusion than a claims examiner did in the first instance.)

The report also conflates its analysis of *remands* and *reversals*. Remands and reversals must be distinguished. A remand does not reverse the denial of a claim and direct the examiner to pay the denied benefit. It may, for example, direct the examiner to ask further questions of the reporting physician, after which the district office issues a new decision that considers the doctor's further response. The new decision may reinstate the original denial or award the benefit.

Thus, a valid "error rate" computed based on both remands and reversals would reflect procedural or other mistakes in the original decision. With respect to remands, however, a critical factor not presented by the GAO report is that the substance of the original district office decision is often found not to have been in error.

In summary, the report's presentation of the ratio of remands and reversals caused by new evidence, as opposed to "errors" in the original decision, is seriously flawed. We have attached a chart that provides the actual outcomes from the two appeal bodies for FY2001. Following the

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actual procedures we have described, we believe that all H&R decisions in which a hearing was held reflect new information to some degree. As for the other categories, our experience is that half the remands/reversals prior to hearing and most of the remands/reversals following reviews on the record are based on the submission of new evidence. This analysis yields the conclusion that well over half of the H&R remands/reversals reflect the consideration of new evidence or new argument. As already stated, any attempt to determine precisely which of these remands/reversals were primarily caused by district office error would require a thorough study of the entire case file, including the decision, the transcript, and the various pieces of key evidence.

The chart also shows that remands for additional development far outnumber reversals (in which the district office decision is simply overturned). The ratio is 2:1 for hearing decisions and 3:1 for ECAB decisions. As previously noted, after further development, the district office may reach substantively the same decision after taking account of the new information with further case development.

The report characterizes four percent of cases as due to "mismanagement of claim files." This phrase is not defined, and only one example is offered, of the need to reconstruct a case because it was not forwarded promptly to ECAB. (Even here, the investigators did not determine whether OWCP or ECAB was the source of the administrative problem.) With no definition and only one example, the phrase "mismanagement" appears to be unsupported. In any case, OWCP's move to a completely imaged case record will improve our ability to timely transfer files to both the H&R and the ECAB, eliminating mailing delays and the small percentage (less than one percent of ECAB decisions according to our data) of cases lost in the mail or via misfiling.

Finally, GAO's recommendation appears to be based on (1) the substantial overestimation of the contribution of OWCP errors to the remand/reversal rate just described, and (2) a generalization that no systematic study of the "underlying causes" of remands and reversals has been undertaken by OWCP. OWCP explained its many and varied approaches to decision monitoring and quality improvement to the GAO team, and we do not understand the basis for this generalization. In fact, OWCP does react to data showing trends from ECAB decisions and hearing decisions, provides appropriate training to claims examiners, and is fully committed to continuing to monitor the outcomes of appeals.

To that end, examples of OWCP's approach include the following:

- Staff of the Division of Federal Employees' Compensation policy branch study every decision of ECAB. Precedent-setting decisions and decisions which evidence a pattern of error become the basis of FECA Bulletins, FECA procedure manual revisions, accountability review manual items, and nationally-developed training courses. As the report mentions, quarterly circulars summarizing important decisions and areas needing more attention are published.
- Accountability reviews of the quality of decisions are done biennially in each district office. The categories used for screening office performance are based on material drawn from OIG findings, appellate results, and other sources. A quality index based on a subset of the scores

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from these reviews is developed and a goal for improvement is included in OWCP's Government Performance and Results Act strategies. This index is intended to get at the fundamental issues which affect outcomes on appeal. Comparative results are shared with the district offices. The index categories were tightened and enhanced for FY 2002 to raise the quality bar even higher, and to ensure that claimants can fully understand the reasoning behind decisions made on their cases in the district offices.

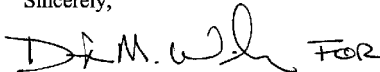
- Managers in the H&R evaluate every decision of the Branch, give guidance to district offices when local patterns of error are detected, and report to the FECA Director on problems and trends.
- Remands and reversals from H&R and ECAB are returned for action to the district office where action is required on a short time frame. They are reviewed by the District Director or a designee to determine whether individual mentoring is needed. Topics that appear to have been widely misunderstood are added to the agendas of local training classes.
- Reports breaking out H&R decisions by issue, remand, and reversal rate are provided to district offices, allowing regional managers to compare outcomes across offices and utilize that information to target training needs.

In addition to these central concerns regarding the report's findings and recommendation, we identified a number of more technical issues or problems with the draft report which are included in Attachment 1.

OWCP is committed to continual improvement of its processes and performance. We believe we have effective systems in place for monitoring the results of the two appellate systems and making changes to procedures and targeting training efforts to address problems and trends identified. Nevertheless, as recommended by the GAO report, we will continue to review and enhance our systems for ensuring case decision quality to better achieve improvements in our claims review.

Again, we appreciate the opportunity to review and comment on the report.

Sincerely,



Victoria A. Lipnic

Enclosures

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Branch of Hearings and Review
Decisions by Disposition
Excluding Procedural Denials of Hearing, Withdrawals, and No-Shows
FY 2001

Affirmations	66.2%
Remand Before Hearing	7.3%
Reversal Before Hearing	4.7%
Remand After Hearing	10%
Reversal After Hearing	8%
Remand, Review of the Record	3.3%
Reversal, Review of the Record	3.4%

Percentages may not add up to 100% due to rounding.

ECAB Decisions by Disposition
FY 2001

Affirm	66%
Affirm/ Remand	3.1%
Remand	14.6%
Reverse	4.7%
Withdraw/ Dismiss	11.8%
Remand for Failure to Produce Case Record	0.7%

Percentages may not add up to 100% due to rounding.

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