STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

ARE WE PLAYING IT SAFE AND SECURE: AN EXAMINATION OF WORKER PROTECTIONS PRE- AND POST-INJURY

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Mr. Chairman and Members of the Subcommittee, my name is Milagro Rodríguez, and I am the Occupational Health and Safety Specialist for the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the members of our union, which represents more than 600,000 federal employees, thank you for the opportunity to testify today regarding federal workforce safety and health and workers' compensation protections.

After years of neglect and inaction on health and safety, when standard setting was delayed, safety budgets were cut and workplace hazards were left unaddressed, AFGE is pleased to see increased attention being paid to workplace safety and health. The Obama administration has appointed strong, pro-worker health and safety advocates to head the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). The Department of Labor is strengthening enforcement and resuming standard setting. Legislation has been introduced that will strengthen the Mine Safety and Health Act and the Occupational Safety and Health Act (HR 5663), which AFGE supports. This is a good time to also strengthen protections for federal employees, and AFGE is grateful for the opportunity to present our members' concerns. We are hopeful that the interest of the Committee in this very important area, your oversight, and the questions you raise during this hearing will result in federal agencies devoting more attention to health and safety and to preventing injuries and illnesses.

Protecting the Health and Safety of Federal Employees

In general, we believe there is room for improvement in the performance of federal agencies in protecting employees on the job and preventing on-the-job injuries and illnesses. Over the years, there have been several efforts to improve federal agency injury and illness rates and to reduce workers' compensation costs. The Federal Worker 2000 Program and the Safety, Health, and Return to Employment (SHARE) Program are examples of such efforts. In addition, since 2008, OSHA has been inspecting high hazard federal workplaces under the Federal Agency Targeting Inspection Program (FEDTARG).

While the injury and illness rates in the federal workplace have improved over the years, we still see high injury rates. The 2009 total case rate for the government minus the US Postal Service (which is treated as private sector for OSHA enforcement purposes) was 3.22. Several agencies have total case rates that are double that rate. The Department of Agriculture Forest Service has a rate of 10.35. The Department of Homeland Security has a total case rate of 6.79, with the highest rates at Customs and Border Protection with a rate of 11.34, the Federal Law Enforcement Center at 8.23, and the Transportation Security Administration at 6.32. Within the Department of Justice, the Bureau of Prisons has a rate of 6.72 and the Marshall Service has a rate of 7.49. Within the Department of Veterans Affairs, the National Cemetery Administration had a total case rate of 9.07. We believe these numbers indicate that there are areas that need more attention and better compliance with health and safety regulations.

Federal agencies have the responsibility of providing a workplace free from recognized hazards. Federal agency obligations in health and safety protection are specified in the *Occupational Safety and Health Act of 1970, Section 19*, in *Executive Order 12196* of February 26, 1980, and in *29 CFR Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters*. Part 1960 requires agencies to develop and implement their own health and safety program. We know that the vast majority of workplace injuries and illnesses can be prevented by following protective health and safety measures. Yet our members report that agencies don't always follow their own health and safety programs; sometimes they don't follow OSHA's standards. Even when the agency at the headquarters level develops good, protective health and safety program, it does not always mean they are implemented at the installation level. In our experience, some agencies have excellent programs in writing but not in practice. From program development to implementation, there seems to be a chasm. What good is a program that is not followed?

OSHA standards and regulations require worker protection from the chemicals and other hazards that employees work with. However, there are not OSHA standards for all the chemicals that workers may be exposed to. In order to prevent harmful exposures, employers must have health and safety programs in place. For federal agencies, this is spelled out in 29 CFR Part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters*.

Federal employees work in a variety of occupations, some of which involve using chemicals. Aircraft mechanics have exposure to jet fuel and degreasing agents such as n-propyl bromide. Operating room nurses have exposure to anesthetic gases. Currently, OSHA inspectors and EPA personnel are deployed to the BP oil spill and face potential exposures to a mixture of petrochemicals and dispersants. AFGE members who face a greater concern with radiation exposures are Transportation Security Officers employed by TSA. We will address the radiation issue in more detail in a separate section.

Over the years, AFGE has been involved in cases involving exposures to cadmium, asbestos, and lead, among others. Some exposures result from the presence of carcinogens in a federal facility, for example asbestos, and not from employees directly working with them. We had a case of potential lead exposure at the EPA headquarters this past April. Lead dust was generated by a firing range located in the basement of the one of the EPA buildings. We also had a case of potential asbestos exposure at the Denver SSA office resulting from renovation work being done. In both cases, the union was involved and closely followed the developing situation to ensure that the hazards were abated and that workers were protected from further exposure. We believe the agencies in those situations acted responsibly.

Ionizing Radiation

Our experience with workplace exposure to ionizing radiation comes primarily from our work with Transportation Security Officers (TSOs) employed by TSA. We

know that employees of the Department of Energy, some of whom have potential exposure to radiation, receive extensive training in radiation exposure, possible health effects, and protective measures. They are also monitored over time to ensure that their exposure levels do not exceed the acceptable limits. Ionizing radiation has not been an issue brought to our attention by AFGE members employed by other agencies.

Among TSOs, exposure to ionizing radiation has been an issue of great concern from the very beginning of the agency. TSA has held the position that there is no harmful exposure from radiation emissions from the X-ray machines used to view the contents of checked baggage as well as carry-on baggage. TSOs' concern stemmed from the fact that some of them had worked for the private sector security firms who were doing those jobs before they were federalized in the wake of the terrorist attacks of September 11, 2001. While they were in the private sector companies, the security officers were provided with dosimeters—devices used to measure the employees exposure to radiation. Dosimetry is used to monitor the exposures of workers to ensure that they are not exposed at harmful levels. The dosimeters are usually worn on the person, around the collar or chest area, either pinned on or on a lanyard. The dosimeters are periodically turned in to be read at a laboratory, and a new one issued. Area dosimeters are also used at strategic locations to measure any radiation leakage around a machine or piece of equipment. In both cases, the objective is to monitor exposure, to take corrective actions if any leakage is detected or if exposures are above permissible levels. Individual TSOs and AFGE as their representative have asked about a dosimetry program at TSA, but have been denied the dosimeters. TSA's position is that the agency has done the necessary testing and is not required by any applicable standards to issue dosimeters to its employees.

While TSA may have done the testing necessary to show that the levels of radiation emitted from the screening equipment are below action levels, their lack of response and their failure to address employee concerns beg the question, what are they hiding? If the testing has in fact been done, why has TSA been unwilling to share the results with employees, and with us, their representative? We understand some information may be classified as security sensitive, but employees deserve answers. We urge the Committee to request that TSA provide copies of any studies they have conducted or have contracted with others to conduct.

In order to address our members' concerns, AFGE has offered to conduct an independent study of radiation emissions and has identified a research team to conduct it. We explored the possibility with TSA, and our offer was declined. AFGE has also been willing to fund the purchase of dosimeters for TSOs since TSA refused to provide them. When they asked if they could wear their own dosimeters, TSOs were told by TSA management that they would not be allowed to wear dosimeters not issued by TSA. TSOs have continued to request dosimeters over the years that TSA has been in existence, yet TSA has not changed its position.

In 2003 and 2004, the National Institute for Occupational Safety and Health (NIOSH) conducted a Health Hazard Evaluation in response to various requests from

TSA employees as well as TSA headquarters. The NIOSH study addressed several issues, including radiation exposure. Twelve (12) TSA-run airports were included. The NIOSH study included radiation testing of equipment and monitoring of employee exposures. Overall, the study found that employee exposures were low. NIOSH did observe work practices that could increase exposure, such as reaching into the tunnels that carryon baggage goes through or removing the protective lead curtains on the X-ray machines. This is a continuing concern based on the reports we received from our members. As recently as last year, members have called AFGE with their concerns when supervisors ordered them to carry out these unsafe work practices.

With regard to monitoring and dosimeters, NIOSH stated that it could neither justify nor refute the need for a dosimetry program because of the strengths and weaknesses of its study, but encouraged TSA to do so. The reason was that the employees wearing the dosimeters were volunteers and may not be representative of workers at other airports. NIOSH suggested a dosimetry study managed by a health or medical physicist to be conducted for at least a year. NIOSH also suggested the monitoring be mandatory. We have no knowledge of this recommendation being implemented.

The NIOSH report, published in September 2008, included this section:

What TSA Managers Can Do

- Develop a radiation safety program in accordance with the Occupational Safety and Health Administration standard.
- Provide regular radiation training to baggage screeners.
- Provide regular training on safe work practices to baggage screeners.
- Improve equipment maintenance.
- Periodically check radiation levels from EDS machines, and post these results on each surveyed EDS machine.
- Conduct limited dosimetry on employees to evaluate dose differences between baggage screeners working at selected airports.
- Improve health and safety communication between employees and management at each airport.
- Work with EDS manufacturers to improve [the] design of machines.

As far as we know from member reports, TSA did not implement the recommendations of the NIOSH researchers. If equipment maintenance was improved and if machines were periodically tested for radiation leaks, this information was not shared with employees. Their concerns around this issue continue. Recently, two AFGE locals have asked TSA for radiation exposure information because of concerns

over a seemingly excessive number of cancers and thyroid conditions – two conditions that can result from radiation exposure. AFGE members at the Boston Logan International Airport are concerned about the growing number of cancers employees are experiencing. At the San Juan Luis Muñoz Marín International Airport, AFGE members are concerned about what they believe to be a large number of employees who have been diagnosed with thyroid conditions. We have learned from our members that NIOSH has been asked to look into these concerns. In Boston, an assessment of the reported increased cancer has been conducted, and although the researchers did not find evidence of a cancer cluster, employees continue to be alarmed by the large number of cancers. In San Juan, the assessment is still in the early stages.

Communications

One of the NIOSH recommendations listed above is to "improve health and safety communication between employees and management." This is an important point that we want to emphasize. Employees count on their employer to provide a healthful and safe workplace, and safety regulations require employers to do that, but employees also know they have to protect themselves. In order to protect themselves, workers have to know what they are exposed to, what potential health effects they may experience, and what they can do to protect themselves. Risk communication is vital in the workplace. A perceived threat or hazard that is not addressed can increase workers' fear for their own wellbeing and that of their families. Additionally, it can increase the employees' distrust of the employer, who they may see as unwilling to share or hiding information.

We would like to illustrate the importance of risk communication by sharing our experience during the H1N1 (swine) flu outbreak in the spring of 2009. The response of most employing agencies was typical of their responses to other health and safety issues: Slow and inadequate.

The lack of communication was a big part of the problem. There was little or no communication from agencies' headquarters to the individual workplaces and the same is true with respect to the communication from those headquarters to the unions. While some information was available through the media, federal employees should not have to rely on that limited source. AFGE members had difficulty obtaining useful information about worker protection from their agencies. The information they did get was inconsistent and contradictory, and it was often different from one part of the country to another. At least one of AFGE's agency bargaining councils felt compelled to issue its own guidance to fill this void.

Many agencies have been dismissive of employees' concerns, showing callous disregard for employees' legitimate worries on the H1N1 issue, and in our view, this is also happening at TSA with the radiation issue. Agencies at all different levels in the chain of command need to be attuned to employees' concerns and respond to them quickly and appropriately.

Training

Training is an important part of a health and safety program and an effective way to help protect workers. Training and education empowers employees to protect themselves by helping them understand the importance of using protective equipment, following safe work practices and identifying potential hazards to be addressed.

Unfortunately, in our experience, agencies generally provide training only if it is required by an OSHA standard, so that only employees doing work covered by an OSHA standard receive health and safety training. Other employees, whose work is not directly covered by an OSHA standard, do not receive much in the way of training. In our own union-sponsored training and education programs, we hear from members how little they knew about health and safety, the exposures they face on the job, and the potential health effects of chemicals and other hazards. Basic health and safety rights and responsibilities should be an annual offering at every employing agency, in addition to any training required by a specific standard. This is an area that can be greatly improved and one which would yield improved protections for federal employees.

Workers' Compensation

The care and compensation available to injured workers is woefully inadequate. At a time when employees are the most vulnerable, when they need the most help, they face sometimes insurmountable hurdles. The problems injured workers face can start when they first file a claim. Some employing agencies refuse to provide the paperwork necessary to file a claim. Some refuse to accept doctors' notes. Some refuse to accommodate employees who need limited duty because of their medical restrictions.

The problems continue as an employee's claim goes through the workers' compensation system, administered by the Office of Workers' Compensation Programs (OWCP) at the Department of Labor. Delays in approving medical services requested by the employees' treating physician sometimes result in a worsening of the injury or condition. Second opinion medical examinations by OWCP doctors who sometimes spend less than five (5) minutes with the injured worker result in denials or reductions in benefits. We will address separately the problems at the employing agency and the problems at OWCP.

Problems with Employing Agencies

We believe agencies have undue influence on the workers' compensation process. Although the process was set up to be "non-adversarial," it has become rather contentious in practice. While we see these practices throughout the government, we will highlight the practices at the Transportation Security Administration (TSA) because they are the most egregious.

- Agencies interfere with the employee's choice of physician.

- They persuade physicians to release employees to work full duty, sometimes before the doctor feels they are ready. TSA for example, tells physicians their patients are at risk of losing their jobs if they don't return to work.

- They impose requirements over and above the requirements of the Federal Employees' Compensation Act (FECA) and the Office of Workers' Compensation Programs. Agencies refuse to accept doctors' notes taking employees off work for a recovery period or requesting they be placed in light duty while in recovery.

- They provide wrong or misguided information. For example, TSA tells employees they have to use up their own leave before they qualify for workers' compensation.

- Agencies decide whether a claim is compensable or not. It is the responsibility of the OWCP to determine whether a claim is compensable, yet TSA sometimes refuses to accept claims from employees because a human resources manager does not think it is compensable.

Under FECA, employees have the right to choose their treating physician. Agencies may require employees to be seen at a clinic or provider of their choosing before they see their own physician. They are also permitted under the FECA regulations to require employees to be seen by the agency's physician before being allowed back to work. We find that agencies often interfere with this process. Employees are not informed of their right to choose; they are instead misled to believe they have to go where management sends them. We will not speculate on the quality of the care the providers chosen by the employing agency are providing, but we do know agency managers are in a better position to influence their findings and recommendations. We do not believe them to be completely impartial in their decisions about whether an employee can return to work. AFGE members tell us the agency provider sends them back to work even when the employees tell the provider they are in pain and cannot return to work.

It appears to us that most human resources or workers' compensation specialists see their job as returning the employee to work and saving the agency workers' compensation costs. While these are two goals we support, returning an employee to work before he or she is physically ready is harmful and can result in further injury. Further injury can result in more lost production time while the employee recovers. It can also result in more compensation costs.

In returning employees to work, agencies focus on full time duties. When employees are able to do some parts of their jobs but not others due to medical restrictions, they are required by FECA to tell their doctors that their agency may be able to offer light or limited duty positions. Agencies often claim that there are no light duty/limited duty positions available, or in the case of TSA, that there are only a few. When the agency does offer limited duty positions, the limited duty work is sometimes so unproductive and demeaning as to appear punitive. Injured employees should not have to be forced to work in such demoralizing conditions. Employees want to be

productive and contribute in a meaningful way to the mission of their agencies. The stories we hear from our members are reminiscent of the stories we heard from chicken processing plants years ago where injured employees were told to report to work only to sit in a break room just so the company would not have to report lost-time injuries and increase their injury rates. That should not be happening in the federal workplace.

AFGE local unions have sometimes worked with management to identify existing positions doing necessary, meaningful work or to create new ones to accommodate injured employees. We encourage them to do that because it benefits the employee as well as the agency.

Although prohibited by FECA regulations, often agency management or the agency's nurse case managers will call the employee's physician. Under the regulations, the agency may contact the physician in writing to clarify medical restrictions, with copies being provided to the employee and to OWCP; however, this is rarely the case. These agency actions can have detrimental effects. For example, an employee of the VA had her schedule award reduced because the agency submitted information which it obtained by contacting her physician without her permission.

Another problematic area is the issuance of form CA-16, *Authorization for Examination and/or Treatment*, which is issued when an injured employee files a CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.* Agency human resources or workers' compensation personnel sometimes refuse to issue the CA-16, basically forcing the injured employee to see the agency-contracted provider or to pay out-of-pocket. One employer recently told an AFGE local during contract negotiations that they do not have to issue the CA-16. According to FECA regulations, the CA-16 *shall* be issued unless the agency suspects the injury did not take place at work. Even in those cases, agencies can issue the CA-16, but mark on it that they do not believe the injury is work-related. Although the local showed the agency the regulation and our office confirmed the information with OWCP, the management representative insisted no CA-16s would be issued.

All of these issues demonstrate that required training of agency personnel is key. We believe current requirements and compliance with those requirements merit review.

The last issue we would like to bring to the attention of the Committee is the retaliatory actions that are sometimes taken against employees injured or made ill by their jobs. We have already mentioned that employing agencies use some limited or light duty positions as punishment for having been injured. Other limited duty positions are given to those favored by management, while other injured workers must convince their doctors to release them to full duty before they are fully recovered in order to keep their jobs. TSOs tell AFGE they believe they are placed in less-desirable shifts (late-night and early-morning) in retaliation for filing workers' compensation claims. At some airports, injured TSOs are placed in a "limited duty" team while they are under medical restrictions and can only perform part of their jobs. This leads to injured TSOs being stigmatized by other workers.

Injured employees and those made ill by exposures on the job sometimes find their work lives destroyed, and their personal lives suffer as well. This is especially true at TSA where employees are often fired or forced to retire after they are injured because the agency deems them no longer able to carry out their full duties as a screener and cannot accommodate them.

Problems with OWCP

First and foremost, we see a problem with enforcement of the requirements of FECA. We understand that OWCP has no enforcement powers over agencies. But there has to be a way to hold agencies accountable. Congress should create a way for employees to find relief from a source outside their agency in upholding their rights under FECA. To whom does an injured employee complain about an agency error or intentional misapplication of the regulations? The injured employee is left to sort it out on his or her own, often caught between the agency and OWCP, and sometimes their own doctor.

We urge the Committee to direct OWCP to identify ways to better ensure the proper administration of FECA at the employing agencies. There is little or no oversight on how agencies run their workers' compensation programs. As we have just outlined, many of the problems workers face originate with their employing agency and how it administers the workers' compensation program. Many of the problems we mention can be avoided if the agencies follow the requirements of the FECA. It is evident to us that some agency personnel charged with workers' compensation responsibilities lack the knowledge and experience to effectively run the program. OWCP should demand that those working in this area have adequate training.

Like many other federal agencies, OWCP is underfunded and understaffed. This affects the availability of OWCP personnel to discuss questions and issues with the injured or ill worker. The complaint we hear most often is that workers cannot reach their claims examiner. We realize that OWCP has made claims information available online and via automated voice response systems, and that helps. However, sometimes a worker needs to talk to the claims examiner to understand why a medical procedure was denied and what recourse they have to have it approved. It is sometimes difficult for injured employees to understand why a decision was made when they believe they have sent in all the necessary information. To better communicate with workers, phone numbers for claims examiners should be made available and perhaps published online. Ensuring that this office has the necessary funding would greatly improve how well it meets the needs of workers suffering from on-the-job injuries or illnesses.

Additional problems are created by the contractor DOL uses to pay medical bills and to provide other services. Members complain of their doctors' bills are not being paid. They complain of services related to their accepted condition not being paid because of coding errors. They complain of the difficulty in finding out the reasons why bills are not paid or why the medical services they need are denied. Again, employees

may not understand what they can do, if anything, once a bill is denied. Injured or ill employees can face devastating financial situations because of how their claims are handled by the contractor.

Lastly, OWCP should be communicating with employees and employee representatives. Most, if not all, communications from OWCP are directed at agencies. Agencies do not usually share information with employees. Years ago, OWCP met somewhat regularly with employee representatives to update them on new developments in the office's operations. Those meetings were very informative and we would encourage the committee to direct OWCP to resume those meetings. We know they work closely with agencies, but to run an effective workers' compensation program, OWCP must also involve the affected employees and their representatives.

Conclusion

In conclusion, federal agency health and safety programs can be improved. Where good programs already exist, they need to be put into practice. Where they are lacking, they need to be enhanced. In past meetings of the Federal Advisory Council on Occupational Safety and Health (FACOSH), which advises the Secretary of Labor on federal worker safety issues, there have been efforts to make the federal government the model employer in providing a safe and healthful workplace. We believe that is a goal we can achieve, and our union stands ready to participate in the effort. Identifying hazards early, abating them promptly, training and educating workers, and providing them with the appropriate protective equipment will keep the federal workforce from becoming injured or sick on the job. When workers do get injured or sick from their workplace exposures, they deserve to receive prompt medical attention, to have their claims fairly and quickly adjudicated, and to return to work once fully recovered.