



# PLOTTING THE COURSE

CHALLENGING  
CLAIMS FROM THE  
AGENCY PERSPECTIVE

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## ADJUDICATION

The Office of Workers' Compensation Program (OWCP) is the only entity legally permitted to adjudicate (meaning to accept or deny) the claim. OWCP determines how to apply the rules and exceptions.

This authority is commonly referred to as “exclusive right of remedy”.



However, the Agency is statutorily obligated to challenge claims which it feels may not meet a claim element and provide OWCP with any information necessary for accurate claim adjudication.

20 CFR 118(A)  
DOES THE  
EMPLOYER  
PARTICIPATE IN  
THE CLAIMS  
PROCESS IN  
ANY OTHER  
WAY?

The employer is responsible for submitting to OWCP **all relevant and probative factual and medical evidence in its possession**, or which it may acquire through investigation or other means. Such evidence may be submitted at **any time**.

20 CFR 10.117 (B)  
WHAT HAPPENS IF,  
IN ANY CLAIM, THE  
EMPLOYER  
CONTESTS ANY OF  
THE FACTS AS  
STATED BY THE  
CLAIMANT?

Any such statement shall be submitted to OWCP with a notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant.

If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established.

The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change or withdraw the claim.

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## QUESTIONABLE CLAIM?

## Things to consider:

- Differing versions
- Time lag/ injury not immediately reported
- No immediate medical attention
- Pre-existing conditions
- Pending or proposed corrective or disciplinary action

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QUESTIONABLE  
CLAIM?  
(CONTINUED)

## Things to consider:

- Pending change of or nearing end of employment
- Disgruntled employee
- No leave balances, recent denial of leave request
- History of multiple claims or injuries
- Other employment

# BASIC ELEMENTS OF A CLAIM

The following five conditions must be met, in sequence, before any claim can be accepted by OWCP:

- Time 20 CFR 10.115(a)
- Civilian Employee 20 CFR 10.115(b)
- Fact of Injury 20 CFR 10.115(c)
- Performance of Duty 20 CFR 10.115(d)
- Causal Relationship 20 CFR 10.115(e)





The background of the left side of the slide is a teal gradient. It features a large, semi-transparent circular gauge or clock face. The gauge has a scale with numbers from 140 to 260 in increments of 10. There are several concentric circles and arrows, some pointing clockwise and some counter-clockwise, suggesting a sense of time or rotation. The word "TIME" is written in a bold, white, sans-serif font in the center of the gauge.

TIME

### Traumatic Injuries

For a traumatic injury, time begins with date of injury.

### Occupational Illness

When an injured employee becomes aware or reasonably would have been aware of relationship between condition and employment. *Where exposure to work factors continue after this knowledge, time begins to run on the date of last exposure to those factors.*



## CIVILIAN EMPLOYEE

Must be an employee of the U. S. as defined in 5 U. S. C. 8101(1) and 20 CFR 10.5(h).

This includes:

- Federal civilian employees
- Peace Corps and VISTA volunteers, Federal petit and grand jurors, volunteer members of Civil Air Patrol, Reserve Officer Training Corps Cadets; Job Corps and Youth Conservation Corps enrollees; and non-Federal law enforcement officers under certain circumstances.
- Contract, volunteer and loaned employees may be covered under certain circumstances but these are considered on a case-by-case basis.

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## FACT OF INJURY

### Fact of Injury (Factual)

Did the employee experience the accident, event or employment factor alleged to have occurred?

**AND**

### Fact of Injury (Medical)

Did the accident or employment factor result in a diagnosed injury or illness/disease?



## PERFORMANCE OF DUTY

Employee must have been in the performance of duty when the injury of illness/disease occurred.

When the injury/condition occurred or developed was the claimant carrying out the duties for which hired?

# PERFORMANCE OF DUTY (CONTINUED)



Is an employee in the performance of duty...



On agency premises?



During lunch?



While in travel status?



When involved in horseplay?



In parking areas?

# PERFORMANCE OF DUTY (CONTINUED)



Is an employee in the performance of duty...



On agency premises? **Maybe**



During lunch? **Sometimes**



While in travel status? **Usually**



When involved in horseplay? **Usually**



In parking areas? **Sometimes**

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## CAUSAL RELATIONSHIP

Medical evidence must contain the physician's opinion with medical rationale as to the causal relationship between the diagnosed condition(s) and the factor or conditions of employment.

Did the workplace incident described by the employee cause the medical condition?



STATUTORY  
EXCLUSIONS TO  
COVERAGE

### Willful Misconduct

Deliberate not careless or accident-prone.

### Intoxication

Must prove extent of intoxication **and** it proximately caused the injury.

Intent to bring injury or death to oneself or another.



# KNOWLEDGE CHECK



What can you Challenge?

- A. Initial claims
- B. CA-7 – Claims for compensation
- C. Reconsiderations
- D. Recurrences
- E. None of the above
- F. All the above

# KNOWLEDGE CHECK



What can you Challenge?

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- F. **All the above**



# WHY IS IT IMPORTANT TO CHALLENGE A CLAIM?



The agency has **NO APPEAL RIGHTS** in the FECA claim process.

If there is valid reason to question or dispute a claim, do so at the time the claim is submitted or as soon as possible thereafter.



YOU'VE  
DECIDED TO  
CHALLENGE  
THE CLAIM

**NOW  
WHAT?**



## RED FLAGS (CONTINUED)

Red flags don't mean the claim is not valid, but it is a reason to review all aspects of the claim for validity.

- Items from the OIG Checklist
- Injury at the same time of year
- Similar injury caused by similar event
- Denied leave or low leave balance
- Conduct or performance issues

# PRO-TIP #1

## ONE STEP AT A TIME

- ✓ Evaluate the claim sequentially
- ✓ Challenge at the lowest possible level



# WHY FOLLOW A SEQUENTIAL ORDER?

The Agency wants the claim to be denied at the earliest possible element to avoid accepting DOL later accepting an element that hasn't been supported.

For example: If DOL issues a denial based on causal relationship (which you challenged) the earlier elements will not be reviewed at a hearing.



# PRO-TIP #2

## WRITE TO WIN

1

### **Decide your position**

- Identify your key points to consider
- Identify potential counterpoints to your position

2

### **Be clear and concise.**

Organize the events in chronological order so that your story makes sense.

3

**Avoid personal opinions or interpretations** There is no “I” in challenges.

4

**Include factual details that are available**  
Who? What? Where?,  
When? Why? How?





# WHAT ARE YOU LOOKING FOR?

- ✓ Check for claimant's schedule and tour of duty. Was the claimant at work?
- ✓ Confirm with Supervisor and see if there are any witnesses
- ✓ Is there any video available?
- ✓ Review claim form against medical documentation for inconsistencies
- ✓ Review the medical narrative how was the injury reported, was it a pre-existing injury, was it stated it happened someplace other than at work .



# PRO-TIP #3

## PAINT A PICTURE

Include documentation that supports your position and credibility:

- ✓ Safety Reports
- ✓ Supervisor Statements
- ✓ Witnesses Statements
- ✓ Statistics
- ✓ Reports
- ✓ Photographs
- ✓ Diagrams



# PRO-TIP #4

## SHOW WHAT YOU KNOW

Use references to support your position

- 20 CFR Part 10
- 5 U.S.C. Chapter 81
- Employee Compensation Appeals Board (ECAB) Decisions
- DFEC Procedure Manual (PM)



# PRO-TIP #5

## ASK FOR AN EXPLANATION

The Employing Agency is entitled to a narrative rationale when DOL accepts a claim which has been challenged within 30 days.

Place this request on each challenge letter.



20 CFR §10.119

WHAT ACTION WILL  
OWCP TAKE WITH  
RESPECT TO  
INFORMATION  
SUBMITTED BY THE  
EMPLOYER

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken.

Where an employer challenges a claim *within 30 days of the initial submittal* and the claim is later approved, OWCP must notify the employer of the rationale for approving the claim.

# PRO-TIP #6

## “LOVE UP ON ‘EM”

- Don't be afraid to call the CE
- Respect your DOL counterpart.
- Do **not** challenge every claim





# STRESS CLAIMS

WHAT ARE WE LOOKING AT?

HOW DO I  
PROCEED  
WITH A  
STRESS  
CLAIM?

Is each allegation factually accurate?



If accurate - is the allegation  
compensable?



Keep in mind: An allegation may be  
factual, but still may not be compensable.



# WHAT IS THE CLAIMANT REACTING TO?

Investigate

- Investigate thoroughly

Provide

- Provide evidence developed by the Agency

Give

- Give the CE the most complete information to explain the context in which the claimant's stress reaction occurred



## SOME COMMON NON-COMPENSABLE FACTORS

Frustration at not being permitted to work in a particular environment or to hold a particular position

Frustration at having to work or not work with a specific person or a specific shift

Failure to secure a promotion

Feelings of job insecurity

The desire for a different job

Feeling under-utilized in current position

Not meeting their own personal work goals

# EXAMPLE 1: DEALING WITH A SUPERVISOR



A supervisor performing supervisory duties is not compensable.



Unless the supervisor does something that is so inappropriate (error or abuse) that it really falls outside the supervisory function (e.g. swearing at the employee.)



## EXAMPLE 2: ADMINISTRATIVE ACTIONS

1

An employing agency needs to be able to make administrative decisions to ensure the agency goal and mission is met.

2

Denying leave, reprimanding employees and performance evaluations, etc. fall under administrative actions, **absent error or abuse.**

3

The Board will examine whether the employing establishment acted reasonably.



# EXAMPLE 3: RELATIONSHIP WITH CO-WORKERS



IF THERE ARE INCIDENTS BETWEEN CO-WORKERS IN THE WORKPLACE THAT CAUSE STRESS, THE REACTION IS COMPENSABLE.



**UNLESS** THE CONFLICT WAS DUE TO A PERSONAL RELATIONSHIP FROM THE EMPLOYEE'S DOMESTIC OR PRIVATE LIFE, WHICH WAS IMPORTED INTO THE WORKPLACE, WITH NO CONTRIBUTION BY THE EMPLOYMENT.



# CASE STUDIES

- Do you have grounds to challenge the claim?
- If you have grounds, which of the 5 conditions of coverage will you challenge on?
- What documentation will you need to provide in support of your challenge?
- What other factors would you consider when challenging this claim?



## CASE STUDY #1

Alec Baldman was working as an agency carpenter in 2015, removing drywall and tile in one of the agency's office buildings. He did not report any exposure to asbestosis related to his position. In December 2019, he was diagnosed with mesothelioma. Alec filed a claim on March 21, 2024.





## CASE STUDY #2

Dolly Carton works as a VA Volunteer. For 17 years, without fail, she has made popcorn every week for “Movie Monday”, even being named VA Volunteer of the Year.

When walking to the Canteen to pick up her supplies, she slipped and fell landing on her left knee and was seen in Occupational Health. Dolly inquired if she could file a claim and was advised that she had a right and elected to do so.







## CASE STUDY #3

Brooke Fields was walking between buildings on her way to an important meeting when a piece of ice slid off the roof hitting her on the head. She had no visible injury, such as a bump or cut. Although it alarmed her she felt okay to continue to her meeting.

After the meeting she decided to file a WC claim because she remembered in her New Employee Orientation the WC specialist stated to report all injuries, regardless of how minor to ensure coverage if something transpired in the future.





## CASE STUDY #4

Jennifer Flopez, a Health System Specialist, was driving on the facility, when she ran a stop sign. She was pulled over by the VA police. In fear for her Safety, she fled the car and ran across the campus. The VA police officer pursued her on foot. When they caught to the employee, she attempted to kick the officer in the groin. Because she was combative she was arrested, placed in handcuffs, and detained.

Jennifer filed an injury stating that the handcuffs had injured her wrists and that she had PTSD from the event and anxiety related to future retaliation from the VA police. Her Supervisor indicated on the CA-1 and maintained that the injury was work-related.





## CASE STUDY #5

Billy Ray Cyprus was working at his desk during his regular tour when his achy breaky heart caused him extreme pain. He was rushed to the hospital where he was diagnosed with a mild heart attack and he was released a few days later to bed rest for 2 weeks.

Billy filed a traumatic injury claim stating he had been feeling stressed at work and believes that is what caused his heart attack. His physician states Billy's condition was probably due to smoking and too many greasy hamburgers.



# SUMMARY



Remember to challenge cases that need to be challenged.....but don't challenge all cases!



Investigate and provide as much information as possible.



Frame your argument and address each allegation.



Stick to only what is being alleged.



Do your research using the CFR, DOL Procedure Manual and ECABs to support your argument



Build your reputation with DOL!

# REFERENCES/RESOURCES

- DOL Website:  
<https://www.dol.gov/agencies/owcp>  
20 CFR Part 10
- 5 U.S.C. Chapter 81
- ECAB Decisions
- DOJ Website:  
<http://www.justice.gov/oig/reports/OBD/a0934/final.pdf>

