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Improvements Still Needed in Administering the Department of Labor's Compensation Benefits for Injured Federal Employees.
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The Federal Employees' Compensation Act, as amended, provides for paying compensation benefits for the disability or death of Federal civilian employees injured or killed while performing their duties. These benefits include compensation for loss of wages, dollar awards for bodily impairment, medical care for an injury or disease, rehabilitation services, and compensation for survivors. Findings/Conclusions: Although the number of civilian employees in the Government has remained fairly constant, from fiscal year 1970 through fiscal year 1977, injuries reported by employees increased by 72.1%; claims increased by 70.3%; persons drawing compensation for extended periods increased by 90%; and benefits paid increased by 315.1%. In about 41% of the 233 cases reviewed, the Office of Worker Compensation Programs (OWCP) awarded benefits without adequately establishing a causal relationship between the employee's disability or death and his or her employment. Many benefits were awarded without adequate supporting medical evidence, supporting medical rationale, or resolution of conflicting medical evidence. Other factors contributing to OWCP's improper determination of benefits involved a lack of onsite investigations and personal contact and a lack of agency appeal rights. District offices visited did not systematically review the condition and status of injured employees who received benefits for extended periods. Recommendations: The Secretary of Labor should instruct all officials and employees of OWCP that: they are responsible for making claims determinations that are equitable to the employee, the Federal Government, and the taxpayers; and their responsibilities require that benefits be denied in all cases in which adequate medical and other evidence are not provided establishing that the employee's injury was work related. The OWCP should: make onsite investigations of all

claims in which causal relationship is not conclusively shown, place as much emphasis on decisions to approve as those to deny benefits, and install a management information system. The Director of the Office of Management and Budget should consider placing specific monitoring and vocational rehabilitation responsibilities in the employing agencies. The Congress should amend the act to place in the employing agencies the authority to appeal any finding of causal relation which is not consistent with or supported by available evidence. (RRS)

7828

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Improvements Still Needed In Administering The Department Of Labor's Compensation Benefits For Injured Federal Employees

Labor approved many claims for benefits under the Federal Employees' Compensation Act without adequate evidence that the employee's disability or death was related to Federal employment. Labor also failed to monitor effectively the condition and status of injured Federal employees to determine whether they remained eligible for the benefits they were receiving, whether they should return to work, or whether they should receive vocational rehabilitation services.

Insufficient staff, mismanagement, and poor administration contribute to the problems.

Labor has taken some actions to improve the program. However, GAO is recommending a number of additional ones for Labor, the Office of Management and Budget, and the Congress.





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

B-157593

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

This report discusses the need for improvements in the administration of the compensation benefits program for injured Federal employees. The benefits program, authorized by the Federal Employees' Compensation Act, is administered by the Department of Labor.

We initiated this review because of the disproportionate increase in the cost of benefits paid under the act. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

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

A handwritten signature in cursive script, reading "James B. Atchale".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

IMPROVEMENTS STILL NEEDED IN
ADMINISTERING THE DEPARTMENT OF
LABOR'S COMPENSATION BENEFITS
FOR INJURED FEDERAL EMPLOYEES

D I G E S T

Claims under the Federal Employees' Compensation Act are being approved without adequate evidence that the injury or death was job related.

Although Federal civilian employment has remained fairly constant during recent years, the compensation program has grown dramatically. From fiscal year 1970 through fiscal year 1977

- injuries reported by employees increased by 72.1 percent, from 120,625 to 207,615;
- claims increased by 70.3 percent, from 17,795 to 30,301;
- persons drawing compensation for extended periods increased by 90 percent, from 23,462 to 44,576; and
- benefits paid increased by 315.1 percent, from \$131.5 million to \$545.8 million.

If the amount of benefits paid continues to increase at this rate, Labor estimates that annual benefit costs will amount to \$1 billion by 1980. (See p. 1.)

Because of the disproportionate increase in program costs, GAO reviewed program administration in Washington, D.C., Jacksonville, Chicago, and San Francisco to determine whether awards of benefits are justified.

GAO reviewed 233 randomly selected cases awarded benefits during fiscal years 1974, 1975, and 1976 at the three district offices. In addition, nine cases in which the Branch of Hearings

and Review in the national office reversed district offices' decisions rejecting the employees' claims for benefits were reviewed. (See pp. 6, 11, and 14.)

GAO concluded that:

--In 96 of the 233 cases (41 percent), the district offices awarded benefits without adequately establishing whether the employee's disability or death was work related. Benefits were awarded often without adequate medical evidence or medical rationale and sometimes without resolving conflicting medical evidence. (See p. 11.)

--In seven of nine cases in which decisions to deny the claim were reversed, the evidence did not support a causal relation between the disability and employment as required by Labor's criteria. (See p. 14.)

GAO also reviewed 102 randomly selected cases of employees on the long-term disability rolls. The district offices had not effectively reviewed the condition and status of injured employees who had been receiving compensation for extended periods to determine whether they remained eligible for the benefits they were receiving, whether they should return to work, or whether they should receive vocational rehabilitation services. (See p. 32.)

Labor officials agreed that claims were being approved without adequate evidence that the disability or death was work related. They attributed the problem primarily to insufficient staff. GAO agrees.

However, the program's top managers at headquarters have set the precedent of awarding benefits without reliable, probative, and substantial medical evidence that the injuries are job related. This precedent has been followed by district office personnel involved in the claims adjudication process. (See p. 23.)

In addition, employing agencies often believe they have evidence as to whether an injury was work related which Labor overlooks or ignores. The quality of Labor's claims determinations would be improved if these agencies were given the right to appeal Labor's decisions. (See p. 26.)

Labor does its monitoring primarily through the mail rather than through onsite investigation and personal contact. Program administration could be much improved by adopting monitoring techniques used in the workers' compensation insurance industry, which emphasize immediate, close, continued personal contact with injured employees and their families, physicians, and employers. (See p. 43.)

Also, shifting responsibility for monitoring and vocational rehabilitation activities from Labor to the employing agencies might help. (See p. 47.)

Labor needs to place as much emphasis on decisions to approve or continue compensation as it does on decisions to reject, terminate, or reduce compensation; it should develop a management information system providing data showing that the agency's activities are properly carried out. (See p. 57.)

In commenting on GAO's draft report, the Secretary of Labor said that, for the past 5 years, the Federal employees' compensation program has been beset by serious deficiencies in administration and management but that GAO's recommendations did not take into account the steps taken over the past year to eliminate them. He believed that GAO needs to follow up on recent program improvements. (See app. IV.)

GAO believes that, because sufficient time has not elapsed for Labor to fully carry out its corrective actions, a followup review is not warranted at this time.

Since GAO's review, Labor has

- made a comprehensive review of long-term disability rolls;
- developed a set of performance standards, an internal management system for each district office, and a claims specialization pilot program;
- initiated a training program; and
- authorized 250 additional positions in fiscal year 1978.

The Office of Management and Budget said it would not be appropriate--as proposed in the GAO draft report--for it to determine the advisability of placing in the employing agencies specific monitoring and vocational rehabilitation responsibility; such a step could well impede progress being made. (See app. V.)

GAO continues to believe that such a determination would improve program administration and would not impede any corrective actions in process. Further, notwithstanding the effectiveness of Labor's actions, the question still remains: could the employing agencies, which are geographically dispersed throughout the country with better access to their injured employees, more effectively perform monitoring and rehabilitation activities?

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

The Secretary should instruct all officials and employees of the Office of Workers' Compensation Programs that:

- They are responsible for making claims determinations that are equitable to the injured employees, the Federal Government, and the taxpayers.

--Their responsibilities require that benefits be denied in all cases in which, in accordance with established criteria, adequate medical and other evidence is not provided establishing that the employee's injury was work related. (See p. 24.)

The Secretary should also make sure that the selection of claims examiners complies with the standards for selection and, in evaluating Labor's long range staffing needs, consider GAO's other recommendations that might affect the Office of Workers' Compensation Programs' need for additional personnel. (See p. 71.)

The Secretary should also have the Assistant Secretary for Employment Standards instruct the Office of Workers' Compensation Programs to:

- Make onsite investigations of all claims in which causal relation is not conclusively shown in the reports filed by injured employees and employing agencies. (See p. 28.)
- Place as much emphasis on decisions to approve as those to deny benefits. (See p. 59.)
- Install a management information system that will give supervisors and managers information needed to see that the activities are being carried out in accordance with the act and established criteria. (See p. 59.)

RECOMMENDATIONS TO THE DIRECTOR,
OFFICE OF MANAGEMENT AND BUDGET

The Director should consider placing in the employing agencies specific monitoring and vocational rehabilitation responsibilities, such as

- obtaining medical progress reports at appropriate intervals to provide current information about the employee's medical condition;

- providing or arranging through State vocational agencies for the vocational rehabilitation services injured employees may need to hasten their return to gainful employment;
- finding appropriate employment for partially disabled employees, either within their own organizations or elsewhere; and
- making any necessary onsite investigations to assure the propriety of continuing compensation payments.

If the Director determines that transferring the monitoring and rehabilitation activities to agencies is feasible, he should submit appropriate legislation to the Congress to so amend the act. The proposed amendment should also give certain responsibilities to the Secretary of Labor. (See p. 49.)

RECOMMENDATION TO THE CONGRESS

To help ensure the quality of determinations of causal relation, the Congress should amend the act to place in the employing agencies the authority to appeal to the Employees' Compensation Appeals Board any finding of causal relation by Labor or any Labor decision continuing compensation benefits which, in the employing agency's opinion, is inconsistent with or not supported by the available evidence. (See p. 28.)

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ABBREVIATIONS

GAO	General Accounting Office
OMB	Office of Management and Budget
OWCP	Office of Workers' Compensation Programs
TVA	Tennessee Valley Authority

CHAPTER 1

INTRODUCTION

The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101), provides for paying compensation benefits for the disability or death of Federal civilian employees injured or killed while performing their duties. These benefits include compensation for loss of wages, dollar awards for bodily impairment or disfigurement, medical care for an injury or disease, rehabilitation services, and compensation for survivors.

Although the number of civilian employees of the Federal Government has remained fairly constant during recent years, the Federal Employees' Compensation Program has grown dramatically. From fiscal year 1970 through fiscal year 1977

- injuries reported by employees increased by 72.1 percent, from 120,625 to 207,615;
- claims increased by 70.3 percent, from 17,795 to 30,301;
- persons drawing compensation for extended periods increased by 90 percent, from 23,462 to 44,576; and
- benefits paid increased by 315.1 percent, from \$131.5 million to \$545.8 million.

If the amount of benefits continues to increase at this rate, the Department of Labor estimates that annual benefit costs will amount to \$1 billion by 1980.

BENEFITS PROVIDED

A Federal employee suffering an injury or death in the performance of duty is entitled to compensation unless the injury or death is

- caused by the employee's willful misconduct,
- caused by the employee's intention to bring about the injury or death of himself or of another, or
- proximately caused by the employee's intoxication.

The act defines "injury" as including " * * * in addition to injury by accident, a disease proximately caused by the

employment * * *," and the term "compensation" as including both the money allowances payable to an employee or his dependents and other benefits provided by the act.

The money allowances provided by the act are of two kinds:

- Payments for specified periods of time (called scheduled awards) for the loss, or loss of use, of a member or a function of the body (for example, loss of an arm or loss of hearing).
- Monthly payments for loss of wages for as long as the disability continues.

The basic money allowance payable for total disability is $66\frac{2}{3}$ percent of the employee's monthly pay. For partial disability, it is $66\frac{2}{3}$ percent of the difference between the employee's monthly pay and wage-earning capacity, as determined by the Secretary of Labor.

For injured employees with one or more dependents, the allowance is increased to 75 percent. The maximum payable is about \$2,940 per month (75 percent of the maximum pay for a Federal employee at the GS-15 level). The minimum payable is the lesser of about \$440 per month (75 percent of the minimum pay for a Federal employee at the GS-2 level) or the employee's actual pay.

If an employee dies as the result of an injury sustained in the performance of duty, money allowances are payable to the spouse, the children, and certain other persons dependent on the deceased employee. The rates of compensation payable to the various classes of survivors vary, but the total amount cannot exceed 75 percent of the employee's salary or 75 percent of the salary of a GS-15. Also, the monthly pay cannot be less than the minimum pay for a GS-2.

Noncash benefits provided by the act include the provision of, or the payment for, medical services and medical appliances and supplies (including necessary and reasonable transportation and other expenses incident to obtaining such services, appliances, and supplies) and vocational rehabilitation services.

Money allowances are not payable for the first 3 days of temporary disability unless the period of disability exceeds 14 days or the temporary disability is followed by permanent disability.

An employee who has incurred a work-related traumatic injury can elect either to immediately file a claim for compensation with the Department of Labor or to file a claim for continuation of regular pay for up to 45 days by the employing agency. Money allowances for compensation cannot be paid to an injured employee during any period for which the employee receives continuation-of-pay.

About 3 million Federal employees and about 350,000 non-Federal employees, such as law enforcement officers injured in connection with Federal crimes, are eligible to receive benefits under the act for a work-related injury. In general, the act covers all civil officers and employees of any branch of the Federal Government.

To obtain benefits under the act, an employee must report any injury sustained on the job to the employing agency and to the Department of Labor. Labor is responsible for adjudicating the claim and for paying any benefits due.

ORGANIZATIONAL RESPONSIBILITIES

The Secretary of Labor has delegated responsibility for administration of the act to the Office of Workers' Compensation Programs (OWCP) in Labor's Employment Standards Administration.

OWCP administers the program through a Division of Federal Employees' Compensation at the national office, which develops policies and procedures, and 15 district offices. Generally, claims are adjudicated and serviced by the district offices. The Branch of Special Claims in the Division of Federal Employees' Compensation, however, is responsible for examining, developing, and adjudicating unusually complex or confidential claims, regardless of where the injury occurred. In addition, during 1976 a special Hearing Loss Task Force was established in the national office to help adjudicate the backlog of hearing loss claims filed before January 1976.

Appeals process

The Branch of Hearings and Review in the Division of Federal Employees' Compensation is responsible for holding hearings when requested by an employee who is dissatisfied with the findings of a district office, the Branch of Special Claims, or the Hearing Loss Task Force. The Branch of Hearings and Review is also responsible for issuing compensation

orders either sustaining, modifying, reversing, or remanding the decisions of the district offices. Decisions of the Branch are binding on the district offices. The district offices generally treat them as precedents in adjudicating later claims.

The Employees' Compensation Appeals Board is a quasijudicial board of three members appointed by the Secretary of Labor, pursuant to the act, with authority to hear and to make final decisions on appeals from OWCP determinations and awards.

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

Labor has administratively excluded employing agencies from participating directly in the adjudication of claims by the Branch of Hearings and Review and the Board. Labor has done this because the act mentions only the claimant's right to a hearing if not satisfied with a decision on his or her claim.

PROCEDURES FOR ADJUDICATING AND SERVICING CLAIMS

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

In the OWCP district office, a claims examiner has primary responsibility for examining and developing the claim and for deciding whether the claimant is entitled to benefits. The claims examiner is authorized to obtain any additional

Information considered necessary to a proper disposition of the claim from the claimant, any witnesses to an accident, the employing agency, the attending physician, or a consulting physician(s) of the claims examiner's choice.

Each OWCP district office has a district medical director, who is a physician. The claims examiner may seek the district medical director's advice concerning medical aspects of an employee's injury and the work-relatedness of such injury, but the final decision concerning the claimant's entitlement to benefits is the claims examiner's responsibility.

The claims examiners are also responsible for monitoring the condition and status of injured employees who are awarded money allowances for loss of wages. This includes obtaining medical reports of the employee's condition, referring injured employees for appropriate vocational rehabilitation services, initiating wage-earning capacity determinations when medical reports indicate that the employee has regained the capacity for some work, and decreasing or terminating the awards as appropriate.

PROGRAM FUNDING

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

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

The act also provides that, in addition to the cost of benefits paid, the Postal Service and mixed-ownership Government corporations and certain other Government corporations are to pay their "fair share" of the program's administrative costs, as determined by Labor. The act provides that the administrative costs reimbursed to Labor shall be deposited in the Treasury as miscellaneous receipts.

In addition, the act authorizes Labor to receive annual appropriations from the Congress to cover expenses of administering the act.

SCOPE OF REVIEW

We made this review because of the disproportionate increases in the cost of benefits paid under the act, in comparison to the relatively constant number of Federal employees. We primarily attempted to determine whether OWCP was effectively and efficiently administering the act. By reviewing a randomly selected sample of claims, we focused on

- whether awards of benefits are supported by medical and other evidence showing that disability or death resulted from injuries sustained in the performance of duty and
- whether awards of continuing compensation are reviewed to ensure the timely rehabilitation and reemployment of disabled persons.

We made our review during fiscal years 1976 and 1977 at OWCP's national office in Washington, D.C., and at its district offices in Jacksonville, Florida; San Francisco, California; and Chicago, Illinois. We started our review at the Jacksonville District Office, and our work there was more extensive than at the other locations. We expanded the review to the other district offices to establish whether the conditions at Jacksonville existed elsewhere. We selected the Chicago District Office specifically because OWCP officials, testifying before the Manpower and Housing Subcommittee of the House Committee on Government Operations in June 1976, cited it as one of their better offices.

We reviewed the act and its legislative history; the Department of Labor's regulations pertaining to the act and OWCP's implementing policies and procedures; decisions of the Employees' Compensation Appeals Board; and internal audit reports and other Labor and OWCP reports pertaining to administration of the act.

In addition we interviewed:

- Headquarters and district office officials, claims examiners, and other personnel.
- Florida and Georgia State officials and representatives of several private insurance companies to obtain

information about their procedures, practices, and experiences concerning States' workers' compensation programs.

--Officials of the Tennessee Valley Authority (TVA), the Charleston (South Carolina) Naval Shipyard, the Department of the Navy, the Warner Robins (Georgia) Air Material Area, the Department of the Air Force, and the Miami (Florida) Post Office. We also reviewed TVA's workers' compensation records.

The cases in our random sample for which our auditors questioned the adequacy of medical evidence were reviewed by our consultant, a physician. He reviewed the cases in detail, noting whether the medical evidence appeared adequate.

We issued a separate report on our review of hearing impairment cases under the act. 1/

1/Report to the Congress, "To Provide Proper Compensation For Hearing Impairments, The Labor Department Should Change Its Criteria," (HRD-78-67, June 1, 1978).

CHAPTER 2

BENEFITS AWARDED WITHOUT ADEQUATE EVIDENCE SHOWING DISABILITY OR DEATH CAUSED BY EMPLOYMENT

In about 41 percent of the 233 cases we reviewed, OWCP awarded benefits without adequately establishing a causal relation between the employee's disability or death and his or her employment. Many benefits were awarded without adequate supporting medical evidence, supporting medical rationale, or resolution of conflicting medical evidence.

OWCP officials agreed that some claims were approved without an acceptable showing of a causal relation, but they do not believe the problem is as serious as our findings indicate. They attribute the problem primarily to a workload which substantially exceeds the staff's capability and pointed out that accumulating more complete evidence of a causal relation would extend processing time, thereby increasing the backlog of unresolved claims.

They said this would be particularly true concerning the increasing number of claims attributing disability or death to various diseases--such as cardiovascular disease, respiratory disease, mental and emotional problems, and orthopedic disorders--for which resolving the question of causal relation is frequently difficult and time consuming.

We recognize that increases in OWCP's staff have not kept pace with increases in workload and that this disparity would necessarily hurt the agency's ability to administer the Federal Employees' Compensation Act effectively and efficiently. However, the need to process claims expeditiously does not justify awarding benefits without first establishing to a reasonable certainty that the recipient is entitled to them.

CRITERIA FOR ESTABLISHING CAUSAL RELATION

Aside from the provision that "The United States shall pay compensation * * * for the disability or death of an employee resulting from an injury sustained while in the performance of his duty," and the definition of "injury" as including "in addition to injury by accident, a disease proximately caused by the employment," the act contains no

criteria for determining causal relation. The definition of injury was included in a 1924 amendment to the act. In hearings on the proposed amendment by the House Committee on the Judiciary, a member of the United States Employees' Compensation Commission (then responsible for administering the act) defined "proximate cause" as " * * * the last cause without which the disability would not have resulted."

Guidance and criteria concerning the nature and extent of evidence necessary to establish a causal relation between an employee's disability or death and his or her employment are contained primarily in OWCP's Federal Procedure Manual and in Employees' Compensation Appeals Board decisions. They have been interpreted and supplemented by numerous bulletins and by more than 200 program memorandums issued by OWCP headquarters.

OWCP Federal Procedure Manual

OWCP's Federal Procedure Manual gives claims examiners the primary responsibility for deciding when the evidence of record is sufficient for approving or rejecting a claim. Claimants, however, are primarily responsible for providing any additional evidence needed for a complete development of the claim. In carrying out their responsibilities, claims examiners may obtain statements from the claimant, supervisors, witnesses, and others having pertinent information. They may also refer the injured employee and an accepted statement of facts concerning the employee's medical history and conditions of employment to consulting physicians of the claims examiner's choice. In addition, the examiners may seek the advice of OWCP's district medical directors, who are physicians.

Because each claim is unique, the guidance in the manual is necessarily general. However, the guidance, especially when considered in relation to the decisions of the Employees' Compensation Appeals Board, is generally sufficient to advise the claims examiners about the nature and extent of evidence necessary to establish a causal relation between the disability or death and the Federal employment. Concerning the establishment of causal relation, the manual states, in part, that:

---The question of causal relation is a medical question that must be resolved on the basis of medical opinion evidence.

- In evaluating the medical opinion evidence, the claims examiner must consider how well qualified the physician is, whether he had been furnished an accurate and complete medical and employment history, and whether his findings justify the diagnosis or whether "medical rationale" is needed to justify the opinion and diagnosis.
- The most important factor in determining the extent of and the rationale for the physician's findings is the nature of the condition for which compensation is claimed (for example, no medical rationale would be required to support causal relation in a claim based on a broken arm sustained when an employee fell off a loading dock at work, but extensive rationale would be required to support a claim based on a heart attack suffered at home on a day off).
- For many conditions that employees attribute to the strain, stress, and friction of their work environments (such as psychoneurosis, heart attacks, and low back pain), the claims examiners must be particularly careful to (1) require detailed and specific allegations from claimants, (2) develop facts about preexisting medical and work histories and about possible causes in the employees' personal lives or activities, and (3) obtain opinions from specialists in the medical fields involved.

Decisions of the Employees' Compensation Appeals Board

Employees' Compensation Appeals Board decisions are precedents to be followed in considering later claims for benefits under the act. Published Board decisions usually contain (1) a recitation of the evidence of record concerning employee's duties and working conditions, (2) the nature and extent of the injury and the circumstances surrounding its occurrence, (3) a discussion of the law and of its application to the evidence, and (4) the decision to either affirm OWCP's action, reverse it, or remand the case to OWCP for further development of the evidence. In its decisions the Board has relied heavily on court interpretations of State workers' compensation laws.

The Board has consistently held that (1) claimants have the burden of establishing by reliable, probative, and substantial evidence that disability or death was caused by Federal employment and (2) this burden requires them to submit medical and work history showing a causal relation. The Board has also consistently held that

- a benefit award cannot be predicated on surmise, conjecture, speculation, or a claimant's belief that a causal relation exists;
- a physician's opinion setting forth causal relation in terms of possibility is speculative and not sufficient to establish causal relation;
- the fact that work activities produce pain or discomfort which reveals an underlying condition does not raise an inference of causal relation; and
- there is no presumption of a causal relation merely because a fatal heart attack occurs at work.

QUESTIONABLE BENEFITS
AWARDED BY DISTRICT OFFICES

We reviewed 233 cases in which OWCP's Jacksonville, San Francisco, and Chicago district offices awarded benefits during fiscal years 1974, 1975, and 1976. Because OWCP's recordkeeping system precluded our taking statistically valid samples, the results of our review of cases cannot be reliably projected to all benefits awarded by OWCP. However, our randomly selected samples indicate that many Federal employees may have received workers' compensation benefits to which they were not entitled.

In 96 of the 233 cases reviewed (41 percent), the district offices did not, in our opinion, establish a causal relation between the employee's disability or death and his or her employment in accordance with the criteria in OWCP's Federal Procedure Manual and the decisions of the Employees' Compensation Appeals Board. We question the benefits awarded in the 96 cases for the following reasons:

<u>Reasons</u>	<u>Number</u>
Inadequate supporting medical evidence	35
Inadequate supporting medical rationale	51
Unresolved conflicting medical evidence	<u>10</u>
Total	<u>96</u>

Internal Labor reviews of OWCP's administration of the Federal Employees' Compensation Act made after our review disclosed problems similar to those we found.

The following cases from our sample illustrate the questionable nature of benefits awarded by district offices.

Inadequate medical evidence
supporting causal relation

The Jacksonville District Office awarded compensation to the widow of a 66-year-old surface mine inspector who died of a heart attack while working at home on a Saturday. The widow believed that her husband's death was caused by the physical requirements of his work and the emotional stress of his having been demoted from a supervisory position about 2 years earlier.

The claims examiner obtained copies of the reports of the deceased employee's fitness-for-duty physical examinations for about 10 years preceding his death in March 1974. These reports showed arteriosclerosis of the aorta as early as 1964 and high blood pressure from 1971. In an examination made about 2 weeks before the employee's death, the examining physician reported evidence of changes on the electrocardiogram compatible with myocardial disease.

However, contrary to the requirements by OWCP's Federal Procedure Manual and rulings of the Employees' Compensation Appeals Board, the claims examiner did not obtain any rationalized medical opinion evidence as to whether or how the employee's death at home on a nonworkday could have been caused by his employment. The only semblance of medical opinion evidence to support a finding of causal relation is the District Medical Director's statement that:

"In my opinion, the factors of the claimant's employment (physical and emotional stress) were competent to precipitate on an already diseased heart a slowly developing myocardial infarction cardiac arrest. The deceased claimant's demise is causally related to his employment."

Being speculative and containing no rationale, this statement, in our opinion, does not satisfy the evidentiary requirements of either the manual or the Board, and it cannot properly serve as a basis for awarding benefits under the act. This case demonstrates inadequate medical evidence supporting causal relation because the examining physician provided no medical opinion evidence.

The widow was being paid \$961 every 4 weeks. Total payments as of December 1977 amounted to \$44,987. (Compensation to an employee's survivors terminates upon their death or remarriage.)

Inadequate medical rationale

The OWCP Chicago District Office awarded compensation to a 35-year-old letter carrier who claimed that his bronchitis and pulmonary emphysema were aggravated by his exposure at work to inclement weather, pollution, dust, and cigarette smoke.

The claims examiner did not develop information about the level or the duration of the employee's exposure at work to these elements. Evidence in the file showed that the employee smoked, but the claims examiner did not determine to what extent. He did obtain a report from the employee's private physician, a general practitioner, who stated that the employee had been under his care for 4 years for chronic bronchitis and obstructive pulmonary disease with progressive emphysema. (The employee had worked for the Postal Service for about 4-1/2 years at the time of his disability.)

The attending physician did not respond to a question concerning causal relation on OWCP's "Attending Physician Report" form, but in his narrative report stated that the employee had to "* * * stop working as dust at work and humidity and cold weather made him so dyspneic [air hunger resulting in labored or difficult breathing] that he fainted one day at work," and that moving to a warmer and drier climate would benefit the employee's health. This statement, in our opinion, does not establish a causal relation between the employee's disability and his work, and nothing in the file indicated that the physician even knew about the employee's working conditions.

The claims examiner submitted the file to the district medical director for consideration of whether the employee's disability was "due to, precipitated, accelerated, aggravated, or proximately caused by" the conditions of employment. The district medical director's response was an unqualified "yes." He added:

"Bronchitis, in susceptible persons, is subject to exacerbations due to inclement weather. Emphysema, pulmonary, is said to have the etiological factor of [to be caused by] exposure to dust."

This statement, in our opinion, is too general to constitute medical opinion evidence that the employee's disabling condition was aggravated by his work.

The employee was awarded compensation of \$586 every 4 weeks beginning in October 1975. As of January 5, 1978, compensation totaled \$22,119 and medical benefits totaled \$2,485.

Conflicting medical
evidence not resolved

The Jacksonville District Office awarded compensation of \$1,812 to a 32-year-old food service worker for disability resulting from a foot infection. The employee claimed that liquid soap spilled on her foot caused the skin to come off when she wiped her foot.

The employing agency disagreed with the employee's statement of facts. According to the immediate supervisor, the employee said that she had scratched her foot at home and that it had become infected after she walked through the dew. The supervisor added that (1) the material which the employee alleged caused her injury was a mild dishwashing detergent which she and other workers had used for years without any problems and (2) an inspection of the work area did not reveal any caustic substance which would cause skin removal and result in infection.

Medical evidence from two physicians supported the existence of an infection but disagreed as to whether the infection was caused by soap. One physician treated the infection several times. He, at first, believed that the infection must have been caused by a caustic agent other than dishwashing solution but, in a later report indicated with some reservations that the infection was related to the incident at work. The employee's private physician also treated the infection. He believed that the condition was not related to the work incident.

The claims examiner submitted the conflicting evidence to the district medical director for review and advice. The district medical director concluded, without the benefit of clarifying evidence, that the employee's infection had been caused by the dishwashing detergent.

QUESTIONABLE CASE DECISIONS OF THE
BRANCH OF HEARINGS AND REVIEW

In addition to the 233 cases, we reviewed 9 cases in which the Branch of Hearings and Review in OWCP's national office had reversed district offices' decisions rejecting the employees' claims for benefits. We reviewed these cases primarily because improperly founded reversals by the Branch were

frequently cited by district office personnel as influencing their inadequate development of claims. We selected six of the nine cases from examples provided by district office personnel. The other three cases were taken from our random samples of cases decided by the district offices. In addition, we obtained statistics from the Branch showing actions it had taken in cases decided in fiscal years 1971-76.

The statistics we obtained do not support the contentions of district office personnel that the Branch reverses most decisions appealed by the claimants. They show, instead, that over the 6-year period, in cases involving the determination of causal relation, the Branch reversed 41 percent of the district office decisions, and that the percentage of reversals has steadily declined--from 54 percent in fiscal year 1971 to 30 percent in fiscal year 1976. The percentage of district office decisions sustained increased from 29 percent in fiscal year 1971 to 37 percent in fiscal year 1976, but fluctuated in the intervening years.

Despite these overall statistics, the nine cases we reviewed illustrate that the Branch does reverse district office decisions without adequate evidence of causal relation and does not adhere to the established criteria for determining causal relation. In seven of the nine cases, in our opinion, the preponderance of evidence did not support a finding of causal relation in accordance with the established criteria. The following case from our sample illustrates this.

A 63-year-old school principal with the Bureau of Indian Affairs suffered a heart attack on February 24, 1971. In July 1971, he filed a claim for compensation with the San Francisco OWCP District Office, alleging that stressful working conditions--insubordination and threats by subordinates; lack of support by supervisors; and conflict, misunderstanding, and lack of communication between employees and supervisors--caused his disability. The employee's claim was still pending when he died on June 30, 1972. His death was attributed to coronary thrombosis due to cardiac decompensation and myocardial infarction. The widow continued the claim for death benefits on the same grounds.

In support of the employee's claim for disability benefits, the employee's personal physician had stated, without rationale or explanation, that the employee's condition was precipitated by work pressures. A second physician, consulted on July 21, 1971, said that it was " * * * quite probable that the pressures of his work did contribute in the development of his infarction."

After the employee's death, the district medical director requested an independent review of the case by a certified heart specialist. A part of the file presented to the selected specialist was OWCP's "Statement of Accepted Facts," which stated that the employee had encountered some personnel difficulties in his work. On the basis of his review of the file, the physician concluded that the employee's death:

"* * * was the result of a progressing intrinsic cardiac disturbance that was neither caused nor accelerated by the work activities in either a direct or indirect sense. There were no data to indicate that the decedent was subjected to acute inordinate physical or emotional stresses that were related to change in coronary circulation. There are no data known to me that would sustain a suggestion that his employment in Indian Affairs for 30 years would have altered the natural course of coronary atherosclerosis if, indeed, that was the correct diagnosis. If the diagnosis of primary myocardial disease is accepted, there is similarly no basis for a suggestion that his work activities were responsible for its cause and/or acceleration in either an immediate or remote sense."

The district medical director agreed with this conclusion, and the San Francisco District Office rejected the claim for lack of causal relation.

The widow asked for a hearing. After a prehearing conference, the widow and her attorney submitted additional evidence to support their contentions about the nature and extent of the employee's work pressures. The Branch of Hearings and Review accepted the additional evidence as factual--while not considering evidence supplied by the employing agency and other employees of the agency--and amended the Statement of Accepted Facts to show that the deceased employee had been subjected to extreme emotional and physical stresses in his work.

The entire file, including the evidence controverting the widow's claim of extreme pressure, was then submitted to another cardiologist for an opinion concerning causal relation. This physician, reporting that he had reviewed the entire file--including the evidence that controverted the widow's claim, concluded the following about causal relation:

"My own opinion is that if a previously presumably well individual is subjected to acute emotional stress and at that time or very shortly afterward develops symptoms and/or findings of degenerative heart disease one may establish some relationship. I do not believe that chronic stress can be implicated, and for this reason it is my opinion that there is no relationship between the emotional factors involved in [the employee's] work for some months prior to his initial attack of myocardial infarction and the occurrence of the infarction itself."

The physician stated in his report that he had reviewed both the evidence in the file which controverted the widow's claim and that which supported her claim and which had been "strongly accepted" by the Branch of Hearings and Review. Because of this, the Branch claims examiner found that the physician "appears to be opinionated," and asked that the file be referred to another physician for an opinion.

The third physician stated in his report that:

"* * * I accept as factual that the decedent was subjected to extreme emotional and physical stresses, created by personnel difficulties and the internal problems at his place of employment. Special attention was given to the statement of the decedent dated June 9, 1972 and a statement of fact dated November 30, 1972."

With respect to causal relation between the employee's death and the pressures of his work, this physician said:

"Regarding the possible role of emotional stress in the precipitation, acceleration or aggravation of his underlying cardiac disease, the absence of data pinpointing a new or acute cardiac event in close temporal relationship to the responsibility of his employment makes an association highly unlikely. Postulation of a causal connection between his death and the described emotional duress would, thus, necessitate acceptance of a theory that longterm psychologic stress may hasten coronary atherosclerosis (or other forms of serious organic heart disease) leading to myocardial infarction, fatal arrhythmia, etc. Despite extensive study by many investigators, the question as to whether chronic emotional tensions play a role in

the genesis and course of heart disease remains scientifically unanswered. Critical evaluation of the evidence marshalled by proponents of this thesis reveals deficiencies and the validity of the reported results is questionable. Long-term psychologic tensions defy quantitation and allocation of the origin of persistent emotional distress to one source rather than to another--in life's complex interpersonal reactions--frequently is on a speculative basis. * * * The most that can be said concerning the effects of chronic emotional stress--such as might stem from this claimant's working conditions--is that such factors may possibly exert an aggravating influence; however, this cannot be deemed a reasonable medical probability, particularly in any one given person. I conclude that the claimant died of the natural, non-traumatic and non-occupational progression of severe organic heart disease, unrelated to the physical or emotional responsibilities of his employment."

Thus, three independent specialists, all of whom had reviewed the complete medical record concerning the employee's disability and death and at least two of whom had reviewed all the evidence submitted in support of the widow's claim, concluded that the employee's death resulted from the natural progression of his underlying heart disease and that the physical and emotional stresses of his work had neither caused nor aggravated his condition.

Notwithstanding this unanimous opinion of three independent experts, OWCP's Medical Director ruled that the employment events preceding the employee's heart attack on February 24, 1971, were "competent to precipitate an acute episode" and that the "episode" of February 24, 1971, aggravated the employee's progressive, preexisting disease.

The Branch of Hearings and Review, citing the opinion of the medical director and referring to decisions of the Employees' Compensation Appeals Board to the effect that "if the regular work of the employee is a factor in the disability, a compensable injury 'while in the performance of duty' is established," reversed the decision of the district office and remanded the case for payment of compensation. Neither the medical director nor the Branch of Hearings and Review attempted to show error in the conclusions of the three independent specialists or to state a rationale for their conclusion that the employee's work aggravated his preexisting heart condition.

In our opinion, the widow's claim was not supported by reliable, substantial, and probative medical evidence that the employee's death was caused by his work. In fact, the overwhelming weight of medical evidence in the case showed that the employee died from the natural progression of his underlying heart condition.

As of December 31, 1977, compensation payments totaled about \$42,600.

LABOR'S INTERNAL REVIEWS

Recent internal Labor reviews of OWCP's administration of the act have been made by (1) the Directorate of Audit and Investigations in the Office of the Assistant Secretary for Administration and Management and (2) an OWCP Task Force appointed in June 1976 by the Assistant Secretary for Employment Standards. (See app. I for a discussion of the OWCP Task Force as it relates to this chapter.)

On October 20, 1977, the Director of Audit and Investigations transmitted to the Assistant Secretary for Employment Standards a report of an audit made at OWCP's district offices in Jacksonville, New Orleans, Philadelphia, San Francisco, and Seattle.

In 82 of 285 cases (29 percent) randomly selected from the August 1976 periodic rolls, Labor auditors found that the files did not contain information to support OWCP's finding of causal relation. Underlying causes of the lack of supporting evidence were said to be the failure of claims examiners to develop and analyze evidence, to obtain additional evidence when needed, and to follow prescribed procedures; the failure of employing agencies to investigate accidents and to submit investigation reports; and improper forms design.

The Employment Standards Administration's Office of Program Development and Accountability, which also performs accountability reviews of the Federal employees' program, has also reported that district offices' statements of facts do not contain enough information to support claims examiners' findings of causal relation. These findings were reported in reviews made at the Chicago and Jacksonville District Offices in late 1977.

COMMENTS OF OWCP OFFICIALS
AND PERSONNEL

We discussed our findings about the establishment of causal relation with Labor representatives in the three district offices we visited and in the Employment Standards Administration regional offices in Atlanta, Chicago, and San Francisco, and with officials at OWCP's Division of Federal Employees' Compensation.

Most of these officials agreed that benefits were awarded without a showing of causal relation between the employee's disability or death and his or her Federal employment. Generally, however, they thought the problem was not as serious as we indicated. Some management officials seemed unaware of the problem, while others said they had suspected it because of the heavy workload, staffing shortages, and the pressure to process claims promptly.

Claims examiners' comments

We discussed the failure to establish a causal relation with claims examiners and supervisory claims examiners in the three district offices. Most agreed that in many cases--especially those involving diseases; neuroses; and back, muscle, or joint sprains or strains--they were not satisfying the established criteria governing determination of causal relation. The reasons most frequently cited for not more completely establishing causal relation were

- very heavy claims workload;
- pressure to process claims quickly;
- the relative ease of accepting a claim, as opposed to rejecting one; and
- the tendency of the national office to reverse district office decisions to reject claims.

About half of the claims examiners and supervisory claims examiners said that they were under great pressure to process claims quickly--from OWCP management as well as claimants, employee unions, and attorneys. They basically saw the pressure as a function of the growing disparity between OWCP's workload and its work force.

The claims examiners and their supervisors said in effect that, in attempting to cope with the pressure, they take advantage of OWCP's management system, which requires

that a decision to deny a claim be justified in writing and receive two or three layers of supervisory review, but that a decision to approve need have no justification or review. This relative ease of accepting a claim, coupled with what the claims examiners see as the national office's overly generous attitude toward the acceptance of claims, results in their accepting claims that should be rejected for lack of evidence of causal relation.

About a third of the claims examiners and supervisory claims examiners we interviewed said that the Branch of Hearings and Review in the national office and the National Medical Director find a way to reverse most of their decisions to reject claims. The examiners stated that such reversals are the most frustrating part of their job and result in their developing a "why fight city hall" attitude toward claims development.

District medical director's comments

We discussed with district medical directors at the offices visited our observation that they often gave opinions favoring a finding of causal relation when the evidence of record would not support such a finding and that the claims examiners relied on such decisions in awarding benefits.

The medical directors interviewed agreed that the claims examiners were not developing medical evidence in accordance with the established criteria. They believed however, that when asked to give an opinion based on the evidence of record, they should give one; they said the claims examiners did not have to rely on their opinions.

One district medical director had interpreted oral instructions of the National Medical Director to mean that he should make do with the evidence of record rather than insisting on complete development of the evidence. District medical directors also made the following statements.

- There is almost complete reliance on the employee's personal physician to support casual relation. Independent medical experts should be used much more.
- If the attending physician uses the words "aggravate," "accelerate," or "precipitate," the claim will be approved.
- If the attending physician uses the word "anxiety," OWCP will award benefits based on emotional problems from worrying about the injury.

--The Branch of Hearings and Review seems to discount any arguments of the district medical directors that run counter to the employees' claims.

--If the district office rejects a claim, the Branch of Hearings and Review will look for the "buzz" words--aggravate, accelerate, or precipitate--and reverse the decision.

Comments of Branch of Hearings and Review officials

We discussed with claims examiners, the acting chief, and the former chief of the Branch of Hearings and Review the comments of district office personnel about the Branch's reversal of district office decisions and our finding that the Branch was not adhering to the established criteria for determining causal relation. The consensus of those we spoke with was that, in their review of district office decisions to reject claims, they

--consider all the evidence, not just that which supports a finding of causal relation, and

--rely heavily on the National Medical Director's opinions because of his qualifications and experience.

They also said Employees' Compensation Appeals Board decisions had established that evidence was to be constructed liberally in favor of the employee. (The Board has, in fact, stated that the act should be liberally construed in favor of the employee. We find nothing in the Board's decisions, however, that would condone accepting less than "reliable, probative, and substantial" evidence of causal relation. We believe the Board is saying that, if the evidence has been completely developed and there is as much evidence to support a finding of causal relation as there is to controvert such a finding, the evidence should be construed in favor of the claimant.)

Comments of the National Medical Director

We told the National Medical Director that, in the cases we reviewed, his decisions about causal relation tended not to conform to the established criteria. He responded that he only interprets medical reports for the Branch of Hearings and Review and gives an opinion about the adequacy of such reports to support a finding of causal relation. He said the Branch decides whether to accept or reject a claim. He added that both the former Director of OWCP and the Employees' Compensation Appeals Board encourage liberal opinions.

CONCLUSIONS, AGENCY COMMENTS,
AND OUR EVALUATION

Our review demonstrates that, for many of the claims for benefits under the act, OWCP awarded benefits without determining, in accordance with established criteria, that the employee's disability or death was caused by his or her Federal employment. The questionable awards primarily involve claims based on a contention that diseases (especially cardiovascular disease), neuroses, or orthopedic disorders are causally related to the employees' work.

We agree with OWCP officials that a major factor in the agency's failure to adequately establish claimants' eligibility is insufficient staffing. (See ch. 6 for a further discussion of OWCP staff.) However, based on our review of cases, our observations during several months of working in OWCP district offices, and our discussions with officials and employees in both the national office and district offices, we also believe that an underlying cause of this problem is OWCP's widespread practice of awarding benefits without reaching impartial decisions that are equitable to both the injured employees and the Federal Government.

Generally, the tenor of how claims should be decided is set by the decisions of the Branch of Hearings and Review and the opinions of the National Medical Director. This is appropriate for they are the ones who should be insuring that benefits are awarded only after entitlement has been established. These actions of the Branch and the National Medical Director, however, have helped set the precedent of awarding benefits without reliable, probative, and substantial medical evidence establishing causal relation. This precedent has been followed by other OWCP personnel involved in the claims adjudication process.

Because the Branch's decisions, issued in the name of the Director of OWCP, can reverse district office decisions, the claims examiners in the district offices understandably construe the Branch's decisions as a valid indication of how the agency wants claims to be decided. We believe that the officials need to be instructed to approve claims for compensation, in accordance with established criteria, only when there is adequate medical evidence supporting causal relation.

In his July 19, 1978, comments on our draft report, the Secretary of Labor stated that, for the past 5 years, the Federal employees' compensation program has been beset by serious deficiencies in administration and management. He

stated, however, that our recommendations do not take into account the steps taken over the past year to eliminate these deficiencies. He concluded that we need to do followup work to reflect recent program improvements and that all our recommendations should be reexamined.

He also questioned our sampling procedures and added that any followup review should include a larger and more representative sample to assess the impact of Labor actions.

We have considered the improvements cited in the Secretary's letter and other management data obtained directly from Labor. We conclude that, because enough time has not elapsed for full implementation of Labor's corrective actions, a followup review is not warranted at this time. OWCP's recordkeeping system precluded our taking a statistically valid sample. Although our sample was not scientifically selected from all cases awarded benefits during fiscal years 1974, 1975, and 1976 on a nationwide basis, it was randomly selected from each of three OWCP district offices covered by our review. We believe that the sample adequately identified problems in program administration of the program and that, as Labor concedes, it is consistent with conclusions reached by other review teams.

Notwithstanding the improvements cited by Labor, we continue to believe that there is a need to emphasize to all OWCP employees their responsibility to reach impartial decisions that are equitable to both the injured employees and the Federal Government.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

Because past administration of the program has demonstrated that employees and OWCP management at all levels have set the precedent of awarding benefits without adequately determining that employees' injuries are caused by Federal employment, we recommend that the Secretary of Labor instruct all OWCP officials and employees that

- they are responsible for making claims determinations that are equitable to the injured employees, the Federal Government, and the taxpayers and
- their responsibilities require that benefits be denied in all cases in which, in accordance with established criteria, adequate medical and other evidence is not provided demonstrating a causal relation between the employee's injury and Federal employment.

CHAPTER 3

OTHER FACTORS AFFECTING

AWARD OF CLAIMS FOR BENEFITS

In addition to the lack of adequate evidence showing causal relation, several other factors contribute to OWCP's improper determination of claimants' eligibility and award of benefits. OWCP's use of a through-the-mail operation, rather than one of onsite investigations and personal contact, greatly hampers its ability, in many cases, to make adequate determinations of claimants' eligibility to receive compensation payments.

Also, OWCP often fails to inform employing agencies of its rationale in deciding compensation claims. Since the employing agencies do not have the right to appeal OWCP's decisions, many agencies believe claims are being approved even though the agencies have adequate evidence to dispute them.

NO ONSITE INVESTIGATION OF CLAIMS

To obtain the information it needs to determine causal relation, OWCP's contacts with injured employees, attending physicians, and employing agencies are essentially all through-the-mail transmissions of forms and form letters. As a result, OWCP personnel rarely have first-hand knowledge about whether an employee is really disabled, whether the disability is really work related, or whether a physician is objective and has an accurate understanding of the employee's work environment.

In contrast, representatives of several insurance companies told us that they make onsite investigations of questionable claims--interviewing injured employees, attending physicians, witnesses, fellow workers of the injured employee, and employers--and that they consider such personal contacts essential for effective claims development.

In the past, OWCP has had claims examiners who made onsite investigations of questionable claims. As the workload increased, however, the investigator positions were discontinued to speed claims processing. A number of claims examiners and supervisory claims examiners noted that the loss of investigators has hampered OWCP's ability to determine causal relation.

LACK OF EMPLOYING
AGENCY APPEAL RIGHTS

Employing agencies do not have the right to appeal OWCP decisions. Officials of several agencies expressed concern to us about the many cases in which they questioned OWCP's determination that an employee's injury occurred in the performance of official duties or that the employee continued to be disabled for work. OWCP often failed to inform the agencies of the rationale for its decision.

Under the act, an employee not satisfied with an OWCP decision, on the basis of the written record, may request a hearing or review of the claim before OWCP's Branch of Hearings and Review. Any OWCP decision, whether for or against payment of compensation, is subject to review by the Employees' Compensation Appeals Board at any time on the Board's own motion or by application of the claimant.

The Board may then end, decrease, or increase the compensation previously awarded or award compensation previously refused or discontinued. The Board's action in allowing or denying a payment is (1) final and conclusive for all purposes with respect to all questions of law and fact and (2) not subject to review by another U.S. official or by a court.

Labor has administratively excluded employing agencies from participating directly in the adjudication of claims under the act, either at the OWCP or the Board levels of review. This is clearly indicated in 20 C.F.R. 10.140, as follows:

"Procedures conducted with respect to claims filed under the Act are intended to be nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, * * * to actively participate in the claims adjudication process. An employing agency may, however, in its discretion, submit affidavits and other relevant and probative statements regarding any particular claim. Such evidence shall be reviewed by the Office and acted upon as appropriate."

Hence, employing agencies are presently not able to appeal any OWCP decisions. During our review, agencies expressed concern over the present system. In many cases, the agencies stated in their administrative reports that the employee's injury was not incurred in the performance of his or her official duties, but OWCP later determined otherwise.

Although OWCP clearly has the authority to make such a determination, employing agencies often believe that they have pertinent evidence which OWCP has not considered and that they should have the right to appeal OWCP's decision in such cases.

CONCLUSIONS, AGENCY COMMENTS,
AND OUR EVALUATION

Proper determination of eligibility for benefits under the act could, in many questionable and complex cases, be greatly improved by onsite investigations and personal contact with the injured employee, the attending physician, the employing agency, and others with knowledge of the disabling injury or disease.

In commenting on our draft report, Labor stated that the recent establishment of an investigative division in OWCP clearly meets the condition addressed in our proposal that some claims need to be investigated onsite. As Labor states, this division emphasizes investigating cases of suspected fraud and abuse, not in aiding determinations of questionable and complex cases.

Employing agencies believe that they often have evidence concerning whether an injury is work related which OWCP disregards. In its comments, Labor states that it is not true that OWCP ignores such evidence. Labor noted that OWCP procedures require that district offices explicitly take into account agency views and reconcile them with those of the claimant. Labor sees no need to alter the equity of the adjudication process by requiring employees to be subject to any undue evidentiary requirement, or to establish an adversary procedure among Federal agencies by providing the employing agencies with the right to appeal.

In our prior review 1/ of the Workers' Compensation Program of the United States Postal Service, the Service gave us controversions, claims it objected to, that it believed were well supported but not upheld by OWCP. Service officials were frustrated by controverting well-documented improper claims only to have OWCP deny the controversions. Many officials at the offices visited told us that such OWCP actions discouraged them from controverting claims.

1/"Administration of the Workers' Compensation Program"
(GGD-77-45, July 8, 1977).

Although Service procedures provide for informally questioning OWCP decisions, Service officials told us that OWCP is unresponsive to inquiries and complaints about adjudicating claims.

Service officials believe that OWCP's approval of most cases encourages employees to apply for compensation for minor or nonexistent injuries. To control the number of employees receiving compensation in questionable circumstances, the Service believes employing agencies should be allowed to appeal OWCP decisions formally. In our opinion, when an employing agency believes it has adequate evidence to question an OWCP decision, it should be able to appeal the case to the Employees' Compensation Appeals Board. This would ensure the quality of OWCP's performance in administering the act.

RECOMMENDATION TO THE SECRETARY OF LABOR

To enhance OWCP's ability to determine causal relation, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards require OWCP to make onsite investigations of all claims in which causal relation is not conclusively shown in the reports filed by injured employees and employing agencies. Such investigations are especially needed in cases in which death or disability is alleged to be the result of work-induced cardiovascular disease, respiratory disease, gastrointestinal disorders, neuroses, or orthopedic disorders and in other hard to prove cases.

RECOMMENDATION TO THE CONGRESS

To help ensure the quality of OWCP's determination of causal relation, we recommend that the Congress amend the Federal Employees' Compensation Act to place in the employing agencies the authority to appeal to the Employees' Compensation Appeals Board any finding of causal relation by OWCP or any OWCP decision continuing compensation benefits which, in the employing agency's opinion, is inconsistent with or not supported by the available evidence.

CHAPTER 4

INEFFECTIVE MONITORING OF INJURED EMPLOYEES'

PROGRESS AND NEED FOR VOCATIONAL REHABILITATION

The three OWCP district offices visited did not systematically review the condition and status of injured employees who had been receiving compensation for extended periods to determine whether they were still eligible for the benefits they were receiving or whether they might benefit from vocational rehabilitation services. Without a systematic and effectively managed monitoring program, OWCP cannot determine whether its continuing compensation payments are proper.

OWCP officials agreed that the agency was not systematically monitoring the condition and status of persons receiving compensation, but attributed this primarily to a lack of staff.

We agree that insufficient staff is one factor causing OWCP's ineffectiveness in monitoring the condition and status of injured employees who have been receiving compensation for extended periods. In our opinion, though, even if OWCP were to obtain enough staff, its through-the-mail monitoring system would leave it relatively ineffective in returning injured employees to gainful employment.

Effective administration of the Federal Employees' Compensation Act may be achieved by adopting monitoring techniques used in the workers' compensation insurance industry. However, given the relatively small number of persons covered by the act and the wide geographic dispersion of those persons, it may not be feasible to provide within OWCP--or any single agency--enough staff to carry out such monitoring techniques.

Comparatively, the employing agencies are already geographically dispersed, generally have first-hand knowledge of the employee and his or her working conditions, are a disabled employee's most likely source of reemployment, and have a legitimate interest in controlling the costs of the workers' compensation program. It may be both feasible and desirable to give employing agencies substantial responsibility for monitoring and vocational rehabilitation activities while leaving OWCP with responsibility for decisions to continue, reduce, or end benefits.

REQUIREMENTS FOR MONITORING

To ensure the propriety of compensation payments, OWCP must have current knowledge about a number of factors that govern an injured employee's continued entitlement to benefits. Specific provisions of the act that necessitate OWCP's having such current knowledge are:

- Monetary compensation is payable only "during the disability," so OWCP needs current knowledge of an employee's medical condition to determine when the disability ceases.
- Lower compensation rates are payable for partial disability than for total disability, so OWCP needs current knowledge of changes in an employee's condition.
- The amount of compensation payable for partial disability depends on the employee's wage-earning capacity, so OWCP needs current knowledge of the degree of the employee's impairment, the availability of suitable employment, and the employee's qualification for such employment.
- Compensation rates are higher for employees with dependents, so OWCP needs current knowledge of the dependency status of persons qualifying the employee for the higher rates.

The act does not place any specific monitoring requirements on OWCP, but it authorizes the Secretary of Labor to obtain information necessary to ensure the correctness of continuing compensation awards. Specifically, the act provides that

- an injured employee shall submit to physical examination by a U.S. medical officer or by a physician designated or approved by the Secretary;
- an employee who refuses to submit to or who obstructs a physical examination loses his or her right to compensation until such refusal or obstruction stops;
- the Secretary may direct a permanently disabled employee to undergo vocational rehabilitation;
- an employee who, without good cause, fails to apply for and undergo vocational rehabilitation when so directed

by the Secretary may have his or her compensation reduced to the amount which the Secretary determines it probably would have been had the employee undergone vocational rehabilitation as directed;

--the Secretary may require a partially disabled employee to report his or her earnings from employment or self-employment;

--an employee who fails to report his or her earnings as required or who knowingly omits or understates any part of the earnings forfeits the right to compensation for the period covered by the required report; and

--a partially disabled employee who refuses to seek suitable work or who refuses or neglects to work after being offered suitable work is not entitled to compensation.

Regulations promulgated by the Secretary implementing the act do not place any specific monitoring requirements upon OWCP, but they do specify that attending physicians shall make detailed narrative reports approximately once a month in all cases of serious injury or disease, including all cases requiring hospital treatment or prolonged care.

OWCP's Federal Procedure Manual specifies that, if an injury causes disability for work for an extended period or requires prolonged treatment, the attending physician must submit a descriptive report concerning the clinical course, prognosis, and recommendations for further medical care. The manual states that these reports generally should be submitted at approximately 30-day intervals, but in cases involving chronic conditions, allows reports at approximately 90-day intervals.

The manual gives claims examiners responsibility for periodically reviewing the condition and status of injured employees who have been receiving compensation for total disability. The frequency of review is left to the claims examiner's judgment based on the particular circumstances, but the manual states that during the first 2 years of disability, the claims examiner's review generally should be at 60- to 90-day intervals. The objective of the claims examiner's review are to

--obtain periodic medical reports;

--authorize physical examinations, as needed;

- obtain a proper medical report as soon as practicable after total disability ceases;
- obtain reports of earnings; and
- obtain reports of the dependency status of persons qualifying the employee for higher compensation rates.

These periodic reviews by the claims examiners are the key to all later actions to terminate an award because disability has ceased, to reduce an award because the disability has lessened from total to partial, to modify an award because of a change in dependency status, or to refer an injured employee for vocational rehabilitation.

Cases reviewed for monitoring requirements

From the periodic disability rolls at the three district offices we visited, we randomly selected 102 cases--50 at Jacksonville, 27 at San Francisco, and 25 at Chicago--and reviewed them to determine whether periodic medical progress reports were being made, whether earnings reports and dependency status reports were being obtained, and whether injured employees were being referred for vocational rehabilitation services.

At the Jacksonville District Office, our sample was taken from all cases on the periodic disability rolls. Predictably, several of these cases had been on the periodic rolls for relatively short times, so all of the required monitoring activities were not applicable. To reduce the size of the samples at the San Francisco and Chicago District Offices and still be able to assess the performance of all the required monitoring activities, we limited our sample in those offices to cases that had been on the periodic disability rolls for more than 2 but less than 15 years. Because our samples were not representative of the total universe of OWCP's periodic disability rolls, we cannot project the results of our review. We believe, however, that our review demonstrates that OWCP is not effectively monitoring its continuing compensation cases.

PERIODIC MEDICAL PROGRESS REPORTS NOT OBTAINED

Periodic medical reports evaluating an injured employee's condition with respect to his or her work-related disability are essential if OWCP is to know whether compensation payments should be continued, modified, or terminated based on the employee's ability to work.

OWCP's Federal Procedure Manual provides that claims examiners generally should obtain medical progress reports at 30- to 90-day intervals. Labor regulations state that attending physicians should submit medical reports at approximately monthly intervals in all cases of serious injury or disease, without limiting the period over which such reports should be made.

In the Jacksonville District Office, 16 of the 50 cases in our sample had been on the periodic disability rolls for between 6 months and 2 years. In only one case had OWCP obtained medical progress reports at least every 90 days. In three cases, no reports had been obtained since the employees were placed on the periodic disability rolls.

Since OWCP had no specific criteria for reviewing cases after the first 2 years of disability, we reviewed the other cases in our sample to determine whether medical progress reports were being obtained on a current basis.

Of the 86 cases we reviewed that had been on the periodic disability rolls for over 2 years, 58 cases had been on the rolls from 2 to 4 years, 25 cases from 5 to 9 years, and 3 cases from 10 to 14 years.

--Of the 58 cases, the claims examiners had not received any medical reports for 26 in the year preceding our review and had not received any medical reports on 8 others since the employees were placed on the rolls.

--Of the 25 cases, the claims examiners had not received any medical reports for 20 in the year preceding our review and had not received any medical reports on 2 others since the employees were placed on the rolls.

--Of the three cases, the claims examiners had not received any medical reports for two in the year preceding our review.

The following case from our sample is illustrative of those in which OWCP continued to pay compensation without obtaining current medical information to insure that the employee was still disabled as a result of a work-related injury.

A veterinarian who worked in a meat processing plant crushed a finger at work on August 14, 1972. The OWCP Chicago

District Office accepted the injury as causally related and began paying compensation for it. About a month later, the employee fell at home and fractured an ankle. He attributed his fall to medication he was taking for pain associated with his injured finger. Three times OWCP requested information that would permit it to determine whether the ankle injury was causally related to the accepted work-related injury, but it received no reply. OWCP took no further action to determine the employee's condition, and as of December 1976 he was being paid \$1,179 every 4 weeks for disability caused by the crushed finger. As of January 5, 1978, total compensation exceeded \$76,000 and medical benefits amounted to \$132.

INADEQUATE WAGE-EARNING
CAPACITY DETERMINATIONS

The act provides that the compensation payable to an employee partially disabled as a result of a work-related injury shall be a specified percentage of the difference between the injured employee's regular pay and his or her wage-earning capacity. OWCP's Federal Procedure Manual provides that the claims examiner will initiate action to determine an injured employee's wage-earning capacity after total disability ceases.

Generally, the determination of wage-earning capacity involves considering:

- Medical evidence concerning the residual impairment resulting from the work-related injury and the physical restrictions that the impairment imposes on the employee in terms of such work-related activities as standing, walking, stooping, and lifting.
- Nonmedical evidence concerning the employee's education, training, experience, work history, and earnings.
- The availability of suitable employment in the area in which the employee lives.

If the injured employee has had earnings and if, in the opinion of the claims examiner, the actual earnings fairly and reasonably represent the employee's wage-earning capacity, the actual earnings will be determined to be the wage-earning capacity and compensation will be paid accordingly. If, however, the injured employee has had no earnings or the claims examiner thinks that the actual earnings do not fairly and

reasonably represent the wage-earning capacity, the employee is to be referred to the State employment service to select a job that is available in the area and is compatible with the nature and extent of the employee's impairment, education, training, and experience.

Wage-earning capacity
determinations made

OWCP had made wage-earning capacity determinations in 44 of the 102 cases in our sample. In 7 of the 44 cases, OWCP found that the employees had wage-earning capacities and reduced their compensation accordingly. The other 37 determinations resulted in findings that the employees did not have wage-earning capacities, and they continued to receive compensation for total disability.

Based on the information in the files at the time the wage-earning capacity determinations were made, we questioned the validity of 18 of the 44 determinations either because the information was not sufficient to support the determination made or because there was conflicting evidence concerning the employee's capacity for work. Based on information in the files at the time of our review, we believe that in 6 cases OWCP should have redetermined the employees' wage-earning capacities and that in 12 cases OWCP's monitoring activity had not been sufficient to permit it to know whether its earlier determination was still valid.

The following case from our sample illustrates those in which OWCP's wage-earning capacity determinations appeared to be based on out-of-date information.

In July 1970, a 40-year-old nursing assistant suffered a back injury that OWCP determined aggravated a preexisting back problem and caused an anxiety reaction.

Based on a medical progress report, the district medical director in Jacksonville stated in April 1973 that the employee was capable of performing part-time sedentary work. The claims examiner should have initiated a determination of wage-earning capacity based on this conclusion, but did not. In January 1974, the employee contacted the State rehabilitation agency and requested vocational rehabilitation training. The State agency notified OWCP of the claimant's request and said the claimant was a good candidate for rehabilitation. However, in April 1975, the claims examiner and the regional

vocational rehabilitation specialist--without obtaining any new information about the employee's condition or ability to work--decided that she had no wage-earning capacity.

As of March 1976, the employee was being paid compensation of \$427 every 4 weeks. As of December 1977, the employee had received \$29,616 in compensation and \$1,744 in medical benefits.

No wage-earning capacity determinations made

In 58 of the 102 cases in our sample, OWCP had not made wage-earning capacity determinations, but 8 determinations were in process at the time of our review. In 5 of the other 50 cases, we believed that the files contained enough evidence that the employees remained totally disabled and that wage-earning capacity determinations were not required. In eight cases, the files contained evidence that the employee had regained some capacity for work, and in our opinion, OWCP should have made wage-earning capacity determinations. In the other 37 cases, OWCP's monitoring had not been sufficient for it to know whether the employee had regained some capacity for work.

The following case from our sample illustrates those in which OWCP had not made a wage-earning capacity determination even though the file contained medical evidence that the employee was no longer totally disabled.

A 49-year-old quality assurance inspector for the National Aeronautics and Space Administration injured his back at work on March 23, 1971, aggravating a preexisting vertebral disc problem. He was placed on the periodic disability roll of the Jacksonville District Office on June 1, 1972.

On March 11, 1975, OWCP received a medical progress report in which the physician stated that the employee was working at a used car lot, was doing "a lot of things requiring an agile back," and occasionally was riding a motorcycle as far as 200 miles in a day. The physician also stated, "the patient should be urged to return to some useful work. Present pension has to be a deterrent to recovery to employment."

Five months later, on August 18, OWCP referred the employee to the State employment service for a job evaluation. As of March 1976, nothing in the file indicated that the

employee had been interviewed by the employment service, and OWCP had taken no further action to complete the wage-earning capacity determination.

The employee was being paid \$1,239 every 4 weeks. As of December 1977, total compensation paid exceeded \$92,000 and medical benefits amounted to \$13,044.

REPORTS OF EARNINGS AND DEPENDENCY STATUS NOT OBTAINED

Under the act the Secretary of Labor may require a partially disabled employee to report his or her earnings from employment or self-employment. OWCP's Federal Procedure Manual provides that the claims examiner will determine the frequency of reports of earnings and dependency status based on the nature and extent of the employee's disability, the length of time since the injury occurred, the employee's age, the prognosis, and other factors that might affect the employee's ability to work. The manual states that reports may be needed every 60 to 90 days but that in all total disability cases the employee should report at least annually.

In our opinion, OWCP should have obtained reports of earnings and dependency status for all of the 102 employees in our sample. However, they did not have reports from any of the 5 employees who had been on the periodic disability rolls for a year or less or from 21 of the 97 employees who had been on the rolls for more than a year. Only 13 of the 76 employees who had submitted earnings and dependency status reports had reported annually as required by OWCP's Federal Procedure Manual. Additionally, in 28 of the 76 cases, the most recent reports in the file at the time of our review were more than a year old.

INADEQUATE VOCATIONAL REHABILITATION EFFORTS

The act provides that an employee permanently disabled as a result of a work-related injury may be directed to undergo vocational rehabilitation and that the compensation of an employee who refuses to undergo rehabilitation when so directed may be reduced.

Each OWCP district office has on its staff one or more vocational rehabilitation specialists. OWCP's Federal Procedure Manual makes these specialists responsible for reviewing certain types of cases to determine (1) whether vocational

rehabilitation services might help the injured employee to remain at or return to work and (2) if so, the nature and extent of the services needed. Essentially, the specialists are to review cases in which

- the injury is likely to result in a permanent, compensable disability;
- there is a definite medical recommendation for job reassignment or job change;
- compensation payments extend beyond 2 months for permanent disabilities with a job handicap; or
- a combination of preexisting and injury-related conditions preclude a return to the former occupation.

Vocational rehabilitation services include job counseling and placement assistance, testing to determine the injured employee's work capability, physical restoration, and training for new job skills.

OWCP's Federal Procedure Manual states "It is imperative that rehabilitation activity begin at the earliest possible time before mental and physical lethargy destroy the motivation of the injured employee." However, cases are generally not reviewed for vocational rehabilitation potential until they are placed on the periodic disability roll. Many more complicated cases are not placed on the periodic roll for months after the injury.

Not all injured employees referred for vocational rehabilitation services

We reviewed 102 cases from the periodic disability rolls at the three district offices to determine whether injured employees were being referred for vocational rehabilitation services. Under criteria in OWCP's Federal Procedure Manual, vocational rehabilitation specialists should have reviewed 89 of the cases. The specialists had only reviewed 70 cases; the average time elapsed between the date of injury and the date of the vocational rehabilitation specialist's review of the case was 15 months in Jacksonville, 21 months in Chicago, and 22 months in San Francisco. The required review had not been made for the other 19 cases.

In 12 of the 13 cases in which the criteria did not require review by the specialists, we believe that review would have been desirable and that appropriate vocational rehabilitation services might have benefited the injured employees. These were cases in which the employee, although not permanently disabled, had been drawing compensation for extended periods of temporary disability.

Moreover in only 15 of the 70 cases reviewed had the specialists determined that the injured employees could benefit from vocational rehabilitation services. At the time of our review, 3 of these 15 cases were still being evaluated for vocational rehabilitation.

In 8 of the remaining 12 cases in which vocational rehabilitation services were recommended, nothing indicated that the employees had even responded to OWCP's efforts to refer them for such services and the services provided had not resulted in any of the employees returning to work or receiving reduced compensation.

Evidence in file shows need for
vocational rehabilitation services

We questioned the vocational rehabilitation specialists' determinations:

- In 34 of 55 cases in which they determined that the injured employees could not benefit from vocational rehabilitation services.
- In 20 cases because we thought the file contained evidence that services might help the employee to return to work.
- In 14 cases because we thought the file did not contain sufficient evidence on which to base an informed decision.

The following case from our sample illustrates those in which the specialist's decision not to direct vocational rehabilitation appeared questionable because the evidence indicated a need for such services.

A 47-year-old vehicle mechanic employed by the Postal Service in Wisconsin sustained a whiplash when the vehicle

he was driving was struck by another in December 1967. The employee was treated and released for return to work.

In October 1968, the employee was treated by the same physician, who reported a mild lateral curvature of the dorsal spine but negative X-rays of the neck. After treatment the physician released the employee for return to work.

The employee was treated again in September 1970; in April 1971 a neurosurgeon performed a myelogram with no adverse findings. The neurosurgeon's diagnosis was cervical muscle strain syndrome causally related to the 1967 vehicle accident, on the basis that the employee's complaints began after the accident.

The employee remained on annual and sick leave from April 1971 until compensation benefits were approved in September. From September 1971 until February 1973, the employee received treatment consisting of home physiotherapy and medication for pain. The employee was placed on the periodic disability rolls in February 1973.

In March 1973, the attending physician reported that the employee had achieved maximum recovery and that he had a permanent partial disability rating of 25 percent of the body as a whole. Despite this, the physician judged that the employee was unable to work, either full or part time.

The district medical director, however, maintained that the employee was not totally disabled because of the history of conservative treatment and the attending physician's rating of partial disability.

Also in March 1973, the vocational rehabilitation specialist met with the employee at his home to determine the need for services. The employee claimed that he could not work or be rehabilitated because of dizziness. The specialist observed, however, that the employee did not appear to be in distress. Moreover, the specialist noted that the employee had been participating in a number of horse shows around the country--an activity that required extensive driving. He concluded that the extent of the disability was probably much less than the employee claimed. He made no further attempt, however, to direct the employee to undergo vocational rehabilitation or to determine his potential to benefit from such services.

In December 1973, the Chicago District Office referred the employee to an orthopedist for an independent medical evaluation. This physician, however, declined to examine the employee because disability evaluations were not part of his practice. OWCP did not refer the employee to another physician for an independent evaluation. In fact, it did nothing more until May 1975, when it directed the employee to return to his attending physician for an up-to-date disability evaluation. A June 1975 report on that evaluation--the most recent medical report in the file at the time of our review in November 1976--contained a diagnosis of osteoarthritis of the atlas and odontoid process of the cervical spine. The physician reported that, although his objective findings were minimal, he did not think that the employee was exaggerating his complaints. He considered the employee to be permanently and totally disabled. There had been no further action in the case at the time of our review.

The specialist did not document his reasons for not referring the employee for vocational rehabilitation services. Evidence was available at least as early as March 1973 that the employee's condition had reached a permanent state. In our opinion, OWCP should have acted at that time to resolve the conflicting evidence concerning the extent of the employee's disability and to initiate an active program of vocational rehabilitation to convince the employee that he was able to return to gainful employment.

Compensation for temporary total disability continued at \$856 every 4 weeks. As of January 5, 1978, the employee's total compensation benefits exceeded \$60,000 and his medical benefits amounted to \$2,330.

The following case from our sample illustrates those in which the specialist's decision not to direct vocational rehabilitation appeared questionable because the evidence was insufficient to permit a conclusion that such services were not needed.

A 42-year-old dietitian employed at a Veterans Administration center in Florida fell at work in November 1971, suffering a back strain and partial dislocation of the coccyx. The Jacksonville District Office placed her on the periodic disability roll in February 1972. In August, the Civil Service

Commission approved the employee's retirement on disability, but she elected to continue receiving compensation from OWCP.

In May 1973, the employee's private physician, an orthopedic surgeon, reported that the employee had permanent disability, involving the lumbar spine, of 10 to 15 percent. Based on this report, the district medical director, in June 1973, concluded that the employee was fit for her usual work.

The claims examiner started a wage-earning capacity determination and referred the employee to the State employment service. The service reported in September 1973 that the employee was capable of working as a nutritionist but that she thought she could neither work nor participate in any training program. Also in September, the vocational rehabilitation specialist reviewed the case and determined that the employee was capable of performing her usual duties and thus had no loss of wage earning capacity. He made no attempt, however, to help her find work or to refer her for vocational rehabilitation services.

In October 1973, the Assistant Deputy Commissioner in the Jacksonville District Office instructed the claims examiner that, to support a wage-earning capacity determination, she should obtain a "work tolerance limitations" report from the attending physician.

In March 1974, the attending physician concluded that the employee had a permanent disability amounting to an impairment of the body as a whole of 12.5 percent. His work tolerance report showed the employee to be fully capable of lifting up to 50 pounds and of standing or sitting for up to 2 hours and to have a limited tolerance for reaching or working above shoulder level, for walking 6 to 8 hours, and for kneeling 1 to 2 hours. On the basis of these limitations, the vocational rehabilitation specialist, in July 1974, determined that the employee was "nonemployable in the open labor market."

No further action had been taken in this case at the time of our review in March 1976. The employee was still being paid compensation of \$913 every 4 weeks for temporary total disability. Total payments as of December 1977 exceeded \$68,000 in compensation and \$1,600 in medical benefits.

We found no support for the specialist's determination that this employee was incapable of working. The only objective medical evidence of record showed that her disability was no more than 15 percent, and the State employment service

reported that she was capable of performing her usual work. Instead of relying on medical evidence, the specialist seems to have relied on the employee's contention that she could not work and he made no real attempt to provide her with vocational rehabilitation services.

In our opinion, a vigorous vocational rehabilitation effort is required in such cases to help injured employees to return to work and to convince them that the Government is serious about getting them off the compensation rolls.

OWCP'S THROUGH-THE-MAIL OPERATION INEFFECTIVE

OWCP's operation is carried on primarily through the mail. There is little face-to-face contact between OWCP personnel and the injured employees, their families, their physicians, and their employers. In addition, OWCP's operation relies primarily on forms and form letters, which are unlikely to deal effectively with all the peculiarities of an individual situation. Form letters are used to request medical progress reports from injured employees and their physicians, to notify an employee to report to the State employment service in connection with a wage-earning capacity determination, or to inform a disabled employee that vocational rehabilitation services are available.

As a result of this through-the-mail operation, OWCP personnel rarely have first-hand knowledge about whether an employee is really disabled, whether a physician is objective and has accurate knowledge of the employee's work environment, whether the employee is motivated to return to work, or whether the employing agency understands the extent of the employee's ability to work and its responsibility for helping the employee return to gainful employment.

In contrast, representatives of State agencies and insurance companies we spoke with consider immediate, close, continued, and personal contact with disabled individuals and their families, physicians, and employers as essential ingredients in effectively reemploying disabled workers. For example, Florida has employed rehabilitation nurses, whose duties include personal contact with injured workers to more realistically assess their medical needs, socioeconomic background, and family problems. State officials believe that this helps maintain the worker's motivation and a work-oriented attitude. If vocational rehabilitation is required,

work is begun early to identify potential problems and to help meet the employee's needs.

Representatives of several insurance companies believed that the key to successfully returning injured employees to work lies in personally contacting the employee as soon as possible after the injury--most of the companies try to do so within 24 hours--and on maintaining frequent personal contact with the employee, the attending physicians, and the employer throughout the period of recuperation. This contact, they say, is necessary to maintain the employee's motivation to return to work and to influence the employee's medical recovery and rehabilitation.

FEDERAL AGENCY MONITORING AND REHABILITATION ACTIVITIES

Our visit to the Tennessee Valley Authority indicated that agencies have been or are capable of providing monitoring and rehabilitation activities under the act. TVA is already providing substantial monitoring and rehabilitation assistance to employees injured on the job. Moreover, it has achieved beneficial results with a self-initiated reemployment program that owes much of its success to its emphasis on early, personal contact and individualized treatment of injured employees.

The primary purpose of TVA's program is to hasten maximum recovery of injured employees and to return them to their former or alternate jobs. A TVA report on the program states:

"The most important part of TVA's rehabilitation program is what happens during the first week following a job related injury involving loss from work. This is the critical period during which the injured employee begins to form attitudes which will have a strong bearing on the likelihood of his returning to work following maximum recovery. During these first few days, TVA nurses visit the injured employees when needed to provide information and to establish a helping, supportive relationship which continues throughout the rehabilitation process."

TVA reported that in fiscal year 1976 it provided rehabilitation counseling and job placement assistance to 378 injured employees, of whom 140 had been placed in jobs. TVA estimated that more than half of 140 employees would not have returned

to work without the assistance they received from the rehabilitation program.

According to TVA officials, the program was begun because of a concern with rapidly increasing compensation costs and because of a lack of cooperation and assistance from OWCP.

LABOR'S INTERNAL REVIEWS

Recent Labor reviews of OWCP's administration of the act have been made by (1) the Directorate of Audit and Investigations in the Office of the Assistant Secretary for Administration and Management and (2) an OWCP Task Force appointed in June 1976 by the Assistant Secretary for Employment Standards. (See app. II for a discussion of the Task Force as it relates to this chapter.)

On October 20, 1977, the Director of Audit and Investigations transmitted to the Assistant Secretary for Employment Standards a report of an audit conducted at OWCP's district offices in Jacksonville, New Orleans, Philadelphia, San Francisco, and Seattle.

Labor auditors reported that:

--In 52 of 176 cases reviewed (30 percent), OWCP did not have current medical reports.

--In 118 of 243 cases reviewed (49 percent), OWCP had not obtained reports of earnings and status of dependents at least annually as required by the OWCP Federal Procedure Manual.

--In 43 of 202 cases reviewed (21 percent), the Social Security Administration reported that injured Federal employees had earnings from employment during a period for which they were paid compensation for total disability.

--In 41 of 243 cases reviewed (17 percent), needed wage-earning capacity determinations had not been made.

The Employment Standards Administration's Office of Program Development and Accountability reviews performed during late 1977 in the Chicago and Jacksonville District Offices showed similar findings, such as untimely medical reports and wage-earning capacity determinations.

COMMENTS OF OWCP OFFICIALS AND PERSONNEL

We discussed our finding that OWCP was not effectively monitoring the condition and status of beneficiaries under the act with management officials, claims examiners and supervisory claims examiners, and vocational rehabilitation specialists in the three district offices visited; with officials of the Employment Standards Administration regional offices in Atlanta, Chicago, and San Francisco; and with officials at OWCP's Division of Federal Employees' Compensation. All agreed that OWCP was not effectively monitoring ongoing cases and that this condition was caused by the pressures of the claims examiners' workload.

Management officials recognized that the lack of effective monitoring resulted in benefits being paid to recipients who were no longer eligible to receive them. We asked claims examiners and supervisory claims examiners to estimate the probable impact of an effective monitoring program. They responded that a significant portion of the persons on the periodic disability rolls--estimates ranged from 10 to 70 percent--could have their benefits reduced or terminated.

Most of claims examiners and supervisory claims examiners agreed that their wage-earning capacity determinations were not effective in reducing the amount of compensation payments and that this was a reason for the high percentage of reversals by the Branch of Hearings and Review. One supervisory claims examiner explained that the claims examiner must select a job that he or she thinks the employee can do--not a specific, real-life job, but a job description from hundreds listed in Labor's Dictionary of Occupational Titles. He said the job descriptions are so broad that they include many unnecessary duties, and the Branch can almost always find some aspect of the described duties that is not compatible with the work tolerance limitations described for the employee.

The vocational rehabilitation specialists in all three district offices said that, if an employee is not interested in pursuing a vocational rehabilitation program, they will take no further action.

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

OWCP is not effectively monitoring the condition and status of recipients of benefits under the act. Therefore, it does not know whether injured employees are receiving the medical and rehabilitative services they need to hasten

their return to gainful employment or whether recipients are still eligible for the benefits they are receiving.

Insufficient staff to cope with the agency's workload is undoubtedly a major factor causing OWCP's ineffectiveness in monitoring the condition and status of injured employees who have been receiving compensation for extended periods. In our opinion, however, even if OWCP obtains sufficient staff, its through-the-mail monitoring operations would still leave it relatively ineffective in returning injured employees to gainful employment.

If OWCP is to ensure that recipients continue to be eligible under the act and that injured employees receive the medical care and rehabilitation services they need to hasten their recovery and their return to gainful employment, the agency must have accurate, complete, and current medical, employment, and other information.

OWCP's approach to obtaining information vital to the effective administration of this program is essentially impersonal and passive, relying primarily on the motivation and initiative of the injured employees. In our opinion, administration of the act will require using techniques, such as those used in the workers' compensation insurance industry, that emphasize immediate, close, continued personal contact with injured employees.

Given the geographic dispersion of the beneficiaries under the act, OWCP--or any single agency--cannot be expected to carry out such a person-oriented program. The employing agencies, however, are (1) already geographically dispersed, (2) more familiar than OWCP with the employee and his or her working conditions, and (3) an injured employee's most likely source of reemployment. The agencies also have a legitimate interest in controlling the cost of the workers' compensation program.

On the basis of TVA's success in returning injured employees to work, it may be both feasible and desirable to place in the employing agencies substantial responsibility for the monitoring and vocational rehabilitation activities while leaving in OWCP the responsibility for decisions to continue, reduce, or terminate benefits.

However, our review was limited to assessing OWCP's administration and visiting four other Federal agencies. We

did not assess the adequacy of the agencies' resources to handle monitoring and rehabilitation services or the impact the delegation of these responsibilities would have on the agencies' operations. Because of the potential benefits of such a delegation--not only in reducing compensation costs to the Federal Government but also in aiding individuals to again become productive members of society--we believe that these questions should be assessed on a Government-wide basis.

The Office of Management and Budget (OMB) has general oversight responsibility for organization and management practices of all Federal agencies. Therefore, we believe that OMB should determine whether it would be feasible to delegate to the employing agencies responsibility for providing monitoring and rehabilitation services to claimants under the Federal Employees' Compensation Act.

In commenting on our draft report, Labor noted the following four innovations that had not yet occurred at the time of our review.

1. Each district office began a comprehensive review of the entire inventory of claims on the long-term disability rolls.
2. The procedure for determining wage-earning capacity was greatly streamlined.
3. Late in 1977 each district office began using a rehabilitation referral form to aid in the early identification of potential vocational rehabilitation candidates.
4. A major step in monitoring the rolls of long-term disability payment beneficiaries was the establishment of an investigative division in OWCP within the past 6 months. The division included 15 to 20 professional investigators pursuing possible fraudulent claims.

Labor believes that, until these four actions are fully implemented and evaluated, our proposed recommendation that OMB determine whether employing agencies should undertake specific monitoring and vocational rehabilitation responsibilities is premature.

OMB, in commenting on our proposal, stated that, in view of the corrective actions underway, it would not be appropriate for OMB to start a formal review to determine whether some activities should be transferred to other agencies. It said such a step could well impede progress already being made. OMB added that it intends to continue normal oversight under the act and that, if Labor does not continue to make progress on its action plan for improvements, a formal review of the kind we proposed may be warranted.

We believe that Labor's planned actions are a step in the right direction. However, for the reasons stated above, we continue to believe that it may be both feasible and desirable to place certain monitoring and vocational rehabilitation activities in the employing agencies. Also, Labor noted that it has encouraged agencies to submit proposals for assuming more responsibility for claims-related matters.

We do not believe that such a step is premature or would impede the progress of actions underway; rather it can only assist in correcting the problem. We believe that the proposed transfer of activities should at least be considered at this time.

RECOMMENDATIONS TO THE DIRECTOR, OMB

To permit the kind of person-oriented monitoring necessary to insure that injured employees are returned to work as soon as practicable and assure recipients' continued eligibility for benefits, we recommend that the Director of OMB consider placing in the employing agencies specific monitoring and vocational rehabilitation responsibilities such as

- obtaining medical progress reports at appropriate intervals to provide current information about the employee's medical condition;
- providing or arranging through State vocational agencies for vocational rehabilitation services injured employees may need to hasten their return to gainful employment;
- finding appropriate employment for partially disabled employees, either within their own organizations or elsewhere; and
- making any necessary onsite investigations to assure the propriety of continuing compensation payments.

If the Director of OMB determines that transferring the monitoring and rehabilitation activities to employing agencies would be feasible, we recommend that he submit legislation to the Congress to so amend the act.

The proposed legislation should give the Secretary of Labor responsibility for

- issuing regulations to guide the employing agencies in carrying out their responsibilities,
- reviewing and supervising the activities of the employing agencies, and
- making all decisions relating to the reduction or termination of benefits, using information developed by the employing agencies.

CHAPTER 5

ADDITIONAL WEAKNESSES IN

PROGRAM MANAGEMENT PRACTICES

During our review, we noted additional changes needed in OWCP's management practices before any substantial improvement would occur in the administration of the Federal Employees' Compensation Act. OWCP needed to

- change its management emphasis from reducing the number of cases in the backlog to ensuring timely processing of all claims;
- install management controls to help ensure the correctness of actions taken by the claims examiners to award or continue benefits as well as those to deny, reduce, or terminate benefits;
- develop a management information system giving management at all levels the information it needs to ensure that the agency's activities are being properly carried out; and
- consider the potential advantages of claims examiner specialization.

BACKLOG REDUCTION PROCEDURES HAMPER CLAIMS PROCESSING

OWCP officials have stated that the critical elements in achieving better administration of the act are reducing the backlog of unprocessed claims and improving response times. Over the past several years, OWCP management has emphasized reducing the backlog, not improving response time.

The following table shows the number of unprocessed claims reported by OWCP at the end of fiscal years 1970 through 1977.

<u>Fiscal year</u>	<u>Reported backlog</u>
1970	31,557
1971	18,776
1972	22,800
1973	35,424
1974	38,660
1975	23,795
1976	37,748
1977	103,016

By the end of December 1977, the backlog had reached 111,325. These totals indicate that OWCP has not been able to keep the backlog of unprocessed claims from increasing.

According to personnel of the district offices we visited, management's emphasis on reducing the backlog encourages the processing of cases that present no particular problem--that is, those which can be processed quickly--and discourages the processing of cases which present "sticky" problems of eligibility. This reportedly results in a backlog which increasingly consists of these difficult-to-process cases.

We believe that OWCP's emphasis on reducing the backlog has (1) slowed the processing of more complex cases and (2) lowered the quality of the claims adjudication process.

OWCP does not keep records or routinely prepare reports showing claims processing times. To obtain this information for any period requires examining documents in the case file for each claim processed during the period. For the cases in our sample at the Jacksonville District Office, we compiled the following information on the number of elapsed calendar days between receipt of claims for compensation and the award of compensation.

<u>Days elapsed</u>	<u>Number of cases</u>	<u>Percent (note a)</u>
1 to 10	15	13
11 to 20	21	18
21 to 30	17	15
31 to 60	29	25
61 to 90	7	6
91 to 180	16	14
over 180	<u>9</u>	<u>8</u>
Total	<u>114</u>	<u>99</u>

a/Does not add to 100 due to rounding.

These are a random sample of all cases filed in fiscal year 1975. They are not limited to those difficult-to-process claims whose adjudication has been hindered by OWCP's emphasis on reducing the backlog. Even so, the initial adjudication of 53 percent of these claims took more than 30 days.

OWCP personnel in all three district offices reviewed said that the agency's emphasis on reducing the backlog was a factor in their awarding compensation benefits without fully developing the information necessary under established criteria to determine whether a claimant is entitled to benefits.

Admittedly, claims examiners may be inclined to cite any management initiative to speed up processing of claims as a reason for their failure to do their job properly. Top agency management, however, also cited the backlog pressure as a contributing factor in the claims examiners' failure to properly develop claims.

MANAGEMENT INFORMATION SYSTEM NEEDS FURTHER IMPROVEMENTS

OWCP's management information system was limited essentially to periodic statistical and narrative reports which dealt mainly with levels of program activity. No information was routinely available concerning either the timeliness or the quality of claims processing, or the extent to which required monitoring was being carried out. Also, no information was made available to operating level officials to help them ensure that necessary actions were being taken.

The reports submitted to management generally gave information only about the level of program activity; for example, number of claims received, number of cases closed, amount of benefits paid, and size of the backlog. On the other hand, OWCP has not established time frame goals for processing individual claims and does not routinely prepare management reports showing the time required to process claims or the "age" of the claims on hand.

OWCP did require the district offices to maintain an adjudication control card system, intended to initiate ascending levels of review of unresolved claims to attempt to complete their development. OWCP also required the maintenance of a "call-up card system," designed to remind claims examiners when future actions were required either in developing a claim or in monitoring cases on the periodic rolls.

However, these systems were not being effectively used in the district offices we visited. (Officials said the systems were not used because of the large influx of new claims.)

Also, these systems, even if effectively used, do not provide a quality control mechanism assuring that claims examiners are following established criteria.

Need to improve automatic data processing system

OWCP has been developing an automatic data processing system for several years. At the time of our review, this system was being designed to provide inventory control over the claims on hand and to permit automated payment of most medical bills and automated computation of the periodic cost-of-living increases in compensation awards.

The system, however, was not being designed to include control of claims processing times and other information essential for timely claims processing. For example, the system does not provide for:

- Establishing a control over the processing time of each claim received.
- Periodically providing to the supervisor of each claims examining section and to the Chief, Branch of Claims, a list of the specific claims in each section on hand longer than the established time frame, so that specific action can be taken to overcome the problems impeding resolution of such claims.
- Periodically providing to the Deputy Commissioner a report showing, for each claims examining section, the number of claims received, rejected, and approved and the "age" of claims on hand so that the Deputy Commissioner can be kept informed of any developing backlog problems in the district office.
- Periodically providing to the Division's Associate Director and the OWCP Director a summary report showing for each district office the claims received, the claims rejected and approved, and the "age" of claims on hand so that top management can be kept informed of any backlog problems in the district offices.

Such information, in our opinion, is vital if the district and top management officials are to maintain effective control over claims processing.

CLAIMS EXAMINER SPECIALIZATION
COULD IMPROVE PERFORMANCE

At the time of our review, most OWCP district offices were organized into "modules." Under the system, cases are distributed among the modules alphabetically based on the first letter of the claimant's last name. Each module usually consists of a supervisory claims examiner, several examiners, and clerical personnel responsible for all adjudicative and monitoring activities of the cases assigned.

One district office was organized into "sections" similar to modules, with certain sections responsible for adjudication and others responsible for monitoring. Under both the "module" and "section" systems, claims examiners adjudicate all types of cases--from amputations to heart attacks.

OWCP does not have records which conclusively show changes over time in the types of conditions for which claims for compensation are made. OWCP personnel we spoke with, however, all agreed that the incidence of "occupational disease" cases is greatly increasing and that the claims adjudication is, accordingly, becoming more complex.

To effectively process such claims, OWCP's claims examiners must have an extensive lay medical knowledge of the various physical and mental impairments; the etiology of diseases; the remediability of impairments; the physical requirements of a wide variety of occupations; and the relationship of occupational hazards to injury, diseases, and death and of injury or disease to disability.

OWCP's administration of the act probably could be improved if certain claims examiners were to specialize in cases that characteristically pose more complex questions of disability and work-relatedness--such as cardiovascular diseases and orthopedic disorders. Specialization of claims examiners should bring the same benefits to administration of the act that specialization of physicians brings to diagnosis and treatment of disease.

CONCLUSIONS, AGENCY COMMENTS,
AND OUR EVALUATION

We believe that a management focus on the timely adjudication of individual claims rather than on the system's backlog would contribute to better administration of the act. This probably would result in a larger backlog and in longer

response times for some claims (that is, the easy to process ones).

However, such a system would not foster the laying aside of certain claims for inordinate lengths of time while the claims examiners concentrate on achieving an arbitrary, misleading, and essentially irrelevant backlog figure. It would result in a more evenhanded treatment of claimants in that no one would be penalized because his or her claim presented complex issues.

Such a management emphasis would require that OWCP establish time goals for processing claims (perhaps different goals for different kinds of claims) and controls over the processing time for individual claims. OWCP would also need to keep track of claims that are not processed within the established goal and assure that they receive special attention to resolve the problems which prevent their timely processing.

We recognize that such a system could not be readily implemented if other things remain as they are. For one thing, trying to settle all the old, complex cases that have accumulated might result in missing the goal for newly received claims.

We believe, however, as discussed in chapter 4, that placing significant responsibility for monitoring and rehabilitation activities in the employing agencies might sufficiently free the claims examiners to permit a reasonably trouble-free transition to the new system. A separate group might be set up in each district office to handle the backlog of old, complex claims, with the new control system being applied to new claims.

Also, as discussed in chapter 2, OWCP's operating procedures require written justification for and multiple supervisory reviews of claims examiners' decisions to reject claims, but not for claims examiners' decisions to accept claims. The relative ease of acceptance was a major factor in approving claims without fully developing the information necessary under established criteria to determine whether the claimants were eligible.

One ingredient needed for equitable administration of the act is a quality control mechanism to ensure that the agency's work meets the criteria. We believe that such a mechanism should include a small quality assurance group in the Deputy Commissioner's office for each district. Such a group could

routinely and randomly review the claims examiners' work and assure that the system established to control processing times is functioning properly.

We believe also that the management information system, particularly the automatic data processing system being developed, needs to be expanded to include various controls and information reports to be made available, on a timely basis, to all management levels. Such information is essential when management focuses on timely claims processing.

Finally, we believe that the volume and complexity of claims may justify the specialization of claims examiners.

In our draft report, we proposed that Labor

- establish standards for the timely processing of all claims and have management focus on achieving these standards;
- install a quality assurance system that will place as much emphasis on decisions to approve or to continue compensation as it does on decisions to reject, terminate, or reduce compensation;
- install a management information system that will give managers at all levels the information they need to ensure that activities are being conducted in accordance with the act and established criteria; and
- consider whether claims examiner specialization would improve the timeliness and the quality of adjudication of the more complex cases.

In commenting on our proposals, Labor cited the following recent actions it has taken:

1. Along with the comprehensive review of the long-term disability rolls, quality control has also been greatly strengthened through development of a set of performance standards for district offices, emphasizing processing time and quality of adjudication rather than size of backlog.
2. The cooperation between OWCP and employing agencies has improved greatly, with some agencies offering

to assist OWCP in validating claims, monitoring continuing compensation cases, and returning claimants to suitable work.

3. An internal management audit system has been developed for each district office.
4. In all district offices the automatic data processing system now performs case tracking, provides case status, and contains a claimant name index. Bill paying is now operational in all except two district offices. Statistics, correspondence control, claimant address file, and a compensation package were to be pilot tested by August 30.
5. A claims specialization pilot program developed in early 1977 has had a successful first test at a large district office with an estimated 25-percent increase in productivity and a significant improvement in quality. After a test of a small district office, a decision will be made about extending the system to other district offices.

To address the problems presented by the increased number of claims involving occupational diseases, OWCP is developing expertise on the unique characteristics and symptoms of certain illnesses, such as hearing loss. In addition, OWCP established, in the summer of 1977, panels (of medical specialists in orthopedic, cardiac, pulmonary, and psychiatric medicine) that reviewed current OWCP medical standards and additional factors that could delay return to employment. A report issued in December 1977 with their recommendations is being integrated into a new OWCP medical procedure manual which OWCP hopes to issue shortly.

Since our review, Labor has taken actions along the lines of our proposals, which, if properly implemented, should help to resolve the problems noted. Nevertheless, we continue to believe that as much emphasis should be placed on approving claims as rejecting them and that a management information system is needed.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To improve both the timeliness and the quality of OWCP's adjudication of claims, we recommend that the Secretary of Labor have the Assistant Secretary for Employment Standards instruct OWCP to

- place as much emphasis on decisions to approve or to continue compensation as it does on decisions to reject, terminate, or reduce compensation and
- install a management information system that will give managers at all levels the information they need to ensure that activities are being conducted in accordance with the act and established criteria.

CHAPTER 6

PROBLEMS WITH STAFFING

AND TRAINING OF CLAIMS EXAMINERS

OWCP officials attribute the agency's problems in program administration largely to the fact that for several years claims arising under the act have increased more rapidly than has the staff assigned to handle them. OWCP has requested additional staff, but Labor has reduced or rejected the requests. OWCP officials also believe that the quality of the persons appointed as claims examiners has decreased in recent years.

We agree that--given the present provisions of the act, OWCP's present organization, and its present method of operation--a shortage of adequately trained staff, especially claims examiners, has contributed significantly to program weaknesses.

However (as discussed in chapter 4), we believe that program administration could be greatly improved if certain monitoring and rehabilitation responsibilities were transferred from OWCP to the employing agencies. Such a shift would, of course, considerably reduce OWCP's workload and would thus reduce the number of people the agency would need.

Another factor (as discussed in chapter 5) that could significantly affect OWCP's staffing requirements is the automatic data processing system which the agency has been developing for several years. Use of this system could reduce the number of staff required to process and pay claims for medical expenses and to process the periodic cost-of-living increases in the compensation payments to persons on the periodic rolls.

From our review of the quality of work performed, we could not determine whether the quality of the claims examiners appointed in recent years has decreased. The quality of performance is affected by too many management weaknesses, such as the lack of supervisory review (see ch. 2), the pressure to expedite claims processing in order to reduce the backlog (see ch. 5), and the lack of an agencywide formal training program. Also, the Civil Service Commission standards for selecting claims examiners appear to be adequate to identify individuals with the potential to develop into competent claims examiners.

**STAFF HAS NOT KEPT PACE
WITH INCREASED WORKLOAD**

From fiscal year 1970 to fiscal year 1977, the number of notices of injury or death received by OWCP increased 72 percent, the number of claims for compensation increased 70 percent, and the number of persons on the periodic rolls increased 90 percent. However, the overall OWCP staff assigned to administer the act increased by only about 53 percent, including a 54-percent increase in the number of claims examiners. Agency officials cite this as a primary cause of program problems.

The changes in workload and staff by fiscal year are shown in the following table.

Fiscal year	Notices of injury or death	Claims for compen- sation	Persons on periodic rolls	Permanent full- time positions	
				Total	Claims examiners (note a)
1970	120,625	17,795	23,462	350	125
1971	111,851	20,987	25,331	441	142
1972	109,578	26,774	27,502	472	137
1973	112,417	28,231	29,114	424	135
1974	123,001	31,025	32,244	469	140
1975	144,897	35,615	36,479	469	141
1976	191,172	40,324	42,401	487	143
1977	207,615	30,301	44,576	535	193

a/Estimates by OWCP national office for fiscal years 1970-74.

During the same period, the amount of benefits paid increased 315 percent--from \$131.5 million to \$545.8 million.

Requests for OWCP staffing

In the past several years OWCP has requested additional staff to handle the increased workload. However, the requests have been rejected or reduced by Labor. The Congress has even provided added staff for OWCP that Labor had not requested.

The following table shows, for fiscal years 1970-77, OWCP staff requests for administering the act along with the levels approved by the Congress.

<u>Fiscal year</u>	<u>Requested by OWCP</u>	<u>Approved by Labor</u>	<u>Approved by OMB</u>	<u>Approved by the Congress</u>	<u>Positions allocated to the division by Labor</u>
1970	(a)	(a)	(a)	(a)	(a)
1971	(a)	(a)	(a)	(a)	(a)
1972	(a)	(a)	(a)	472	472
1973	(a)	424	424	424	424
1974	445	445	445	469	469
1975	584	469	469	469	469
1976	487	487	487	487	487
1977	623	610	610	645	645
1978	713	655	645	643	643

a/OWCP was unable to supply this data.

As the schedule shows, OWCP's staff was reduced by 48, from 472 to 424, in 1973. This resulted from the President's economy action to reduce employment in the executive branch. The combined effect of this staff reduction, along with the increase in workload, was an increase in the OWCP's backlog.

OWCP's problem was eased somewhat in 1974, when the Congress added 24 permanent positions that Labor had not requested. In addition, OWCP requested and received assistance in the 1974 supplemental appropriations, which added 21 full-time permanent employees and 25 2-year temporary employees.

For 1975, OWCP submitted a total request to Labor of 584 positions, including 115 additional positions--80 claims examiners, 20 technical assistants, and 15 rehabilitation specialists. The request was based on an office-by-office analysis of the backlog and the need to reduce it before converting the program's processing system to an automated support system. Labor denied this request. Nonetheless, the Congress added 74 temporary positions for the last 6 months of 1975 to help reduce the backlog.

For 1976, Labor approved the transfer of 18 positions (deputy commissioners and their secretaries) to the Federal Employees' Compensation Program from the Longshoremen's and Harbor Workers' Compensation Act Program. The Congress concurred in the transfer and authorized continuing the 74 temporary positions through 1976. During 1976, OWCP also received authorization from Labor and OMB to hire another 108 temporary employees to help reduce the continuing backlog.

For 1977, the OWCP budget request to Labor included 13 permanent and 52 temporary positions. Labor recommended 8 permanent and the 52 temporary positions. But because of other pressing workload requirements within Labor, the Secretary only approved 52 temporaries. The Congress approved the 52 temporaries. It also added 35 full-time permanent positions to help OWCP reduce the backlog.

A supplemental appropriation for 1977 was later submitted to the Congress, requesting additional funds for 123 permanent positions and 55 staff-years of temporary assistance and overtime. This request was approved by the Congress.

For 1978, OWCP requested an additional 36 positions to improve case management and quality control and 32 claims examiner positions. Labor, however, recommended an increase of 10 positions, which OMB denied. Funding for 200 temporary positions was authorized, and 2 positions were transferred from the Federal employees' compensation program to the longshore program.

Cause of increase in workload

OWCP has not conclusively established reasons for workload increases. Officially, it cites as contributing causes (1) greater employee awareness of the program--brought about largely through the activities of employee unions and through OWCP's participation in safety seminars and similar meetings--and (2) the 1974 amendments to the act.

Some claims examiners and supervisory claims examiners linked the increase in claims to the act's generous benefit provisions (because disability benefits are tax free, compensation payments are greater than take home pay for many employees), combined with the fact that it is commonly known how easy it is to get a claim approved. Another factor affecting the workload is the increase in administrative activities resulting from the growth of the periodic rolls.

OWCP personnel we spoke with all cited the 1974 amendments as a major cause of the workload increase. The provision of the amendments most credited with contributing to the workload increase is the continuation-of-pay provision. Under this provision, an employee disabled by a work-related traumatic injury is entitled to have his or her regular pay continued for the period of disability up to 45 days.

An employee who chooses to take continuation-of-pay must still report the injury to OWCP and submit medical evidence to support the claim of disability. OWCP must still determine the validity of the claim before it can pay the medical expenses, and it is supposed to inform the employing agency of its determination.

Thus, an increase in lost-time injuries would affect OWCP's workload because

- every lost-time injury for which the employee elects continuation-of-pay must be reported to OWCP and requires as much claims examiner involvement as a claim for compensation, whereas
- a no-lost-time injury is not reported to OWCP unless the employing agency anticipates that a bill for medical services will be filed, and
- no-lost-time injuries that are reported require only minimal involvement by a claims examiner.

Although we did not try to assess the effects of the 1974 amendments, the available information on reported injuries does show a greater increase in lost-time injuries, compared to no-lost-time injuries, since enactment of the 1974 amendments.

The amendments were enacted in Public Law 93-416, approved September 7, 1974, and Labor published implementing regulations on November 25, 1974. Thus, fiscal year 1974 was the last full fiscal year before the amendments were implemented, and fiscal year 1976 was the first full fiscal year after they were implemented.

From fiscal year 1974 to fiscal year 1976, total Federal employment remained stable. From fiscal year 1970 to fiscal year 1974, the number of injuries and deaths reported to OWCP increased only 1.9 percent--from 120,625 to 123,000--with declines in the intervening years.

But from fiscal year 1974 to fiscal year 1976, the number of injuries or deaths reported increased 55 percent, to 191,000. Also, from calendar year 1974 to calendar year 1976, the number of lost-time traumatic injuries reported to OWCP increased 96 percent--from 47,000 to 97,000--while the number of no-lost-time traumatic injuries reported increased 34 percent--from 82,000 to 110,000.

SELECTION OF CLAIMS EXAMINERS

OWCP officials we spoke with in both the district and national offices believed that the quality of the persons appointed as claims examiners has decreased in recent years. However, the standards established for selecting claims examiners appear adequate to identify individuals with the potential to develop into competent claims examiners.

The Civil Service Commission has classified OWCP's claims examiners under a single-agency standard--the Workers' Compensation Claims Examining Series, GS-951. The standard, as revised in October 1976, describes the general qualifications of workers' compensation claims examiners as follows:

"These examiners must possess a high degree of analytical ability and judgement. They must have the ability to examine a claim or case and break it down into its constituent parts; to identify the issues or problems, to develop sufficient and valid evidence; and to make a quasijudicial determination on complex factual, legal and medical situations, based upon the Bureau of Employees' Compensation [1] general policies and principles, rules and regulations, and precedents, which, in turn, embody that specialized branch of the law generally referred to as 'workmen's compensation.'
* * *

"These examiners must possess the ability to acquire an extensive lay medical knowledge of the various physical and mental impairments, the etiology of diseases, the remediability of impairments, the physical requirements for a wide variety of occupations, and the relationship of occupational hazards to injury, diseases and death, and of injury or disease to disability."

1/Now OWCP.

The standard specifies that all applicants for claims examiner positions in grades GS-5 and GS-7 must pass an appropriate written test, but that the written test "should be waived for inservice placement actions." For evaluating the abilities of candidates for inservice placements, the standard provides the following guidance:

"Analytical ability. --This characteristic is important as the examiner must have ability to break a claim down into its constituent parts; to identify the issues involved; and to develop sufficient and valid evidence on which to base a decision. Consider the degree to which the candidate has demonstrated the ability independently to analyze problems, to identify issues, and to conduct fact-finding studies, or the extent to which supervisory guidance and assistance were available. Appropriate consideration should be given to persons with a high degree of analytical fact-finding ability regardless of academic background.

"Decision-making ability. --This is an important characteristic as the claims examiner is called upon to make many decisions where evidence is difficult to develop and there are conflicting opinions. Consider the degree to which the candidate has demonstrated the ability to consider pertinent facts, the conflicting opinions of others, and precedents in making a decision or recommendation; whether he has demonstrated the ability to make decisions under pressure and within deadlines.

"Ability to meet and deal effectively with others. --This characteristic is essential for some positions particularly those involving the conduct of prehearing conferences. Consider the degree to which the candidate has demonstrated the following abilities: ability to deal with a variety of people in different circumstances; the ability to persuade others to accept recommended action; the ability to lead conferences and, at the same time, maintain smooth relations with and between individuals with different points of view; the ability to mediate and negotiate the differences between opposing parties.

"Subject-matter knowledge of the workers' compensation programs. --Knowledge of the particular workers' compensation program being administered, even though gained in an administrative (or other) capacity could be more valuable than claims examining experience gained in an unrelated type of benefit program. Consider the candidate's knowledge of the Federal Employees' Compensation program, the Longshore and Harbor Workers' Compensation program, the District of Columbia Compensation program, and how these knowledges relate to the particular position to be filled."

INADEQUATE TRAINING OF CLAIMS EXAMINERS

OWCP did not, at the time of our review, have a specific, agencywide training program for claims examiners. Instead, each district office was responsible for training its own personnel.

Officials of the three district offices agreed, however, that the pressure of the backlog of unprocessed claims has severely limited the staff time that could be spared for training. This applied to the time of both the claims examiners and the more experienced staff who would provide the training. As a result, they said, most formal training has been provided on a "panic" basis--to try to deal with some particularly acute problem--and claims examiners have basically received only on-the-job training.

As demonstrated by the preceding discussion of the qualification standard for the claims examiner position, the work of OWCP's claims examiners is complex. Claims examiners cannot be expected to fulfill such responsibilities unless they are given indepth training in the information and techniques required to do the job.

We believe that our review results reflect, at least in part, the insufficient training of the claims examiners. District office officials agreed that inadequate training contributed to problems in administration of the act. They added that the lack of a specific, agencywide training program resulted in an uneven application of the act by the different district offices and even by different claims examiners in the same district office. They pointed out that the lack of training has resulted in inadequately trained claims examiners providing on-the-job training for newly appointed examiners.

After June 1976 hearings by the Manpower and Housing Subcommittee of the House Committee on Government Operations and in response to OWCP's Task Force Report, OWCP's national office initiated action to develop a new comprehensive training program for claims examiners.

LABOR'S INTERNAL REVIEWS

The Labor internal audit report of October 20, 1977, also discussed workload and staffing. The auditors obtained responses of 170 district office employees to a questionnaire designed "to determine what problems affected the efficient processing of claims and what solutions could improve claims processing." The five most frequently cited problems affecting claims processing were (1) lack of adequate staff, (2) lack of adequate training, (3) low morale, (4) increased workload, and (5) the 1974 amendments to the act.

Some suggested solutions pertaining to workload and staffing received from the district office employees were to hire additional permanent, qualified personnel, especially claims examiners and supervisors; stop hiring temporary employees; establish an indepth training program for all staff; repeal the continuation-of-pay provision; and require employing agencies to handle continuation-of-pay cases and minor injury claims.

In addition, the Labor auditors also recommended that

- the Director of OWCP require all district offices to submit copies of their training plans and to give trainee examiners priority for training.
- the Director monitor district office training programs more frequently, and
- the district offices establish a specific job position to handle claimants' inquiries about their claims.

Labor and OWCP generally agreed with the recommendations and had taken or planned to take appropriate action. (See app. III for a discussion of the OWCP Task Force Report as it relates to workload and staffing.)

CONCLUSIONS, AGENCY COMMENTS, AND OUR EVALUATION

OWCP's problems in administering the act have been exacerbated by a shortage of well-trained staff- especially

claims examiners. Labor's efforts to alleviate this problem have generally been limited to authorizing the hiring of additional temporary staff and paying overtime.

In 1974 and 1977, because of the concern about the program, the Congress took the initiative and, without requests from Labor, authorized a total of 59 new permanent positions. The question remains whether the staff, even with the new positions, will be sufficient to process claims in a timely manner and reduce the backlog. Additional staff may have to be provided to achieve acceptable quality administration. Nevertheless, many weaknesses and problems we noted could be alleviated by better administration and improved management controls and practices.

Also, before taking any action to authorize additional personnel, Labor and OMB should consider transferring significant responsibility for certain monitoring and rehabilitation activities from OWCP to the employing agencies. (See recommendation, ch. 4.)

From our review, we could not determine whether the quality of the claims examiners appointed in recent years has decreased. The quality of performance is affected by too many management weaknesses, such as

- the lack of supervisory review of approved claims (as discussed in ch. 2),
- pressure to expedite the processing of claims to reduce the backlog (as discussed in ch. 5), and
- the lack of an agencywide formal training program.

Also, Civil Service Commission standards for selecting claims examiners appear to be adequate to identify individuals who have the potential to become competent claims examiners.

Although we did not assess whether the process for selecting claims examiners identifies the most qualified applicant, the very existence of the question harms the operation of the Federal Employees' Compensation Program. Accordingly, we believe that the Secretary of Labor should review the process for selecting claims examiners to assure that only the best qualified applicants are selected. In addition, the Secretary of Labor should review the implementation of the newly established agencywide training program to assure that the program

is adequately providing the claims examiner with the knowledge and direction to make proper decisions on the complex issues involved in processing compensation claims.

In our draft report, we proposed that Labor:

- After considering our other proposals--dealing with transferring significant responsibilities to employing agencies (discussed in ch. 4), using the automatic data processing system to aid in processing claims (discussed in ch. 5), making onsite investigations of questionable claims (discussed in ch. 3), and correcting many management weaknesses (discussed in chs. 2 and 5)--that might affect OWCP's pressing need for additional personnel, review the staffing situation and attempt to secure and allocate adequate resources and staff to enable OWCP to carry out its responsibilities under the act efficiently, effectively, and promptly.
- Ensure that the selection and training of OWCP's claims examiners comply with the standards for selection and that personnel receive the training needed to efficiently and effectively carry out their duties and responsibilities.

In commenting on our proposals, the Secretary of Labor replied that he has authorized 250 additional positions in fiscal year 1978, from within the Department's currently available resources, to meet and control critical workload problems. The funds to finance this additional effort were formally reprogrammed with congressional approval. He added that Labor is evaluating the long-range staffing needs and will be making recommendations to OMB and to the Congress.

Further, according to Labor, in spring 1977 all claims examiners attended a basic 4-day training course. Since August 1977 all newly hired examiners have attended a 7-day course. A 2-week advanced training course for all experienced examiners was held in early June.

Labor's actions of increasing staffing and developing a new training program should help it improve program administration. We continue to believe that the Secretary should ensure that the selection of OWCP's claims examiners complies with the standards for selection and, in evaluating Labor's long-range staffing needs, should consider our other recommendations that might affect OWCP's need for additional personnel.

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

To provide for more effective and efficient administration of the act, we recommend that the Secretary of Labor

--ensure that the selection of OWCP's claims examiners complies with the standards for selection and

--in evaluating Labor's long-range staffing needs, consider our other recommendations (see chs. 2, 3, 4, and 5) that might affect OWCP's need for additional personnel.

OWCP TASK FORCE FINDINGS,
RECOMMENDATIONS, AND ACTIONS TAKEN
RELATING TO DETERMINATION OF CAUSAL RELATION

In its study of the Federal Employees' Compensation Program, the OWCP Task Force solicited comments from 61 Federal agencies and from all Federal employee unions to identify problems and to seek recommendations for improvement. At the conclusion of its study, the Task Force issued a report, dated December 30, 1976, setting forth 33 recommendations for amendment of the act or changes in its administration.

Task Force findings and recommendations relating to the determination of causal relation are summarized below.

The Task Force found that guidelines for establishing causal relation were generally adequate, but that for cases involving nervous disorders, psychiatric irregularities, and back, heart, respiratory, and circulatory conditions, they may not be adequate. Also, understandable guidelines were needed to identify and develop those cases in which preexisting disabilities have become manifest or worsened during periods of Federal employment to determine to what extent, if any, employment factors caused this manifestation or worsening. The Task Force recommended that a panel of medical specialists be convened to review and revise OWCP's guidelines for disability determinations.

The Task Force report also stated that the need for an investigative staff is clearly shown by GAO findings and by the variety of allegations against OWCP, including (1) agency complaints of claimant fraud, (2) agency complaints that information they supply has not been thoroughly pursued by OWCP, (3) union and employee complaints that agencies or supervisors discouraged or delayed the filing of claims, (4) complaints of less than adequate claims development, and (5) complaints that cases have been approved on inadequate or insufficient evidence, especially in "occupational disease" cases. The Task Force recommended that an investigative staff and procedures be provided.

According to the Task Force report, OWCP's initial medical report form is generally sufficient in cases of simple traumatic injury, but in the more complex cases the reports do not

provide enough information to permit a determination of causal relation. The Task Force recommended that the medical report forms be revised to insure receipt of necessary medical evidence concerning causal relation.

The Task Force reported that many claims initially denied and later appealed to the Branch of Hearings and Review are returned to the district offices with a contrary determination of some kind. About two-thirds of all cases considered by the Branch in fiscal year 1976 were modified, remanded for further development, or found not in posture for final decision on the evidence of record. The Task Force recommended that the district offices be given copies of significant Branch decisions and statistics on the numbers and types of cases not affirmed, so that the training of examiners and adjudication performance of the district offices can be upgraded.

The Task Force also found that there was no formal internal accountability review of the quality of adjudication at the district offices. The only requirement was for the periodic submission of numerical case counts and statistics. The Task Force recommended (1) instituting a system of internal auditing in the district offices with reports of findings sent to the national office and (2) integrating with this system an external review by the Employment Standards Administration's Office of Program Development and Accountability.

Labor officials have informed us that several of the Task Force recommendations have been implemented and that considerable progress has been made on the following Task Force projects:

- Four panels of medical specialists have convened to draft new guidelines as part of the medical procedures manual.
- A Division of Investigations has been established within OWCP to explore allegations of fraud and other abuse.
- The medical report forms and accompanying instructions to examining physicians are being revised.
- Information and statistics on the Branch of Hearings and Review are to be distributed to the district offices biannually.
- Procedures for instituting an internal auditing system for the district offices are being drafted.

OWCP TASK FORCE FINDINGS,
RECOMMENDATIONS, AND ACTIONS
TAKEN RELATING TO MONITORING OF CLAIMS

The Task Force findings and recommendations relating to the monitoring of the condition and status of persons on the periodic rolls are summarized below.

The Task Force reported that the compensation benefits of injured Federal employees in the higher salary levels is greater than their regular take-home pay. Such employees have no monetary incentive to return to work or undergo vocational rehabilitation. The Task Force recommended that the benefit structure under the act be reviewed to determine possible changes to assure that benefits are equitable and that incentives are provided for injured employees to return to work or undergo vocational rehabilitation.

The Task Force also reported that the provision of the act requiring reduction of compensation of persons who do not comply with the Secretary's direction to undergo vocational rehabilitation is ineffective. This is because determining wage-earning capacity is time consuming and complex and because the determination of a hypothetical wage-earning capacity, as provided for in the act, is much more likely to be reversed on appeal than a determination based on completion of a vocational rehabilitation program. The Task Force recommended that legislation be introduced to amend section 8113(b) of the act to suspend the compensation of an injured employee who, without good cause, refuses to comply with the Secretary's direction to undergo vocational rehabilitation.

The Task Force reported that the Civil Service Commission could strengthen its regulations implementing the provisions of the act pertaining to employing agencies' responsibilities for restoring injured employees to duty. Another problem in implementing these provisions is the personnel ceilings that the Office of Management and Budget places on Federal agencies. The Task Force recommended coordination (1) with the Civil Service Commission to strengthen reemployment rights and procedures for injured employees and (2) with OMB to determine whether employment ceilings could be removed for the reemployment of persons who have sustained work-related injuries.

The Task Force reported that many cases in which the injured employee may be eligible for vocational rehabilitation are not referred to the vocational rehabilitation specialist in a timely manner. This increases compensation cost. The Task Force recommended reducing the timelag on referral by using a special form which claims examiners and vocational rehabilitation specialists must initial and which would be placed on top of the claims file.

The Task Force also reported that the rehabilitation program is not realizing its full potential. An impartial evaluation of such things as present management techniques, referral system, and current procedures as well as a study of the feasibility of using private contractors in the rehabilitation process is needed. The Task Force recommended employing an outside group to develop ways to strengthen the rehabilitation program in order to provide timely counseling to injured employees and to insure their earliest possible return to gainful employment.

According to the Task Force report, the present procedures for the wage-earning capacity determination calls for referring the injured employee to the State employment service for selecting an appropriate occupation consistent with the employee's physical condition, education, and job experience. These referrals generally have resulted in delays of 3 months or more and, on occasion, have produced ratings not consistent with the injured employee's capabilities. These delays result in unwarranted payments for temporary total disability. The Task Force recommended establishing a new procedure for selecting an appropriate occupation in wage-earning capacity cases in order to reduce or eliminate the present delay.

Labor actions in response to the Task Force report include

- considering a study of the benefit structure under the act,
- implementing a new rehabilitation form and procedures,
- working on a plan for an in-house study of ways to strengthen rehabilitation, and
- establishing a new procedure for making wage-earning capacity determinations.

OWCP TASK FORCE FINDINGS,
RECOMMENDATIONS, AND ACTIONS
TAKEN RELATING TO WORKLOAD AND STAFFING

The Task Force findings and recommendations relating to workload and staffing are summarized below.

The Task Force found that, in the past few years, OWCP's workload has increased dramatically without a similar increase in staff to handle the workload. The Task Force recommended establishing a procedure by which the Secretary may delegate to certain employing agencies responsibility for processing noncontroverted continuation-of-pay cases involving 15 days or less of disability.

The Task Force believed that the continuation-of-pay provision, elimination of the 3-day waiting period at the beginning of disability, and the free choice of physician have led to more injury reports for short-term injuries. Before the 1974 amendments, employees with minor injuries were more likely to remain on the job or to use sick or annual leave than to file a claim for compensation.

The Task Force believes that employees now elect continuation-of-pay for minor injuries and that they tend to "stretch out" the time lost because of such injuries. The Task Force recommended amending section 8117 of the act to provide for a waiting period of 2 workdays of wage loss at the beginning of disability before entitlement to either compensation or continuation-of-pay. However, eligibility would begin with the first day of disability if the disability lasted longer than 14 calendar days or if temporary disability were followed by permanent disability.

The Task Force also reported that various provisions of the act are not uniformly applied. Different offices make different decisions on claims involving substantially identical situations. Even within the same office, different claims examiners make different decisions in similar cases. This condition is apparently caused by lack of uniform training. The Task Force recommended developing a comprehensive training program for all claims examiners, from the newly hired to the supervisory claims examiner.

The Task Force found there is concern that, as a result of the present system for claims examiner selection, most examiners have reached that position by promotion from within

the organization without sufficient preparation or training. The Task Force recommended instituting a system through which candidates for trainee examiner positions are identified through both internal and Civil Service Commission Professional and Administrative Career Examination sources in order to provide a full range of candidates for these positions.

According to the Task Force, a systematic method is needed to improve the quality of the district office staff while assuring maximum use of existing employee skills and providing a clear career path for all employees to advance through the district office. Each occupational field and position title used in the district offices should be defined in terms of the qualification requirements at each grade level. The Task Force recommended developing a career path program for district office employees to allow lower level clerical employees to advance through all district office jobs.

The Task Force reported that, because the work of claims examiners has become, and will continue to become, more complex, the claims examiner classification standard may not accurately describe the duties and responsibilities of the position. The Task Force recommended reviewing the existing position classification standard for the claims examiner series to assure that it properly reflects current operational criteria and that it meets OWCP's needs with respect to grade-level determination.

The Task Force also reported that the increasing claims backlogs demonstrate the need to expedite the adjudication process. By specializing, the examiners would become proficient in major areas, such as traumatic injuries, occupational disease, and periodic roll management. The Task Force recommended testing the feasibility of claims specialization in the district offices.

The Task Force found that the speed with which various case actions are taken differs from one district office to another and from examiner to examiner. This is partly due to the lack of performance standards on the time needed for each action. Examples of such actions are attaching an incoming piece of mail to a case file, taking action on a bill, and paying compensation after receipt of a claim. The Task Force recommended establishing a list of standards of timeliness for specific actions, to be used as a guide in handling all aspects of the claims process.

The Task Force further reported that OWCP does not have an accurate, detailed data system which can provide information on program administration. It recommended developing, as a part of the automatic data processing system being developed, a management information system to improve control and management of the claims processing activities.

In response to the Task Force report, Labor is taking several actions, including:

- Instituting a new comprehensive training program for claims examiners.
- Instituting a program for selecting candidates for claims examiner positions.
- Developing a draft career path program for claims examiners.
- Revising the claims examiner position classification standard.
- Testing a program of claims examiner specialization.
- Drafting standards for time frames for specific case actions.
- Developing an automated management information system.

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

July 19, 1978

Honorable Elmer B. Staats
The Comptroller General of
the United States
Washington, D.C. 20548

Dear Mr. Staats:

This is in response to the GAO draft report "Substantial Improvements Needed in the Department of Labor's Administration of Compensation Benefits Program for Injured Federal Employees" (FECA).

For the past five years the FECA program has been beset by serious deficiencies in administration and management. However, over the last year and a half the present Administration has taken significant steps to eliminate a number of the program's deficiencies. The GAO draft report does not indicate the period during which the review was conducted. Also, GAO's findings and recommendations do not take into account the steps taken over the past year to eliminate deficiencies identified by the audit. The result is an incomplete picture of how the program is presently being administered. Some explanation of the period of audit needs to be made and the corrective measures already undertaken by the Department of Labor should be included and evaluated.

Some of the major steps taken over the past year are set forth below under the following four headings:

- I. The quality of evidence accepted by the Office of Workers' Compensation Programs
- II. Sampling procedures used for the draft report

III. Monitoring of injured employees' programs and need for rehabilitation

IV. The role of the employing agencies

I. The quality of evidence accepted by the Office of Workers' Compensation Programs (OWCP)

The draft report's most extensively discussed findings are that benefits are awarded by OWCP without adequate evidence showing disability or death caused by employment, and that management changes will have to precede improvement in the administration of the program. The report recognizes that increases in OWCP's staff have not kept pace with increases in the workload, but it concludes from a sample discussed below that there is a widespread practice of awarding benefits without reaching impartial decisions equitable to both the injured employees and the Federal Government. The draft report urges: (a) more staff, (b) more training, contains suggestions for (c) quality assurance, (d) claim examining specialization, (e) a management information system, and (f) improved claims examining with respect to occupational diseases. In each of these subject areas there has in fact been a great deal of activity since early 1977. Specifically:

- (a) A supplemental appropriation for Fiscal Year 1977 added one hundred and twenty-three new positions for the FECA program. The Secretary has authorized 250 additional positions in Fiscal Year 1978 from within the Department's currently available resources. The positions are to meet and control critical workload problems. The Department is evaluating the long range staffing needs and will be making recommendations to OMB and Congress. Funds to finance the additional level of effort for FY 1978 were formally re-programmed with Congressional approval.
- (b) In spring 1977, all claims examiners attended a basic four-day course. Since August 1977, all newly hired examiners

have attended a seven-day course. A two-week advanced training course for all experienced examiners was held in early June.

- (c) Since March 1977, each District Office has undertaken a comprehensive review of the entire inventory of claims on the long-term disability payment rolls. To date, over 17,000 cases have been reviewed under this effort. Although figures on the amount of savings realized by this project are not yet available, it is estimated that they will total many millions of dollars. Quality control has also been greatly strengthened through development of (1) a set of performance standards for District Offices emphasizing processing time and quality of adjudication rather than size of backlog; and (2) an internal management audit system for each District Office. The National Office review of this kind began last July and the internal audit system is expected to be put into place by mid-summer.
- (d) A claims specialization pilot program developed in early 1977 has had a successful first test at a large District Office with an estimated 25 percent increase in productivity and a significant improvement in quality. After a test of a small District Office, a decision will be made regarding extension of the system to other District Offices.
- (e) The severe difficulties experienced in 1976 in initiating the use of the ADP system have been in large part overcome. In all District Offices the ADP system now performs case tracking, provides case status, and contains a claimant name index. Bill paying is now operational in all except two District Offices. Statistics,

correspondence control, claimant address file, and a compensation package will be pilot tested by August 30.

- (f) To address the problems which accompany the increasing caseload of occupational diseases, OWCP is developing expertise on the unique characteristics and symptoms of certain illnesses. The OWCP Hearing Loss Task Force has adjudicated nearly 7,000 claims to date. In March 1977, the OWCP formula for evaluating hearing loss was changed to correspond more closely with the guidelines adopted by the American Medical Association, as developed by the American Academy of Ophthalmology and Otolaryngology. Moreover, the Employment Standards Administration will shortly open bidding on an extensive research project focusing on the many problems associated with properly compensating occupational-related hearing impairment.

In addition, OWCP established in the summer of 1977 panels of medical specialists in orthopedic, cardiac, pulmonary and psychiatric medicine. These panels reviewed current FECA medical standards and impairments to employment factors. A report issued in December 1977 with their recommendations is being integrated into a new FECA medical procedure manual which will be issued shortly.

II. Sampling procedures used for the draft report

The GAO Review Team examined 233 FECA awards and nine decision reversals by the Branch of Hearings and Review to reach their findings and recommendations. The 233 awards were collected in three of the 16 District Offices and represent less than one percent of awards to beneficiaries currently being compensated under the FECA program. The nine reversals by the Branch

of Hearings and Review amount to less than one percent of the cases handled by this Branch in FY 1976 alone. Moreover, only three of these reversals were randomly selected; the other six have been cited by District Office personnel as examples of cases which they felt had been improperly reversed.

The conclusions reached by the GAO Review Team are not inconsistent with those obtained by other review teams using pre-1977 data, and as indicated at the beginning of this letter, the Department recognizes that the program has been in trouble in recent years. The concern here, however, is that when and if GAO conducts follow-up studies, it should, before issuing a final report, insure that larger and more representative samples be taken in order to assess the impact of the 1977 and 1978 activities outlined above.

III. Monitoring injured employees' progress and need for rehabilitation

The draft report states that, in the three District Offices visited by the reviewers, the Office did not systematically review the condition and status of injured employees who had been receiving compensation for extended periods to determine whether they remained eligible for their benefits or whether they might benefit from vocational rehabilitation services. At the time of the GAO team's visits to these District Offices the following four important innovations had not yet occurred.

- (a) As indicated above, in early 1977 each District Office began a comprehensive review of the entire inventory of claims on the long-term disability payment rolls. The review involves a re-examination of previous actions taken, and a determination of the current status of each case.
- (b) The procedure for determining wage earning capacity (WEC) has been greatly streamlined. In this procedure, partially disabled claimants receiving total disability compensation

have their compensation payments reduced to an appropriate rate commensurate with their capacity to earn wages. Previously, the procedures were so time consuming that they sometimes resulted in unwarranted continuation of total disability compensation payments. The new procedure which has recently been introduced in each District Office will result in savings of approximately two months of processing time on the average case with related savings in partial disability compensation payments.

- (c) Late in 1977 each District Office began using a rehabilitation referral form to aid in the early identification of potential vocational rehabilitation candidates. A pilot program using this procedure was very successful in referring cases to the District Office's vocational rehabilitation specialist within three months from the date disability began. The system will provide more timely service to the claimants in need of rehabilitation assistance.
- (d) A major step in monitoring the rolls of long-term disability payment beneficiaries has been the establishment of an investigative division in OWCP within the past six months. The Division included fifteen to twenty professional investigators pursuing possible fraudulent claims. Sometime prior to October 1, 1978, the newly created Office of Special Investigations will become responsible for this function. This Office was created to investigate allegations of fraud and abuse in programs administered by the Department. This new emphasis on investigating cases of suspected fraud has already produced results. OWCP participated in the development of evidence which led to eleven indictments for fraud and two convictions. About

fourteen more indictments are expected shortly, and about 200 cases are under active review for possible legal action. OWCP has worked closely with the U.S. attorneys in all of these cases and will continue these efforts.

Until the four activities outlined above are fully implemented and evaluated, the recommendation that the Office of Management and Budget undertake the task of determining whether employing agencies should undertake specific monitoring and vocational rehabilitation responsibilities (pages 76a, 77) is premature. Innovation (d) listed above clearly meets the condition addressed in the draft report's recommendation that some claims, especially the hard-to-prove ones with causation issues, need to be investigated on-site (pages 44, 45).

IV. The role of the employing agencies

The draft report also finds that OWCP often fails to inform employing agencies of its rationale when it decides compensation claims, and that many agencies believe claims are being approved by OWCP even though the agencies have adequate evidence to dispute the claim. In connection with these findings, the draft report recommends that Congress amend the Federal Employees' Compensation Act to place in the employing agencies the authority to appeal to the Employees' Compensation Appeals Board any findings of casual relation by OWCP or any OWCP decision continuing compensation benefits which, in the opinion of the employing agency, is inconsistent with or not supported by the evidence available to the employing agency and OWCP.

Over the past year, and since the GAO Review Team's observations of employing agency attitudes, there has been a significant improvement in the cooperation between OWCP and most of the agencies whose employees file the largest number of claims. To a much greater extent,

they are offering to assist OWCP in validating claims, monitoring continuing compensation cases, and returning claimants to suitable work. Several agencies have expressed a keen interest in participating in identifying jobs that can be filled by vocational rehabilitation candidates. Finding positions for these candidates has been a problem in the past. Over the past year OWCP has been working closely with the U.S. Postal Service and certain Air Force installations to identify positions and potential rehabilitation placements. Pilot programs with the Postal Service are already underway in the Dallas, Kansas City, and Seattle regions. Reports received thus far on the progress of these efforts are positive. Much of this improvement is attributable to the upgrading over the past year of technical assistance to agency managers, assisting them to establish their own internal controls and making their supervisors more aware of the agency responsibilities with respect to this program. As part of the technical assistance effort, a comprehensive training program on FECA procedures and requirements for agency personnel has been developed. This course is now being scheduled for agency compensation specialists throughout the country.

Quarterly meetings with various agencies have been held to communicate with them on the administration of the Act. In these meetings, we have encouraged agencies to submit proposals for assuming more responsibility for FECA claims related matters. For example, we are actively considering one such agency proposal which would provide additional authority with respect to medical care and case management to that agency. We also welcome the advice of any Federal agency as to how we might improve the system.

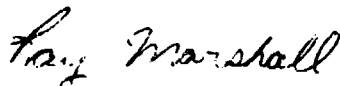
Of particular significance is agency action in the controversion of claims. In many situations, if OWCP is effectively to uncover questionable allegations of cause and job-related injuries the agency must raise questions about the claim. It is not true, as has been alleged, that OWCP ignores evidence submitted on the controversion of a claim by an agency. On the contrary, FECA procedures require that District Offices explicitly take into account agency views and reconcile those of the claimant with the perceptions of the agency.

For these reasons, we believe that an examination by GAO of the present situation will indicate that there is no need to alter the equity of the adjudication process by requiring employees to be subject to any undue evidentiary requirement, or to establish an adversary procedure among Federal agencies by providing the employing agencies with the right to appeal. It is our opinion that a re-examination by GAO would lead it to conclude at this time that it is neither necessary nor desirable to have the Federal Government take opposing sides in these quasi-judicial proceedings.

The Department appreciates this opportunity to comment upon the draft report. We hope that you will share with us the conclusion that follow-up visits by the General Accounting Office are needed if this report is to provide the important service that is intended. If follow-up visits are made, any final report on the FECA program should indicate the recent improvements in the program mentioned above so that readers will have an up-to-date view of the program. All recommendations should be re-examined in the light of the new initiatives.

Please let me know if I can provide any further information.

Sincerely,



Secretary of Labor

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



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 25, 1978

Mr. Victor L. Lowe
Director, General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This is in response to your letter of April 19, 1978, requesting comments on your draft report entitled Substantial Improvements Needed in the Department of Labor's Administration of Compensation Benefits Program for Injured Federal Employees.

We have reviewed the draft report, especially the section concerning monitoring and rehabilitation services to claimants under the Federal Employees' Compensation Act (FECA). In general the data on these matters finds that the Office of Workers' Compensation Programs (OWCP) is not effectively monitoring the condition and status of recipients of benefits under the Act. Therefore, the OWCP does not know whether injured employees are receiving the medical and rehabilitation services they need to hasten their return to gainful employment or whether recipients are still eligible for the benefits they are receiving. Following from these findings is the recommendation that the Director of the Office of Management and Budget determine whether it would be advisable to place in the employing agencies specific monitoring and vocational rehabilitation responsibilities.

The administrative problems outlined in your draft report are many of the same deficiencies found in the internal Department of Labor review of the Federal Employees' Compensation Program which was completed in December 1976. The Department informs us that they are in the process of taking steps to improve the administration of the FECA program.

In the areas of monitoring and rehabilitation, a new rehabilitation referral form has been developed that will aid in the early identification of potential

vocational rehabilitation candidates. The Department reports that a pilot project using this procedure was very successful in referring cases to the district offices' vocational rehabilitation specialist within three months from the date the disability occurred. To improve the monitoring of approved claims the Department plans to review the entire inventory of claims on the long-term disability payment rolls.

To help the agencies carry out their responsibilities under the FECA, the Department has increased its efforts to provide technical assistance. Seminars have been held to acquaint agency officials with the requirements of the Act and to encourage them to develop systems which will enable them to track reports of injuries, the flow of FECA claims, and ensure that proper evidence is submitted on a timely basis. Also, as part of their technical assistance effort, the Department of Labor has developed a training program on FECA procedures and requirements for agency personnel. In addition, quarterly meetings with various agencies have been held to exchange information concerning the administration of the Act. As a result of these meetings the Department now has under consideration a proposal which would provide agencies with additional authority to monitor claims, and provide more comprehensive rehabilitation services.

In view of the substantial actions underway in the Department of Labor to correct the problems you found in the monitoring and rehabilitation area, we do not believe it would be appropriate for this Office to start a formal review to determine whether some activities should be transferred to other agencies. Such a step could well impede progress already underway. However, we intend to continue our normal oversight of operations under FECA. If the Department does not continue to make progress on their action plan for improvements, a formal review of the kind recommended in your report may subsequently be warranted.

Sincerely,



W. Bowman Cutter
Executive Associate
Director for Budget

(20146)