Workers' Compensation Update from the DLA Injury Compensation Center

DHRC-I Insider

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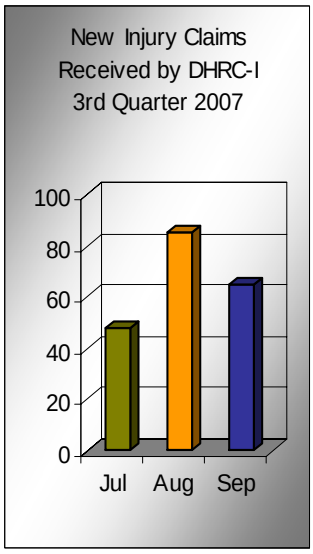

"Though no one can go back and make a brand new start, anyone can start from now and make a brand new ending."
—Anonymous

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Employees and Supervisors Reminded to Remain Vigilant Toward FECA Fraud

Fraud—the ugly side of the benefits business. All DLA employees and supervisors are asked to remain vigilant toward Federal Employees' Compensation Act (FECA) fraud. At this time of year when thoughts turn towards family and friends, all should remember that fraud doesn't take a holiday.

The DHRC-I office partners with the DLA Office of Investigations (OI) personnel to look into all identified instances of potential FECA fraud. OI Investigators are located throughout the DLA Enterprise, and they are able to work with local law enforcement, making their efforts far-reaching and very effective. Surveillance, investigatory interviews, and official records checks are just some of the services OI personnel can provide. Building a criminal case can take time; however, and the success can hinge upon details provided by a conscientious employee or supervisor in reporting a suspicious individual or situation.

Generally, it takes more than just a hunch for the proverbial "red flag" to be raised. Although it is unrealistic to address every potential scenario, some common fraud indicators can include: inconsistencies within the injury claim, doctor-shopping, medical documentation that supports total disability however the employee cannot be reached at home during working hours, employee who has history of filing multiple claims, injury claim is filed either just after disciplinary action or prior to job termination, no witnesses to the injury, or the duration of disability is inconsistent with type of injury.

Any suspected case of fraud should be reported to Special Agent Patrick Gookin at (910) 451-0976 or patrick.gookin@dla.mil. A conviction of fraud can result in fines, potential jail time, as well as the forfeiture of any entitlement to future compensation benefits.

DoD Updates Policy Guidance for Civilian Employees Injured While Forward Deployed in Support of Hostilities

By Memorandum dated 9/24/07, Deputy Secretary of Defense Gordon England updated the Department of Defense (DoD) policy to provide medical care for civilian employees injured or wounded while forward deployed in support of hostilities. This memorandum affirms DoD's commitment to providing the highest quality military medical care to its civilian personnel serving the DoD mission in its contingency operations.

The memorandum states that DoD civilian employees are eligible for medical evacuation and health care treatment and services in military treatment facilities (MTF) at the same level and scope provided to military personnel. It also clarifies that deployed civilians who were treated in theater continue to be eligible for treatment in an MTF or private sector medical facility for compensable illnesses, diseases, wounds, or injuries under the Office of Workers' Compensation Programs. The policy is extended to employees who later identify compensable illnesses/injuries following deployment. This care is provided at no cost to employees.

Reasonable Medical Travel-Related Expenses are Reimbursable for Employees Injured at Work

Injured employees are entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies. In defining "reasonable", the Office of Workers' Compensation Programs (OWCP) will consider the availability of services, the employee's condition, and the means of transportation.

Generally, a distance of 25 miles from the place of injury, the worksite, or the employee's residence, is considered by OWCP to be a reasonable distance to travel. Exceptions to this norm are made by OWCP on a case-by-case basis.

Any injured employee wishing to file for reimbursement must complete the Form OWCP-957, *Medical Travel Refund Request*. This form is available on the DHRC-I website at: http://www.hr.dla.mil/forms/#injury.

All original receipts for listed expenses should be attached to the OWCP-957 at the time of submission. Employees may reference the form's instructions for specific requirements. The completed OWCP-957 and all supporting documentation should be submitted to the DHRC-I office, who will forward the information to OWCP for processing.

For automobile travel, the employee will be reimbursed at the standard mileage rate for Government travel. Reimbursement for other travel-related expenses will be processed based on specific cost incurrence.

In cases where travel by automobile is not possible, injured employees should travel by the shortest route and use public transportation unless a taxicab or specially equipped vehicle is needed because of the medical condition.

Employees are responsible for ensuring the accuracy of all claimed expenses. Employees are discouraged from "estimating" travel distances unless it can be done with reasonable certainty. Employees are reminded that, as with any claim for benefits, the submission of inaccurate or false information may constitute fraud, which could subject them to criminal prosecution.

OSHA's "Cold Stress Quick Card" Provides Tips to Employees Working in Cold Weather

Plunging winter temperatures and inclement weather conditions this time of year increase the potential for workplace injuries and illnesses. Slips, trips, and falls are common as employees make their way to an from work; and typically, Federal agencies see a marked increase in the number of claims filed for sprains, strains, and fractures to various body parts. Less noticeable however, is another epidemic: the health effects of working in cold weather.

Employees should know that prolonged exposure to freezing or cold temperatures may cause serious health problems. Employees who are in poor health, or those who take certain medications may face increased risks. The Occupational Safety & Health Administration (OSHA) has developed a "Cold Stress Quick Card" (OSHA-3156) that provides tips and suggested precautions for employees working in cold weather. The card includes danger signals to watch for, as well as advice that will help employees protect themselves.

Free copies of the card may be obtained by accessing OSHA's website at: www.osha.gov or by calling their publications office at (202) 693-1888.

BAL Implements *Hatch v OPM* Regarding Service Credit for Workers' Compensation Recipients

The Office of Personnel Management (OPM) is changing the way we credit service for employees on workers' compensation who work part-time but have a full-time appointment. Specifically, employees who were given a full-time appointment, but as the result of a work-related injury, only worked part of the day and used leave without pay (LWOP) for the other part of the day, will now be credited as full-time for retirement purposes.

Benefits Administration Letter (BAL) 07-103, 7/2/07, discusses the case of *Hatch v OPM*, 100 MSPR 204 (2005). In this case, the Merit Systems Protection Board ruled that the annuitant should have been treated as a full-time employee for retirement purposes for the period of time that he worked four hours per day and received Office of Workers' Compensation Programs benefits for the other four while in a LWOP status. Prior to this ruling, OPM's statutory interpretation of 5 USC 8332 (f) and 5 CFR 831.703 (b) had been that employees in these circumstances had their service computed using part-time rules. The Hatch decision covers employees in both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) because the statutory language is virtually the same.

Case Law: Holiday Party Attendance Doesn't Raise Inference of Performance of Duty

With the holiday season in full swing, employees and employers alike should be vigilant when it comes to office parties and celebrations. Neither should assume that the government will be liable for injuries which occur as the result of attendance at such gatherings. Consider the following case law: *S.P. v Department of Veterans Affairs, 56 ECAB 03-1086, 105 LRP 12957, 2/11/2005.*

The Employees' Compensation Appeals Board (ECAB) ruled that the employee's fractured left wrist did not occur in the performance of duty. The employee attended a Christmas party and slipped and fell as she was leaving. The employee contended that her injury occurred in performance of duty because the event was held at an employing establishment and it was an officially sponsored event.

In determining whether an injury arises in the performance of duty, ECAB applied the following legal precedent. Recreational or social activities are within the course of employment when:

—They occur on the premises during a lunch or recreational period as a regular incident of the employment; or

—The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or

—The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

ECAB found that the employee was not in performance of duty at the time of injury. The party was held on a Saturday (a non-workday), it was a voluntary social event (strictly publicized as such), and it was not held on the premises of her duty station. ECAB found no evidence that the party related in any way to the employer's business, and the employee was not required to attend or participate in any official capacity.

"Coming and Going Rule" Nixes Workers' Compensation Coverage for Most Commuters

The Federal Employees' Compensation Act provides for the payment of compensation for injury sustained by employees while in performance of duty. Because most employees commute to work, employing agencies need to understand the "coming and going rule" and its exceptions to fully assess their workers' compensation liability.

As a general rule, off-premises injuries sustained by employees having fixed hours and places of work while going to or coming from work, or during a lunch period, are not compensable. These accidents typically are considered to be merely the ordinary, non-employment hazards of the journey itself, which are shared by all travelers.

There are recognized exceptions that are dependent upon the particular facts relative to each individual claim. Some examples include: where the employer furnishes the employee's transportation to and from work; where the employee is subject to emergency calls; where the employment requires the employee to travel; and where the employee is performing a duty incidental to his or her employment with the employing agency's knowledge and approval.

As with any injury claim, the burden of proof rests with the employee to establish that the injury occurred while in performance of his/her duties.

The DHRC-I Staff Have Been Asked...

Q: I received a job offer from the Agency with a salary which is less than I was making when I was injured. If I accept the offer, will I lose pay?

A: Sometimes it is not possible to offer an employee a job at his/her current grade level or salary. If the employee is reemployed at a lower grade or pay level than previously held, the Office of Workers' Compensation Programs (OWCP) will make up the difference by determining and paying loss of wage-earning capacity benefits.

Q: Does OWCP pay chiropractor bills? My claim was accepted but my chiropractor is saying his bills are being denied.

A: The services of chiropractors may be reimbursed only for treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. Costs of tests performed or required to make such a diagnosis are also payable. Additionally, chiropractors may provide physical therapy services under the direction of a physician. All medical providers must be enrolled with OWCP in order for their bills to be paid.

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Family meals can be a great way to reconnect with each other after a long day. Some ideas for dinnertime talk:

1. Ask each family member to name three things he or she did that day—two true and one false. The rest of the family has to guess which story is fiction.
2. Ask each family member to share a high point and low point of the day.
3. Plan after dinner board games.

Source: *Good Housekeeping* Magazine; www.goodhousekeeping.com

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.

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 that has just come to you to report an injury. The employee states that he actually injured his knee three months ago. He did not report it to you previously because it was only a minor injury. By history, you are aware that the employee missed three days of work at approximately the same time frame as the injury date he is now claiming. At his request, the employee was carried on sick leave. The employee tells you that he hit his knee on the corner of his desk, and he is reporting the injury now because he has received a medical bill for the doctor's visit he had following his injury. His physician billed his health insurance carrier for the visit initially, but the carrier refused to pay because the treatment was for a work-related injury. The employee wants to get his bill problem resolved. What would you do?

A. Provide the employee with a form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*, and a form CA-16, *Authorization for Treatment*. Advise the employee to give the CA-16 to his physician so that they can submit the bill for payment after the injury claim has been established with the U.S. Department of Labor. (DOL)

B. Provide the employee with the form CA-1, but do not give him the CA-16. Advise the employee that he should pass the injury claim number to his physician once it is established by DOL. The physician may use the claim number to submit the bill to DOL for payment.

Bonus Question: Is the employee entitled to Continuation of Pay for the three days of sick leave he was charged?

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**