



THE DEPARTMENT OF JUSTICE'S MANAGEMENT OF THE FEDERAL EMPLOYEES' COMPENSATION ACT PROGRAM

U.S. Department of Justice
Office of the Inspector General
Audit Division

Audit Report 09-34
August 2009

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THE DEPARTMENT OF JUSTICE'S MANAGEMENT OF THE FEDERAL EMPLOYEES' COMPENSATION ACT PROGRAM

Introduction

The Federal Employees' Compensation Act (FECA) provides for medical benefits, income replacement, and certain supportive services to civilian employees of the federal government with work-related illnesses or injuries, or in the case of death, survivor benefits to family members.¹ FECA cases include claims submitted to the Department of Labor (DOL) resulting from a traumatic injury, occupational disease, illness, or fatality.

FECA is primarily administered by the DOL's Office of Workers' Compensation Programs (OWCP). However, each federal agency, including the Department of Justice (DOJ), has financial and management responsibilities for its own FECA cases.

Each OWCP office employs Claim Examiners who adjudicate employees' claims and approve payments to claimants. The costs of FECA benefits are initially paid by DOL through the Employee Compensation Fund.² At the end of each fiscal year (FY), agencies employing injured workers reimburse the FECA program for their employees' FECA expenses through a process known as chargeback.³ To facilitate the chargeback process, the OWCP provides each agency with a quarterly chargeback report listing the cases and charges each agency is responsible for reimbursing. Chargeback expenses are required to be reimbursed to the Employee Compensation Fund within 2 fiscal years from the end of each chargeback period.⁴

¹ The Federal Employees' Compensation Act is codified at 5 U.S.C. § 8101 et seq.

² The Employee Compensation Fund is an account managed by the Department of the Treasury that funds all benefit payments through FECA.

³ The chargeback process is the process by which the costs from July 1 through June 30 for work-related injuries, diseases, and deaths are billed to each federal agency annually. This time period is known and referred to in this report as the chargeback year.

⁴ If an agency receives a chargeback report for the period ending June 2009, which is the final month of a chargeback year (CBY), payment for it would be included in the budget submitted to Congress requesting funding for FY 2011. The Employee Compensation Fund would be reimbursed in FY 2011 once the budget was approved. Appendix X contains a detailed description of how the chargeback expenses are administered.

The OWCP encourages all federal agencies to actively manage their workers' compensation programs. According to the DOL Agency Handbook, FECA responsibilities for employing agencies include: (1) notifying employees of their rights and obligations under FECA; (2) questioning or disputing claims to the OWCP; (3) monitoring the medical status of injured employees; (4) providing options for light or modified work duties, when appropriate; and (5) ensuring employees return to work as soon as they are able.⁵ In addition, agencies should establish a record keeping system that will enable their component to maintain copies of claim forms, medical reports, correspondence with OWCP, and other materials related to each claim.

While all federal agencies have the ability to question a claim filed by an employee, only OWCP has the authority to deny a claim. In addition, OWCP has the authority to request second medical opinions by other physicians under circumstances including: (1) to evaluate an employee's medical condition, (2) to evaluate the original medical prognosis, or (3) to justify continuing an employee's entitlement to FECA benefits. Although FECA does not address an agency's right to obtain a second medical opinion, Office of Personnel Management (OPM) regulations grant components authority to arrange for additional medical examinations of a FECA claimant by a physician of the component's choice, at the agency's expense.⁶

The Department of Labor OWCP reports that the FECA program currently provides workers' compensation coverage to 3 million federal and postal employees for work-related injuries and occupational diseases. During the fiscal year ending September 30, 2008, the FECA program incurred expenses in excess of \$2.6 billion for work-related injuries and diseases. Of this total amount, expenses for DOJ totaled more than \$102 million (4 percent) for over 8,500 cases. DOL also reported that over 115,000 new FECA cases were created in FY 2008 throughout the federal government, with over 4,600 related to DOJ.⁷

⁵ OWCP Publication CA-810, *Injury Compensation for Federal Employees* (January 1999) is referred to as DOL Agency Handbook in this report. This publication is used by federal agencies and serves as a handbook for the administration of FECA.

⁶ 5 C.F.R. § 339.301c (2009).

⁷ U.S. Department of Labor, Occupational Safety and Health Administration, "Federal Injury and Illness Statistics" for FY 2008, <http://www.osha.gov/dep/fap/fap-inj-ill-stats.html> (accessed December 16, 2008).

OIG Audit Approach

The Office of the Inspector General (OIG) initiated this audit to examine whether DOJ had effective controls to manage its FECA program, to reduce opportunities for claimant fraud, and to return injured DOJ employees back to work when appropriate. We focused our audit on the FECA program in the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Prisons (BOP), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and U.S. Marshals Service (USMS) because these DOJ components accounted for 95 percent of DOJ's FECA program costs and had the largest number of claims as of June 30, 2008.

To review the overall management of the DOJ FECA program, we met with officials from the Justice Management Division (JMD), which serves as the liaison between the DOL and DOJ on FECA. During our audit, we also interviewed the DOL Deputy Director of the Division of Federal Employees' Compensation to obtain a general overview of DOL operations and requirements for the FECA program.

In addition, we conducted field work at the headquarters offices of the ATF, BOP, DEA, FBI, JMD, and USMS. FECA case files were not always maintained at these headquarters offices; therefore we conducted on-site field visits to BOP Florence, Colorado, and Coleman, Florida, along with two USMS district offices in the Southern District of New York and the Northern District of Texas. Our audit reviewed case files, laws and regulations, the component's return to work practices, and their internal controls. We also conducted interviews with key personnel and analyzed the data presented throughout this report.

A detailed description of our audit objective, scope, and methodology is presented in Appendix III.

Results In Brief

We concluded that DOJ lacks effective controls to reduce risk for waste, fraud, and abuse in its FECA program, and to return employees back to work when appropriate.

We found that, in comparison to other agencies, DOJ had relatively high rates of injury, with an average rate of 4.53 per 100 employees from FYs 2005 to 2008, ranking fourth out of 29 major federal agencies. In addition, DOJ's overall benefit expense of \$102 million for FY 2008 ranked seventh out of those 29 agencies. DOJ had average annual increases of

\$6.4 million from FY 2000 through 2005, thereby ranking third in highest benefit increases of the top 10 agencies receiving FECA benefits during that time period.

Of the DOJ components we reviewed, the ATF and DEA had the highest average cost per FECA case, at approximately \$14,700 and \$13,000, respectively. Special Agents and Correctional Officers were the two job series with the highest occurrences of job-related injuries.

We determined that most of DOJ's costs were associated with cases open for longer than 3 years. Although the long-term cases comprised 6 percent of the total number of FECA cases, the costs of these long-term cases were equal to over half (54 percent) of total DOJ FECA expenses.

We also found that inadequate controls over the FECA program led to ineffective monitoring of FECA cases. With the exception of the BOP and the FBI, DOJ components we audited were generally reactive rather than proactive in their monitoring of FECA cases. We also found that of the case files we selected to review from the components, claim forms were missing in 21 percent of the cases and entire case files were not available for our review in an additional 15 percent of the cases. The DEA was missing 48 percent of the case files we selected for review. By contrast, the BOP had all of the case files we requested. Without the necessary documentation related to FECA cases, DOJ FECA Specialists are unable to make fully informed decisions regarding these cases.⁸

DOJ FECA case files we reviewed often did not have evidence of second medical opinions (73 percent) or medical updates (34 percent). While second medical opinions are not required in all cases, these examinations are beneficial in evaluating cases where employees have some level of work capability. No DOJ component we reviewed had required second medical opinions for FECA cases as allowed by OPM regulations, although the FBI did request the DOL to obtain second medical opinions in some cases. This suggests that DOJ components were not proactive in a core area of responsibility in the FECA program, which is to evaluate and monitor an employee's medical condition in order to return the employees back to work when appropriate.

Returning employees back to work after a prolonged injury can be a major challenge for FECA Specialists and supervisors, particularly for Special

⁸ "FECA Specialist" is the term used collectively in this report to identify the DOJ employee assigned to manage its FECA program. However, these employees have different position titles within their components.

Agents that are unable to return to their previous duties because of medical restrictions related to work performance. We found that some Special Agents were reluctant to accept light duty assignments as non-agents because it would result in the loss of eligibility for the 20-year retirement and extra 1 percent retirement pension that Special Agents receive. We also found that FECA claimants who are Special Agents are resistant to returning to light duty non-agent assignments, which generally consist of administrative duties and office work, because that work is seen as less prestigious than performing as a Special Agent conducting investigations.

While the FBI and BOP had an established procedure for returning employees to light duty assignment, the ATF, DEA, JMD, and USMS did not. We found that the BOP was the most effective DOJ component in providing temporary light duty assignments.

All of the DOJ components we reviewed only monitored cases that were relatively new and where the employee was most likely to return to work. We believe that a review of older cases is important since medical conditions may improve over time and employees may reach a point where they could return to work in some fashion and contribute to the components' missions.

Although each DOJ component received an electronic file of the chargeback report on a quarterly basis, we did not find any evidence that these reports were reviewed.⁹ In addition, we found several cases in the chargeback report that were incorrectly assigned to the USMS when those cases actually belonged to another federal agency. Chargeback report reviews by the components are necessary to avoid improper payments being charged to DOJ and to reduce the risk for potential abuse and fraud.

We also found that the ATF, DEA, and USMS were not actively pursuing potential abuses or fraud concerning FECA claims. ATF, DEA, and USMS FECA Specialists told us that they believed there were no fraudulent cases in the components because the integrity of the personnel and the desire to return to work minimizes the risk for fraudulent claims. However, we concluded it is not sufficient to rely on the integrity of all personnel to

⁹ Chargeback reports are prepared by the OWCP each calendar quarter and contain the summary of FECA expenses by case number within DOJ components.

prevent any abuse.¹⁰ As discussed in the report, these components were failing to properly monitor their case files and thus could be missing important indicators of fraud or abuse that should be further investigated.

We believe a more proactive case monitoring approach, including case file reviews, obtaining second medical opinions and medical updates, establishing return to work policies, and more consistent monitoring of chargeback reports, could reduce the long-term costs of DOJ's FECA cases.

As a result of our audit, we made five recommendations to improve the management of DOJ's FECA program. These recommendations include developing a procedure to ensure that all FECA cases have an employee case file maintained and that minimum criterion is developed for completing periodic reviews of the case files. In addition, we recommend that DOJ components ensure that periodic medical updates are obtained and evaluated, as well as develop processes to monitor case files for return to work opportunities or light duty assignments. We also recommend that a procedure be established to ensure all components review the quarterly chargeback reports and identify errors to the OWCP for corrective action. These recommendations, as well as background information about the FECA program, are discussed in more detail in the following sections of this report.

Background

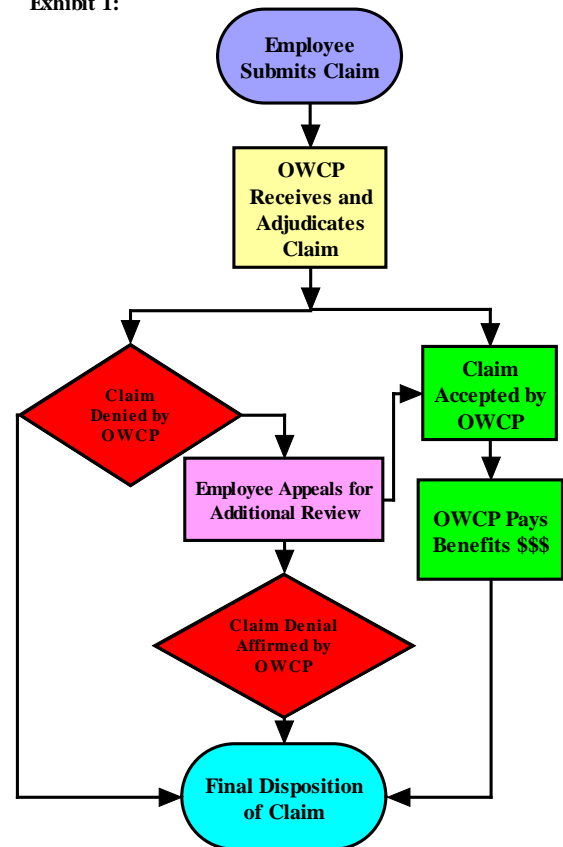
According to the OWCP, FECA is a disability compensation program that seeks to protect the interests of eligible workers, employers, and the federal government by ensuring timely and accurate claims adjudication and provision of benefits to federal employees who suffer from work-related injuries or illnesses. The OWCP and its 12 district offices located throughout the United States administer the FECA program. Each office employs Claims Examiners who adjudicate federal employees' claims and approve payments to claimants within a geographic region. Each OWCP district office maintains the official case files for its respective FECA claims and makes electronic copies available to FECA Specialists from all federal agencies to review by request. A list of the OWCP District Offices and geographic regions is provided in Appendix VI.

¹⁰ This conclusion is supported by a Government Accountability Office (GAO) report, which found that the FECA program was vulnerable to improper payments and concluded that the OWCP relied on unverified, self-reported information from FECA claimants. In addition, GAO reported that FECA claimants receiving lost wage benefits often failed to notify OWCP of their return to work in order to stop future wage loss payments. U.S. Government Accountability Office (GAO), *Federal Workers' Compensation Data and Management Strategies*, Highlights Section, 3.

When a federal employee becomes injured or ill as a result of federal duties and seeks FECA benefits, the employee or representative must submit one of three DOL claim forms to the employing agency.¹¹ The employing agency then submits the claim form within 10 days to the OWCP district office for processing and adjudication. Once the claim is submitted, agencies employing FECA claimants may question a claim by submitting documentation from supervisors, witnesses, or others involved in the employee’s claim.¹² The OWCP Claims Examiner has authority to accept or deny a FECA claim. If the Claims Examiner denies an employee’s claim, several appeal options are available through the DOL, including reconsideration of the case by another Claims Examiner or by the DOL Hearings and Review Board, with a final appeal to the Employee Compensation Appeals Board.¹³ If the claim is accepted by the DOL, the employee is eligible to receive benefits under the FECA program.

Exhibit 1 depicts an abbreviated claim process overview.¹⁴ Appendix V depicts a detailed overview of the FECA process from the time of injury to the acceptance or denial by the DOL.

Exhibit 1:



Source: OIG depiction of the chargeback process

Once accepted, FECA benefits can include payment for wage-loss compensation, medical care, and vocational rehabilitation services. Compensation benefits are paid directly to injured employees by the OWCP.

¹¹ The DOL claim forms used are the CA-1 (Traumatic Injury), CA-2 (Occupational Illness or Disease), or CA-5 (Death). See Appendix VIII for examples of the CA-1 and CA-2 claim forms.

¹² 20 C.F.R. § 10.110 – 10.118.

¹³ The Board consists of three permanent judges appointed by the Secretary of Labor, one of whom is designated as Chief Judge and Chairman of the Board.

¹⁴ The figure depicts the last step as “Final Disposition of Claim” because there are multiple outcomes that may result from the FECA process, including return to work, termination, vocational rehabilitation, and the employee indefinitely remaining on FECA with or without a wage earning capacity. See Appendix V for a detailed flowchart for the FECA claims process.

Wage-loss compensation benefits are determined based on the employee's regular salary and number of dependents. Injured employees without dependents receive two-thirds of their current gross salary, tax-free, while injured employees with one or more dependants receive three-fourths of their current gross salary, also tax-free. These compensation benefits are subject to annual cost-of-living increases. Payments for medical care and rehabilitation, including vocational services, are paid directly to the provider after OWCP reviews the documentation submitted.

Claims for compensation are initially accepted by the OWCP as "daily roll" status payments. The payments under daily roll status are paid to claimants for an initial period of wage loss. OWCP bases its initial decision to place a claimant on daily roll status contingent on factors such as the type and severity of injury and medical diagnosis. However, for claimants to continue receiving daily roll status payments, periodic medical evidence is necessary indicating that the injured employee will not be able to return to work over that period. If an employee's disability continues for an extended period of time beyond the initial period anticipated, the OWCP Claims Examiner will consider changing the status of the case to "periodic roll" for a long term disability if sufficient additional medical evidence is provided. With this change in status, the OWCP pays wage-loss compensation automatically every 28 days. This payment process continues indefinitely until new medical evidence is received from the medical doctor that shows the employee's condition has improved enough to return to work in some capacity. The frequency and extent of medical evidence for periodic roll cases is contingent on the nature of the employee's disability and the discretion of the DOL Claims Examiner.

Prior Reports on the FECA Program

We identified 10 prior reports related to FECA issued by other federal OIGs (8 reports) and the Government Accountability Office (GAO) (2 reports) from FYs 2002 through 2008. Some of the most common issues described in these reports were case management issues, such as untimely filing of claim forms, lack of monitoring the chargeback reports, and lack of return to work strategies.¹⁵

A February 2008 GAO audit of the OWCP found that it did not sufficiently emphasize preventing, detecting, and recovering improper payments; did not ensure that overpayments were collected in a timely

¹⁵ See Appendix IX for a more detailed comparison of the issues noted in this report and other selected OIG reports.

manner; and did not take advantage of opportunities for recovering overpayments.¹⁶

DOJ's Management of the FECA Program

Management of the FECA program in DOJ is the responsibility of the Justice Management Division and the DOJ components where the FECA claimants are located. A DOJ Order designates the Deputy Assistant Attorney General, Human Resources and Administration, as responsible for the Office of Workers' Compensation activities in DOJ.¹⁷ The JMD Director of Facilities and Administrative Services Staff is the primary point of contact for the DOJ FECA program. JMD's Office of Workers' Compensation is responsible for providing chargeback reports to components, offering general FECA training and guidance to DOJ components for injury claims, maintaining user access to the information system DOJ uses for managing FECA claims, and serving as the liaison between DOJ and the DOL.

DOJ component heads are specifically responsible for designating a personnel or safety officer (FECA Specialist) to manage their component's worker compensation program. According to the DOL, each FECA Specialist is responsible for:

- developing and maintaining employee medical files containing a record of each injury or disease;
- monitoring cases for compensation and assisting management to challenge claims for which there is no basis;
- tracking pending and approved cases, including continuation of pay and ensuring compliance with agency and DOL requirements;
- reviewing active cases and associated costs, and maintaining contact with the employee to determine the earliest practical date for the employee's return to work;
- assisting management in structuring and providing restricted or limited duty assignments to employees who suffer from job-related diseases or injuries;

¹⁶ U.S. Government Accountability Office, *Federal Workers' Compensation, Better Data and Management Strategies Would Strengthen Efforts To Prevent and Address Improper Payments*, GAO-08-284, (February 2008), Highlights Section.

¹⁷ DOJ Order 1200.1, Chapter 6-1, Workers' Compensation Program.

- examining FECA chargeback bills to ensure that an agency pays only for cases that involve its eligible employees and that any bills submitted by its employees are forwarded to the DOL in a timely manner;
- assisting management and employees in determining the causes of accidents and illnesses, and eliminating or mitigating these causes; and
- serving as a liaison between an agency component and the OWCP on all non-medical related matters.

All DOJ components audited had at least one full-time FECA Specialist assigned to work at the components' headquarters. The number of full-time FECA Specialists and active cases by component are identified in Exhibit 2.

We found significant differences in the way these DOJ components manage their FECA programs. For example, the ATF, DEA, FBI, and JMD used centralized operations, and FECA case files are the responsibility of the headquarters personnel. These components' field offices forward FECA claims to headquarters for submission to the DOL. In contrast, the BOP and USMS maintain decentralized operations where individual personnel assigned to each of the 114 BOP facilities and 94 USMS district offices submit claims directly to the DOL and are responsible for the case files locally.

**EXHIBIT 2: DOJ FECA PERSONNEL AND CASES
CHARGEBACK YEAR 2008**

COMPONENT	Full-Time FECA Specialists	Number of Active Cases
ATF	2	575
BOP	2	5,740
DEA ¹⁸	4	740
FBI	5	2,037
JMD	1	583
USMS	1	873
TOTAL	15	10,548

Source: OIG interviews with DOJ FECA Specialists and analysis of chargeback reports

¹⁸ Three of the four FECA Specialists for the DEA were contractors.

Injury Case Rates and Total Cost

According to statistics from the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), DOJ had a total injury and illness case rate of 4.31 per 100 employees in FY 2008.¹⁹ Our analysis of FYs 2005 through 2008 data published by OSHA indicated that DOJ had the fourth highest case rate average per employee for injuries and illnesses out of 29 agencies. Exhibit 3 lists the case rates for each fiscal year and the average of all of the years for the 29 federal agencies.

¹⁹ OSHA, "Federal Injury and Illness Statistics" for FY 2008.

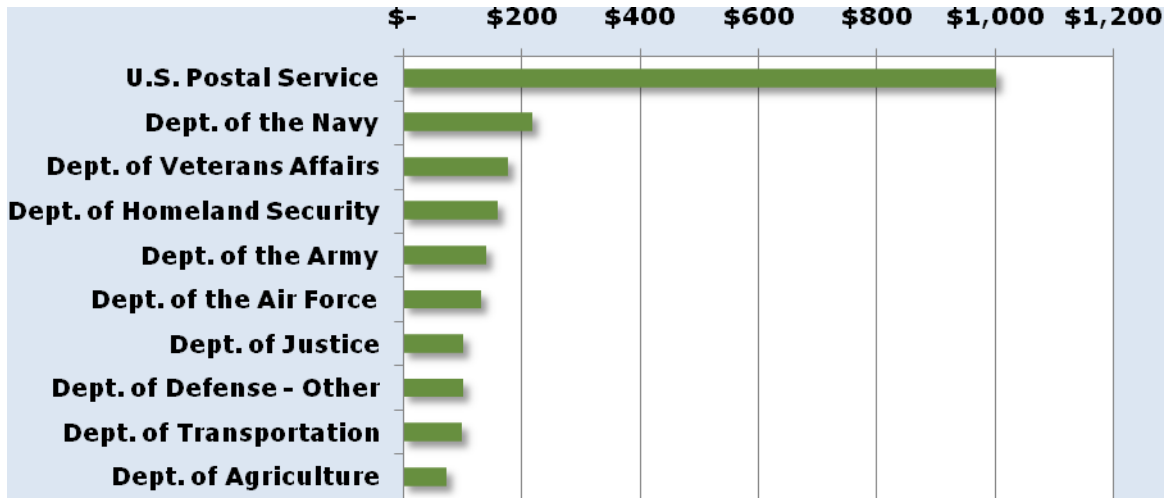
**EXHIBIT 3: FEDERAL INJURY AND ILLNESS CASE RATES
PER 100 EMPLOYEES
FOR FISCAL YEARS 2005 THROUGH 2008**

	Department or Agency	2005	2006	2007	2008	Average
1	Department of Homeland Security	14.02	9.30	8.17	7.12	9.65
2	U. S. Postal Service	7.22	6.87	6.66	6.53	6.82
3	Department of the Interior	6.70	6.27	6.41	6.64	6.51
4	Department of Justice	4.93	4.71	4.18	4.31	4.53
5	Department of Veterans Affairs	4.62	4.24	4.06	4.08	4.25
6	Department of Agriculture	3.65	3.67	3.92	5.53	4.19
7	Tennessee Valley Authority	3.80	4.06	3.17	3.18	3.55
8	Department of the Army	3.67	3.37	3.68	3.38	3.53
9	Department of the Navy	3.23	3.07	2.93	2.87	3.03
10	Department of the Air Force	3.09	2.80	2.78	2.91	2.90
11	Department of Energy	1.96	2.03	2.26	2.93	2.30
12	Department of Defense – Other	2.51	2.38	1.69	2.37	2.24
13	Department of Transportation	2.13	2.02	2.28	2.02	2.11
14	Department of Labor	2.23	1.98	1.94	1.95	2.03
15	Department of Health and Human Services	1.90	1.70	1.59	1.47	1.67
16	Small Business Administration	1.92	1.91	1.07	1.35	1.56
17	Social Security Administration	1.72	1.54	1.48	1.31	1.51
18	General Services Administration	1.51	1.33	1.25	1.19	1.32
19	Department of Treasury	1.44	1.28	1.33	1.23	1.32
20	Office of Personnel Management	1.65	1.13	1.08	0.80	1.17
21	Department of Commerce	1.23	1.17	1.06	1.06	1.13
22	Department of State	1.04	1.04	1.03	1.06	1.04
23	Department of Housing and Urban Development	1.12	0.84	0.96	1.12	1.01
24	Department of Education	1.05	0.80	0.67	1.17	0.92
25	Environmental Protection Agency	0.77	0.73	0.74	0.70	0.74
26	Nuclear Regulatory Commission	0.74	0.55	0.64	0.48	0.60
27	National Science Foundation National Aeronautics & Space Administration	0.38	0.68	0.52	0.44	0.51
28	Administration	0.49	0.48	0.57	0.45	0.50
29	Agency for International Development Other Agencies	0.26	0.32	0.28	0.76	0.41
		0.97	0.77	0.66	0.99	0.85

Source: OIG analysis of Occupational Safety and Health Administration, "Federal Injury and Illness Statistics," for FYs 2005 through 2008, <http://www.osha.gov/dep/fap/fap-inj-ill-stats.html> (accessed December 16, 2008).

According to DOL statistics, DOJ ranked seventh among the 29 federal agencies identified by the DOL, incurring a total FECA expense of more than \$102 million during FY 2008. Exhibit 4 shows the top 10 federal agencies incurring FECA benefit expenses.

EXHIBIT 4: TOTAL ANNUAL FECA BENEFIT EXPENSE
TOP 10 RECIPIENTS OF FECA BENEFITS FOR FY 2008²⁰
in millions



Source: OIG Analysis of DOL OIG, *Special Report Relating to the FECA Special Benefit Fund*, Report Number 22-09-001-04-431, (October 27, 2008), 23-24.

DOJ also had the third highest average annual increase in FECA costs, approximately \$6.4 million per year, of the top 10 agencies between CBYs 2000 and 2005. Only the U.S. Postal Service and the Department of Homeland Security had larger increases with \$34.8 million and \$27.2 million, respectively. Exhibit 5 lists the top 10 federal agencies receiving FECA benefits and the average annual increase in FECA expenses for each agency.

²⁰ Appendix VII contains the list of all 29 federal agencies tracked by the DOL in the Schedule of Benefit Expense for FY 2008.

**EXHIBIT 5: ANALYSIS OF CHANGES IN FECA BENEFIT EXPENSES
TOP 10 RECIPIENTS OF FECA BENEFITS**
INCREASES/DECREASES PER YEAR FOR FISCAL YEARS 2000 THROUGH 2005²¹
in thousands

Federal Agency	2001 Change from 2000	2002 Change from 2001	2003 Change from 2002	2004 Change from 2003	2005 Change from 2004	Average Annual Change
U.S. Postal Service	\$ 54,208	\$ 64,681	\$ 61,677	\$ 6,069	\$ (12,804)	\$ 34,766
Dept. of Homeland Security	\$ N/A	\$ N/A	\$ N/A	\$ 37,114	\$ 17,253	\$ 27,184
Dept. of Justice	\$ 7,324	\$ 4,423	\$ N/A	\$ 7,880	\$ 6,079	\$ 6,427
Dept. of Veterans Affairs	\$ 2,688	\$ 5,703	\$ 5,703	\$ (1,924)	\$ 779	\$ 2,590
Dept. of the Army	\$ 2,230	\$ 5,613	\$ 6,466	\$ (4,048)	\$ (2,590)	\$ 1,534
Dept. of Agriculture	\$ 1,868	\$ 2,813	\$ 2,749	\$ (3,067)	\$ (564)	\$ 760
Dept. of Defense	\$ (36)	\$ (873)	\$ 1,541	\$ (1,613)	\$ (820)	\$ (360)
Dept. of the Air Force	\$ 5,972	\$ (1,568)	\$ 2,971	\$ (6,280)	\$ (4,713)	\$ (724)
Dept. of the Navy	\$ 5,296	\$ 1,369	\$ (2,789)	\$ (316)	\$ (7,354)	\$ (759)
Dept. of Transportation	\$ 2,620	\$ 2,160	\$ (7,034)	\$ (2,023)	\$ 28	\$ (850)
All Other Agencies	\$ 22,294	\$ 6,029	\$ (21,931)	\$ (15,296)	\$ (883)	\$ (1,957)

Source: OIG analysis of U.S. Department of Labor Office of Worker's Compensation, *Annual Report to Congress FY 2005*, (September 20, 2008), <http://www.dol.gov/esa/owcp/05owcpmx.pdf> (accessed April 2, 2009), 59.

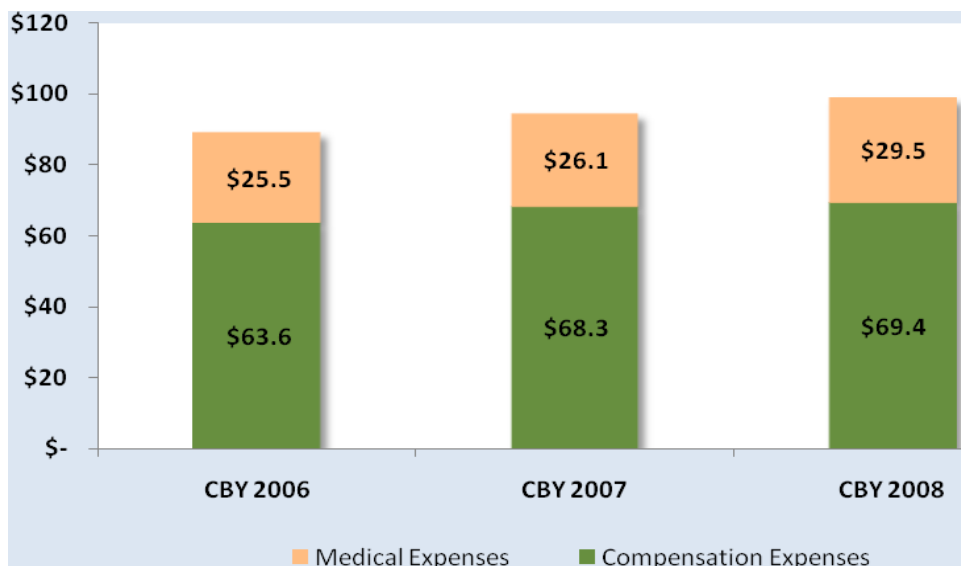
Generally, DOJ FECA Specialists we interviewed stated that they believed the reason why DOJ has a high ranking among federal agencies is due to the nature of law enforcement operations and the daily exposure to high risk situations. Our analysis of the 2006 through 2008 chargeback reports indicated that correctional officers and Special Agents accounted for the majority of injuries in DOJ. In our opinion, ineffective management of the FECA program may also have contributed to the high costs.

We found that DOJ's expenses between CBYs 2006 and 2008 further increased at an average annual rate of 5 percent. Compensation expenses comprised an average of 71 percent of DOJ's total FECA costs during CBY 2006 through 2008, while medical expenses accounted for the remaining 29 percent in FECA costs. Exhibit 6 illustrates the general

²¹ Our analysis of annual average change of FECA benefits for the Department of Homeland Security only included 2003 through 2005 since DHS was created in 2003. Our analysis of DOJ excluded CBY 2003 because we could not identify and exclude changes in FECA claims attributed to the transfer of the Immigration and Naturalization Service to the DHS or the ATF to DOJ.

increase of costs associated with compensation expenses and medical expenses.²²

EXHIBIT 6: DOJ COMPENSATION AND MEDICAL EXPENSES
CHARGEBACK YEARS 2006 THROUGH 2008²³
in millions



Source: OIG analysis of DOJ chargeback reports for CBYs 2006 through 2008

We concluded that the increase in FECA costs could not be attributed to new cases because the number of injuries within DOJ generally remained constant during the period of our review. We also found that the majority of the costs associated with DOJ FECA expenses were for claims exceeding 1 year. Moreover, in these cases where claims exceed one year, the medical costs associated with the injuries or diseases were generally low in relation to the compensation payments.

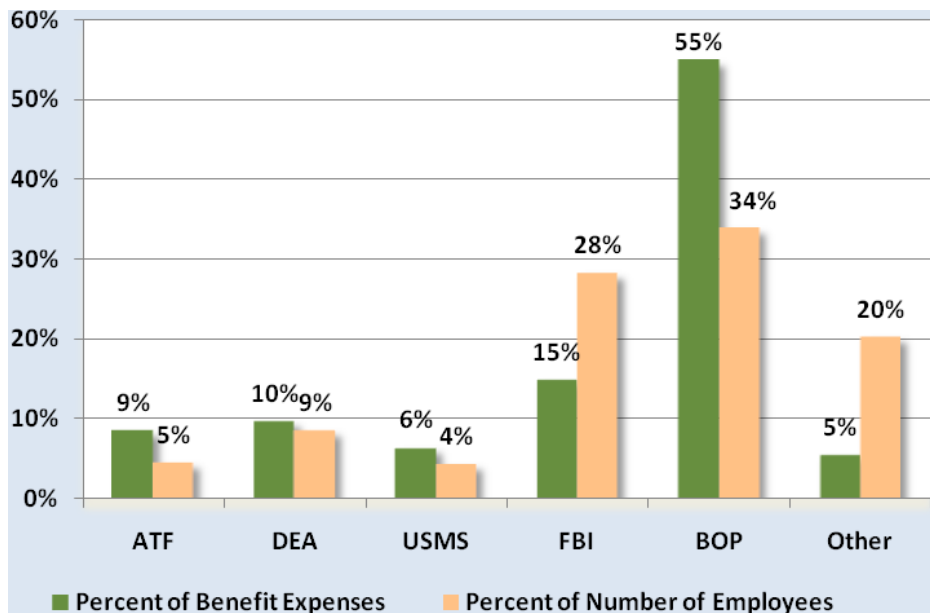
While all DOJ components can have FECA expenses, 95 percent of DOJ's total FECA expenses were from employees from the ATF, BOP, DEA, FBI, and USMS. For chargeback year 2008, the Bureau of Prisons comprised 55 percent of DOJ's FECA expenses. Exhibit 7 illustrates a comparison

²² Medical expenses refer to costs associated with doctors, hospitals, medical treatment, and prescriptions.

²³ The Chargeback years 2006 through 2008 were from July 1, 2005, through June 30, 2008.

between the percentages of personnel to the percentages of total FECA benefit expenses for each of the five DOJ components we reviewed.²⁴

**EXHIBIT 7: FECA BENEFIT EXPENSES AND PERSONNEL
PERCENTAGE OF TOTALS FOR CHARGEBACK YEAR 2008**



Source: OIG analysis of 2008 DOJ chargeback report and employee data from OSHA, "Federal Injury and Illness Statistics" for FY 2008 (Final).

Analysis of the injury case rates and cost by DOJ component shows that the FBI and the USMS had relatively low average case costs and ATF and DEA had the highest. The ATF stated that case costs are high because of the nature of the work of ATF agents and because of the large number of long term claimants over age 60, thereby making it difficult to return those employees back to work. The DEA FECA Specialist stated that the majority of their case costs are from Special Agents, which receive a higher gross salary and cause the case costs to be high. Exhibit 8 shows the components we audited and how each compares based on the cost per case.

²⁴ These five components have 80 percent of the employees in DOJ. In addition, the majority of employees at these five components are involved in law enforcement duties, which DOJ officials say result in higher injury rates.

**EXHIBIT 8: TOTAL CASES AND EXPENSES
FOR CBY 2008 BY COMPONENT**

Component	Cases	Total Expense	Average Cost per Case
ATF	575	\$ 8,453,988	\$ 14,703
DEA	740	\$ 9,627,970	\$ 13,011
BOP	5,740	\$ 54,322,828	\$ 9,464
Other DOJ	583	\$ 5,417,772	\$ 9,293
USMS	873	\$ 6,321,574	\$ 7,241
FBI	2,037	\$ 14,702,550	\$ 7,218
TOTAL DOJ	10,548	\$ 98,846,682	\$ 9,371

Source: OIG analysis of DOJ's CBY 2008 chargeback report

Because of DOJ's relatively high rates of injury, benefit expenses, and average expense increases, we believe that DOJ management needs to more effectively manage and monitor the FECA program to ensure that the FECA funds are spent appropriately. We determined that DOJ's, inadequate controls over the FECA program resulted in ineffective monitoring of FECA cases. In our opinion, DOJ must improve its internal control policies governing the FECA program, the management of case files, the monitoring of FECA claimants' medical conditions, and the consistent review of the quarterly chargeback reports. If implemented effectively, these efforts would improve DOJ's opportunities for returning employees to work when appropriate; minimize the potential for waste, fraud, and abuse; and reduce the risk for unnecessary long-term costs.

Ineffective Monitoring of DOJ FECA Cases

To evaluate the effectiveness of DOJ's monitoring of its FECA program, we tested whether DOJ components were adequately: (1) monitoring FECA claims by reviewing case files, (2) maintaining complete case files with essential claim-related information, (3) monitoring the medical status of FECA claimants by requesting medical updates and second opinions, (4) applying appropriate efforts to return previously injured employees back to work, and (5) monitoring chargeback reports to identify questionable cases and costs.

We judgmentally selected and tested a combined total of 389 FECA cases from the DOJ components we audited. We tested multiple attributes in each case file, such as copies of the initial DOL claim form, the presence of authorizing signatures, copies of medical status reports, witness statements or conflicting physician reports, and any evidence of the employee's return to work. We also conducted individual interviews with each FECA Specialist assigned to the DOJ components we tested. During our

audit, we assessed whether controls were in place, appropriate return to work efforts were consistently pursued, and if fraud indicators were present.

Failure to Monitor Cases

We found that most of the components we reviewed did not effectively monitor FECA cases. With the exception of the BOP and the FBI, the components we audited were generally reactive rather than proactive in their monitoring of cases. The ATF, DEA, and USMS relied heavily on the DOL for overall case monitoring in place of conducting their own monitoring. For example, the FECA Specialist at USMS rarely communicated with USMS personnel at District Offices we visited. As a result, the USMS personnel in the District Offices did not fully understand their FECA monitoring responsibilities. We also found that the ATF and DEA's case monitoring was primarily based on responding to questions or inquiries from employees or the DOL and did not focus on monitoring cases to ensure FECA claims were appropriate.²⁵

In contrast, we found the BOP had established proactive procedures for case file monitoring and light duty assignments and for offering temporary light duty assignments to its employees who were not able to fully return to work because of their injuries. In addition, the FBI FECA Specialist, who previously was employed as an OWCP Claims Examiner, was more proactive in obtaining and reviewing medical documentation and second medical opinions when necessary from the DOL to assist in returning FBI employees back to work after an injury. However, while the BOP and FBI were doing a better job in monitoring FECA cases than other components we reviewed, we believe the BOP and FBI still could improve their monitoring of FECA cases by ensuring case files are complete and contain updated medical documentation to assist in determining when employees may be returned to work, and also by providing guidance for conducting periodic reviews of the quarterly chargeback reports.

The deficiencies in each component's monitoring efforts that we identified were caused to some extent by the lack of effective DOJ procedures to ensure that monitoring FECA cases was thoroughly performed. We recommend that DOJ develop a required procedure identifying a minimum set of criteria describing how each FECA Specialist should complete periodic case file reviews.

²⁵ After reviewing a draft of our report, the ATF stated that it has established a policy to review 10 percent of its cases each year. The ATF also stated that it has reviewed 20 percent of its cases this year. However, for the cases we tested during our review, we did not find evidence of ATF review.

Inadequate Recordkeeping

To adequately monitor the FECA program, DOJ components must maintain adequate records on each FECA claimant. The DOL Agency Handbook advises all FECA Specialists to establish a recordkeeping system that will maintain copies of claim forms, medical reports, correspondence with OWCP, and other materials related to each claim. The DOJ FECA Specialists we interviewed agreed that their monitoring responsibilities included maintaining case files. However, we found that FECA case files often were missing and that case files available for review often were missing critical documentation, such as a second medical opinion or medical update. These issues are discussed in more detail below.

Missing Case Files

We found that 15 percent of active DOJ FECA case files we selected for review were unavailable.²⁶ According to FECA Specialists interviewed, these case files did not exist or were archived and not readily available for periodic review and monitoring.

In our opinion, the cases listed on the current chargeback report should be maintained and easily available to allow effective monitoring. Exhibit 9 shows the number of case files missing for each DOJ component.

EXHIBIT 9: MISSING CASE FILES²⁷

Component	Number of Case Files Selected for Review	Missing Case Files	Percentage of Missing Case Files
ATF	79	3	4%
BOP	101	0	0%
DEA	112	54	48%
FBI	84	5	6%
JMD	29	4	14%
USMS	53	3	6%
TOTAL	458	69	15%

Source: OIG analysis of sample cases

We determined that the components listed in Exhibit 9, with the exception of BOP, relied exclusively on the OWCP Claims Examiner to

²⁶ For the purposes of our audit, the OIG considered all FECA cases listed in the CBY 2008 chargeback report as active.

²⁷ All of the BOP case files in our sample were available for review at BOP headquarters and in Florence, Colorado, and Coleman, Florida.

monitor and provide oversight of the missing cases. Missing case files render FECA Specialists unable to monitor employee medical conditions, current medical updates, and any correspondence between DOJ, OWCP, and the injured employee. Because of the lack of case files, FECA Specialists were unaware of what the employee’s medical restrictions were and whether they could be accommodated to allow a return to work.

In our opinion, each DOJ component should establish and maintain an employee case file on all active FECA cases.

Missing Claim Forms

In examining the case files in our sample that were available for review, we found that some component case files were missing critical documentation such as a copy of the initial claim form. This missing documentation makes it difficult for FECA Specialists to monitor cases.

During our testing, we found 80 of 389 (21 percent) case files lacked the basic DOL claim form initiating FECA benefits. Exhibit 10 shows the number of missing claim forms by component. Reasons provided by DOJ FECA Specialists for the missing information were that the claim forms were too old, not retained by component personnel, not forwarded to the component headquarters, or lost.

EXHIBIT 10: MISSING DOJ CLAIM FORMS

Component	Number of Case Files Reviewed	Number of Missing Claim Forms	Percentage of Missing Claim Forms
ATF	76	19	25%
BOP	101	1	1%
DEA	58	16	28%
FBI	79	20	25%
JMD	25	8	32%
USMS	50	16	32%
TOTAL	389	80	21%

Source: OIG analysis of sample cases

Claim forms contain essential data related to the initial claim that may not be available from any other source, such as a narrative description of the cause and nature of the injury. Without a record of the essential facts in a case file, a FECA Specialist will not be able to make fully informed decisions regarding that case.

Lack of Second Medical Opinions and Medical Updates

Federal employees involved in work-related incidents are entitled to have medical treatment by a licensed physician of their choosing paid for by the FECA program. According to FECA, DOJ management may not interfere with an employee's right to choose a physician, nor may DOJ require employees to go to a physician who is employed by, or under contract to the component, before employees seek treatment from their own physician. According to the DOL Agency Handbook, the employing agency may contact the attending physician to obtain additional information about the employee's medical condition or capability to perform work. DOJ FECA Specialists can use this information to identify employees who may be able to return to work at full capacity or light duty.

As discussed in the introduction of this report, the OWCP has the authority to request a medical examination to obtain a second opinion by a physician it designates to evaluate the original medical prognosis or to determine whether an employee remains entitled to FECA benefits. In addition, Office of Personnel Management (OPM) regulations grant federal agencies authority to arrange for a second medical opinion through an additional medical examination of an employee who files a FECA injury claim by the agency's designated physician.²⁸ While the OWCP may use these second medical examinations both to evaluate the employee's initial claim and to determine whether the employee is capable of returning to work, federal agencies may only use these second medical examinations to assess the capability of returning employees back to work.

Our testing of case files revealed that 285 out of 389 (73 percent) files did not contain any evidence of a second medical opinion. The remaining 104 cases (27 percent) containing evidence of second medical opinions were all initiated by the OWCP Claims Examiner, not the DOJ FECA Specialist. According to the FECA Specialists we interviewed, DOJ components did not initiate second medical opinions, either because of the additional expense of the examination or because some FECA Specialists did not know they were authorized to initiate such requests.²⁹

While second medical opinions are not required in all cases, these examinations can be beneficial in evaluating cases where the record indicates the employee has some potential of eventually returning to work. In our opinion, DOJ components should not be reluctant to seek second

²⁸ 5 C.F.R. § 339.301c (2009).

²⁹ The costs associated with the second opinion are paid by the agency that requests the exam.

medical examinations in these cases, which could result both in returning experienced and trained personnel to active duty and in reducing long term FECA expenditures.

Exhibit 11 depicts, by component, the breakdown of case files without second medical opinions or medical updates.

EXHIBIT 11: CASE FILES WITH NO SECOND MEDICAL OPINION OR MEDICAL UPDATE

Component	Case Files Reviewed	No Evidence of Second Medical Opinions	No Medical Update
ATF	76	60	16
BOP	101	82	31
DEA	58	44	29
FBI	79	42	25
JMD	25	23	15
USMS	50	34	15
TOTAL	389	285	131

Source: OIG analysis of FECA case file reviews at DOJ components

In addition to requesting and reviewing the results of a second opinion medical examination from the agency’s designated physicians, we believe FECA specialists also should obtain and review updated medical documentation. Periodic medical updates about the claimant are necessary to evaluate whether the claimant’s medical condition has improved enough to return to work. However, we determined that FECA specialists are not consistently obtaining this information.

We identified 131 of 389 (34 percent) case files that lacked any updated medical documentation describing the medical condition of the employee. For these 131 cases, which had dates of injuries ranging from 1967 to 2008, the only medical documentation was the initial diagnosis identifying the injury. We found that the DEA and JMD had a high percentage (50 and 60 percent, respectively) of case files without a medical update. By not routinely reviewing the employee’s medical conditions, components are unable to track the employee’s work capabilities and determine whether the employee can return to work.

Promptly returning employees to work when appropriate is important to prevent waste and abuse in the FECA program. Even partial returns to duty can save significant FECA expenditures. For example, in one case a USMS employee was injured on the job and unable to return to his original assignment. However, the DOL determined the employee could perform

some duties and had a wage earning capacity over \$26,000 per year despite his medical condition. Therefore, while the employee continued to receive FECA benefits, the amount of his benefits was reduced by \$26,000.

On the other hand, a DOJ attorney who was unable to work due to stress and anxiety since September 2004 had not returned to work as of May 2009. However, we learned from the JMD FECA Specialist that in 2006, this employee began hosting a weekly cable TV show while still receiving \$90,000 annually in FECA benefits. While the employee's television hosting duties indicated the employee may have been able to at least partially work, JMD did not coordinate with DOL to determine a possible wage earning capacity by which the employees' FECA benefits could be reduced.

We recommend that DOJ components routinely review the case files to ensure periodic medical updates are obtained and evaluated for all injured employees and routinely pursue second medical opinions where appropriate. Through consistent and effective review of medical documentation, DOJ FECA Specialists can identify employees who are capable of returning them to work or can find other employment outside the federal government, which would reduce the long-term cost accumulation to DOJ.

DOJ's Return to Work Efforts

In order to return FECA claimants back to work as soon as appropriate, FECA Specialists must not only routinely monitor the condition of the injured employees receiving FECA benefits, they must also coordinate with component management, the employee, OWCP's registered nurse, and the employee's physician in order to create a light or modified duty assignment when applicable. We found 136 of the 389 (35 percent) case files selected for review lacked evidence to support any attempt by component personnel to return an employee back to work or offer light duty assignments. We concluded that DOJ missed opportunities to return employees back to work, thus allowing the FECA benefit expenses to increase while losing employee experience and production.

Issues Impacting Return To Work

Our analysis of the chargeback reports showed that Correctional Officers and Special Agents were the two job series with the highest occurrences for work-related injuries in DOJ. FECA Specialists told us that Special Agents were reluctant to accept non-agent roles because of the loss of prestige associated with performing non-agent duties and the loss of retirement benefits they would incur if they returned to non-agent work. For example, a GS-13, step 5 Special Agent earns a gross salary of

approximately \$115,440 a year.³⁰ If injured and unable to return to any work, with one or more dependents this agent would receive \$86,580 tax free in FECA compensation, or \$865,000 over 10 years. If this agent returned to work as an analyst, at a GS-13, step 5, the agent would be awarded \$172,360 in FECA compensation over 10 years rather than the \$865,000 he was be paid if he did not return to work at all.³¹ Thus, by returning the agent to light duty work, the cost of the agent's FECA benefits would be reduced by approximately \$700,000. It should be noted that the agent would receive the same amount of compensation whether he received full-time FECA compensation because he was unable to return to work or whether he received a combination of salary and reduced FECA compensation for returning to work as an analyst.

Although Special Agents may be reluctant to accept non-agent roles, in our opinion, this approach should be pursued more aggressively because it would reduce DOJ's FECA benefit costs over the long term while continuing to utilize employees' expertise and knowledge.³²

We found that DOJ management faces a difficult situation in returning employees back to work since claimants may receive more net income from FECA benefits than from earned wages. This disparity occurs because FECA benefits are not subject to taxes for federal and state income, social security and Medicare. Thus, employees may be reluctant to return to work and may challenge whether they are physically capable of doing so. While it is difficult to demonstrate that an employee is ready to return to full duty, it is easier to prove that employees are capable of returning to limited or light duty assignments.

Light or Modified Duty Assignments

According to JMD's former Director of Workers' Compensation, the preferred and most often used method for returning an employee back to work is for the employee to recover quickly and return to the employee's

³⁰ This example is based on the Office of Personnel Management's Salary Table 2008, Locality Pay Area Dallas-Fort Worth, effective January 2008, plus 25-percent Law Enforcement Availability Pay. Dallas, Texas, was used because it represents a reasonable average for the entire United States.

³¹ The FECA wage loss compensation for returning as an analyst rather than as an agent would be 75 percent of the difference between the analyst's base salary and the agent's salary with salary enhancements provided to agents as Law Enforcement Availability Pay.

³² According to the DOL Agency Handbook, employees who cannot return to their original assignment must accept suitable light duties if allowed by their medical restrictions.

original assignment without any physical restrictions due to injury. We found that 95 percent of FECA cases during Chargeback Year 2006 through 2008 were closed within 1 year after the claim was initiated. Generally, these cases required little or no effort on the part of the FECA Specialists or the employee's supervisor.

Alternatively, if an employee's physician authorizes a return to work under limited or restricted duty, the FECA Specialist, along with the supervisor, may attempt to accommodate the restrictions. A light or modified duty assignment must be detailed in writing and be well-defined by the DOJ component, meet the restrictions as prescribed by the physician, and be approved by the OWCP Claims Examiner. Once the light or modified duty assignment is developed and approved, the employee has 30 days to accept or reject the assignment and return to work.

We found that the DEA, JMD, and USMS did not have written procedures defining how to fulfill modified, light duty assignments. However, the supervisors, along with the employee and FECA Specialists, modified normal job assignments to meet medical restrictions when the medical information indicated this was appropriate. DOJ FECA Specialists at the ATF, DEA, JMD, and USMS stated that after employees received a light duty offer in response to restrictions defined by a physician, the FECA Specialists would consider excluding additional activities on the light duty assignment based on additional medical information submitted by the claimants. FECA Specialists told us this process of proposing light duty and the employee objecting and submitting additional medical information to restrict additional assignments may happen multiple times with the same employee, thereby making it difficult to develop an adequate light duty assignment.

The OWCP Deputy Director informed us that if the employee refuses to accept a legitimate light or modified duty assignment more than three times, the case should be referred by the DOJ FECA Specialist to the OWCP Claims Examiner for further review. However, we found that the FECA Specialists were not documenting when they referred cases to the OWCP Claims Examiner, and thus we could not determine whether the components appropriately notified the OWCP when employees refused light or modified duty assignments.

Each component we audited gave various levels of attention to the process of providing light or modified duty assignments. The FBI had a policy in place to address return to work assignments, but faced difficulties in assigning Special Agents that were unable to return to full duty. The BOP had a return to work policy and was proactive in developing temporary duty

assignments for their employees. The DEA and USMS did not have documented policies and the ATF, DEA, and USMS were not proactive in providing light duty assignments. We concluded the ATF, DEA and USMS were missing opportunities to return employees to work, thus increasing FECA benefits over time.

While in most FECA cases employees recover from injury and return to work without restrictions, the FBI FECA specialists told us that it is particularly difficult for a Special Agent who has suffered a work-related injury or illness to achieve the medical condition necessary to return to duty as a Special Agent. According to the FBI FECA Specialist, to qualify and remain as a Special Agent, the employee must continually meet 247 criteria encompassing physical fitness, vision, hearing, and medical review. The FBI's Medical Mandates Board reviews each agent's qualifications and medical condition to determine if they are qualified to serve as a Special Agent. When Special Agents are unable to return to work at the original position, the FBI FECA Specialist stated there are two alternatives for temporary work assignments. The first is a temporary alternative work assignment for any FBI position based on the medical restrictions identified by the employee's doctor. The second alternative is an offer of a new non-agent position, such as an Intelligence Analyst, academy instructor, or Computer Specialist.

The FBI FECA Specialist said that finding non-agent jobs for Special Agents is the biggest challenge, since agents refuse to accept support positions offered because of the stigma associated with non-agent roles and the loss of law enforcement retirement benefits. During our review of 79 FECA cases at the FBI we only found 6 examples where the FBI offered Special Agents alternative work assignments. Out of these six cases, only one Special Agent accepted an offer to a non-agent support position. The other five did not accept the alternative assignments to support positions. In these five cases, the FBI either terminated their employment or the claimant elected retirement disability. Whether terminated or retired, the claimants continued to receive FECA benefits.

The BOP was more proactive in developing temporary light or modified duty assignments for their employees. The BOP allowed employees to work in a temporary light duty assignment for up to 6 months, after which time, each employee met with BOP institution management to evaluate whether the employee was physically able to return to the original job assignment. If the condition lasted in excess of 1 year and the employee remained unable to return to full performance at their original job assignment, the BOP terminated the employment. In these cases, the terminated employees

were eligible to receive full FECA benefits based on lost wages and medical disability.

The ATF, DEA, JMD, and USMS did not give the same level of attention to providing light or modified duty assignments. For two USMS FECA claims in New York, we found that no case files existed, and we determined that there was no evidence of the FECA Specialist monitoring these cases and attempting to return employees to work. One case involved a U.S. Deputy Marshal whose claim for “back sprain, lumbar region” and “post traumatic stress disorder” was initially accepted by the OWCP in November 2001. This 31-year old Deputy Marshal did not return to work on his own initiative, nor did any district personnel attempt to contact the Deputy Marshal regarding the incident over the ensuing 8 years. The Deputy Marshal continues to receive FECA benefits and has been paid over \$365,800 in benefits since June 2002.

The second USMS case with no existing case file involved a USMS employee who was injured in 1967. We learned from the DOL Agency Query System (AQS) that the employee had received almost \$250,000 in compensation benefits since 2002. No additional documentary information was available in AQS prior to August 2002, but the USMS FECA Specialist said the employee probably received benefits since 1967. This case was accepted by OWCP for “major depression, post traumatic stress disorder” and “various urinary and prostate disorders,” and we found no evidence that this case had ever been monitored. The USMS personnel responsible for the case told us that the case was too old and the status of that employee was unknown because no one at the USMS had managed this employee’s case or reviewed the medical reports to determine if this employee could have returned to work.

In addition, during our audit we noted other cases that warranted additional review:

- An ATF administrative employee submitted an injury claim from a fall while entering an elevator in 1985 and had not returned to work. The file contained conflicting medical reports and DOL terminated benefits in 1999. Subsequently, the employees’ case was appealed, and the DOL reversed its termination decision and accepted the claim as of July 2006. The employee was still receiving benefits as of FY 2008 and had not returned to work.³³

³³ After reviewing a draft of our report, the ATF stated that it is awaiting updated medical information for this case.

- A USMS Deputy Marshal submitted an injury claim for an incident that occurred on September 11, 2001, and was listed on the CBY 2008 chargeback report. The USMS had no knowledge, documentation, or contact with the employee as to his injury, condition, or whereabouts.
- A DEA Special Agent submitted an injury claim for a contusion of the knee with a torn meniscus incurred while on duty. This Special Agent has received wage loss compensation since 2003. There was no evidence of the agent's current medical condition or work capacity in the case file, nor was there any evidence of an effort to return the agent to work in a non-agent capacity, such as an Intelligence Analyst.

As illustrated by the specific instances described above, we found that DOJ components in our audit only monitored those cases that were relatively new or those cases where the injured employee was likely to return to work. The FECA Specialists were less likely to monitor cases that were old or where the injuries or illnesses were severe. The FECA Specialists at each component stated that they did not have the time or personnel to review each and every case file. The DEA FECA Specialist also said that there was not anything the DEA could do about the older cases since the medical conditions were established and DOL approved the benefits.

We believe this approach is ill-advised since medical conditions may improve over time and employees may reach a point where they could return to work, either in their original position or a different position, contribute to DOJ's mission, and thereby reduce the FECA expense by the salary they would earn in a new career field.

Monitoring Chargeback Reports

DOJ FECA Specialists are supposed to use the chargeback reports to review and correct errors in benefits recorded by the DOL and identify cases assigned to a DOJ component before the charges are billed. When a DOJ component believes that a case incorrectly appears on its chargeback report, the component should verify the claimant's name to current personnel and payroll records.³⁴ If the claimant is not a DOJ employee, the OWCP should be notified to make corrections to the chargeback report.

³⁴ Agency personnel may also review case files at the OWCP district office to resolve such discrepancies.

We determined that DOJ needs to improve its monitoring of the chargeback reports. Based on the interviews we conducted and our analysis of the chargeback reports, we found that each DOJ component received an electronic file of the chargeback report quarterly. FECA Specialists said that the chargeback reports were reviewed quarterly to identify new cases and to ensure that employees are listed in the correct component. However, the FECA Specialists did not keep any record that these reviews took place. Moreover, we found serious errors on the USMS chargeback reports that were not caught by the USMS, which indicated that these reviews were not taking place. In particular, six of the USMS cases in our audit sample were incorrectly assigned to the Southern District of New York. The USMS FECA Specialist later confirmed that four of these employees were employed at other USMS offices.³⁵ The USMS FECA Specialist also told us the other two claimants were not employed with the USMS and were improperly identified on the chargeback report.³⁶

We also selected FECA cases from the chargeback report for the ATF, BOP, DEA, FBI, and JMD. Although we found other discrepancies at these components, such as blank or incomplete data fields and missing files, we found no instances of an employee being charged to the incorrect office.

Ineffective monitoring of the chargeback reports may result in substantial FECA expenses being improperly charged and increases the risk for waste, fraud, and abuse in the FECA program.

Ineffective Monitoring Leads to Potential Abuse and Fraud

According to FECA, claimants are criminally liable and could be prosecuted for obtaining benefits fraudulently. DOJ components are responsible for identifying and pursuing potential criminal violations within their agency. According to the DOL Agency Handbook, if a questionable case or fraud is suspected, the component should: (1) review all relevant case files at the respective OWCP District Office for evidence of fraud, (2) conduct its own initial internal investigations, and (3) notify the DOL. DOJ components may also conduct reviews or investigations to identify and prevent improper benefit payments. According to the DOL, if the beneficiary is convicted of fraudulently obtaining FECA benefits, in addition to penalties and possible incarceration for past fraud, entitlement to any future compensation would be terminated.

³⁵ FECA Specialists told us the four employees were assigned to the Eastern District of New York; New Jersey; USMS headquarters; and the Federal Law Enforcement Training Center in Glynco, Georgia.

³⁶ These two cases incurred FECA expenses totaling approximately \$1,200.

During our audit, we found that DOJ components had different practices for handling allegations of potential fraud and abuse. The BOP and FBI's practice was to conduct internal reviews and refer selected cases to the DOJ OIG Investigations Division for further inquiry as appropriate. JMD's practice was to refer cases to the DOJ OIG Investigations Division for further inquiry as appropriate. During our review period, we did not identify any cases that were pursued for investigation by the ATF, DEA, and USMS for possible abuse or fraud.³⁷ As shown in Exhibit 12, 66 cases were reviewed internally by BOP, FBI, and JMD and 17 of those cases were referred to the DOJ OIG Investigations Division for possible fraudulent activity between FY 2005 through 2008.

The OIG Investigations Division investigates complaints that involve criminal issues that are likely to be prosecuted or involve serious non-criminal misconduct by DOJ employees at the GS-15 or higher grade level. Cases that do not meet this threshold are referred back to the component as a management issue. For FECA cases, the OIG Investigations Division often coordinates with the Department of Labor to determine whether that Department has investigative interest in the allegations.

**EXHIBIT 12: FECA CASES REVIEWED
FOR POSSIBLE FRAUD OR ABUSE
FROM FISCAL YEARS 2005 TO 2008**

Component	Cases Reviewed By Component	Cases Referred to the OIG	Prosecution or Awaiting Judicial Action
ATF	0	0	0
BOP	48	14	6
DEA	0	0	0
FBI ³⁸	15	2	0
JMD	3	1	0
USMS	0	0	0
TOTAL	66	17	6

Source: DOJ components and OIG Investigations Division

As of April 7, 2009, 2 of the 14 cases referred to the OIG by the BOP resulted in felony prosecutions and restitution orders in excess of \$68,000.

³⁷ After reviewing a draft of our report, the ATF stated that it submitted a case of possible abuse or fraud to the OIG Investigations Division.

³⁸ The FBI was internally reviewing one case as of April 7, 2009 – this case was not referred to the OIG Investigations Division.

Four additional cases were awaiting judicial action.³⁹ Of the remaining eight cases referred by the BOP, two resulted in the employee's resignation, one was referred back to the component, and five were determined by the OIG Investigations Division to be unsubstantiated.⁴⁰ The FBI referred two cases to the OIG, and the OIG referred both back to the component. In the one case JMD referred to the OIG, the OIG Investigations Division determined that the allegations were unfounded and that an investigation was not warranted.

The ATF, DEA, and USMS FECA Specialists did not refer any cases to the OIG. Their FECA specialists told us that they believed that none of their cases were fraudulent because they thought the claimants generally had integrity and a desire to return to work. However, we believe that it is not sufficient to rely on the integrity of personnel without taking further steps to prevent fraud, waste, and abuse.⁴¹ As discussed above, these components were failing to properly monitor their case files and thus could be missing important indicators of fraud or abuse that should be further investigated.

Long-term Costs of Ineffective Monitoring

Ineffective monitoring efforts by DOJ FECA Specialists can permit FECA expenses to accumulate unchecked. We determined that most of DOJ's FECA costs are associated with those cases open for longer than 3 years. These cases generally had a status of periodic roll, which indicates the employee suffered a long-term disability and will not return to work for some time. The OWCP Claims Examiner will consider changing the status of the case from daily roll to periodic roll when the medical evidence indicates a long-term disability. Claimants with a status of periodic roll receive automatic wage loss payments every 28 days. The cases in DOJ's chargeback reports designated as periodic roll were further denoted using the following three codes:

³⁹ Cases awaiting judicial action are those that are in trial, are awaiting a decision by a prosecutor on whether or not to prosecute, or are involved in court proceedings such as grand jury, discovery, or plea negotiations.

⁴⁰ The results of the cases that were referred back to the component were determined by the OIG Investigations Division to be component management issues. For the unsubstantiated cases, the OIG Investigations Division determined that the investigations did not result in evidence that warranted administrative or legal remedies.

⁴¹ This conclusion is supported by a GAO report, which found that the FECA program was vulnerable for improper payments and concluded that the OWCP relied on unverified, self-reported information from FECA claimants. In addition, GAO reported that FECA claimants receiving lost wage benefits often failed to notify OWCP of their return to work in order to stop future wage loss payments. GAO, *Federal Workers' Compensation Data and Management Strategies*, Highlights Section, 3.

- **PR:** The claimant is entitled to wage-loss payment on periodic roll and re-employment or wage earning capacity is not yet determined.
- **PN:** The claimant is entitled to wage-loss payment on periodic roll and is determined to have no wage-earning capacity or re-employment potential.
- **PW:** The claimant is entitled to reduced compensation reflecting a partial wage-earning capacity or actual earnings.

In our analysis of the chargeback reports for CBYs 2006, 2007, and 2008, we summarized the cases by status and found that the total cost for periodic roll cases was significantly higher than any other case status. While only 6 percent of the total number of FECA cases for DOJ fell within the periodic roll status, the accumulated expenses for long-term FECA cases totaled approximately \$154 million from CBYs 2006 to 2008 or 54 percent of the total of DOJ FECA expenses. Exhibit 13 shows the breakdown of cases and total expenses by case status.

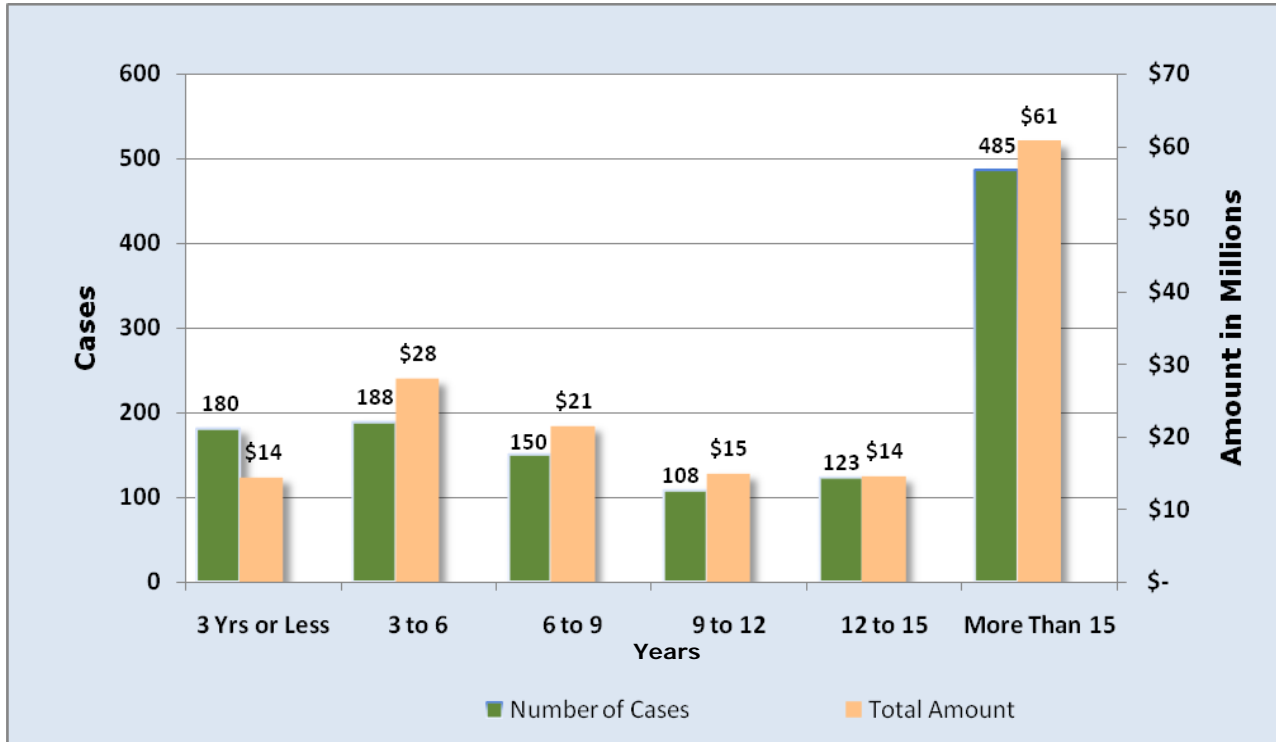
**EXHIBIT 13: NUMBER OF CASES AND TOTAL AMOUNTS
BY CASE STATUS FOR CBYs 2006, 2007, 2008**

Case Status	Cases	Percent of Cases	Total Amount	Percent of Total Amount
Periodic Rolls	1,234	6%	\$ 153,548,460	54%
Medical Payments Only	7,116	33%	\$ 50,215,373	18%
Schedule Awards	612	3%	\$ 34,542,640	12%
Death Rolls	150	1%	\$ 16,163,234	6%
Daily Rolls	677	3%	\$ 13,414,099	5%
Closed Cases	11,255	52%	\$ 12,554,292	4%
Overpayment Cases	32	0%	\$ 1,891,535	1%
Retired And Under Development Claims	497	2%	\$ 69,609	0%
TOTALS	21,573	100%	\$ 282,399,244	100%

Source: OIG analysis of DOJ chargeback reports for CBYs 2006 through 2008

Further, we analyzed the long-term cases by comparing the number of cases and dollar amounts for 3-year intervals. We found that cases open longer than 15 years comprise approximately 40 percent of DOJ's periodic roll expenses. Exhibit 14 reflects the results of our analysis.

**EXHIBIT 14: NUMBER OF CASES AND TOTAL COSTS
FOR PERIODIC ROLL CASES DURING CBYs 2006, 2007, 2008
BY MULTIPLE YEAR INTERVALS**



Source: OIG analysis of annual chargeback reports from CBYs 2006 to 2008

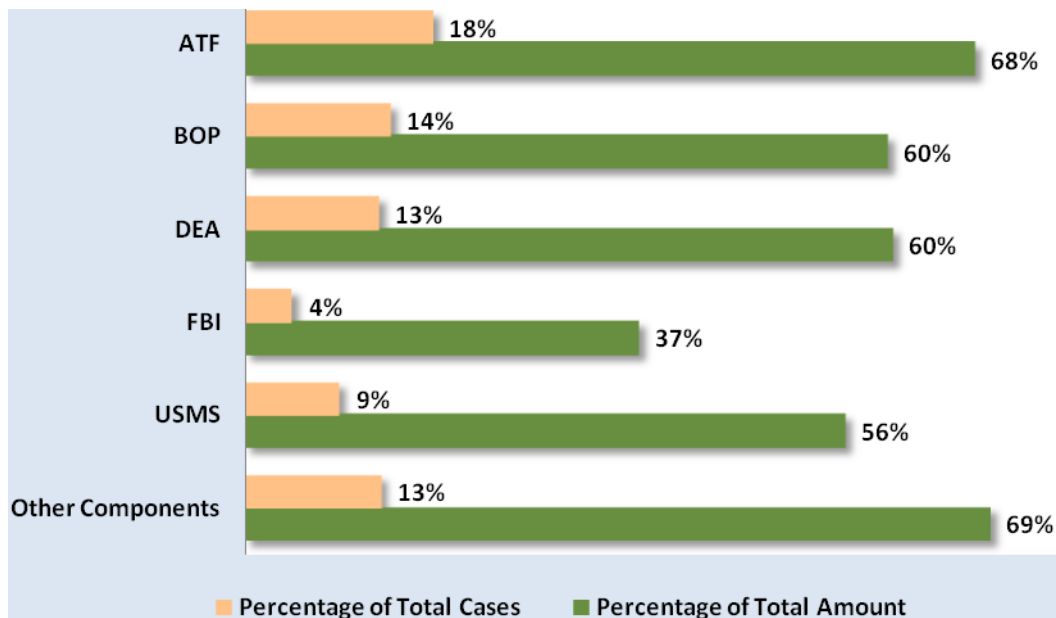
Cases open for extended periods require long-term payment of compensation benefits and result in a higher accumulation of costs. Also contributing to the long-term accumulation of costs is the fact that FECA program benefits are tax free and do not end until death, and therefore claimants choose FECA benefits rather than retirement under OPM.⁴² They also can choose to continue to receive FECA benefits after they reach retirement age because FECA typically provides more net compensation than OPM retirement benefits. These conditions indicate a need to monitor FECA cases to ensure they do not remain open longer than necessary.

Further analysis of the periodic roll cases shows that each DOJ component experienced different levels of costs associated with periodic roll cases. For example, while only 18 percent of ATF FECA cases fell within the periodic roll status, this accounts for 68 percent of ATF's FECA expenses. In contrast, 4 percent of the FBI's FECA cases fell within the periodic roll status and accounted for 37 percent of its total FECA expenses. Exhibit 15

⁴² According to the DOL Agency Handbook, FECA prohibits payment of compensation and other federal benefits at the same time. A person may not receive FECA benefits concurrently with a regular or disability annuity.

illustrates the percentage of periodic roll cases and the costs by DOJ component for CBY 2008.

EXHIBIT 15: TOTAL AMOUNT AND CASE PERCENTAGES OF PERIODIC ROLL CASES BY COMPONENT
CBY 2008



Source: OIG analysis of DOJ chargeback report for CBY 2008

We asked FECA Specialists at the ATF, BOP, DEA, FBI, and USMS to explain the reasons for their periodic roll costs, and they provided the following explanations:

- The ATF stated it has a large number of long-term claimants over the age of 60.
- The BOP stated it has numerous terminations due to injured employees failing to meet and maintain law enforcement requirements, which is a condition of employment.
- The DEA stated that injuries to Special Agents, who are among the more highly compensated employees at DEA, comprised 57 percent of all cases at the DEA.
- The FBI stated that it is the second largest component in DOJ and attributes the number of injuries due to the number of employees.

- The USMS stated that because of the physical requirements for performing law enforcement duties, the USMS often cannot return a Deputy U.S. Marshal to work in a full time capacity and can only accommodate an injured employee in a temporary, limited duty assignment.

When we discussed the total FECA expenses with JMD's Director of Internal Review, he indicated that the annual benefit expense for DOJ in CBY 2008 of \$98 million did not meet the JMD's materiality threshold of \$114 million.⁴³ Therefore, the staff in Internal Review did not specifically review the detailed FECA expenses in DOJ because the Director's primary concerns were the overall financial statements and the FECA liability accrual.⁴⁴ The former Director of JMD's Office of Workers' Compensation stated that the reason for the increasing FECA expenses were due to the rising medical costs of injured employees. However, we found that the medical costs did not substantially contribute to the high FECA expenses, but that compensation expenses comprised 71 percent of the FECA benefit costs.

Conclusion

We believe that without adequate DOJ oversight, the DOJ FECA program will continue to face increased risks of waste, fraud, and abuse. Our audit revealed that 15 percent of the case files we selected for review were not available, 21 percent did not contain the basic DOL claim form, and 34 percent lacked a recent medical update. In addition, 30 percent of the case files we reviewed lacked evidence supporting an attempt by component personnel to return an employee back to work. We also determined that 54 percent of DOJ's total FECA expenses were for long-term periodic roll cases paying wage loss compensation since July 1, 2005.

As a result of these deficiencies, DOJ components are at risk for:

- having employees in the FECA program longer than necessary;

⁴³ The materiality threshold is established by JMD to designate a minimum dollar amount (\$114 million) for accounts to meet to be eligible for a detailed review of transactions. The detailed transactions of accounts at or below this threshold, such as the account for DOJ's FECA program, are not reviewed by JMD's Internal Review Division.

⁴⁴ The liability accrual is an estimated amount calculated by JMD Budget and Finance Staff to show the expected costs over the next 2 years. The purpose of this estimated calculation is to reconcile the different reporting periods between fiscal year (October 1 to September 30) and chargeback year (July 1 to June 30) reporting. The estimated amounts are contingent on the expense charged to DOJ each chargeback year.

- providing incomplete or inaccurate information regarding FECA cases to all parties involved;
- ineffective monitoring of FECA cases and allowing FECA benefits to continue to rise indefinitely;
- harming the general public and taxpayer through wasteful spending; and
- potential abuse or fraud by claimants.

In our opinion, controls over the entire FECA program need to be strengthened. Controls must be sufficient to ensure that FECA Specialists are aware of and consistently carry out procedural requirements, ranging from creating and maintaining a case file to verifying the chargeback report and promptly notifying OWCP of any errors or omissions found. In addition, DOJ management needs to strengthen its methods for returning employees back to work through proactive requests of second medical opinions and obtaining and reviewing medical status updates for injured employees. We also believe that the active monitoring, investigation, and review of FECA cases will provide a strong deterrent effect for fraudulent or unnecessary claims.

Recommendations

We recommend that the Justice Management Division:

1. Develop a procedure to ensure each DOJ component establishes and maintains on site a readily available case file for the respective FECA cases listed in each component's annual chargeback report.
2. Establish minimum criteria by which each DOJ FECA Specialist should complete periodic case file reviews.
3. Ensure that periodic medical updates are obtained and evaluated for reemployment opportunities for all DOJ employees on the chargeback report and second medical opinions are pursued when necessary.
4. Develop a process to routinely monitor and update FECA case files that will further DOJ's efforts in returning employees back to work or to a light or modified duty assignment.

5. Establish a procedure to ensure each DOJ component reviews the quarterly chargeback reports, identifies all possible errors, and reports errors to the OWCP for corrective action.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

This audit assessed DOJ's controls in place to effectively administer the FECA program, reduce opportunities for claimant fraud, and return employees back to work. The audit was conducted in accordance with the *Government Auditing Standards*. As required by the standards, we reviewed management processes and records to obtain reasonable assurance about DOJ's compliance with laws and regulations that could have a material effect on operations. Compliance with laws and regulations applicable to DOJ's FECA program is the responsibility of DOJ's Deputy Assistant Attorney General for Human Resources and Administration.

Our audit included examining, on a test basis, evidence about laws and regulations. The specific laws and regulations against which we conducted our test are contained in:

- Federal Employees' Compensation Act.
- DOJ Human Resources Order 1200.1, Chapter 6-1.
- OPM Regulation – Agencies authority to require medical examinations (i.e., second medical opinions), 5 C.F.R. § 339.301c (2008).

Our audit identified no areas where DOJ was non-compliant with the laws and regulations referred to above. With respect to those areas not reviewed, nothing came to our attention that caused us to believe that DOJ management was not in compliance with the laws and regulations cited above.

STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit, we considered DOJ's internal controls for determining our audit procedures. This evaluation was not made for the purpose of providing assurance on the internal control structure as a whole. However, we noted certain matters that we consider to be reportable conditions under the *Government Auditing Standards*.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect DOJ's ability to manage its FECA program. We found that DOJ:

- lacked policies to ensure FECA case files were maintained and consistently reviewed;
- provided no oversight for routinely monitoring chargeback reports; and
- established no review to ensure complete and accurate claim information was recorded for case data.

Because we are not expressing an opinion on DOJ's internal control structure as a whole, this statement is intended solely for the information and use of DOJ in managing its FECA program. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

Audit Objective

The objective of this audit was to determine whether controls were in place to effectively administer the FECA program, reduce opportunities for claimant fraud, and return employees back to work.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted work at the Bureau of Alcohol, Tobacco, Firearms, and Explosives; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Bureau of Prisons; Justice Management Division; and United States Marshals Service in Washington, D.C. We also conducted work at two federal prison complexes in Florence, Colorado, and Coleman, Florida, and two U.S. Marshals District Offices in the Southern District of New York and the Northern District of Texas. We also met with JMD, which is the liaison between the Department of Labor (DOL) and DOJ. We used judgmental sampling to select the sites that had the largest number of claims as of March 31, 2008. Since a non-statistical sampling method was used, the results cannot be projected to all sites.

We interviewed 22 officials within DOJ at JMD, the ATF, BOP, DEA, FBI, and USMS. The DOJ officials interviewed included the Director and Deputy Director of Workers' Compensation; Director, Deputy Director, and Assistant Deputy Director of Finance; Director and Deputy Director of Internal Review; Director of Budget Operations; Budget Analysts; Supervisory Compensation Specialist and staff; Human Resource Specialist; Coordinator and Co-Coordinator of Operations and Safety; and Safety Specialists.

We conducted interviews with five FECA Specialists to obtain information on matters such as procedures, requirements, initiatives, training, and the overall responsibilities associated with the program, both internally and externally.

In addition to the interviews, we reviewed documents and records pertaining to the number of claims on file, number of injuries by type and location on the body, the total liability and expenditures, financial allocations for each DOJ component, DOJ Order 1200.1, and the Worker's Compensation Annual Reports for Fiscal Years 2006-2008. We also reviewed information available on the DOL's website pertaining to the program. We judgmentally selected 458 cases for review to obtain broad exposure to multiple facets of the cases, such as expense and age. We were able to review 389 cases to assist in determining the effectiveness of managing injury cases. Since a non-statistical sampling method was used, the results cannot be projected to all cases.

To achieve the audit's objective, we used computer-processed DOL data contained in the Agency Query System (AQS) and the Veterans Administration (VA) Worker's Compensation Occupational Safety and Health Management Information System (WC/OSH MIS), two databases that contain information on each federal employee who has filed an on-the-job injury claim. DOJ generally uses WC/OSH MIS to enter new claim information, which is verified against DOJ's payroll information maintained by the National Finance Center. The WC/OSH MIS then takes new information and merges it into the AQS. We used the information provided on the quarterly chargeback reports printed from the WC/OSH MIS and verified attributes listed in the report to reference files being maintained by DOJ components.

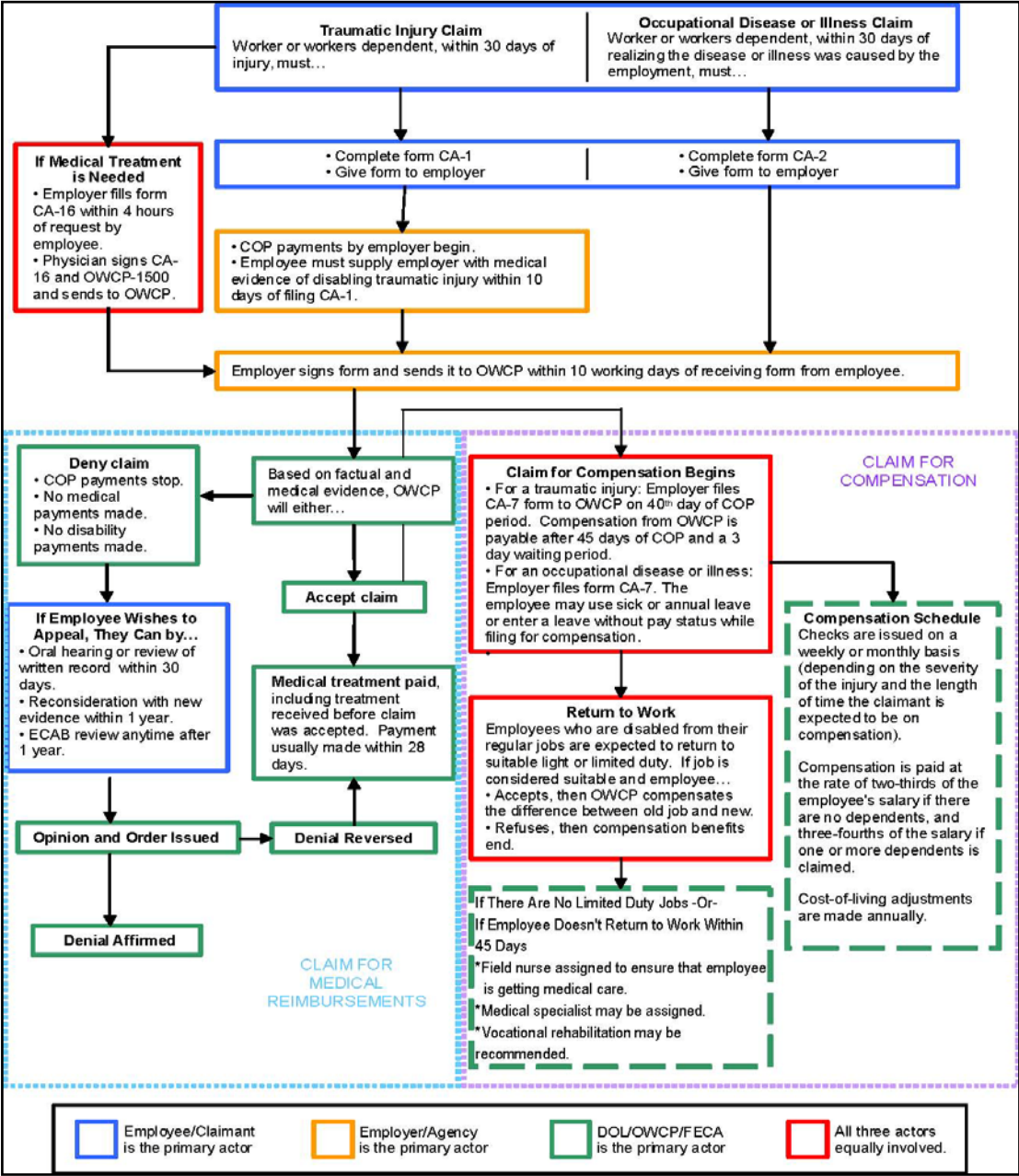
We assessed the reliability of the DOL-provided data by comparing DOL's chargeback report data to the reference case files maintained by DOJ components. Based on the results of our tests and information obtained, we concluded that the data were sufficiently reliable to achieve our audit objective.

The audit scope covered the period from July 1, 2005, through April 22, 2009.

ACRONYMS

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AQS	Agency Query System
BOP	Federal Bureau of Prisons
CBY	Chargeback Year
DEA	Drug Enforcement Administration
DOJ	Department of Justice
DOL	Department of Labor
FBI	Federal Bureau of Investigation
FECA	Federal Employees' Compensation Act
FY	Fiscal Year
GAO	Government Accountability Office
JMD	Justice Management Division
OIG	Office of the Inspector General
OPM	Office of Personnel Management
OSHA	Occupational Safety and Health Administration
OWCP	Office of Workers Compensation Program
USMS	United States Marshals Service
WC/OSH MIS	Worker's Compensation Occupational Safety and Health Management Information System

FECA PROCESS OVERVIEW



Source: FECA Program Effectiveness Study, ICF Consulting, dated March 31, 2004, 23.

**DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMPENSATION PROGRAM
DISTRICT OFFICES**

Location	Area of Responsibility
Boston, MA	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
New York, NY	New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands
Philadelphia, PA	Delaware, Pennsylvania, West Virginia, and Maryland for claimants with a residence zip code beginning with 21XXX
Jacksonville, FL	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
Cleveland, OH	Indiana, Michigan, Ohio, and all other areas outside the U.S.
Chicago, IL	Illinois, Minnesota, and Wisconsin
Kansas City, MO	Iowa, Kansas, Missouri, and Nebraska
Denver, CO	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
San Francisco, CA	Arizona, California, Hawaii, and Nevada
Seattle, WA	Alaska, Idaho, Oregon, and Washington
Dallas, TX	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
Washington, D.C.	District of Columbia, Virginia, and Maryland for claimants with residence zip code beginning other than 21XXX

SCHEDULE OF BENEFIT EXPENSE BY AGENCY
AS OF SEPTEMBER 30, 2008
(Dollars in Thousands)

Item	Agency	Benefits Paid
1	United States Postal Service	\$1,001,131
2	U.S. Department of the Navy	219,285
3	U.S. Department of Veteran Affairs	177,894
4	U.S. Department of Homeland Security	160,695
5	U.S. Department of the Army	140,861
6	U.S. Department of the Air Force	131,175
7	U.S. Department of Justice	102,131
8	U.S. Department of Defense – Other	101,450
9	U.S. Department of Transportation	98,999
10	U.S. Department of Agriculture	73,224
11	U.S. Department of the Interior	60,217
12	Tennessee Valley Authority	55,325
13	U.S. Department of the Treasury	53,465
14	Social Security Administration	25,872
15	U.S. Department of Health and Human Services	25,822
16	U.S. Department of Labor	25,184
17	U.S. Department of Commerce	15,929
18	General Services Administration	14,816
19	U.S. Department of Energy	9,385
20	U.S. Department of State	8,100
21	U.S. Department of Housing and Urban Development	7,583
22	National Aeronautics and Space Administration	6,856
23	Environmental Protection Agency	4,513
24	Agency for International Development	3,396
25	Small Business Administration	2,553
26	Office of Personnel Management	2,216
27	U.S. Department of Education	1,544
28	Nuclear Regulatory Commission	755
29	National Science Foundation	131
	Other Agencies	111,909
	Total – All Agencies	\$2,642,416

Source: U.S. Department of Labor, *Special Benefit Fund Report 22-09-001-04-431*, (October 27, 2008), 23-24.

CLAIM FORMS CA-1 AND CA-2

Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

[Reset](#) [Print](#)

U.S. Department of Labor
 Employment Standards Administration
 Office of Workers' Compensation Programs

Employee: Please complete all boxes 1 - 15 below. Do not complete shaded areas.

Witness: Complete bottom section 16.

Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

Employee Data

1. Name of employee (Last, First, Middle)			2. Social Security Number		
3. Date of birth	Mo. Day Yr.	4. Sex	5. Home telephone	6. Grade as of date of injury	
		<input type="checkbox"/> Male <input type="checkbox"/> Female		Level <input type="checkbox"/>	Step <input type="checkbox"/>
7. Employee's home mailing address (Include city, state, and ZIP code)				8. Dependents	
				<input type="checkbox"/> Wife, Husband	
				<input type="checkbox"/> Children under 18 years	
				<input type="checkbox"/> Other	

Description of Injury

9. Place where injury occurred (e.g. 2nd floor, Main Post Office Bldg., 12th & Pine)			
10. Date injury occurred	Time	11. Date of this notice	12. Employee's occupation
Mo. Day Yr.	<input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Mo. Day Yr.	

13. Cause of injury (Describe what happened and why)

14. Nature of injury (Identify both the injury and the part of body, e.g., fracture of left leg)	a. Occupation code	
	b. Type code	c. Source code
	OWCP Use - NOI Code	

Employee Signature

15. I certify, under penalty of law, that the injury described above was sustained in performance of duty as an employee of the United States Government and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and the following, as checked below, while disabled for work:

- a. Continuation of regular pay (COP) not to exceed 45 days and compensation for wage loss if disability for work continues beyond 45 days. If my claim is denied, I understand that the continuation of my regular pay shall be charged to sick or annual leave, or be deemed an overpayment within the meaning of 5 USC 5584.
- b. Sick and/or Annual Leave

I hereby authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs (or to its official representative). This authorization also permits any official representative of the Office to examine and to copy any records concerning me.

Signature of employee or person acting on his/her behalf _____ Date _____

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Have your supervisor complete the receipt attached to this form and return it to you for your records.

Witness Statement

16. Statement of witness (Describe what you saw, heard, or know about this injury)

Name of witness	Signature of witness	Date signed
Address	City	State ZIP Code

Form CA-1
 Rev. Apr. 1999

Official Supervisor's Report: Please complete information requested below:

Supervisor's Report

17. Agency name and address of reporting office (include city, state, and zip code) _____ OWCP Agency Code _____

OSHA Site Code _____

ZIP Code _____

18. Employee's duty station (Street address and ZIP code) _____

19. Employee's retirement coverage CSRS FERS Other, (identify) _____

20. Regular work hours From: _____ a.m. To: _____ a.m. p.m. p.m. 21. Regular work schedule Sun. Mon. Tues. Wed. Thurs. Fri. Sat.

22. Date of injury Mo. Day Yr. _____ 23. Date notice received Mo. Day Yr. _____ 24. Date stopped work Mo. Day Yr. _____ Time: _____ a.m. p.m.

25. Date pay stopped Mo. Day Yr. _____ 26. Date 45 day period began Mo. Day Yr. _____ 27. Date returned to work Mo. Day Yr. _____ Time: _____ a.m. p.m.

28. Was employee injured in performance of duty? Yes No (If "No," explain) _____

29. Was injury caused by employee's willful misconduct, intoxication, or intent to injure self or another? Yes (If "Yes," explain) No _____

30. Was injury caused by third party? Yes No (If "No," go to item 32.) 31. Name and address of third party (Include city, state, and ZIP code) _____

32. Name and address of physician first providing medical care (Include city, state, ZIP code) _____

_____ 33. First date medical care received Mo. Day Yr. _____
34. Do medical reports show employee is disabled for work? Yes No

35. Does your knowledge of the facts about this injury agree with statements of the employee and/or witnesses? Yes No (If "No," explain) _____

36. If the employing agency controverts continuation of pay, state the reason in detail. _____ 37. Pay rate when employee stopped work \$ _____ Per _____

Signature of Supervisor and Filing Instructions

38. A supervisor who knowingly certifies to any false statement; misrepresentation; concealment of fact, etc.; in respect of this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception:

Name of supervisor (Type or print) _____
Signature of supervisor _____ Date _____
Supervisor's Title _____ Office phone _____

39. Filing instructions No lost time and no medical expense: Place this form in employee's medical folder (SF-66-D)
 No lost time, medical expense incurred or expected: forward this form to OWCP
 Lost time covered by leave, LWOP, or COP: forward this form to OWCP
 First Aid Injury

Notice of Occupational Disease and Claim for Compensation

U. S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs



Employee: Please complete all boxes 1 - 18 below. Do not complete shaded areas.
Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

Employee Data								
1. Name of Employee (Last, First, Middle)						2. Social Security Number		
3. Date of birth			4. Sex	5. Home telephone		6. Grade as of date of last exposure	Level	Step
7. Employee's home mailing address (Include city, state, and ZIP code)						8. Dependents		
						<input type="checkbox"/> Wife, Husband		
						<input type="checkbox"/> Children under 18 years		
						<input type="checkbox"/> Other		

Claim Information	
9. Employee's occupation	a. Occupation code
10. Location (address) where you worked when disease or illness occurred (include City, state, and ZIP code)	11. Date you first became aware of disease or illness
12. Date you first realized the disease or illness was caused or aggravated by your employment	13. Explain the relationship to your employment, and why you came to this realization

14. Nature of disease or illness	OWCP Use - NOI Code	
	b. Type code	c. Source code

15. If this notice and claim was not filed with the employing agency within 30 days after date shown above in item #12, explain the reason for the delay.

16. If the statement requested in item 1 of the attached instructions is not submitted with this form, explain reason for delay.

17. If the medical reports requested in item 2 of attached instructions are not submitted with this form, explain reason for delay.

Employee Signature

18. I certify, under penalty of law, that the disease or illness described above was the result of my employment with the United States Government, and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and other benefits provided by the Federal Employees' Compensation Act.

I hereby authorize any physician or hospital (or any other person, institution, corporation, or government, agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs (or to its official representative). This authorization also permits any official representative of the Office to examine and to copy any records concerning me.

Signature of employee or person acting on his/her behalf _____ **Date** _____

Have your supervisor complete the receipt attached to this form and return it to you for your records.

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Official Supervisor's Report of Occupational Disease: Please complete information requested below

Supervisor's Report

19. Agency name and address of reporting office (include city, state, and ZIP Code) OWCP Agency Code

OSHA Site Code

ZIP Code

20. Employee's duty station (Street address and ZIP Code) ZIP Code

21. Regular work hours From: a.m. p.m. To: a.m. p.m. 22. Regular work schedule Sun. Mon. Tues. Wed. Thurs. Fri. Sat.

23. Name and address of physician first providing medical care (include city, state, ZIP code) 24. First date medical care received Mo. Day Yr.

25. Do medical reports show employee is disabled for work? Yes No

26. Date employee first reported condition to supervisor Mo. Day Yr. 27. Date and hour employee stopped work Mo. Day Yr. Time a.m. p.m.

28. Date and hour employee's pay stopped Mo. Day Yr. Time a.m. p.m. 29. Date employee was last exposed to conditions alleged to have caused disease or illness Mo. Day Yr.

30. Date returned to work Mo. Day Yr. Time a.m. p.m.

31. If employee has returned to work and work assignment has changed, describe new duties

32. Employee's Retirement Coverage CSRS FERS Other, (Specify)

33. Was injury caused by third party? Yes No If "No," go to Item 34. 34. Name and address of third party (include city, state, and ZIP code)

Signature of Supervisor

35. A supervisor who knowingly certifies to any false statement, misrepresentation, concealment of fact, etc., in respect to this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception:

Name of Supervisor (Type or print)

Signature of Supervisor Date

Supervisor's Title Office phone

**COMPARISON OF RESULTS AND FINDINGS OF FECA
PROGRAM AUDITS**

ISSUES IDENTIFIED	1. Department of Education	2. Department of Homeland Security –TSA⁴⁵	3. Department of Commerce – Census Bureau	4. Department of Commerce – Office of the Secretary	5. Department of Agriculture	6. USAID⁴⁶	7. U.S. Postal Service	Department of Justice
Lack of Monitoring	X	X		X		X		X
Lack of Policy and Procedure	X			X				X
Lack of Return to Work Efforts		X	X	X				X
No Department Oversight								X
Lack of Documentation in the Case File								X
Detecting and Reporting Fraud				X				X
Timeliness of Claim Form Submission	X				X			X
Coordination with Safety Office		X				X		
Training for Supervisors	X		X	X				
Develop Information System		X						
Controverted Claims							X	
Recovery of Improper Payments						X	X	
Obtain Medical Updates								X
Review Chargeback Report								X

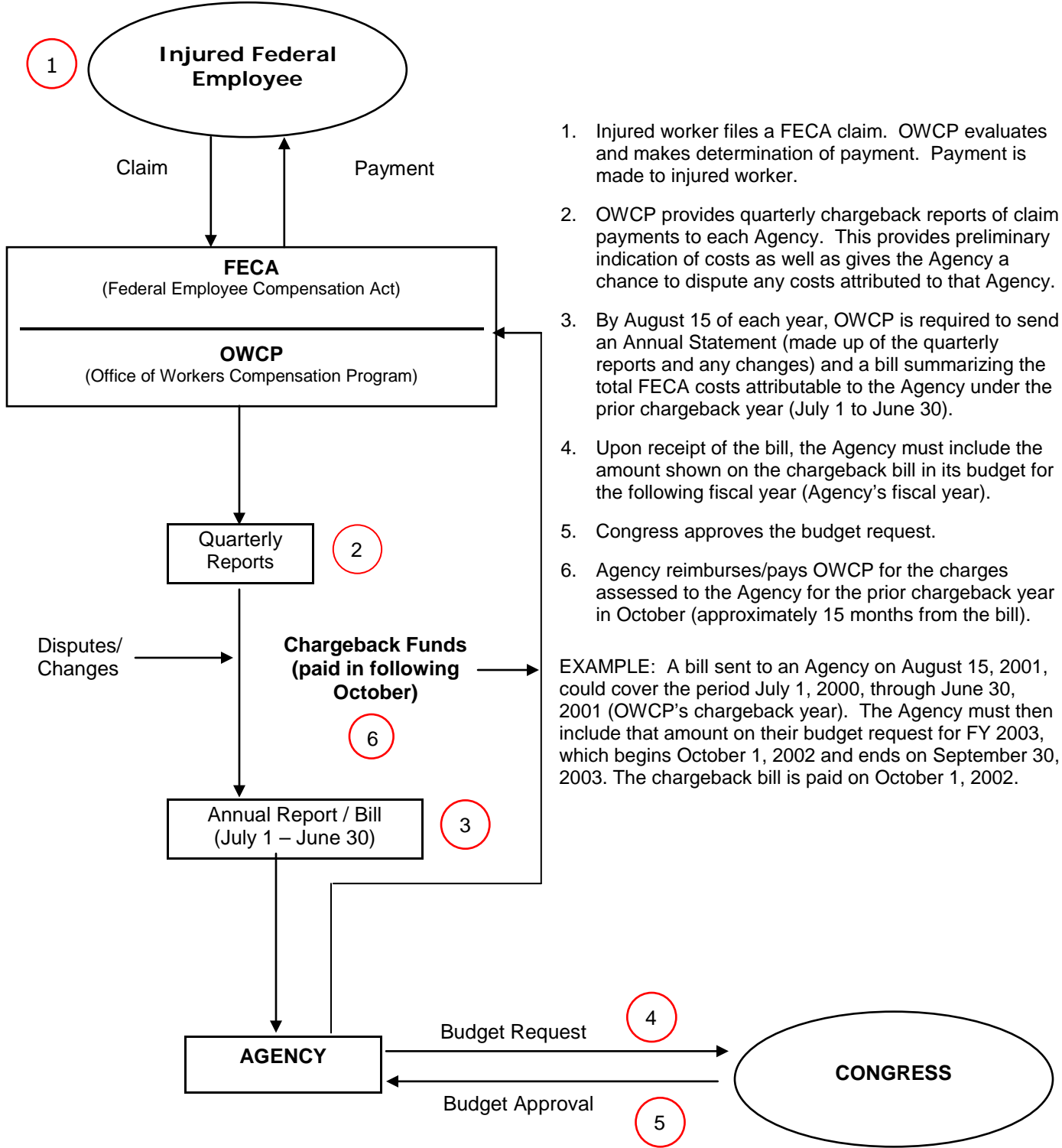
⁴⁵ Department of Homeland Security's Transportation Security Administration (TSA).

⁴⁶ U.S. Agency for International Development (USAID)

FECA Program Audit Reports

1. U.S. Department of Education Office of Inspector General, *Audit of the Department's Management of the Federal Employees' Compensation Act Program*, Audit Report A19-D0008 (March 2005), 1.
2. U.S. Department of Homeland Security Office of Inspector General, *The Transportation Security Administration's Management of its Federal Employees' Compensation Act Program*, Audit Report OIG-07-45 (May 2007), 6.
3. U.S. Department of Commerce Office of Inspector General, *Preparing for Census 2010: Follow-up Review of the Workers' Compensation Program at the Census Bureau Reveals Limited Efforts to Address Previous OIG Recommendations*, Inspection Report IPE-18592 (September 2007), 4-5.
4. U.S. Department of Commerce Office of Inspector General, *Management of Commerce's Workers' Compensation Program Needs Significant Improvements*, Inspection Report IPE-17536 (March 2006), 11-15.
5. U.S. Department of Agriculture Office of Inspector General, *Management Oversight of Federal Employees' Compensation Act Operations within the U.S. Department of Agriculture*, Audit Report 50601-2-Hy (August 2005), 4-7.
6. U.S. Agency International Development Office of Inspector General, *Audit of the Management of USAID's Federal Employees' Compensation Act Program*, Audit Report 9-000-07-003-P (December 2006), 1.
7. U.S. Postal Service Office of Inspector General, *Postal Service's Injury Compensation Program's Controversion and Challenge Process in Selected Areas*, Audit Report HM-AR-06-004 (May 2006), 4-8.

OVERVIEW OF THE FECA CHARGEBACK PROCESS




Source: U.S. Department of Labor Office of Job Corps for the Office of the Secretary, *Job Corps Technical Assistance Guide TAG E: Medical Transfer, Separation, and Referral; Management of Student Injury and Death Under FECA/OWCP*, October 2006, <http://jchealth.jobcorps.gov/documents/tags/tag-e> (accessed April 2, 2009), 54.



JUL 30 2009

Washington, D.C. 20530

MEMORANDUM FOR RAYMOND J. BEAUDET
ASSISTANT INSPECTOR GENERAL FOR AUDIT

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration 

SUBJECT: Draft Audit Report – The Department of Justice’s
Management of the Federal Employees’ Compensation
Act Program

The Justice Management Division (JMD) has reviewed the subject draft report which was provided by your office on July 8, 2009. The purpose stated in your draft report for conducting the inspection was to determine whether the Department of Justice (DOJ) and its components have established and implemented adequate effective controls to administer the Federal Employees Compensation Act (FECA) Program; whether DOJ management has implemented controls to prevent improper payments and opportunities for claimant fraud; and whether effective initiatives and practices exist for reducing the cause and duration of extended leave related to occupational injury.

We note that the report memorandum indicates that a copy of the draft report was also provided to Agency contacts with injury and disability program responsibility for their review and that they were advised to direct any comments to you directly.

The following are JMD’s comments on the findings and recommendations contained in the report.

Recommendation 1:

Develop a procedure to ensure each DOJ component establishes and maintains on site a readily available case file for the respective FECA cases listed in each component’s annual chargeback report.

The report indicates that 15 percent of active DOJ FECA case files selected for review were unavailable. Although various reasons were brought forth by the components to explain the deficiency, your position is that cases listed on the chargeback report should be maintained and easily available to allow effective monitoring.

As required by the Office of Workers’ Compensation Program (OWCP), DOJ components are required to maintain a copy of the Compensation Act (CA) Form initially filed for the claim, complete with all of the required signatures. These records are to be maintained and secured at the employer’s location. The documents in the file may include: medical reports, copies of letters and decisions by OWCP, the employer and the employee and/or his/her representative and any other material which is part of the case file, regardless of its source.

JMD concurs with the recommendation to develop procedures that will ensure that all DOJ components establish and maintain on site a readily available case file for FECA cases listed on their respective chargeback report. JMD recognizes the importance of maintaining CA Forms along with other important case file information and is currently working to establish and provide written procedures which will include information on quarterly internal “cross over” case file reviews that will ensure the availability and maintenance of CA Forms in the case file. JMD will coordinate all efforts associated with the internal “cross over” case file reviews to include: coordinating the scheduling of the reviews, designating component personnel to conduct the reviews, providing the random sample listing of case files, reviewing the written findings and providing a collective report to all of the components with recommendations for corrective measures where needed.

Recommendation 2:

Establish minimum criteria by which each DOJ FECA Specialist should complete periodic case file reviews.

We concur with this recommendation and will set a high priority for the development of detailed, written procedures for periodic case file reviews. The procedures and criteria for reviewing case files are currently being written for inclusion in the Standard Operating Procedures Guide for the Department’s Workers’ Compensation Program.

FECA requires, at a minimum, annual medical documentation to determine if a claimant is still entitled to benefits under this provision. Medical documentation is used by the Compensation Specialist to determine if a light duty assignment can be offered to the employee. In order to make a job offer, the agency must conduct active case file monitoring and obtain medical evidence that would otherwise describe the injured workers’ medical restrictions.

OWCP encourages active management of workers’ compensation programs by agency personnel. JMD recognizes the importance of devoting the time and effort necessary to ensure that claims are processed in a timely fashion, that complete and accurate files are maintained, and that constant monitoring and periodic reviews of claims is conducted to facilitate return to work efforts.

Recommendation 3:

Ensure that periodic medical updates are obtained and evaluated for reemployment opportunities for all DOJ employees on the chargeback report and second medical opinions are pursued when necessary.

The report recommends that instituting a more proactive case monitoring approach, including case file reviews, obtaining second opinions (SECOP) and medical updates, establishing return to work policies, and more consistent monitoring of chargeback reports, could reduce the long-term costs of DOJ’s FECA cases.

We concur with this recommendation to obtain periodic medical updates that will assist Compensation Specialists with return to work efforts. We will provide written procedures to the Compensation Specialists which will require that all long-term disability cases be reviewed on an annual basis (at a minimum) for medical documentation that would support a continued entitlement to compensation benefits. This requirement is applicable to those cases where the case status indicates that updated medical documentation should be obtained.

The Department can only make a written request to OWCP for SECOP evaluations. At various stages of a claim, the claims examiner may determine that there is a need for a medical opinion beyond the opinion of the claimant’s treating physician. In most cases, the attending physician is the primary source of medical evidence. Further, the Compensation Specialist will only make a written request to OWCP for a SECOP where medical evidence is conflicting. Authorizations for and approvals of SECOP’s rest solely with OWCP; however, we will ensure in written Department procedures that components are aware of their right and responsibility to request SECOP’s.

Recommendation 4:

Develop a process to routinely monitor and update FECA case files that will further DOJ’s efforts in returning employees back to work or to a light or modified duty assignment.

JMD concurs with the recommendation to develop a process to routinely monitor and update cases files for the purpose of returning employees back to work. This is a key element for the effective monitoring and management of case files.

When an employee has partially or fully overcome an injury or disability, the components will be responsible for making every effort toward assigning the employee to limited duty consistent with the employee’s medically defined work limitation. The duty assignment can be developed for part-time or full-time work.

Managers, supervisors, injured workers, and Compensation Specialists will all be required to work together to develop light/limited duty and temporary duty assignments. There may also be a need to coordinate this effort with Human Resources to clarify issues related to grade, pay, qualifications and other Federal benefits.

Components will be encouraged to monitor cases by using their quarterly chargeback reports, the Department’s Workers’ Compensation Occupational Safety and Health Management Information System to obtain various case information and analysis reports, and the case file information on hand at their location.

JMD will include procedures for monitoring case files to identify those employees who are capable to returning to work, as evidenced and documented in medical reports in the Standard Operating Procedures Guide which is currently being developed.

Recommendation 5:

Establish a procedure to ensure each DOJ component reviews the quarterly chargeback reports, identifies all possible errors, and reports errors to the OWCP for corrective action.

Chargeback data is provided to DOJ by OWCP on a quarterly basis via storage media. The chargeback period runs from July to June and chargeback data is available and provided to DOJ on a quarterly basis. OWCP bills DOJ annually for paid compensation benefits, to include medical care and costs associated with wage loss.

JMD concurs that there are no written procedures to ensure that each DOJ component conducts routine reviews of their chargeback reports and report errors for corrective measure; however, DOJ components are tasked quarterly by JMD with reviewing their chargeback reports. There have been a number of credits and adjustments made to DOJ over past years due to proactive monitoring of quarterly chargeback reports.

DOJ components currently review the chargeback reports to verify proper ownership of all cases for which the respective component is currently paying. The Federal Bureau of Investigation and the Bureau of Prisons work independently to identify such errors and report them to OWCP for handling. Each quarter, JMD provides an electronic copy of the chargeback report to all other DOJ components and bureaus to include: Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration, Executive Office for the United States Attorneys, U.S. Marshals Service and Headquarters Components. The components are currently required to review their chargeback report to verify that the claimants identified are or were a DOJ employee at the time of their injury and report any discrepancies to JMD within two weeks of the report being delivered. JMD will forward a collective report of all discrepancies to OWCP’s National Office for handling. The National Office will follow-up with JMD on their findings and report

Memorandum for Raymond J. Beaudet
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all corrections and future credits to JMD accordingly. JMD will notify components of any corrections, adjustments or future credits.

Components are now required to provide a written response to JMD that they have reviewed their chargeback report and indicate their findings. These quarterly responses will be maintained and filed by JMD.

In an effort to enforce and control quarterly chargeback report reviews, all components will be given written instructions on how chargeback report reviews should be conducted and reported. JMD will perform a collective analysis of the Department’s concurrence with this new control. It is with this process in mind, that DOJ will be able to correct chargeback reporting errors before the agency is actually billed, alleviating the task of processing credits and adjustments.

We appreciate the opportunity to respond to your report and are confident that the implementation of these reported recommendations will assist Compensation Specialists and management with addressing those challenges with respect to claims review, claims management, return to work efforts, and erroneous payments, thereby reducing the Department’s overall chargeback costs and opportunities for fraud.

If you have any questions regarding the above planned initiatives, please contact Edward Hamilton, Director, Facilities and Administrative Services Staff, at (202) 616-2995.

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft audit report to the components involved in this review. Because many of the issues we identified involved all DOJ components and because JMD is charged with implementing DOJ-wide FECA policies, we directed our recommendations to JMD, which concurred with all of our recommendations. JMD's response to our recommendations is included as Appendix XI of this report. The following provides the OIG's analysis of JMD's response and a summary of actions necessary to close the report.

Summary of Actions Necessary Close the Report

1. **Resolved.** JMD concurred with our recommendation to develop procedures that will ensure each DOJ component establishes and maintains on site a readily available case file for FECA cases listed on each component's annual chargeback report. JMD stated in its response that it will coordinate quarterly case file reviews to be performed by DOJ components and reviewed by JMD.

This recommendation can be closed when JMD provides evidence that the new procedures have been implemented and consistent compliance to these procedures is being applied within all DOJ components.

2. **Resolved.** JMD concurred with our recommendation to establish criteria by which each DOJ FECA Specialist should complete periodic case file reviews. JMD indicated that new procedures and criteria that will provide detailed instructions for periodic case file reviews are being written for inclusion in the Standard Operating Procedures Guide for the Department's Workers' Compensation Program.

This recommendation can be closed when JMD provides us with a copy of the new procedures and evidence that periodic case file reviews are being conducted by each DOJ component.

3. **Resolved.** This recommendation is resolved based on JMD's concurrence with the intention of the recommendation that periodic medical updates are obtained and evaluated and that second medical opinions are pursued when necessary. However, JMD's response stated that "the Department can only make a written request to OWCP

for [second medical opinion] evaluations.” We agree with JMD that DOJ officials must work through OWCP to request second medical opinions for the purposes of disputing conflicting medical evidence. However, we disagree with JMD’s broader interpretation of regulations that “authorizations for and approvals of [second medical opinions] rest solely with OWCP.”

OPM regulations specifically state that “an agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.”⁴⁷ OWCP has interpreted this provision to authorize agencies “to arrange for examination of any employee who files a compensation claim by a physician of the agency’s choice, at the agency’s expense . . . in order to determine if the employee can work in some capacity, thereby facilitating return to work.”⁴⁸

Therefore, we conclude that DOJ officials may directly require a claimant to submit to a medical exam with a physician of DOJ’s choice at DOJ expense in order to monitor the claimant’s ability to return to work.

This recommendation can be closed when JMD provides us with documentation that it has: (1) implemented procedures to obtain periodic medical updates for all long-term cases listed on the annual DOJ chargeback report and (2) either provided DOJ components with adequate procedural guidelines for directly arranging for second medical opinions when necessary, or alternatively, provided us with a reasonable explanation for why this is not possible.

4. **Resolved.** JMD concurred with this recommendation to develop a process to routinely monitor and update case files to further DOJ’s efforts in returning employees back to work or to a light or modified duty assignment. JMD acknowledged that DOJ components are responsible for making every effort to assign the employee to limited duty consistent within the medical condition and defined work limitations. JMD plans to include procedures in the Standard Operating Procedures Guide for monitoring case files to identify

⁴⁷ 5 C.F.R. § 339.301(c).

⁴⁸ U.S. Department of Labor Employment Standards Administration, *Injury Compensation for Federal Employees*, Publication CA-810 (January 1999), <http://www.dol.gov/esa/owcp/dfec/regs/compliance/dfecfolio/agencyhb.pdf>, (Accessed August 14, 2009), 49.

employees who are capable of returning to work, as evidenced and documented in medical reports.

This recommendation can be closed when JMD provides evidence that the new procedures have been implemented.

5. **Resolved.** JMD concurred with this recommendation to ensure that each DOJ component reviews the quarterly chargeback reports, identifies all possible errors, and reports errors to the OWCP for corrective action. JMD plans to develop written instructions on how to perform chargeback report reviews and report errors. DOJ components are now required to provide a written response to JMD confirming their review of chargeback reports and describing any findings. The results will be maintained and filed by JMD each quarter.

This recommendation can be closed when JMD provides written evidence that DOJ components have reviewed the quarterly chargeback reports in accordance with the written instructions provided by JMD and reported any errors or findings to OWCP in a timely manner.