

STATEMENT OF SHELBY HALLMARK
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

July 21, 2010

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

My name is Shelby Hallmark, and I am the Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP).

I appreciate having this opportunity to discuss OWCP's role in providing benefits under the Federal Employees' Compensation Act (FECA) to injured federal employees, including those in high risk occupations. Please be assured that the Secretary of Labor is fully committed to ensuring that all injured workers receive the care and compensation they deserve through the services provided by OWCP's Division of Federal Employees' Compensation (DFEC).

FECA was enacted on September 7, 1916 to provide comprehensive federal workers' compensation coverage to all federal employees and their survivors for disability or death due to an employment injury or illness. Although the FECA has been amended over the years it retains its fundamental purpose: to provide compensation for wage loss and medical care, facilitate return to work for employees who have recovered from their injuries and pay benefits to survivors. The FECA system covers 2.7 million Federal and

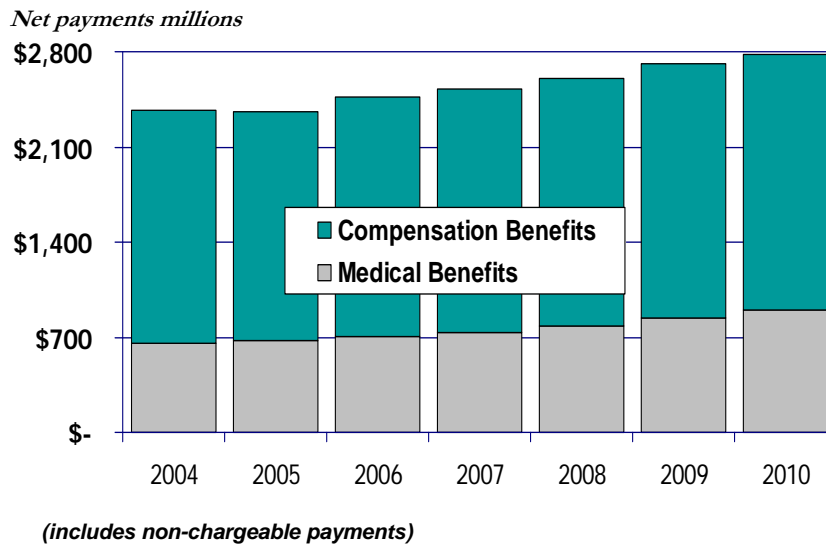
Postal workers around the world for employment-related injuries and occupational diseases and is one of the largest self-insured workers' compensation systems in the world.

In the earliest years of our program, some questioned whether Congress intended to cover occupational disease. Although this debate was resolved in favor of occupational coverage long ago, occupational disease claims (which consist of everything from repetitive strain injuries such as carpal tunnel syndrome to complex cancer and emotional stress cases) continue to be among our most challenging claims. As we approach the 100th anniversary of the 1916 Act, we are constantly evaluating our progress seeking ways to better support the Secretary of Labor's vision of "*good jobs for everyone*" by delivering benefits more efficiently for both traumatic and occupational injuries as well as facilitating return to work for all those able to do so.

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational diseases (medical conditions sustained as a result of injury or exposure occurring over the course of more than one work shift). Compensation and medical benefits are paid out of the Employees' Compensation Fund. These costs are then charged back to the employee's agency and become part of the agency's annual appropriations request. The 2010 chargeback year ended on June 30, 2010. More than \$1.88 billion were paid out in lost wage compensation, impairment, and death benefits and another \$898.1 million were paid out to cover medical and rehabilitation services and supplies. (This includes outlays for non-chargeable costs that total \$86.2 million.) The program is administered by OWCP's Division of Federal Employees' Compensation; administrative costs to manage the program have averaged a very modest 5 percent of total outlays.

Total FECA Benefit Costs

Chargeback Years 2004 - 2010



FECA compensation benefits are based upon an employee's actual wage loss. While many state workers' compensation systems cap benefits at a relatively low level or limit benefit duration, FECA has no time limit on benefit duration and provides compensation based upon salary up to a maximum of GS-15 Step 10. The FECA program provides payment for all reasonable and necessary medical treatment for a work related injury or disease; payment to the injured worker to replace lost wages (paid at two-thirds of the employees' salary if there are no dependents or three-fourths if there is at least one dependent); a monetary award to an injured worker for permanent impairment of limbs and other parts of the body; medical and vocational rehabilitation assistance in returning to work; and benefits to survivors in the event of a work related death. In cases where an employee dies as a result of a work-related illness or injury, survivor benefits are paid to the employee's eligible survivors (generally spouses and minor children). More than 70% of FECA claimants are paid at the augmented (75%) level because they have a qualifying dependent; benefits are tax free; and long-term benefits are escalated for inflation after the first year of receipt.

Claims for benefits under the FECA are usually filed by injured workers through their employing agency and then forwarded to one of the 12 DFEC district offices. District

office staff are responsible for reviewing the claims and determining entitlement to FECA benefits. The evidence submitted must establish that the claimant is a Federal civilian employee who filed a timely claim for benefits for a medical condition that was caused, contributed to or aggravated as a result of a work related incident or exposure. The type of medical evidence required to establish a claim depends on the type of injury or condition claimed. For instance, if an employee experiences an obvious injury such as a laceration on work equipment, usually a diagnosis and a physician's signature are sufficient to accept the claim. However, when a claim is made for an injury or illness whose cause is not as apparent as a fall or an automobile accident, such as a myocardial infarction or cancer, more detailed medical evidence is required to establish the relationship between the employment and the injury. While employment factors do not have to be the sole cause of an injury or illness for it to be covered by FECA, there must be evidence from a physician to show that the employment caused, contributed to or aggravated the medical condition, including analysis of any pre-existing medical history and other possible causative factors.

Clearly occupational illnesses can be more of a challenge for a claimant to establish causation and for OWCP claims examiners to adjudicate than traumatic injuries, even though such injuries can be as serious as a one-time injury. In FY2009, the acceptance rate for all FECA claims was 86 %. The acceptance rate for traumatic injuries was 90.5%, while that for occupational illnesses was 52%.

If the evidence submitted with the initial claim is not sufficient, the claims examiner advises the claimant and employing agency of the deficiencies with the claim, explains what is needed to establish the case and provides timeframes for submission of such evidence. Claims examiners may also communicate directly with the treating physician or arrange for the claimant to be seen for a second opinion medical examination. In complex cases where there is a disagreement between claimant's physician and a second opinion obtained by OWCP, the claimant is referred to an independent referee physician to resolve the disagreement.

If the claim is accepted, the injured federal worker is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. In addition to the claimant's initial choice of a treating physician, OWCP authorizes referrals to other specialists so long as the treatment is for an injury-related condition.

If the claim is denied or the claimant disagrees with the benefit level awarded, the claimant has several rights of review including either an oral hearing or a review of the written record by an OWCP hearing representative in DFEC's Branch of Hearings and Review or a reconsideration before a different claims examiner in the DFEC district office. Claimants may submit new or additional evidence in support of the claim through the hearing and reconsideration process. Finally, claimants have the option of requesting an appeal to the Employees' Compensation Appeals Board (ECAB), which is the highest appellate authority for FECA. The ECAB's review is based solely upon the case record at the time of DFEC's formal decision and new evidence is not considered.

Mr. Chairman, your invitation indicated a focus on worker protections, both pre-injury and post-injury. Specifically, you requested information on OWCP's role in providing care and compensation to employees post-injury and how OWCP is meeting the needs of injured workers in high-risk occupations.

The benefits available through the FECA program are available to all federal employees, regardless of the characterization of the employee's particular occupation. If the evidence establishes a work-related medical condition, and the case is accepted, benefits are payable. Benefits are payable as long as the work related condition or disability continues.

While FECA coverage is extended to every Federal employee (as well as certain individuals such as local law enforcement officers fighting federal crime), federal employees injured due to a war risk hazard enjoy broader coverage under FECA as do Peace Corps volunteers. Federal employees in travel status or on a special mission are

covered for all activities reasonably incidental to their employment. Federal employees (including those in high risk occupations) may be covered beyond their physical workplace under other well-established doctrines of workers' compensation law such as the zone of special danger, the bunkhouse rule, the proximity rule, the positional risk doctrine or the rescuers doctrine.

The FECA program is a non-adversarial process, and OWCP makes every effort to inform both the employees and the employers of an injured worker's entitlement under the FECA. Our district offices provide employing agency compensation specialists with training to assist injured workers in obtaining appropriate information to establish their claims. We also provide informational brochures and our program maintains a robust presence on the Department's website including the latest updates as well as claim forms and program procedures. Our district offices maintain phone banks to respond to general questions and our Branch of Technical Assistance provides guidance and training to employers, unions and individual claimants. Particular attention has been directed in recent years to address claims related to Federal civilian employees deployed in war zones. OWCP has worked closely with the Departments of Defense and State and with OPM in devising better ways to support these employees, who experience a high degree of risk and uncertainty, and for whom the provision of medical care and development of medical evidence may be more complex. DOL participated with DOD, State, and OPM in the development of the Federal Civilian Employees in Zones of Armed Conflict Benefits Act of 2010 which the Administration transmitted to Congress on June 10, 2010.

OWCP has also made technological advances to more effectively serve injured workers, including the implementation of a more robust IT system for claims staff to use in the management of cases, as well as accepting electronic submissions of certain claim forms. Claimants can now access real time status information about their cases online via our "Claimant Query System," and employing agency personnel can access the same data for their employees. A very substantial expansion of our online

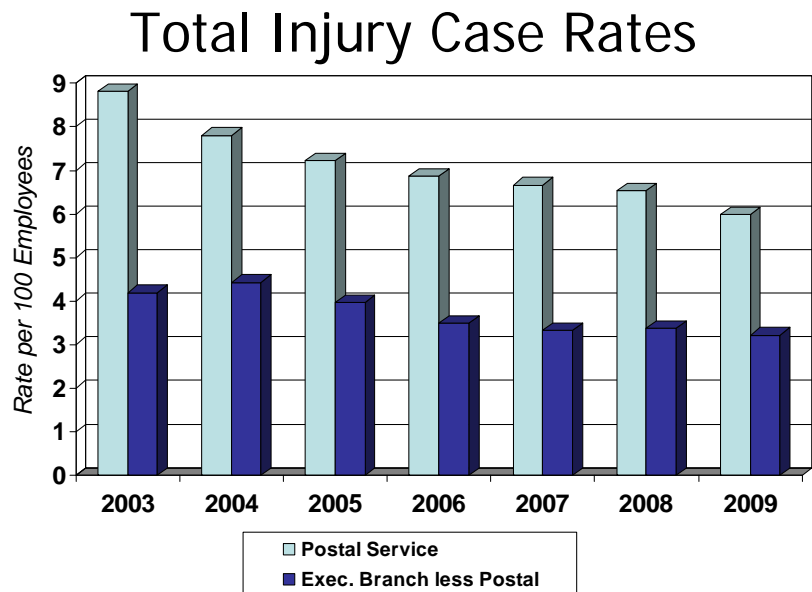
accessibility, including a portal for claimants and their representatives to submit evidence on line, is now under construction and will be implemented next year.

Over a decade ago, President Clinton established "Federal Worker 2000," a new initiative to make the safety and health of every Federal worker a central value in Federal workplaces. The initiative sought to reduce injury rates and to ensure that "when injuries do occur, Federal employees are given the best possible care and are returned to work as quickly as possible." A joint effort of OWCP and the Occupational Safety and Health Administration (OSHA), this new focus on safety and health in the Federal Government sought to achieve measurable improvements in terms of fewer injured workers, significant cost reductions, and enhanced productivity in service to the American public.

Building on the concept of Federal Worker 2000, the Presidential Safety, Health, and Return-to-Employment (SHARE) initiative was launched in 2004 to challenge federal Executive Branch agencies to improve their safety, health and case management programs through four measurable goals: 1) lower total injury and illness case rates; 2) lower lost time injury and illness case rates; 3) increase timely submission of injury reports; and 4) lower rates of lost production days due to workplace injuries and illnesses. Under the auspices of SHARE, OWCP and OSHA worked jointly with Federal agencies to reach these goals, and OWCP tracked and posted on its website detailed agency performance statistics for timely submission of injury notices and wage loss claims. Agencies were slow to improve during the initiative's first two years, and results were impacted significantly by the start-up of the Transportation Security Administration (TSA), which suffered very high injury and lost production day rates in its early years. I am happy to report that all four SHARE goals were met on a government-wide basis for its last four years (FY 2006-2009), and six departments and three independent agencies achieved all four of the SHARE goals in FY 2009.

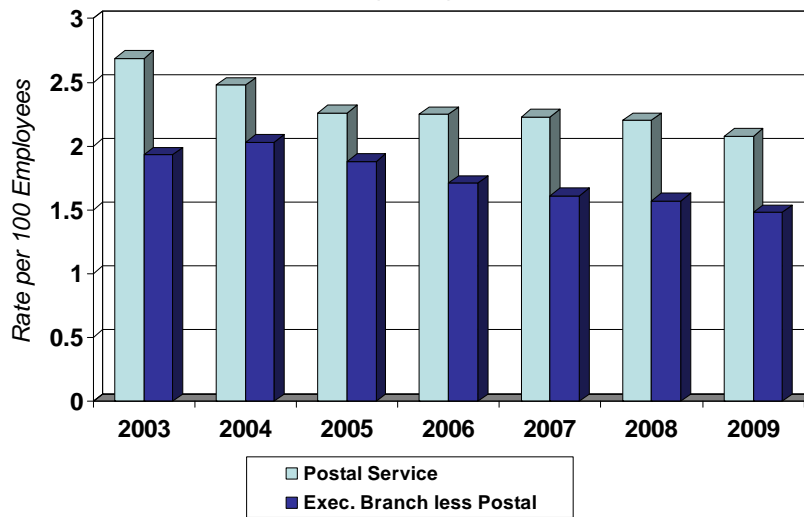
At the end of the six year initiative, the overall total case rate (per 100 employees) had dropped from 4.19 in FY2003 to 3.22 in FY2009, a reduction of 23%. Prior to the

SHARE initiative, in FY2000, OWCP created 174, 471 claims for Federal injured workers, but that number has since dropped to 129,690 in FY 2009. This represents a reduction in new claims of over 25%.



The second goal of the SHARE initiative focused on lost time case rates, as opposed to overall case rates. These are cases that result in the employee losing time from work beyond the actual date of the injury, which typically means the injury was more serious. At the end of the six year initiative, the lost time case rate (per 100 employees) had dropped from 1.93 in FY2003 to 1.48 in FY2009, also a reduction of 23%.

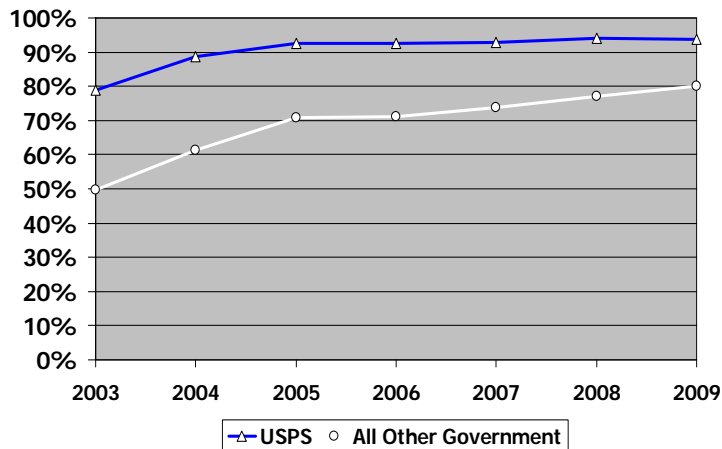
Lost Time Injury Case Rates



Improving the timeliness of reporting new injuries to OWCP, the third SHARE goal, yielded impressive results every year of the initiative. Injuries and illnesses should be reported to OWCP within 14 days, and in FY2003 the government-wide timely filing rate was only 49.6%. By FY2009 the timely filing rate was 80.1%, which represents a 61.5% improvement.

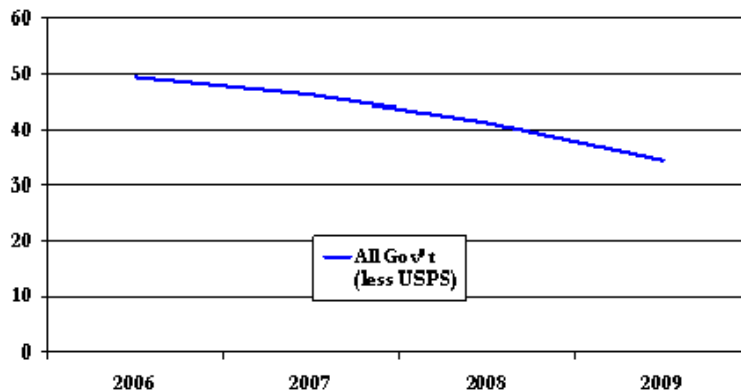
Notice of Injury Filing

Percent within 14 days



The last SHARE goal was to reduce lost production day rates across the federal government by 1 percent per year. The lost production day rate provides a valuable measure of the overall incidence and severity of workplace injuries and the effectiveness of OWCP's and agency return to work efforts since it measures actual lost days from work during the first year of injury. The Lost Production Day performance was 56 days per 100 employees in baseline year FY2003. By FY2006 LPD had declined to 52 days per 100 employees. The measure was re-baselined in FY2006 for technical reasons (the revised baseline was 49.5 days), and by FY2009 LPD declined once again to a rate of 35.8 days per 100 employees for FY2009. This constituted a 27.6% reduction from the FY 2006 baseline, far exceeding the SHARE target. It's worth noting that TSA, which started with an LPD index of well over 400 days per 100 FTE, by FY 2009 had reduced that figure to just 107.5 days per 100 FTE.

Lost Production Day Rates FY 2006 to 2009 *



* Rebased in FY 2006 to more precisely measure "intermittent" disability periods.

These important results were achieved through a variety of strategies, including compliance assistance and outreach efforts by both OSHA and OWCP. But most importantly they derived from the increased focus on workplace safety and health and on improved compensation case handling and return to work activities on the part of the major Federal employing agencies. By establishing measurable and achievable goals

and reporting agencies' and bureaus' outcomes on a quarterly basis, the initiative raised the level of attention devoted to these issues throughout the Federal establishment, resulting in clear improvement in these objective measures of workplace safety and health and workers' compensation case outcomes.

While the Federal Worker 2000 and SHARE initiatives were successful, the Department of Labor is committed to continued improvement. Secretary of Labor Solis has proposed to the President the creation of a successor program to SHARE called "Protecting Our Workers, Ensuring Re-employment" (POWER) that will establish new and enhanced goals to improve workplace safety and further reduce the impact of workplace injuries. POWER will build on each of the SHARE measures while adding a new measure to specifically drive improved return to work outcomes in the federal agencies. It is anticipated that POWER will be launched in FY 2011 and will also help the Department of Labor achieve its High Priority Performance Goal to create a model federal workers' compensation program. These efforts will require the Department of Labor to work with all federal agencies, particularly those with high injury and LPD rates, to further reduce the incidence and severity of on the job injuries and adopt innovative strategies to create re-employment opportunities for those who are more severely injured. OWCP hopes to be able to focus additional resources requested in the President's FY 2011 budget to work intensively with agencies where there is continuing opportunity for substantial improvement in both injury rates and return to work outcomes.

OWCP is also independently implementing initiatives to address the concerns and circumstances of injured workers. OWCP is creating a web-based application (ECOMP) that will allow injured workers to electronically file claim forms for new injuries and wage loss. This system will also allow all stakeholders (medical providers, agencies and injured workers) to upload documents directly into the OWCP case file so that they are immediately available to the claims staff. The application will be free of charge to all agencies, and it is scheduled for release in 2011. In addition, to continuously improve customer responsiveness, the FECA program will be deploying a

new interactive voice response customer care system (also in FY 2011), which will provide claimants with greater access to OWCP claims staff as well offer self-help features that will provide timely case status information.

OWCP is also enhancing our Disability Management protocols to more effectively serve the injured worker. If an injured worker has lost time from work, a registered nurse can be assigned as early as one week after the injury to make contact with the injured worker, employing agency and medical provider. Information obtained will allow claims staff to identify those cases that require more extensive intervention due to the severity of the injury, contemplated surgical intervention, or lost time from work. If the injured worker remains out of work, a rehabilitation nurse can be assigned, usually in the locale of the injured worker, to assist the worker in understanding what is needed both for medical recovery and to coordinate between the physician, the worker, and the employer on facilitating return to work when medically feasible.

OWCP is dedicated to promptly adjudicating claims, promptly paying medical bills and claims for compensation, and providing assistance in returning injured workers to gainful employment once that is medically possible. The goal is to ensure that the best possible service is provided to all injured workers, including those in high risk occupations.

Mr. Chairman, I would be pleased to answer any questions that you or the other members of the Committee may have.