



What Have You Done for Me Lately?

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COURSE OVERVIEW

01

Discuss complex process at OWCP which may create extended waits for the employing agency or injured worker including:

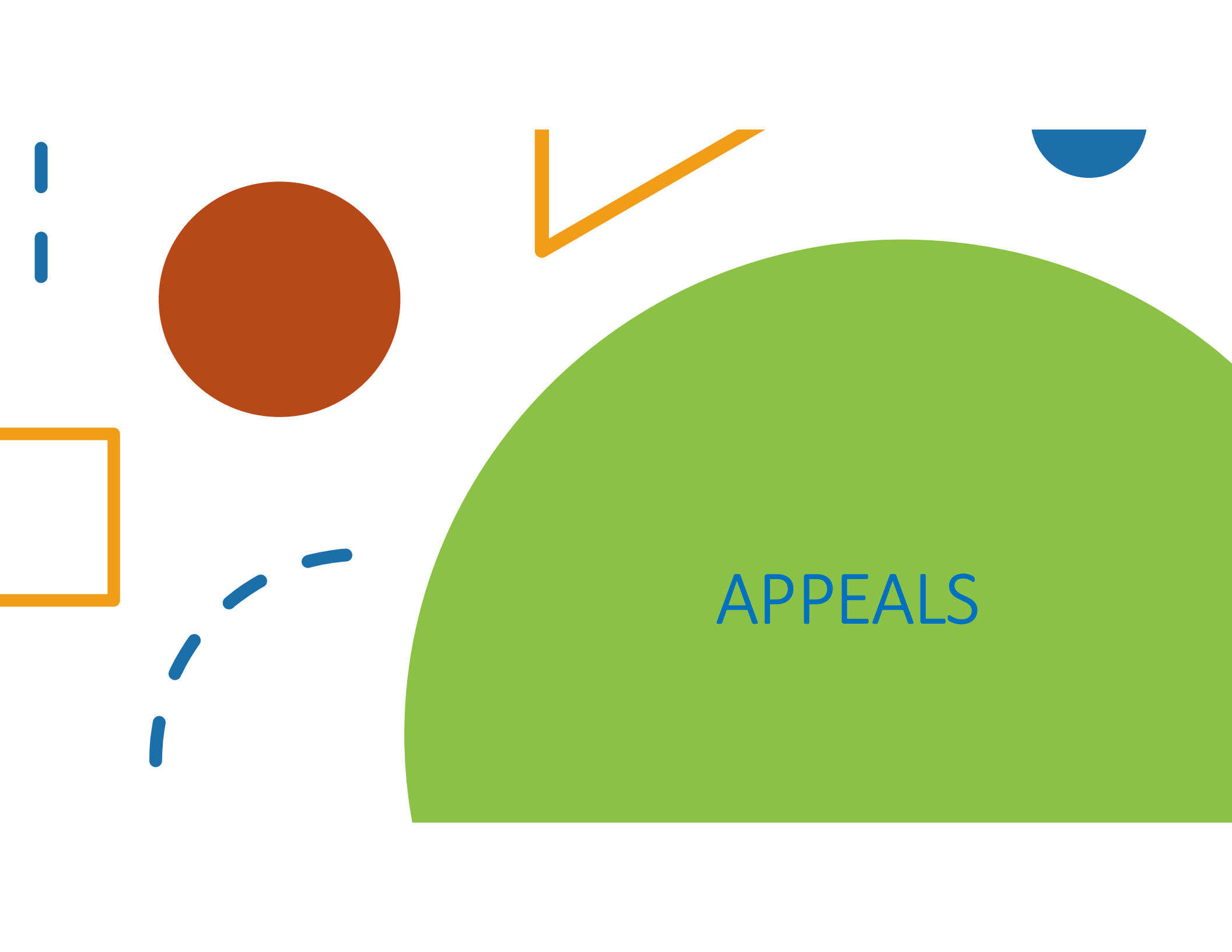
- Appeals
- Schedule awards
- Loss of wage-earning capacity (LWEC) determination

02

Address information required from the employing agency and injured workers

03

Discuss activities and timelines associated with these processes and what is happening at OWCP.



APPEALS

Introduction to Appeals



All notice of decisions and formal decisions associated with claims may be appealed.



Letters or compensation orders denying review of a prior decision, or denying modification of a prior decision, may be appealed to the Employees' Compensation Appeals Board.



The office must notify the claimant in each case of his or her further rights.

Appeal Rights – Who Handles What?



Appeal rights include a hearing, reconsideration, and/or review by ECAB. There are timeliness requirements associated with filing each type of appeal.



Applications for hearings are processed by Branch of Hearings and Review within the Office of Workers' Compensation Program's (OWCP) National Office.



Applications for reconsideration are handled by OWCP's District Office personnel.



Review by the Employees Compensation Act Board (ECAB) occurs at a separate entity from OWCP within the U.S. Department of Labor.



Appeals may be requested in any order, except that a hearing may not be held after case has been reconsidered.

Hearing - Oral Hearing What is Happening at OWCP?

Before and During the Hearing

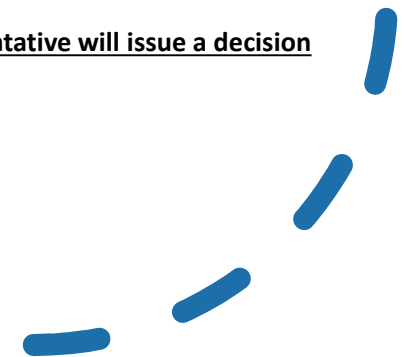
- The FECA (5 U.S.C. 8124(b)) states that a claimant not satisfied with a formal decision is entitled to a hearing by a Branch of Hearing (BHR) representative if the **request is made within 30 days of the date of the decision.**
- Nature of Proceedings - Hearings will be open to claimants, his/her representative, witnesses, designated EA officials, and any other persons whose presence BHR's Hearing Representative deems necessary.
- Proceedings are informal and are not limited by legal rules of evidence or procedures. Proceedings are limited to one hour; however, this limitation may be extended at the discretion of BHR's Hearing Representative. Testimony will be taken under oath and recorded verbatim.

After the Hearing

When all witnesses have spoken, and Hearing Representative has obtained all necessary clarification, Hearing Representative will close proceedings by noting time of completion. Record will remain open for submission of additional evidence for 30 days after hearing is held.

Claimant (or authorized representative) and EA will be provided with copy of transcript. EA will be allowed 20 days from release of transcript to submit any comments and/or documents believed relevant to issue in question.

When all evidence and testimony has been evaluated, **Hearing Representative will issue a decision** which affirms, reverses, remands, or modifies DO decision.



Hearing - Review of the Written Record

What is Happening at OWCP?

Before and During a Review of the Written Record

- In place of an oral hearing, claimant is entitled to a review of the written record (subsequently referred to as "review") by a BHR representative. Must be requested within 30 days of the formal decision as long as a reconsideration has not already been requested.
- Such review will not involve oral testimony or attendance by claimant, but claimant may submit any written evidence or argument deemed relevant.
- Hearing or review will usually be limited to those issues which were addressed by OWCP's district office (DO) in contested decision.

After a Review of the Written Record

- BHR will furnish employing agency (EA) with a copy of claimant's request for review of written record, together with any pertinent factual documentation submitted. (Medical evidence is not considered "pertinent" for review and comment by EA and will therefore not be furnished to EA. OWCP has sole responsibility for evaluating medical evidence.)
- EA will be allowed 20 days to submit any comments and/or documents believed relevant and material to issue in question. BHR will furnish any comments or documents submitted by EA to claimant and allow 20 days for review and comment by claimant .
- Following a review of record and any evidence submitted, **BHR representative shall decide claim and inform claimant, claimant's representative, and EA of decision.** Appeal rights will be attached to any adverse decision.

Reconsideration

- A reconsideration may:
 - ✓ End, decrease, or increase the compensation previously awarded
 - ✓ Award compensation previously refused or discontinued.
- An injured worker may apply for reconsideration of a final decision regardless of date of injury or death.
- Reconsiderations must be received within one calendar year from the date of the original or last merit decision.
- Must be accompanied by relevant new evidence or argument not considered previously.
- Claimant must present evidence which on its face shows that OWCP made a mistake if the request for reconsideration is untimely filed.
- If no new evidence or legal argument is presented with request, then request for review will be denied.
- Claimant's only appeal from a decision denying merit review is to ECAB.

Reconsideration - How To Apply

No special form is required, but request must:

- ✓ Be in writing
- ✓ Be signed and dated
- ✓ Identify the decision, – Identify the specific issue(s) for reconsideration

All requests for reconsideration should be accompanied by one of the following:

- ✓ Argument that OWCP Erroneously Applied or Interpreted a Point of Law
- ✓ Relevant Legal Argument not Previously Considered by OWCP
- ✓ New Evidence (not previously considered by OWCP) which is Relevant to the Issue Upon Denial
- ✓ Special Evidence or Argument

Reconsideration- Insufficient Evidence What is Happening at OWCP?

Insufficient Evidence for Merit Review

- When request for reconsideration is accompanied by new evidence, the assigned examiner must determine whether it is sufficient to review case on its merits. This step requires a review of file to assess what material it already contains.
- The following types of new evidence are not sufficient to reopen claim for merit review:
 - Cumulative evidence, which is substantially similar to material on file which has already been considered.
 - Repetitious evidence, which consists of copies of documents previously submitted or a restatement of previously considered evidence.
 - Irrelevant/immaterial evidence, which has no bearing on issue or which is frivolous or inconsequential in regard to issue.
- If evidence submitted is not sufficient to require a merit review, the assigned examiner will prepare a decision explaining reconsideration request is denied because evidence submitted did not warrant review. Claimant's only appeal from this decision is to ECAB.

Reconsideration- Sufficient Evidence

What is Happening at OWCP?

Sufficient Evidence for Merit Review

- When reconsideration request includes new, relevant evidence, legal contentions not previously considered or identifies a significant factual or legal error, the assigned examiner will conduct a “Merit Review” of case to determine whether prior decision should be modified.
- As soon as the assigned examiner decides that an application is sufficient to warrant a merit review of case, EA should be notified; however, requirement to provide a copy of application and evidence received differs depending on whether issue for determination is medical in nature.
- If there is a legal argument or a factual basis for merit review, application along with copies of pertinent supporting documentation should be sent to EA.
- Where a reconsideration request pertains only to a medical issue (such as disability or a schedule award), EA should be notified that a request for reconsideration has been received, but no comments should be solicited from EA if medical evidence is sole basis for review.

Reconsideration

What is Happening at OWCP?

Prior to Decision

- If EA is provided with application, comments should be submitted within 20 days.
- Any evidence submitted by EA will be forwarded to claimant with a letter allowing 20 days for comment before a final decision is issued on reconsideration request.

After the Decision

The assigned examiner can issue a variety of decisions based on his/her review of file and additional evidence upon reconsideration:

- **MODIFY** –The assigned examiner will prepare a new formal decision to modify any previous decision.
- **VACATE** -If a previous decision is to be overturned and a benefit or compensation approved, the assigned examiner will prepare a vacate order and a cover letter which explains acceptance.
- **DENY MODIFICATION (AFFIRM)** – The assigned examiner will prepare a formal decision to deny modification of prior decision. This denial does not carry right to a hearing, but does carry right to request reconsideration again or review by ECAB.

Employees' Compensation Appeals Board (ECAB)

- ECAB is an independent Department of Labor agency which considers and decides appeals of formal decisions in FECA cases. ECAB consists of three permanent judges appointed by the Secretary of Labor, one of whom is designated as Chief Judge and Chairman of ECAB.
- ECAB also has a Clerk of the Board who assigns appeal requests and places the case on a docket by number. It is the Clerk's Office that communicates directly with OWCP on behalf of ECAB.
- ECAB may review questions of law, fact, and discretionary actions in FECA cases, except amounts payable for medical services, and exclusion and reinstatement of medical providers.
- Only evidence in case record at time of OWCP's final decision will be reviewed. **ECAB cannot consider new evidence.**

ECAB - Timeliness



Effective November 19, 2008, appellants must file application for review by ECAB within 180 days from date of decision.



ECAB may waive a failure to file an application within 180 days. ECAB maintains discretion to extend time period for filing an appeal if an applicant demonstrates compelling circumstances beyond the injured employee's control.

ECAB - How To Apply

- It is important that claimant address any ECAB appeal requests in writing directly to ECAB. No special form is required; however, it must be signed, dated, identify the specific issue, and be accompanied by relevant new evidence or argument not previously considered.
- Once a case is accepted by ECAB for an appeal, that case file is assigned a docket number. OWCP no longer has jurisdiction over the claim related to the issue on appeal.
- Oral argument is held in the discretion of the Board. Any request for oral argument must be submitted in writing no later than 60 days after filing the appeal.
- An appeal in which oral argument is not granted will proceed to a written decision based on the case record before the Board.

ECAB

What is Happening at ECAB?

Prior to Decision

- Proceedings before the Board are informal and there is no requirement to file a pleading.
- All evidence is carefully considered before a decision is reached.
- **The judges may not consider new evidence on appeal.** Injured workers must clearly state their disagreement with the OWCP decision and explain any factual or legal matter you want considered.
- Oral argument must be confined to the evidence of record. There is no provision for the introduction of testimony, questioning of witnesses, or a transcription of the argument.

After the Decision

- Following the decision by the Board, the decision is final and is not subject to review, except by request for reconsideration by the Board. If you are not satisfied with the Board's decision, a petition for reconsideration may be filed. Petitions for reconsideration must be filed within 30 days from the date of issuance of the Board's decision or order. After 30 days, the decision of the Board becomes final.
- The judges who consider your appeal will issue either a written decision explaining the action taken or an order disposing of the case.
- The Board strives to process appeals in the order in which they are filed and as expeditiously as possible.

The image features a large green semi-circle on the right side. Inside this semi-circle, the text "LOSS OF WAGE-EARNING CAPACITY" is written in blue, uppercase letters. To the left of the green semi-circle, there is a large brown circle. Further left, there is a dashed blue line that curves downwards. Above the brown circle, there are two vertical blue bars. To the left of the dashed line, there is an orange-outlined rectangle. Above the green semi-circle, there is an orange L-shaped line and a blue semi-circle.

LOSS OF WAGE-
EARNING CAPACITY

Introduction to LWEC

Injured employees who are able to perform some work, even though it is not the date of injury job, are considered partially disabled.

If an injured employee returns to work earning less than the current pay rate, OWCP may pay the difference. This is called a loss of wage-earning capacity (LWEC) determination.

The object of an LWEC is to estimate an injured employee's earning capacity as close as possible to parity with current pay for the grade and step held on date of injury.

There are no provisions to compensate injured employees for grade or step increases he/she might have received had he/she not been injured.

Introduction to LWEC (continued)

The Loss of Wage-Earning Capacity (LWEC) was introduced by the Office of Workers Compensation Program (OWCP) to compensate injured federal employees for degrees of disability that affect their ability to earn wages.

Factors to be Considered:

- ✓ Nature and extent of injury
- ✓ Medical impairment
- ✓ Vocational Factors such as education and local job market conditions

LWEC – How to Apply

- The injured employee needs to complete Form CA-7, Claim for Compensation. The form includes sections where an employee can indicate their claim for LWEC.
- Medical Documentation – the injured worker will need to gather any requested medical documentation related to the injury including reports, test results, and any other relevant medical records to support the claim for LWEC.
- Additional Medical Evaluation to determine the extent of the injury and impact on their ability to work.

Reviewing the LWECC

What is Happening at OWCP?

After receipt, OWCP will:

1. Review the claim
2. Evaluate the claim based on the medical evidence, LWECC statement, and any other relevant information.
3. Makes a determination on whether the employee is eligible for LWECC compensation.
 - ✓ If the employee is eligible, OWCP will calculate the LWECC and issue a formal LWECC determination.
 - ✓ If the claim is denied or the employee disagrees with the decision, they have the right to appeal.

Calculating the LWEC

What is Happening at OWCP?

- The Shadrick Formula is based upon the loss of capacity to earn wage, It is used to compare the current actual earnings with the current pay rate for the date-of-injury position. A percentage is calculated and appellant's loss of wage-earning capacity is then determined.
- OWCP calculates an employee's wage-earning capacity in terms of percentage by dividing the employee's actual earnings (or constructed earnings) by the current or updated pay rate for the position held at the time of injury.
- The employee's wage-earning capacity in dollars is computed by first multiplying the pay rate for compensation purposes, defined in 20 C.F.R. § 10.5(a) as the pay rate at the time of injury, the time disability begins or the time disability recurs, whichever is greater, by the percentage of wage-earning capacity.
- The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain loss of wage-earning capacity.

| | |
|--|-----------|
| (1) Pay rate when: (a) injured () (b) disability began () (c) compensable disability recurred. () | \$ _____ |
| (2) Current pay rate for job and step when injured | \$ _____ |
| (3) () (a) is capable of earning () (b) has actual earnings of | \$ _____ |
| (4) WEC [item (3) divided by item (2)] | \$ _____% |
| (5) WEC [item (4) times item (1)] | \$ _____ |
| (6) Loss of WEC [item (1) minus item (5)] | \$ _____ |
| (7) Compensation [item (6) times () $\frac{3}{5}$ or () $\frac{3}{4}$] | \$ _____ |
| (8) CPI (expressed in decimal terms) (a) Item (7) times 1. * = \$ _____ (rounded) (b) Item (8a) times 1. * = \$ _____ (rounded) (c) Item (8b) times 1. * = \$ _____ (rounded) | |



Calculating the LWEC

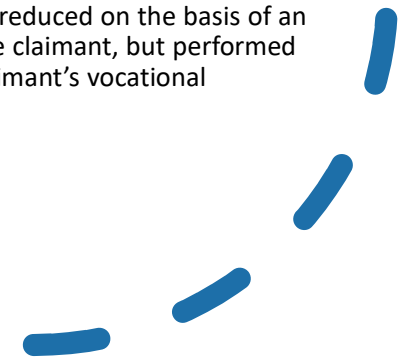
What is Happening at OWCPC?

Employees Who Return to Federal Employment

- ✓ **For Full-Time and Part-Time Employees**, the CE will compute entitlement using the Shadrick formula. The injured Employee's actual earnings may be used to calculate reduced compensation if these earnings are found to fairly and reasonably represent his or her earning capacity..
- ✓ **For seasonal and temporary employment**, the annual salary of the job selected must be divided by 52 to obtain a weekly pay rate. The figure obtained should then be compared, using the Shadrick formula, to the weekly pay for the grade and step of the job held when injured, and the result should be applied to the pay rate for compensation purposes.
- ✓ **Where the injured employee has earnings of a sporadic or intermittent nature**, the CE should obtain actual earnings for each pay period and compensate the injured employee on the daily roll using the Shadrick formula.

Employees Who Do Not Return to Federal Employment

- ✓ **Where there are actual earnings** that span a lengthy period of time (e.g., several months or more), the compensation entitlement should be determined by averaging the earnings for the entire period, determining the average pay rate, and applying the Shadrick formula (comparing the average pay rate for the entire period to the pay rate of the DOI job in effect at the end of the period of actual earnings).
- ✓ **Where there are no actual earnings**, as a last resort, benefits will be reduced on the basis of an estimated earning capacity, based upon a job not actually held by the claimant, but performed to a reasonable extent in the commuting area and suitable to the claimant's vocational background.



Timeline for Issuing A LWEC Decision

What is Happening at OWCP?

- The CE will determine the employee's monetary entitlement using the Shadrick formula.
- The CE will confirm the respective pay rates by letter, secure e-mail with the employing agency to and from a government network, or by telephone call and document the file accordingly.
- The decision should be issued following 60 calendar days from the date of return to work unless a recurrence of disability is accepted within 60 days.
- If the employee returns to work at a retained pay rate, and therefore incurs no wage loss, the CE should still issue a formal LWEC decision. Wages lost because step increases and/or cost-of-living increases were not applied to the retained pay rate do not constitute a LWEC.

Issuing A LWEC Decision

What is Happening at OWCP?

1. Case summary pertaining to the injured employee's return to work.
2. Identification of the medical evidence that indicates the injured employee's condition is stable and that establishes well-defined work limitations.
3. Acknowledgement the employee has worked in the position for at least 60 days.
4. Explanation of the computation of compensation.
5. In cases where the reemployment was within the Federal government, the decision should also include the following.
 - a. A discussion of the evidence supporting that the position is classified. The CE should cite a formal job title, established work schedule, written position description, description of duties, and physical limitations of the alternative work.
 - b. An indication that the type of appointment and tour of duty are at least equivalent to the job held when injured (unless otherwise medically restricted).
 - c. If the employee was a full-time employee on the DOI, and the actual earnings LWEC is based on part-time work because the stable work restrictions limit the employee to part-time work, the CE should clearly identify the medical evidence and explain the medical basis for finding the part-time work representative of the WEC.
 - d. An indication that the physical requirements of the alternative work do not exceed the work limitations.
6. In cases where the reemployment was outside of the Federal government, the decision should include the following:
 - a. A wage-comparison analysis, if appropriate.
 - b. An indication that the job was obtained through an OWCP Vocational Rehabilitation effort, if applicable.
 - c. Formal language awarding compensation based on actual earnings for the period beginning on the date of return to work through the date of issuance of the formal LWEC decision.

Modifying a Formal LWEC Decision

01

It is established that there is a material change in the nature and extent in the injury related condition

02

The employee has been retrained or otherwise vocationally rehabilitated

03

The original determination was erroneous

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SCHEDULE AWARDS

Introduction to Schedule Awards

5 U.S.C. 8107 provides compensation for the permanent loss or loss of use of specified members, functions, and organs of the body.

Partial loss or loss of use of members and functions is compensated on a proportional basis

Payment is made for a specified number of days or weeks according to the severity of the impairment.

A schedule award (SA) may not be paid concurrently with loss of wage compensation related to the same specified members but may be paid concurrently with OPM benefits.

The law does not allow for payment of an SA award for impairment to the back, heart or brain. There is no time limitation on claiming schedule awards.

Schedule Award – How to Apply

- The employee needs to complete Form CA-7, Claim for Compensation. The form includes sections where an employee can indicate their claim for Schedule Award.
- Medical Documentation – the injured worker will need to gather any requested medical documentation related to the injury including reports, test results, and any other relevant medical records to support the claim for Schedule Award.
- Additional Medical Evaluation may be required to establish the degree of permanent impairment.

Schedule Awards – How to Apply Required Medical Evidence

- Must have reached maximum medical improvement
- and functions of the body.
- Medical must describe the impairment in sufficient detail so OWCP can visualize the character and degree of impairment.
- Provide a percentage evaluation of the impairment in terms of the affected member or function, not the body as a whole (except for impairment to the lungs) according to the 6th edition of the AMA Guide.

Schedule Members

| Anatomical Member | Maximum Number of Weeks |
|------------------------|-------------------------|
| Arm | 312 |
| Leg | 288 |
| Hand | 244 |
| Foot | 205 |
| Eye | 160 |
| Thumb | 75 |
| First Finger | 46 |
| Great Toe | 38 |
| Second Finger | 30 |
| Third Finger | 25 |
| Toe (other than great) | 16 |
| Fourth Finger | 15 |

| Anatomical Member | Maximum Number of Weeks |
|-----------------------------------|-------------------------|
| Complete Hearing Loss (one ear) | 52 |
| Complete Hearing Loss (both ears) | 200 |
| Breast (one) | 52 |
| Kidney (one) | 156 |
| Larynx | 160 |
| Lung (one) | 156 |
| Penis | 205 |
| Testicle (one) | 52 |
| Tongue | 160 |
| Ovary (one) | 52 |
| Uterus/ cervix | 205 |
| Vulva/ vagina | 205 |
| Skin | 205 |

Schedule Awards What is Happening at OWCP?

- If the claimant does not provide an impairment evaluation from his/her physician when requested, and there is no indication of permanent impairment in the medical evidence of file, the CE may proceed with a formal denial of the award.
- If the claimant does not provide an impairment evaluation from his/her physician when requested, and there is an indication of permanent impairment in the medical evidence of file, the CE should refer the claimant for a second opinion evaluation. The CE may also refer the case to the District Medical Advisor (DMA).
- If the claimant's physician provides an impairment report or the second opinion is received, the case should be referred to the DMA for review.
- The DMA will verify the calculations of the attending physician or second opinion examiner and determine the percentage of permanent impairment based on the standards outlined in the AMA Guides, Sixth Edition, the date MMI was reached and rationale for the percentage of impairment specified.

Calculating the Schedule Award

What is Happening at OWCP?

- Based on pay rate used for compensation purposes - 66.66% of salary without dependents and 75% of salary with dependents
- Schedule Formula:
 $(\text{OWCP Compensation Rate}) \times (\text{Number of weeks allowed on the Schedule for the injured body part}) \times (\% \text{ of Impairment}) = \text{Amount of Schedule Award}$
- Example:
 - Employee Salary = \$52,000
 - Employee Comp Rate = 75%
 - Weekly Comp Rate = \$750.00
 - Injured Body Part = Leg (# of Weeks = 288)
 - DMA Approved PPI Rating = 42%
 - $(\$750) \times (288) = \$216,000 \times (42\%) = \mathbf{\$90,720 \text{ Schedule Award}}$

A Few More Notes on Schedule Awards

- A lump-sum payment of schedule award benefits may be made where the evidence shows that such a payment would be in IW's best interest.
- Lump sum generally not paid when compensation payments are relied upon as a substitute for lost wages.
- There are no provisions for apportionment under the FECA. In some instances, a schedule award may be payable even if the claimant had a pre-existing loss or loss of use of 100 percent of a member or function of the body.



QUESTIONS?