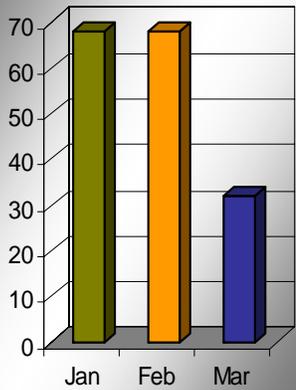


DHRC-I Insider

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New Injury Claims Received by DHRC-I 1st Quarter 2008



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“Two roads diverged in a wood and I - I took the one less traveled by, and that has made all the difference.”

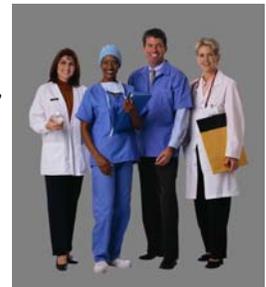
Robert Frost (1874-1963)
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Current FECA Definition of “Physician” Excludes Certain Groups of Healthcare Providers

The DLA Human Resources Center—Injury Compensation office (DHRC-I) frequently receives medical documentation that is signed by registered nurses (RNs), physician assistants (PAs), and nurse practitioners (NPs). The DHRC-I staff have worked diligently to advise injured employees and their supervisors of the appropriate requirements for medical documentation under the Federal Employees’ Compensation Act (FECA); however, this problem has remained prevalent among claims received from throughout the Agency.



“Physician” definition is limited under FECA

The FECA currently defines the term “physician” to include surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by State law. There is substantial case law available which supports that medical documentation signed by RNs, PAs, and NPs has no probative value in supporting a work-related injury claim because they are not recognized as physicians under FECA.

In an effort to change this definition, new legislation has been recently introduced. The *“Improving Access to Workers’ Compensation for Injured Federal Workers Act”*, sponsored by Representative Phil Hare (Democrat-Illinois), seeks to amend the FECA to recognize PAs, NPs, and several other advanced practice nursing specialties as covered providers. According to Hare, their inclusion would better align Federal law with the overwhelming majority of state workers’ compensation programs. Until such time that the current law is amended, however, injured employees must ensure that their medical documentation adheres to the current FECA physician provisions. Any employee not in compliance should be directed back to his/her healthcare provider.

Agency Officials Encouraged to Use Discretion in Issuance of Form CA-16, Authorization of Treatment

When an employee sustains a work-related traumatic injury that requires medical treatment, the Agency may authorize such care by issuing a form CA-16, *Authorization for Treatment*. Generally, the form CA-16 should be completed within four hours of the injury; however, the CA-16 need not be issued in all traumatic injury claims.



If an employee reports an injury several days after the fact, or did not request medical treatment within 24 hours of the claimed injury, the supervisor may still issue the CA-16. The Agency is

NOT required to issue the CA-16 more than one week after the occurrence of the claimed injury on the basis that the immediate need for treatment has passed. Agency officials are encouraged to use discretion in issuing the CA-16 because it essentially guarantees that the Agency will be liable for medical expenses incurred within 60 days of its issuance.

The U.S. Department of Labor (DOL) may pay medical bills without the CA-16 form as long as the medical evidence supports the work-injury. A CA-16 may NOT be issued for occupational illness/disease claims, except with specific permission from DOL.

Case Law: “Oh Nuts!” Squirrel Bite Not Compensable For IRS Agent

The words “when animals attack” often evoke images of lions, tigers, and bears (Oh my!). But squirrels? Unconventional? Yes. Compensable? Not always. Consider the following case law: *S.B. v Department of the Treasury, Internal Revenue Service, ECAB 07-2352, 108 LRP 13581, 2/26/2008.*

The Employees’ Compensation Appeals Board (ECAB) ruled that the employee’s head injury was not compensable because it occurred off of the Agency’s premises and it did not arise out of and in the course of her Federal employment. As the case goes, the employee, an Internal Revenue Service (IRS) agent, was bitten on the head by a squirrel while she was in the parking lot on her way to her work site. Within a few hours of the incident, the employee sought medical care for the in-

jury and she received the first of a series of rabies vaccinations.

The evidence of record showed that the parking lot was not controlled or maintained by the employing establishment, nor was it for the exclusive use of its employees. In fact, the lot was open to the general public. At the time of injury, the employee was crossing the lot while making her way into work.

As a rule, ECAB has held that off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work, are not compensable. Rather, they are merely the ordinary non-employment related hazards of the journey itself, which are shared

by all travelers. In this case particularly, the conditions giving rise to the injury (i.e. a squirrel habitat near the parking facility) were not causally connected to the employment.



Additionally, ECAB has held that the industrial premises are constructively extended to hazardous conditions which are proximately located to the premises and may be considered as hazards of the employing establishment. The main consideration in applying this rule is whether the hazard was employment-related. In this case, the encounter with wildlife living near the parking lot was a hazard faced by everyone who used the lot. Did her profession provoke the attack? Only the squirrel knows for sure...

FECA Does Not Afford “Blanket” Coverage for Every Injury or Illness Occurring During Travel or TDY Status

The Federal Employees’ Compensation Act (FECA) covers an employee 24 hours a day while he/she is on travel status, a temporary duty assignment (TDY), or a special mission. However, the compensability of any specific injury or illness claim depends on whether the employee was engaged in activities essential, or incidental to, the official employment duties at the time of occurrence.



A traveling employee is not covered when he/she deviates from the normal affairs of the trip. Injuries occurring during the course of personal errands and recreational activities are generally not compensable. Some examples: lifting weights at the hotel gym, jogging, sightseeing, shopping, and visiting family members.

Conversely, activities reasonably

incidental to the official employment duties are generally compensable. Some examples: injuries that arise out of the necessity of sleeping in hotels or eating in restaurants.

All claims filed for injury or illness that occurs during travel or TDY status must be supported by a copy of the employee’s official orders. Supervisors should review all claims carefully for performance-of-duty consideration.

‘Personal Comfort Doctrine’ Not Extended to Home Offices in Agency Telework Arrangements

Employees injured while teleworking are afforded the same coverage under the Federal Employees’ Compensation Act (FECA) for injuries that occur during performance of duties as those employees who are injured at their official duty stations. However, a key distinction is made for injuries that occur under the auspices of the “Personal Comfort Doctrine.”

This doctrine is a legal concept that refers to activities related to fulfilling

basic human needs and wants. These activities are considered to be reasonably incidental to official employment-related duties thereby bringing them under coverage of the FECA for **injuries which occur at an employee’s official duty station only**. Such activities include the use of facilities for the employee’s comfort, health, and convenience, as well as those used for eating meals and snacks provided on the premises.



However, when an employee is on property under his/her own control, activities which are not immediately directed toward the actual performance of regular duties do not arise out of employment. In accordance with DLA’s *Telework Policy*, “an employee who works at a desk at home removes himself or herself from the performance of regular duties as soon as he or she walks away from the desk to use the bathroom, get a cup of coffee, or seek fresh air.”

Case Law: Early Arrival Time Doesn't Afford FECA Coverage for Injury

Employees with a penchant for coming to work early (and the supervisors who allow them to do so) should be aware that injuries sustained prior to an established tour of duty may not be covered by the Federal Employees' Compensation Act



(FECA). Consider the following case law: *W.O. v Department of the Navy, ECAB 07-1528, 108 LRP 4335, 1/3/2008.*

The Employees' Compensation Appeals Board (ECAB) ruled that the employee's left knee injury did not occur in the performance of duty. As the case goes, the employee stated that he routinely arrived at work one hour early because of the bus route he took. He stated that

he used the time to prepare for work, have his morning coffee, and socialize with his co-workers.

The injury occurred when the employee slipped and fell in a puddle of oil as he was returning to his office from the restroom prior to the start of his official tour of duty. The injury claim was controverted by the agency's injury compensation program manager on the basis that the employee's one hour early arrival was much earlier than what was considered reasonable, and that the employee was not in performance of duty when the injury occurred.

Under certain circumstances, an employee having a fixed time and place of work can be afforded coverage under FECA for an injury which occurs

during a reasonable interval before and after official working hours. The Office of Workers' Compensation Programs denied this claim because the evidence of record did not establish that the employee was required to be at his place of employment one hour prior to his work shift, and that the employee failed to establish that he was in performance of duty at the time of injury. By his own admission, the employee was at the employer's premises by choice and he was not actually engaging in an activity having a relationship to the Agency's official business.

FECA does not cover every injury or illness that occurs on the premises of Federal agencies; rather, there must be a nexus to the performance of the employee's official duties.

ACS Web Portal Allows Injured Workers to Obtain Medical Bill Payment and Treatment Authorizations Status

The DHRC-I Staff are frequently asked to check on the status of medical bills and treatment authorizations for injured employees and their physicians. While we are happy to do so, employees who have Internet accessibility may use the Office of Workers' Compensation Programs (OWCP) web portal to review their personal information at any time.

The Affiliated Computer Services (ACS) website is located at: <http://owcp.dol.acs-inc.com>

ACS is the contractor used by OWCP to manage the medical authorizations and billing functions. When accessing the website, injured employees will need to have their OWCP claim number, date of injury, and date of birth available.

Access to the site allows an employee to check the status of all bills and treatment authorization requests. There is an additional function available which determines the eligibility

for a particular service under the claim. This is a safeguard to ensure that the care the injured employee is receiving is relevant to the condition(s) for which the injury claim was accepted.

Specific questions regarding medical bill payments or treatment authorizations should be discussed with ACS personnel directly by dialing (850) 558-1818. When calling, the employee or physician should have the specific injury claim number available.



The DHRC-I Staff Have Been Asked...

Q: I recently filed an occupational disease claim (CA-2) for my carpal tunnel syndrome. I am having surgery next week. May I use Continuation of Pay to cover my absence?



A: No. Continuation of Pay (COP) is the continuation of an employee's regular pay for up to 45 calendar days of wage loss due to disability and/or medical treatment. It is paid

by the employer only in connection with a traumatic injury (CA-1). Employees with occupational disease claims are not eligible to receive COP; however, they have the option of using their own sick/annual leave or filing for wage-loss compensation from the U.S. Department of Labor.

Q: I am a supervisor who is completing a CA-1, Federal Em-



ployee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation form for a recent employee injury. What date am I supposed to use in Block 23, "Date Notice Received?"

A: You should use the date the employee actually provided you with his/her completed portion (front page) of the CA-1 form.

**DLA Human Resources Center
Injury Compensation (DHRC-I)**

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The DLA Human Resources Center, Injury Compensation Center (DHRC-I) is designed to provide the best possible service to the injured employee while efficiently and effectively managing the processes and costs of the Agency's workers' compensation program.

The DHRC-I officially opened for business on November 4, 2002. Based at DLA Headquarters in Fort Belvoir, Virginia, the DHRC-I also has two satellite offices located at the Defense Distribution Depots in San Joaquin, California and Susquehanna, Pennsylvania. It is currently staffed by a team of eight (8) Specialists and five (5) Assistants operating under the supervision of the Director, DLA Injury Compensation Program. The DHRC-I staff offers over 130 years of expertise in the Federal Personnel and Workers' Compensation program areas.

The "National President's Challenge" will take place March 20—May 15, 2008:

The challenge encourages everyone age six and older to participate in regular physical activity for 30 minutes a day, 5 days a week, for 6 weeks. Participants can register for free at www.presidentschallenge.org. After registering, participants are given a daily log to track their activity. This website also has nearly 100 different activities to choose from. Certificates of completion can be downloaded for free at the conclusion of the challenge. If you participate, you win!

Is there a topic you want us to write about? Please send us your ideas at: ICC@dla.mil

Putting the Knowledge to the Test: What Would You Do?

Knowledge is power, so the saying goes. Applying that knowledge in a real-life situation though, takes skill. Looking for a challenge? Read the scenario below and then choose the best answer from the choices that follow. The solution is available on our web site: <http://www.hr.dla.mil/resources/benefits/InjuryNewsletters.html>

Scenario: You are a supervisor with an employee who recently sustained an injury at work. As it was reported to you, the employee was walking back to her desk in the office when she suddenly passed out. While falling to the ground, she struck her head on the side of her desk, an injury which required several stitches. By history, you are aware that the employee has some personal health conditions for which she takes daily medication. After being seen by her doctor, the employee later tells you that she had a mild heart attack and that she has been advised to remain off from work for 30 days to recuperate. The employee wants to file an injury claim, so you provide her with a form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*. With respect to her claim, what medical condition(s) may be compensable?

- A. Both the heart attack and the head laceration because the employee was injured while at work. All injuries that happen at work are covered by the Federal Employees' Compensation Act.
- B. The head laceration only will likely be covered. You expect that the U.S. Department of Labor may consider the injury to be the result of an idiopathic fall, which is a fall caused by a personal, or non-occupational, medical condition. In falls such as this, the employee generally has coverage for the results of the injury, but not for the underlying condition that caused the fall.



Bonus Question: What is the employee's specific entitlement to Continuation of Pay?

For information on recording employee absences due to work-related injuries and illnesses, check out our website: <http://www.hr.dla.mil/resources/benefits/injurycomp.html>