

CHAPTER 1

OVERVIEW—

FEDERAL EMPLOYEES' COMPENSATION ACT

I. AUTHORITY AND JURISDICTION

The Department of Labor is responsible for administering workers' compensation claims for employees of the federal government. The Department of Labor exercises this responsibility through its Office of Workers' Compensation Programs ("OWCP" or "Office"), which is responsible for the initial processing of claims, and through the Employees' Compensation Appeals Board ("ECAB" or "Board"), which is responsible for appellate review of workers' compensation claim decisions by the Office of Workers' Compensation Programs. The Department of Labor derives its authority and jurisdiction over federal sector workers' compensation claims from the Federal Employees' Compensation Act ("FECA" or "Act").

A. STATUTORY AUTHORITY

The FECA, codified at 5 USC § 8101 *et seq.*, is a complex statutory scheme that provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the U.S. government and individuals employed by the District of Columbia. The Act provides for the payment of compensation for wage loss and for certain permanent bodily impairments incurred by employees as a result of injury, illness or death sustained while in the performance of their duties. In addition to financial compensation, employees may receive reasonable medical and related services. In some instances, vocational rehabilitation services are provided. 20 CFR § 10.0(b). The Act also provides for payments to certain survivors of an employee whose death is the result of an employment-related injury, and for payment of burial expenses pursuant to 5 USC § 8134. 20 CFR § 10.0(c). In addition to survivors' benefits, the FECA Death Gratuity, established by the 2008 Defense Authorization Act, authorizes up to \$100,000 to the survivors of "an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." 5 USC § 8102a.

B. EXCLUSIVITY OF REMEDY

The FECA is the exclusive remedy for federal employees who are injured on the job. 5 USC § 8116(c). The Supreme Court explained the purpose of this section in *Lockheed Aircraft Corp. v. United States*, 460 U.S. 190, 193-94 (1983):

FECA's exclusive-liability provision...was designed to protect the Government from suits under statutes, such as the Federal Tort Claims Act, that had been enacted to waive the Government's sovereign immunity. In enacting this provision, Congress adopted the principal compromise—the "*quid pro quo*"—commonly found in workers' compensation legislation: employees are guaranteed the right to receive immediate, fixed benefits, regardless of fault and without need for litigation, but in return they lose the right to sue the Government.

"[O]nce an injury falls within the coverage of FECA, its remedies are exclusive and no other claims can be entertained by the court." *Jones v. Tennessee Valley Auth.*, 948 F.2d 258, 265 (6th Cir. 1991); *see generally Turner v. Tennessee Valley Auth.*, 859 F.2d 412 (6th Cir. 1988) (describing exclusive nature of FECA and holding that it preempted Jones Act claim asserted by spouse of drowned government employee).

The U.S. Court of Appeals for the Ninth Circuit reaffirmed this in *Moe v. United States*, 326 F.3d 1065 (9th Cir. 2003). In *Moe*, an Air Force employee witnessed a mass shooting at Fairchild Air Force Base when a recently discharged serviceman went on a shooting rampage at the agency's medical facility. She suffered from Post Traumatic Stress Disorder, and sued under the Federal Tort Claims Act (FTCA). The court dismissed the claim for lack of jurisdiction, as her injury was covered by the FECA. The court stated, "A plaintiff need only allege a colorable claim under FECA for our courts to lose jurisdiction over an FTCA action." *Citing Figueroa v. United States*, 7 F.3d 1405 (9th Cir. 1993).

1. Discrimination Cases

When an individual has been discriminated against under the laws the EEOC enforces, the remedies set forth in Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the other anti-discrimination laws are not precluded by the FECA. *DeFord v. Secretary of Labor*, 700 F.2d 281 (6th Cir. 1983); *see also Karnes v. Runyon*, 912 F. Supp. 280 (S.D. Ohio 1995) (FECA designed as a substitute for common-law tort actions only; no mention of FECA as exclusive remedy when federal employees were added to Title VII). In *Nichols v. USPS*, 42 F.3d 503 (9th Cir. 1994), an employee who was subjected to sexual harassment began to receive FECA wage-loss benefits. In finding that the employee nonetheless was entitled to back pay under Title VII, the court held that unlawful discrimination is not an "injury" within the meaning of the FECA, insofar as unlawful discrimination is neither an accidental injury, nor a disease proximately caused by the employment, nor damage to durable medical devices, which are the FECA's three definitions of "injury." Damages payable to compensate for emotional harm caused by the discrimination likewise are not precluded by the FECA.

II. ADMINISTRATION OF THE ACT

Administration of the FECA was originally vested in an independent establishment known as the U.S. Employees' Compensation Commission. 20 CFR § 1.6(a). Effective July 16, 1946, the Commission was abolished and its functions were assigned to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation. *Id.* (citing Reorganization Plan No. 2 of 1946 (3 CFR 1943-39 Comp., p. 1064; 60 Stat. 1095)). In 1950 the Bureau of Employees' Compensation was transferred to the Department of Labor and the authority to administer the Act was assigned to the Secretary of Labor. *Id.* (citing Reorganization Plan No. 19 of 1950 (15 Fed. Reg. 3178, 64 Stat. 1263)). The Secretary of Labor was

authorized to make provisions he or she deems appropriate. The Secretary was also given the power to authorize the performance of any of his or her functions by any other officer, agency, or employee of the Department of Labor.

In 1972, two organizational units were established within the Bureau of Employees Compensation: (1) an Office of Workmen's Compensation Programs; and (2) an Office of Federal Employees' Compensation. 20 CFR § 1.6(b). In 1974, these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs (OWCP), was established. *Id.*

Under 5 USC § 8145, responsibility for administering provisions of the Act were delegated to the Assistant Secretary of Labor for Employment Standards. The responsibility for the administration and implementation of the Federal Employees' Compensation Act (except for 5 USC § 8149 as it pertains to the ECAB) was then assigned by the Employment Standards Administration (ESA) to the Director of the Office of Workers' Compensation Programs.

Pursuant to the Secretary of Labor's Order 10-2009, 74 Fed. Reg. 58834 (2009), effective November 8, 2009, the ESA was dissolved into four component parts under OWCP, discussed below. The Order "cancelled or modified all prior orders and directives referencing ESA, devolved certain authorities and responsibilities of ESA to OWCP, and delegated authority to the Director, OWCP, to administer the programs now assigned directly to OWCP." There is no longer an Assistant Secretary of Labor for Employment Standards or an ESA.

In the case of employees of the Panama Canal Commission, the Federal Employees' Compensation Act is administered by the Panama Canal Commission. 5 USC § 8146.

A. OFFICE OF WORKERS' COMPENSATION PROGRAMS

The OWCP is comprised of four separate programs, including the Division of Federal Employees' Compensation, which administers the FECA. The *FECA PM*, 0-0100.3, describes the other programs OWCP administers:

OWCP includes four separate programs, of which DFEC is one. The other three are the Division of Longshore and Harbor Workers' Compensation, the Division of Coal Mine Workers' Compensation, and the Division of Energy Employees' Occupational Illness Compensation.

The OWCP Director, along with the OWCP Deputy Director, has authority for the administrative management of the four programs. The individual program directors work directly for OWCP; therefore, the DFEC Director reports to OWCP. Likewise, the Regional Directors, who are considered the chief executives for the OWCP programs within the regions, report directly to OWCP.

Until November 8, 2009, OWCP was part of the Employment Standards Administration (ESA). A change in organization on November 8, 2009, dissolved the ESA and delegated its previous authority to the Director, OWCP.

OWCP explains its own organization in *Injury Compensation for Federal Employees*, Chapter 1–3, as follows:

The Division of Federal Employees' Compensation (DFEC) administers the FECA. The Director of the program, in conjunction with regional managers, has the authority over the operations of the 12 district offices. Each of these offices is headed by a District Director, who has overall responsibility for office functions.

In each district office are two or more Supervisory Claims Examiners, who are responsible for the operation of individual claims units. A number of Senior Claims Examiners and Claims Examiners have primary responsibility for handling claims. Individuals at each level have specific responsibilities for issuing decisions on claims.

Initial claims for workers' compensation are typically filed with the local district office of OWCP.

OWCP is responsible for more than just the administration of FECA. OWCP also administers several other statutes, including the War Hazards Compensation Act, 4 USC § 1701 *et seq.*; the War Claims Act, 50 USC app. § 2003; the Longshoremen's and Harbor Workers' Compensation Act, 33 USC § 901 *et seq.*; the District of Columbia Workmen's Compensation Act, 36 D.C. Code § 501 *et seq.*; the Defense Base Act, 42 USC § 1651 *et seq.*; the Outer Continental Shelf Lands Act, 43 USC § 1331; the Nonappropriated Fund Instrumentalities Act, 5 USC § 8171 *et seq.*; Title IV of the Federal Coal Mine Health and Safety Act, 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972, 30 USC § 901, *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 USC § 7384 *et seq.*

Under the War Hazards Compensation Act, employees who are injured as a result of a war risk hazards are entitled to compensation akin to a civil employee injured in the performance of duty, and the administrative procedures of the FECA apply to claims filed under the War Hazards Compensation Act. *FECA PM*, Ch. 4-300-6(c); *M.E. and Dept. of Army*, 06-1886 (2007).

1. Division of Federal Employees' Compensation

The Division of Federal Employees' Compensation (DFEC) is one of four components of OWCP. DFEC is responsible for administration of FECA claims. DFEC has 12 district offices, each of which is headed by a District Director. *FECA PM*, Ch. 0-0100.5.

2. National Office

The Director for Federal Employees' Compensation, who works in the National Office, has final authority over program matters. As described in the *FECA PM*, Ch. 0-0100.4, the Director supervises the following functions:

Under the immediate supervision of the Director and Deputy Director are five specific branches that provide specialized oversight and guidance to the district offices. Each branch has a Branch Chief who reports to the Deputy Director.

- a. *Branch of Regulations, Policies, and Procedures.* This Branch develops recommendations for new operational policies, regulations and procedures consistent with the overall policies of OWCP. Changes in operational policies and procedures may be the result of new legislation, court decisions, ECAB decisions, program audits and studies, or precedent setting claims under the FECA. The Branch formulates procedures and maintains a procedure manual to be used by the district offices in adjudicating FECA claims

and paying benefits. This branch also conducts accountability reviews of district offices with help from district office personnel and develops training materials for claims personnel.

b. *Branch of Technical Assistance.* This Branch is responsible for developing, preparing, and distributing technical assistance materials and guides to Federal agencies, labor organizations, employees and their representatives. These materials are designed to educate and inform Federal employees of their responsibilities in reporting injuries and to inform Federal agencies of their responsibilities in processing claims under the FECA. This Branch reviews and analyzes Federal agencies' injury compensation programs, performance statistics, progress, and trends, and then makes recommendations for overall improvement. Employees of this branch conduct training sessions with various groups to advance understanding of the Program. This Branch also oversees and implements all communication strategies for the program.

c. *Branch of Automated Data Processing (ADP) Coordination and Control.* This Branch is responsible for the coordination and control of all information technology (IT) requirements, systems relating thereto, and supporting documentation. The Branch operates, maintains and enhances the integrated Federal Employees' Compensation System (iFECS) and coordinates with OWCP to ensure it meets the data needs of the program and conforms to Federal and OWCP guidelines and operational procedures. In conjunction with OWCP, the ADP Branch directs and coordinates activities of IT support contractors in the development, operation and maintenance of DFEC IT systems and hardware. Toward that end, the Branch maintains liaison with the district offices in regard to the operation of iFECS and other information systems and provides technical oversight and assistance.

d. *Branch of Fiscal Operations.* This Branch is responsible for formulating and monitoring all financial operations for DFEC on a national level, handling items such as Chargeback and the monitoring of program debt performance. This Branch performs a variety of functions to ensure the financial integrity of the program. Specifically, the Branch directs the efforts of the National Office to train or otherwise advise all district offices on billing, payment, and fiscal practices. Formulation and monitoring of all fiscal policy and procedures is conducted by this Branch, including national oversight of agency automated compensation and bill payment systems.

e. *Branch of Hearings and Review (H&R).* This Branch issues appellate-level decisions on claims involving hearings or requests for review of the written record, which affirm, reverse, modify, or remand cases to any of the district offices. A staff of hearing representatives (based in both Washington, DC and the field offices) is responsible for conducting the hearings, which can be held in a variety of formats, including video hearings, face-to-face hearings, and telephonic hearings.

3. District Offices

As noted above, there are 12 district offices of DFEC. The *FECA PM*, Ch. 0-0100.5.d, describes the organization of the DFEC district offices:

District Office Functions.

(1) *Claims Functions.* In each DO there are two or more Supervisory Claims Examiners, who are responsible for the operation of individual claims units and the Senior Claims Examiners and Claims Examiners within those units. Claims Examiners and Senior Claims Examiners have the primary responsibility for adjudicating claims, authorizing medical treatment, making compensation payments, and overseeing disability management. Individuals at each level of authority are delegated specific responsibilities for issuing decisions on claims.

(2) *Fiscal Functions.* Each DO has a Fiscal Officer and at least one other employee who assists with fiscal-related matters. These personnel are responsible for the maintenance of financial management records, changes in health benefits coverage, etc.

(3) *Medical Functions.* Each DO has at least one District Medical Adviser (DMA) who works under contract to review individual cases, and some DOs may have a District Medical Director (DMD) as well. Each DO also has personnel assigned to schedule medical examinations as needed.

(4) *Disability Case Management Functions.* Claims Examiners and Senior Claims Examiners have a vital role in the management of disability claims.

In addition to claims staff, each DO has at least one Staff Nurse who is responsible for ensuring there is a sufficient number of COP (Continuation of Pay) Nurses and Field Nurses to service the needs of the district office. Both COP Nurses and Field Nurses are professionals who are contracted by OWCP to provide disability case management services, but they do not provide clinical treatment. The COP Nurse is assigned early in the life of a traumatic injury case and works each case telephonically. The Field Nurse monitors the claimant's medical progress and assists with the return to work effort by coordinating efforts with the Claims Examiner, treating physician, employing agency and claimant.

Each DO also has at least one Rehabilitation Specialist (RS). The RS is responsible for ensuring that there is a sufficient number of vocational Rehabilitation Counselors to service the needs of the district office. The RS manages the counselors, who work under contract with OWCP, to help claimants obtain employment.

The districts are broken down geographically, except for District 25, which handles the claims of all special category employees, discussed in more detail below. Claims should be filed with the district office having geographic jurisdiction over the employing agency. The districts, and the areas they cover, are set forth in the *FECA PM*, Ch. 1-0200.2.e:

- (1) District Office 1, Boston, MA. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
- (2) District Office 2, New York, NY. New Jersey, New York, Puerto Rico and the Virgin Islands.
- (3) District Office 3, Philadelphia, PA. Delaware, Pennsylvania, West Virginia, and Maryland when the claimant's residence is outside of an area approximating Prince George's County. Effective February 1, 2003, claims filed by claimants who reside in Maryland in zip codes beginning with "21" were transferred from District Office 25, Washington DC's jurisdiction, to District Office 3, Philadelphia's jurisdiction.

Effective September 1, 2014, Philadelphia's jurisdictional authority was expanded to include new claims for claimants who reside in all zip codes in Maryland, aside from those roughly encompassing Prince George's County which will remain under the jurisdiction of District Office 25, Washington DC. Effective October 1, 2014, jurisdiction for existing claims with all zip codes in Maryland, aside from those within an area roughly encompassing Prince George's County, were transferred from District 25, Washington DC's jurisdiction, to District Office 3, Philadelphia's jurisdiction.

- (4) District Office 6, Jacksonville, FL. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
- (5) District Office 9, Cleveland, OH. Indiana, Michigan, Ohio and Special Jurisdiction cases.
- (6) District Office 10, Chicago, IL. Illinois, Minnesota and Wisconsin.
- (7) District Office 11, Kansas City, MO. Arkansas, Iowa, Kansas, Missouri and Nebraska; and the following:
 - (a) Cases filed by employees of the former Mining Enforcement and Safety Administration (MESA) of the Department of the Interior for cardiopulmonary conditions due to coal dust exposure; and
 - (b) Cases filed by employees of the Department of Labor and their relatives (except Job Corps and employees of the Office of Workers' Compensation Programs-Midwest Region and their relatives).
- (8) District Office 12, Denver, CO. New Mexico, Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
- (9) District Office 13, San Francisco, CA. Arizona, California, Hawaii, Nevada, and Pacific trust territories.
- (10) District Office 14, Seattle, WA. Alaska (including Aleutian Islands), Idaho, Oregon and Washington.
- (11) District Office 16, Dallas, TX. Louisiana, Oklahoma and Texas.
- (12) District Office 25, National Operations Office (NOO), Washington, DC. District of Columbia and Virginia, and a portion of Maryland for claimants who reside in zip codes in an area roughly encompassing Prince George's County. Claimants who reside in zip codes outside the area approximating Prince George's County are under the jurisdiction of District Office 3, Philadelphia, as detailed in paragraph 2e(3) above. District Office 25, Washington, DC, also has general jurisdiction for claims filed by claimants who are employed by the Office of Workers' Compensation Programs-Midwest Region and their relatives.

The address and telephone number of each district office can be found on the Department of Labor's website at <http://www.dol.gov/owcp/contacts/fecacont.htm>.

B. EMPLOYEES' COMPENSATION APPEALS BOARD

The Employees' Compensation Appeals Board (ECAB) was created in 1946 by Federal Security Order 58. Subsequently, the ECAB was transferred to the Department of Labor under Reorganization Plan No. 19 of 1950, 39 Stat. 742. Pursuant to 5 USC § 8149, the Secretary of Labor is authorized to promulgate rules and regulations regarding the administration and enforcement of FECA. Section 8149 also provides:

The rules and regulations shall provide for an Employees' Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees....

The Secretary of Labor designates one of the Board members as Chairman. 20 CFR § 501.2(b). In August 2005, the Board changed the titles of ECAB members from "members" to "judges." The Chairman (or Chairwoman) is now referred to as the "Chief Judge."

The ECAB is an appellate body that sits in Washington, D.C. Although the statute uses the word "hear" in describing the authority of the ECAB to review cases, evidentiary hearings actually are held in front of OWCP claims examiners. The ECAB hear oral argument in its appeals, upon request. 20 CFR § 501.5. Under 20 CFR § 501.2(c), the Board "has jurisdiction to consider and decide appeals from final decisions of OWCP in any case arising under the FECA. The Board may review all relevant questions of law, fact and exercises of discretion (or failure to exercise discretion) in such cases."

1. ECAB Decisions

The ECAB issues written decisions in all cases. The decision "will contain a written opinion setting forth the reasons for the action taken and an appropriate order." Decisions of the ECAB are final and not subject to judicial review. 20 CFR § 501.6(d). However, a party may petition the ECAB for reconsideration of a decision within 30 days. 20 CFR § 501.7(a).

Although the ECAB issues written decisions in all cases; historically, it has not reported all such decisions. From 1947 until 1994, the ECAB selected only those decisions it believed were significant or precedential. Those decisions were published in volume form by the U.S. Government Printing Office in a 45 volume set entitled *Digest and Decisions of the Employees' Compensation Appeals Board*. As the title indicates, each volume contains its own digest of the decisions published in that volume. Volume 45, the last volume to which citations are routinely referenced in the book, contains ECAB decisions through September 30, 1994. Later decisions are cited by the docket number and year.

The complete decisions of the ECAB are published on its website at www.dol.gov/ecab/decisions.htm and are indexed by year. Decisions also can be searched by keyword, date and/or topical index on Cyberfeds (www.cyberfeds.com), administered by LRP Publications.

III. EMPLOYEES COVERED

The FECA provides coverage to all civilian officers and employees in all branches of the United States government, and the government of the District of Columbia. Under 5 USC § 8101(1), the term "employee," as used in the FECA, means:

- (A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

- (B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;
- (C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;
- (D) an individual employed by the government of the District of Columbia; and
- (E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); but does not include—
 - (i) a commissioned officer of the Regular Corps of the Public Health Service;
 - (ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;
 - (iii) a commissioned officer of the Environmental Science Services Administration; or
 - (iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521-535 of title 4, District of Columbia Code; and
- (F) an individual selected pursuant to chapter 121 of title 28, United States Code, and serving as a petit or grand juror;

The referenced statutory provision, 28 USC Chapter 121, refers to individuals selected for jury trials.

As drafted, the Act is somewhat confusing because subsection (E) lists several categories of employees who are excluded from coverage and subsection (F), which appears directly below it, again goes back to listing who is covered, rather than who is excluded. To the extent the actual wording of the Act tends to suggest that individuals serving as petit or grand jurors are not covered, the Office, in its *FECA PM*, Ch. 2-0802.20, specifically provides that such individuals are covered. *See also* 20 CFR § 10.5(h).

The categories of individuals covered under the FECA definition of employee encompass individuals who technically are not employees of the United States government. For example, FECA benefits specifically extend to individuals who, without pay, render services similar to those of federal employees provided the acceptance of such services is authorized by statute or, in the alternative, a statute authorizes payment of travel or other expenses to such an individual. *See* 5 USC § 8101(1)(B). In addition, as discussed in detail below under the subheading “[Statutory ‘Employees,’](#)” Congress has amended the FECA several times to include special categories of volunteers and reserve corps members, though usually the benefits to such groups are less generous than otherwise provided by the Act.

For the vast majority of federal civilian employees, coverage under the FECA is evident by the plain language of 5 USC § 8101(1). Still, as a vast entity, the U.S. government uses individuals who are not technically federal civilian employees in many capacities. The determination of whether these individuals are employees for FECA purposes is not so evident. In some instances, as noted above, Congress, through legislation, has provided FECA coverage. In other instances, OWCP has recognized categories of individuals as employees for FECA purposes. In still other instances, OWCP has issued guidance for determining, in a given situation, whether an individual is considered an employee under the FECA. Each of these is addressed below.

Two determinations are made when OWCP considers whether a claimant is an employee within the meaning of the FECA. First is whether the employer is a “branch of the Government of the United States” as that term is used in 5 USC 8101(1) of the FECA.” *FECA PM*, Ch. 2-0802.3. In other words, is the employer a “component of the legislative, judicial, or executive branch of the Government...”? *Id.* Second is whether the claimant actually was employed as an officer or employee of the branch of government claimed. The answer to the first question usually is clear; the same is not always true of the second question.

A. COVERAGE OF APPLICANTS FOR EMPLOYMENT

Unlike some employment statutes, such as the major civil rights laws, applicants for employment are not covered under the FECA. However, there are instances where an individual who has not yet attained the status of “employee” may be covered. According to the *FECA PM*, Ch. 2-0802.5:

Question of Applicant vs. Employee. This question must be considered where it is unclear that a contract of hire was established before the injury or if the claimant worked at the agency prior to the injury.

- a. The most usual situations involve cases where:
 - (1) The claimant is a casual employee;
 - (2) The injury occurs about the time the employment contract began or was about to begin; or
 - (3) The injury occurs in connection with a pre-employment examination, vaccination or immunization, or an event of a similar nature where the individual may not have as yet acquired the status of an “employee.”
- b. Where the claimant’s status is unclear, the CE [claims examiner] should obtain the information noted below. Any material discrepancy in the statements must be clarified by requesting supplemental statements from principals, or by obtaining similar evidence from other sources. The CE should ask the worker and the reporting agency:
 - (1) The precise time when the worker accepted an offer of employment from the reporting agency;
 - (2) Whether such agreement was verbal or written (a copy should be requested if there was a written agreement; otherwise, particulars of the agreement should be furnished);
 - (3) Whether the worker was required to take an oath of office and, if so, whether the oath was taken prior to the injury;

- (4) What work, if any, the worker had performed for the reporting office prior to the injury; and
- (5) The precise time when the worker began rendering this service and when pay began accruing.

Under the foregoing FECA guidance, although applicants for employment are not covered, an individual may attain “employee” status for FECA purposes prior to otherwise being officially recognized as a federal civilian employee.

B. INDEPENDENT CONTRACTORS

Independent contractors are not covered under the FECA. Whether an individual is an employee of the federal government or an independent contractor is determined largely by the same common law test that is used to determine whether an individual is an employee or an independent contractor in the private sector. The issue is one of how much control the government asserts over the employment relationship.

The criteria for determining independent contractor or employee status are set forth in *FECA PM*, Ch. 2-0802.6:

- a. *Contract Employees.* Not every person rendering service for the Federal government is necessarily an “employee.”

Many such individuals are independent contractors or employees of independent contractors and have no status under the FECA. For this reason the CE must be particularly careful to determine whether the worker is an independent contractor or an “employee.” Where this issue becomes a factor, the CE should request statements from the worker and the reporting agency, to show:

- (1) Whether the worker performs services or offers services to the public generally as a contractor or is permitted to do so by the reporting agency and, if so, a full explanation;
- (2) Whether the worker is required to furnish any tools or equipment and, if so, a full explanation;
- (3) The period of time the work relationship is to exist;
- (4) Whether the reporting agency has the right to discharge the worker at any time and, if so, when and under what circumstances;
- (5) Whether the reporting agency has any right to control or direct how the work is to be performed and, if so, a full explanation;
- (6) The manner in which payment for the worker’s services is determined; and
- (7) Whether the activity in which the worker was engaged was a regular and continuing activity of the reporting agency and, if not, a full explanation.

- b. *Proof of Status.* Any material discrepancy in these statements must be clarified by requesting supplemental statements from the principals, or by obtaining similar evidence from other sources. A copy of the contract or agreement should be obtained if there was a written instrument to support the agreed-upon work relationship. Proofs of employee status are similar to those for regular employees of the United States.

In general, the more control asserted over the individual, the more likely that he or she is an employee and not an independent contractor. Among all the factors, the Board has held that the right to control the work activities of the person whose status as an “employee” is at issue is the most important factor. *Nettie Jackson (Lee F. Jackson)*, 01-498 (2001); *Harry H. Holzem*, 03-588 (2003).

C. MEMBERS OF CONGRESS

Members of Congress are covered by the FECA, and must pursue work-related injuries under the FECA just like any other federal employees. See *Sullivan v. United States*, 2007 WL 1114124 (D.D.C. 2007).

D. U.S. POSTAL SERVICE

Currently, OWCP has considered whether two particular classes of individuals who perform services for the U.S. Postal Service should be considered employees or independent contractors. In each case—mail messengers and contract job cleaners—OWCP has decided to reserve judgment on the class of individuals and decide on a case-by-case basis.

1. Mail Messengers

The *FECA PM*, Ch. 2-0802.7, provides that questions concerning FECA coverage for mail messengers should be made on a case-by-case basis by a senior claims examiner. Prior to the submission, in accordance with Ch. 2-0802.7, a claims examiner should:

...ask the reporting agency for copies of any written agreement or work contract executed by the mail messenger or the Postal Service when the injured individual began working or at any later date, and of any oath executed by the worker. Absent a written contract, the postmaster and the mail messenger should be asked to submit statements showing in full detail the terms of the oral agreement and the precise manner in which it was reached. The reporting agency should also be asked to submit a statement showing:

- a. The manner in which the worker qualified and was selected to act as mail messenger;
- b. The distance the mail was carried;
- c. The kind of equipment used and by whom it was furnished;
- d. Whether the mail messenger was required to personally perform the service or whether assistants or substitutes were permitted and, if so, under what conditions and circumstances;
- e. Whether the mail messenger had any other employment or performed or offered like or similar services to the public as an independent business service and, if so, this should be explained fully;

- f. The manner and circumstances under which the relationship could be terminated;
- g. The manner in which the pay was determined;
- h. Who determined how, when, and in what manner the mail would be carried; and
- i. What right, if any, the postmaster had to direct or supervise the work performed by the mail messenger and to what extent the postmaster exercised this right.

2. Job Cleaners

Like cases involving mail messengers, cases involving contract job cleaners are decided by senior claims examiners. The *FECA PM*, Ch. 2-0802.8, provides:

Contract Job Cleaners Used by the Postal Service. In lieu of using employees with civil service appointments, the U.S. Postal Service frequently contracts for the services of individuals to perform janitorial work. The contracts consist of signed agreements, which may result from negotiation or invitation-bid. Determinations of whether contract job cleaners are civil employees under the FECA are made on a case-by-case basis and will depend on the particular facts of each case.

Cases of contract job cleaners are to be referred to a Senior CE [claims examiner] for adjudication. The Senior CE should request:

- a. A copy of the Postal Service agreement form under which the individual was serving when injured,
- b. A statement from the postmaster showing the extent to which there was a right to control the manner of the worker's performance and the amount and extent of the control exercised over the worker, and
- c. A statement from the contract job cleaner showing whether the injured person worked for any employer other than the Postal Service during the year before the injury and, if so, the employers' names and addresses and the inclusive dates worked for each, the kinds of work performed, rates of pay, and the total amounts earned from each employer.

E. STATUTORY "EMPLOYEES"

Several groups of volunteers, members, and trainees have been granted FECA coverage by Congress. However, in most cases, the benefits provided are less than benefits provided to federal civilian employees.

1. Civil Air Patrol Volunteers

Pursuant to 5 USC § 8141, volunteer Civil Air Patrol members are covered under the FECA. Section 8141 provides:

- (a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.
- (b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—
 - (1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;
 - (2) the percentages applicable to payments under section 8133 of this title are—
 - (A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;
 - (B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and
 - (C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;
 - (3) a payment may not be made under section 8133(a)(5) of this title;
 - (4) "performance of duty" means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and
 - (5) the Secretary of Labor or his designee shall inform the Commissioner of Social Security when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Commissioner of Social Security shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.
- (c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

2. Reserve Officers' Training Corps

Members and applicants for membership in the Army, Navy, or Air Force Reserve Officers' Training Corps (ROTC) are considered employees for the purposes of the FECA in limited circumstances. Coverage for ROTC members is provided at 5 USC § 8140:

- (a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred, or an illness contracted, in line of duty—
- (1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or
 - (2) during the period of the member's attendance at training or a practice cruise under chapter 103 of title 10, United States Code [10 USCA § 2101 et seq.], beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.
- (b) For the purpose of this section, an injury, disability, death, or illness of a member referred to in subsection (a) may be considered as incurred or contracted in line of duty only if the injury, disability, or death is incurred, or the illness is contracted, by the member during a period specified in that subsection. Subject to review by the Secretary of Labor, the Secretary of the military department concerned (under regulations prescribed by that Secretary), shall determine whether an injury, disability, or death was incurred, or an illness was contracted, by a member in line of duty.
- (c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed \$150.
- (d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.
- (e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.
- (f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees' Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual by a military department in a facility of a military department.
- (g) For purposes of this section, the term "applicant for membership" includes a student enrolled, during a semester or other enrollment term, in a course which is part of Reserve Officers' Training Corps instruction at an educational institution.

3. Peace Corps Volunteers and Employees

FECA coverage for Peace Corps volunteers is provided at 5 USC § 8142:

- (a) For the purpose of this section, "volunteer" means—
- (1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;
 - (2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and
 - (3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.
- (b) Subject to the provisions of this section, this subchapter applies to a volunteer, except that entitlement to disability compensation payments does not commence until the day after the date of termination of his service as a volunteer.
- (c) For the purpose of this subchapter—
- (1) a volunteer is deemed receiving monthly pay at the minimum rate for GS-7;
 - (2) a volunteer leader referred to by section 2505 of title 22, or a volunteer with one or more minor children as defined in section 2504 of title 22, is deemed receiving monthly pay at the minimum rate for GS-11;
 - (3) an injury suffered by a volunteer when he is outside the several States and the District of Columbia is deemed proximately caused by his employment, unless the injury or disease is—
 - (A) caused by willful misconduct of the volunteer;
 - (B) caused by the volunteer's intention to bring about the injury or death of himself or of another; or
 - (C) proximately caused by the intoxication of the injured volunteer; and
 - (4) the period of service of an individual as a volunteer includes—
 - (A) any period of training under section 2507(a) of title 22 before enrollment as a volunteer; and
 - (B) the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

Peace Corps claims are initially adjudicated in the Office's Special Claims Unit in Cleveland District Office. Claims that are approved are transferred to other district offices in the volunteer's home locale. *FECA PM*, Ch. 2-1701.5.

The *FECA PM*, Ch. 2-1701.6 provides more detail regarding when Peace Corps employees and volunteers are covered:

The Peace Corps Act extends the benefits of the FECA to Peace Corps Volunteers and Peace Corps Volunteer Leaders. For the purposes of this paragraph all three groups will be referred to as volunteers.

Note—In 1974, Section 8142(c)(2) of the FECA was amended to designate Peace Corps Volunteers with one or more minor children as “Heads of Household.” By virtue of this amendment, these volunteers are entitled to compensation at the same rate as the Volunteer Leaders. Reports of injury should indicate whether a claimant is a Volunteer, Head of Household, or Volunteer Leader.

- a. Peace Corps National Advisory Council members and the experts and consultants provided by sections 12 and 13 of the Peace Corps Act have the protection of the FECA while performing their assigned duties under section 8101(1)(B) of the FECA. However, decisions concerning these individuals will be made on a case-by-case basis, and an opinion from the Solicitor of Labor should be requested if necessary.
- b. *Staff Employees.* These employees fall within the definition of “employee” outlined in 5 U.S.C. 8101(1). They have full coverage of the FECA, and their claims are adjudicated in the district office having jurisdiction over the place of employment. *See FECA PM* 1-200.
- c. *Staff Spouses.* The spouses of Peace Corps staff members serving in foreign countries have the protection of the FECA while performing service or engaged in official travel. In addition to Form CA-1 or CA-2, a copy of the travel authorization is required. Performance of duty will be determined on a case-by-case basis. (*See FECA PM* 2-804) The pay rate for computing compensation will be determined in the manner used for persons coming within the scope of section 8101(1)(B) of the FECA.

Volunteers undergoing required training overseas in their country assignment are covered by the FECA. *FECA PM*, Ch. 2-1701.7. Volunteers traveling home from their assignment are also covered by the FECA unless they deviate by not traveling straight home. *FECA PM*, Ch. 2-1701.9. Deviations from assignments are discussed in [Chapter 7](#).

4. Job Corps, Volunteers in Service to America, and Youth Challenge Program

Limited coverage also is provided to Job Corps enrollees and Volunteers in Service to America (VISTA) under 5 USC § 8143, which states:

- (a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection—
 - (1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2;
 - (2) section 8113(a) of this title applies to an enrollee; and
 - (3) “performance of duty” does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.
- (b) This subchapter applies to a volunteer in service to America who receives either a living allowance or a stipend under part A of subchapter VIII of chapter 34 of title 42, with respect to that service and training, to the same extent as enrollees of the Job Corps under subsection (a) of this section. However, for the purpose of the computation described in subsection (a)(1) of this section, the monthly pay of a volunteer is deemed that received at the minimum rate for GS-5 of the General Schedule under section 5332 of title 5, United States Code.

Participants in the National Guard Civilian Youth Opportunities Pilot Program, also known as the Youth Challenge Program, are considered federal employees pursuant to the Defense Authorization Act of 1993. Their coverage follows the same guidelines as Job Corps enrollees. *FECA PM*, Ch. 2-0802.28.

5. National Teacher Corps

Members of the National Teacher Corps also are covered by the FECA under 5 USC 8143a:

Subject to the provisions of this section, this subchapter applies to a member of the National Teacher Corps. In administering this subchapter for a member covered by this section—

- (1) “performance of duty” does not include an act of a member while—
 - (A) on authorized leave; or
 - (B) absent from his assigned post of duty, except while participating in an activity authorized by or under the direction or supervision of the Commissioner of Education; and
- (2) In computing compensation for disability or death, the monthly pay of a member is deemed his actual pay or that received at the minimum rate for GS-6, whichever is greater.

6. Student Employees

Pursuant to 5 USC § 8144, a student employee who suffers “disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training” is covered under the FECA. Student employees are defined at 5 USC § 5351 and include student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists and student occupational therapists “assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency...”

7. Panama Canal and Alaskan Railroad Employees

Employees of the Panama Canal Commission are covered under the FECA. However, the administration of claims by those employees is not handled by OWCP. The Commission processes its own claims, subject to review by the ECAB. 5 USC § 8146.

Originally, Alaskan railroad employees also were provided with FECA coverage under section 8146. However, the Alaskan railroad has now been entirely transferred to state control. Claims for injuries or illnesses occurring after January 6, 1985, are the responsibility of the State of Alaska. *FECA PM*, Ch. 2-0802.21.

8. Law Enforcement Officers

Coverage for certain non-federal law enforcement officers is provided under the FECA at 5 USC §§ 8191–8193. Section 8191 defines the eligibility of law enforcement officers for FECA benefits:

The benefits of this subchapter are available as provided in this subchapter to eligible law enforcement officers (referred to in this subchapter as “eligible officers”) and their survivors. For the purposes of this subchapter, an eligible officer is any person who is determined by the Secretary of Labor in his discretion to have been on any given occasion—

- (1) a law enforcement officer and to have been engaged on that occasion in the apprehension or attempted apprehension of any person—
 - (A) for the commission of a crime against the United States, or
 - (B) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or
 - (C) who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or
- (2) a law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or
- (3) a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in section 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under subchapter I of this chapter to pay compensation if he had been on that occasion such an employee engaged in the performance of his duty. No person otherwise eligible to receive a benefit under this subchapter because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

Section 8192 provides the following in the way of benefits:

- (a) **Benefits in Event of Injury.**—The Secretary of Labor shall furnish to any eligible officer the benefits to which he would have been entitled under subchapter I of this chapter if, on the occasion giving rise to his eligibility, he had been an employee as defined in section 8101(1) engaged in the performance of his duty, reduced or adjusted as the Secretary of Labor in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which he would have been entitled to receive but for this subchapter) by virtue of his actual employment on that occasion. When an enforcement officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.
- (b) **Benefits in Event of Death.**—The Secretary of Labor shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee as defined in section 8101(1) engaged in the performance of his duty on the occasion giving rise to his eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subchapter) by virtue of the officer’s actual employment on that occasion. When an enforcement officer has contributed to a survivor’s benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivor’s benefits coverage for the individual officer.

Section 8193 relates solely to the administration of the above sections and requires the Secretary of Labor to cooperate with the U.S. Attorney General or any state or local law enforcement official necessary to process a claim.

The tragic events of September 11, 2001, resulted in a claim for compensation from a New York City Police Officer. In *Michael Kosowski and New York City Police Dept.*, 04-2263 (2005), the claimant was hit by falling debris when he was evacuating civilians from the World Trade Center. He claimed coverage under section 8191(3), stating that he was “engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States.” Specifically, he stated that he was preventing a crime against the United States because, by rescuing individuals, he was preventing them from becoming victims of the terrorist attack. The Board noted that the claimant acted in a heroic manner, but held that, while the claimant “may have saved lives, he did not act with the intent to prevent the commission of a federal crime.”

A local law enforcement officer injured or killed in the line of duty must know “that a federal crime or potential federal crime was being, or about to be, committed and therefore formed the intent to apprehend someone for, or to prevent the commission of, a federal crime.” *D.H. claiming as widow of G.H. and Grand Prairie Police Dept.*, 07-314 (2007). In that case, the local officer was investigating a report of a suspicious car in a Wal-Mart parking lot. When he contacted the unknown male inside the vehicle, the man shot him in the throat, and he died. A colleague returned fire, killing the assailant. It was later discovered that the assailant had warrants out for his arrest in Florida, and that he the firearm he possessed and used was

a violation of federal firearms laws. As such, the claimant argued that the officer was engaged in the apprehension or attempted apprehension of an individual committing crimes against the United States under 8191(1)(A). The Board in *G.H.* disagreed, citing to the FECA's wording, as well as congressional intent:

Appellant indicated that when decedent was initially dispatched to the scene, the purpose was for a welfare call for a suspicious motor vehicle parked in a Wal-Mart parking lot which was located on an interstate thoroughfare. Appellant asserts that the stimulus for the dispatch changed when the suspect fired his weapon and at that point the mission was no longer a response to a welfare call. Appellant contends that the Congressional intent of 5 USC § 8191 was to bring local law enforcement within the coverage of the Act and therefore the statute should be broadly construed. Appellant asserts that decedent would have found out that his assailant was a federal fugitive but was shot before he had the chance to question him.

While the Act is remedial and should be broadly and liberally construed in accord with its purpose, the primary rule of statutory construction is to give effect to legislative intent. In arriving at such intent, the words in a statute should be construed according to their common usage. Section 8191 does not explicitly state that an eligible officer must be aware of a federal crime, but the legislative history supports that the local officer be purposely, not accidentally, engaged in the federal law enforcement activity. The statute's wording suggests a contemporaneous specificity. The phrases on that occasion and at that time in the statute indicate that to be eligible for coverage under the Act, the local officer must be apprehending or trying to apprehend a person who is committing or is wanted for committing a federal crime at the time of the local officer's activity.

Certainly, the congressional sponsors of section 8191 were clear that the crime for which the person was being apprehended would be controlling in determining coverage. This is because the purpose of the Act was to provide compensation benefits for state and local law enforcement officers who expose themselves to the dangers of enforcing federal laws or providing assistance to federal authorities.

The Board has consistently held that coverage will not be afforded where the law enforcement officer is engaged in a purely local police matter [See *James David Finch*, 24 ECAB 181, 185-6 (1973); Cong. Rec., September 14, 1967, p. 25, 567], nor is coverage appropriate if, only after the injury or death, is it discovered that a federal crime was involved; in such a case the initial police activity which resulted in the injury or death would have been a purely local matter [*Michael McKeon*, 28 ECAB 8 (1976); *Angel F. Poggi*, 28 ECAB 199 (1977); *Edward L. Jackson*, 31 ECAB 550 (1980)]. Thus, the proximate cause of the injury or death was related to whatever prompted the local officer's actions; any subsequent link to federal offenses or potential crimes becomes too tenuous to support coverage in keeping with the purpose of the Act. See *Alan R. Penberg*, 42 ECAB 610, 614 (1991) (finding that whether the on-going investigation might have prevented further federal violations was too remote a circumstance to bring appellant within coverage of section 8191).

A review of the Board's case law involving traffic stops demonstrates the distinguishing characteristics of purely local police activity. The Board has denied coverage when the officer was engaged in a local police matter and only later learned that the suspect was a possible federal offender. [See *Rocco A. Ranaudo*, 35 ECAB 689, 691 (1984) (where a police officer approached an idling vehicle whose driver appeared to be asleep, was injured when the man accelerated rapidly and the driver was subsequently found to be an illegal alien; the Board denied coverage because the officer was engaged in a local police matter, a potential traffic violation, and only later did the police department learn that the driver was a possible federal offender); *Lance D. Coleman*, 41 ECAB 604, (1990) (where a highway patrol officer stopped a vehicle because of a broken tail light and was shot; the Board held that the officer was not covered under section 8191 because only after the incident was it discovered that the assailant was wanted for a federal crime); *Morris W. Farlow*, 48 ECAB 659 (1997) (where a police officer stopped a vehicle because its out-of-state license plate number was registered to a different make of car and the police reported suspicious activity by the car's occupants; the Board denied coverage because nothing of a federal criminal nature was known to appellant as he approached the car's driver and was immediately shot)].

In this case, the facts establish that decedent had no knowledge that the occupant of the vehicle was a federal offender, potential or otherwise. On June 18, 2004 decedent was asked to respond to the parking lot of a Wal-Mart investigating a suspicious van with New Mexico license plates which had been running all night. According to the police incident report, decedent contacted an unknown male inside the van and the suspect opened fire, with an unknown type of firearm. Decedent was shot in the throat and head and later died at the hospital. The identity of the suspect was later determined to be Timothy Joe Irwin who was killed by a fellow officer. It was subsequently discovered that the suspect had active warrants out for his arrest for assault/domestic violence from Florida, a protection order with armed and dangerous caution from Florida, that he committed a violation of the federal firearms laws on that occasion, as he possessed the firearm in violation of 18 USC §§ 922(g)(3) and 922(g)(8) and possessed a destructive device in violation of 26 USC § 5861(d). Nothing of a federal criminal nature was known to decedent when he approached the automobile, made contact with the occupant and was immediately shot. Only afterward, were the potential federal violations discovered. Therefore, the circumstances of this case do not afford coverage under section 8191 of the Act.

The Board affirmed denial of coverage because the activity of responding to the suspicious car and approaching the driver was not, in its interpretation, the apprehension of a federal offender or the prevention of a federal crime.

Park Police and Secret Service agents hired after December 31, 1983, who suffered injuries on or after January 1, 1987 are covered by the FECA, unless the claim is for recurrence of an injury or illness occurring prior to January 1, 1987. In such cases, coverage is provided under Title IV of the District of Columbia Code. *FECA PM*, Ch. 2-0802.24.

9. Petit or Grand Jurors

While most do not consider jury duty particularly hazardous, petit and grand jurors are nonetheless covered by the FECA during the period of their service. 5 USC § 8101(1)(F). The coverage became effective January 12, 1983. The *FECA PM*, Ch. 2-0802.20, provides:

Grand and Petit Jurors. Pub. Law 97-463, effective January 12, 1983, provides that persons serving as grand or petit Federal jurors are entitled to benefits under the Act, for injuries occurring on or after that date.

- a. Coverage of jurors is limited to injury in, or arising from, situations where the juror is:

- (1) In attendance at court pursuant to a summons.
- (2) In deliberation.
- (3) At a location, such as the scene of a crime, for the purpose of taking a view.
- (4) Sequestered by order of a judge. A juror is not covered while traveling to and from home.

The pay rate for compensation purposes for grand or petit federal jurors will be that of a GS-2, step 1, unless the juror is a federal employee. In that case the pay rate is based on the juror's actual federal employment and is determined in accordance with 5 USC 8114. The continuation of pay provisions of 5 USC 8118 would only apply if the juror is a federal employee who would be entitled to COP by virtue of the definition given at 5 USC 8101(1)F. Aside from COP, jurors who are not otherwise federal employees are entitled to all rights and benefits under the FECA.

Entitlement to compensation for disability does not begin until the day after termination of service as a juror. The clerk of the court, or a designee, will serve as the official superior in these cases.

10. National Fisheries Observers

Pursuant to an act of Congress in 1996, certain observers on vessels are deemed to be federal civilian employees entitled to benefits under the FECA. The *FECA PM*, Ch. 2-1700.8, provides:

- a. **Statutory Authority.** Public Law 104-297, enacted on October 11, 1996, provides that observers on vessels that are under contract to carry out responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act or the Marine Mammal Protection Act of 1972 shall be deemed to be civil employees of the United States for the purposes of coverage under 5 U.S.C. 8101.
- b. **Conditions of Coverage.** Contract observers are employed in private industry to carry out the requirements of the above Acts, which are under the jurisdiction of the Department of Commerce. Any person claiming coverage has the burden of establishing that he or she is an observer within the meaning of section 403 of the Magnuson-Stevens Act, that the injury was sustained while in performance of duty on a vessel, and that the claimed disability or impairment is due to the on-the-job injury. Therefore, once the determination that the claimant is a civil employee is made, the guidelines described in chapters 2-800 through 2-805 should be employed in the adjudication of these claims. In particular, fisheries observers are extended coverage under the FECA only while on board the vessel, not while traveling to and from the vessel, or when performing off-vessel work while assigned to the cruise.
- c. **Jurisdiction.** As these cases are anticipated to present unusual issues, they will be handled in one location. All claims for contract observers and their survivors will be forwarded to the National Operations Office (District 25) without jacketing. They will be assigned case file numbers with an OB-prefix, and will be adjudicated and maintained in the National Operations Office.
- d. **Other Considerations.** Payment of compensation should be determined in accordance with Section 8114(d) of the FECA and PM Chapter 2-900. Increases in the pay rate due to the claimant being at sea when the injury occurred should be handled as described in 2-900-8b., Applying Increments of Pay. The increase in pay rate for sea duty should be treated in exactly the same way as premium pay, night differential pay, Sunday pay or FLSA extra pay is treated. According to section 8b. of the chapter, the CE must obtain the dollar amount of additional pay received during the year previous to the work injury, and add it to the reported base pay to obtain the annual salary. (See Chapter 2-900-8. b.)

Due to the potential for third party liability of the vessel owner, Form CA-1045 should be released by the CE [claims examiner] and the appropriate subrogation procedures followed. As possible entitlement to state workers' Compensation would not constitute a prohibited dual benefit, OWCP would not require an election of benefits by the claimant. This does not preclude the states from offsetting FECA benefits against any entitlement the claimant might have under the Jones Act.

With regard to processing claims for contract observers on vessels, the *FECA PM*, Ch. 2-0802.33 states:

Contract Observers on Vessels. Public Law 104-297, enacted on October 11, 1996, provides that observers on vessels who are under contract to carry out responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act or the Marine Mammal Protection Act of 1972 shall be considered Federal employees for the purpose of compensation under the FECA.

Contract observers are employed in private industry to carry out the requirements of these Acts, which are under the jurisdiction of the Department of Commerce. Since these individuals are not Federal employees, the Department of Commerce will not be directly involved in the claims process. All claims from contract observers and their survivors will be forwarded to District 9 (Cleveland).

F. UNPAID VOLUNTEERS

As noted above, section 8101(1)(B) of the Act provides FECA benefits for certain volunteers who are either unpaid, or paid only a nominal amount. The Office, in the *FECA PM*, Ch. 2-0802.9, describes the responsibilities of a claims examiner in such cases:

Workers Serving Without Compensation. Except for cases of certain volunteers with the Department of Veterans Affairs...and certain volunteers with the U.S. Department of Agriculture, Forest Service..., determinations of civil employee status for volunteers must be made by a Senior CE or higher adjudicative authority.

- a. **Statutory Authority.** In any case where status as a civil employee is claimed by reason of 5 U.S.C. 8101(1)(B), the CE must obtain a statement from the reporting agency citing the statutory authority by which the services of the injured or deceased individual were used. (See paragraph 4 concerning referral of such issues to the National office.)
- b. **Kind of Service Rendered.** The CE must also ensure that the evidence shows whether the injured or deceased individual was "rendering a personal service of a kind similar to those of civilian officers or employees of the United States." If such evidence is not received with the initial submission, the CE should ask the reporting agency to submit a statement which fully describes the services rendered by the injured

or deceased individual and shows whether the agency has persons on its payroll who render similar services and, if so, the job titles for those positions.

In some instances, the determination of whether a claimant is an employee will be made on an individual basis. In other instances, discussed below, OWCP has made a determination that a class of volunteers comes within the definition of employee under the FECA.

1. Department of Veterans Affairs Volunteers

The Department of Veterans Affairs is an agency that utilizes volunteers on a regular basis. As a result, OWCP has made a number of specific determinations with respect to such volunteers so that individualized determinations as to a volunteer's status do not have to be made. The *FECA PM*, Ch. 2-0802.10 to 12, provides:

10. *Volunteer Workers with the Department of Veterans Affairs.* OWCP has determined that the Department of Veterans Affairs (DVA) has statutory authority to use the services of persons who serve without compensation in its Volunteer Service Program. Therefore, the CE need not ask the DVA to cite its statutory authority for using the services of these individuals.

However, the CE must be certain that the injured or deceased individual was "rendering a personal service of a kind similar to those of civilian officers or employees of the United States" as required by 5 U.S.C. 8101(1)(B). (See instructions in preceding paragraph.)

The CE may affirmatively determine the status of these individuals when the service performed by the injured or deceased individual is clearly like the services in well-established positions in the Federal service, e.g., nurse's aide, recreation supervisor, etc. Otherwise, the question should be submitted for determination by a Senior CE or higher adjudicative authority.

11. *Attendants Authorized to Travel with DVA Patients.* OWCP has ruled that a person has status as an "employee" while traveling under an authorization from the DVA as an attendant for one of its beneficiaries. The authority for the DVA to use the services of these individuals appears in Pub. Law 76-432 (38 U.S.C. 76), as amended. In any case of this nature, the CE should ask the DVA to submit:

- a. A copy of the authorization issued to the attendant by the Department of Veterans Affairs; and
- b. A statement showing whether the services of the injured or deceased individual were used pursuant to the provisions of Pub. Law 76-432 (38 U.S.C. 76), as amended. The CE may affirmatively determine the status of these individuals when the attendant was serving under a valid authorization and it is shown it was issued pursuant to this legislation.

12. *Affiliate Student Nurses of the DVA.* OWCP has determined that an affiliate student nurse of the DVA has status as an "employee" when appointed for training pursuant to section 14A, Pub. Law 79-293. In any case of this nature the CE should ask the DVA for a statement showing whether the services of the injured or deceased individual were used pursuant to the provisions of this section. The CE may determine the status of these individuals affirmatively when it is shown they were serving under the authority of this legislation.

2. Forest Service Volunteers

Individuals who perform services for the U.S. Department of Agriculture, Forest Service, under the Volunteers in the National Forests Act of 1972, Pub. L. 92-300, have "the status of an 'employee' by virtue of section 3(c) of that Act." See 16 USC § 558c(c). A statement by the employing agency that the services of an injured or deceased individual were provided, under § 558c, is sufficient to establish employee status. *FECA PM*, Ch. 2-0802.13.

3. National Park Service

Similarly, volunteers of the Department of Interior, National Park Service, under Pub. L. 91-357, are entitled to FECA coverage. *FECA PM*, Ch. 2-0802.25.

4. Volunteer Weather Observers—National Oceanic and Atmospheric Administration

The rules with respect to determining the status of an individual serving as a volunteer weather observer to the National Oceanic and Atmospheric Administration (NOAA) are complex. The ultimate determination is fact specific. The *FECA PM*, Ch. 2-0802.14, explains:

Volunteer Weather Observers of the National Oceanic and Atmospheric Administration. The National Oceanic and Atmospheric Administration (NOAA) has many small weather stations where, by agreement, individuals make observations on a voluntary basis without pay. They are known as "volunteer weather observers." The operation of the station may be by agreement with:

- a. Individuals who make observations on their own time. These individuals have status as employees while actually engaged in taking the observations or while performing activities incidental to making the observations. The CE may determine the status of these individuals affirmatively when the evidence clearly shows the agreement to operate the station was with the individual.
- b. A company or institution, where its employees take the observations as part of their regular duties. These individuals do not have status as employees.
- c. Individuals who are employees of a company or institution and who are permitted to take observations on company time. The status of these individuals is questionable and such cases should be referred to a Senior CE for final determination after the facts have been developed fully.

The CE should ask the NOAA to submit a copy of the agreement made with the individual, company, or institution for the operation of the weather station. If this agreement is not sufficiently detailed or otherwise fails to clarify the status of the injured or deceased individual, additional information should be requested of the NOAA, the injured individual or claimant, or the company or institution which may also be involved.

In many of cases involving individuals (subparagraphs 14a or 14c), the more difficult issue is whether the injury occurred in the performance of duty, and particular attention should be given to the guidance in *FECA PM* 2-804.

For a full discussion of Performance of Duty, see [Chapter 7](#).

5. Federal Emergency Management Agency Volunteers

Volunteers for the Federal Emergency Management Agency (FEMA), who are recruited from state and local police, firefighter, and emergency medical personnel units, are covered under FECA, as set forth in *FECA PM 2-0802.32*:

The Robert T. Stafford Disaster Relief and Emergency Act, P. L. 93-288, as amended, 42 U. S. C. 5121, et. seq., authorizes the FEMA to form Urban Search and Rescue (US&R) Response system member squads from state and local police, firefighter and emergency medical personnel. The squads train at FEMA's direction and according to FEMA's requirements, so they are ready when activated in case of a disaster. FEMA transports them to the disaster and directs their actions for the duration of the crisis. A FEMA employee will complete the supervisor's part of the notice of injury, illness or death.

6. Student Volunteers for Department of Commerce

Student volunteers for the Department of Commerce, International Trade Administration, whose services are authorized under 5 USC § 3111, are considered federal employees under the FECA, and are therefore covered by the Act. *FECA PM, Ch. 2-0802.27*.

G. OTHER COVERED "EMPLOYEES"

In addition to the situations discussed above, OWCP has determined that the following individuals are covered under the FECA.

1. National Guard

Individuals serving in the National Guard are covered by the FECA provided that they were performing duties in a civilian status at the time of injury or death. The *FECA PM, Ch. 0-0802.15*, provides:

Employees of the U.S. Property and Fiscal Officers (National Guard). All cases in this category must contain a statement from the U.S. Property and Fiscal Officer (or from some other responsible and knowledgeable official of the National Guard) certifying that the injured or deceased individual was a civil employee of the U.S. paid from Federal funds, and at the time of injury was performing duties in a civilian status. These agencies have been instructed to submit this certification with the original reports on Form CA-1 or CA-2. It should be requested from the reporting agency if it is missing.

- a. This certificate is required because these civilian caretakers and technicians serve in a dual capacity:
 - (1) As members of the State National Guard in a military capacity, and
 - (2) As employees of the U.S. Property and Fiscal Officer in a civilian capacity. This certification is *prima facie* proof that at the time of the injury, the injured or deceased individual had status as an employee.
- b. The CE may accept this certificate and affirmatively determine the employee's status on this basis, unless the particular facts and circumstances of the case or other evidence creates doubt whether the certification is correct. The CE should consult with the Senior CE or supervisor if it is felt that certification is not valid.

If the injury does not arise from the individual's performance of civilian duties, however, there is no entitlement to FECA benefits. *See F.O. and Dept. of Air Force, Alaska Nat'l Guard, 06-1626 (2007)*.

2. International Organizations

Federal employees who transfer to international organizations are eligible for FECA benefits provided that prior to the transfer, the employee was serving under a federal appointment not limited to one year or less, and the transfer was made with the consent of the head of the federal agency. The *FECA PM, Ch. 2-0802.16*, states:

Employees Transferred to International Organizations. A Federal employee who transfers to an international organization retains the coverage, rights and benefits of the FECA if, prior to the transfer, the employee was serving under a Federal appointment not limited to one year or less, and the head of the Federal agency consented to the transfer (see Pub. Law 85-795).

In any case of injury or death to a Federal employee after transfer to an international organization, the CE should ask that the forms, reports, or certificates required of an official superior be completed and signed by an appropriate official of the Federal agency which originally employed the claimant.

Alternatively, forms, reports, claims, etc., will be acceptable when completed by an official of the international organization if they are either countersigned by an official of the Federal agency, or accompanied by a certificate from the Federal agency confirming the employee's employment status and duty status at the time of the accident.

Additionally, an appropriate official of the Federal agency should be asked to submit a statement showing the following:

- (1) Whether, prior to the transfer to the international organization, the employee was serving with the Federal agency under a Federal appointment not limited to one year or less; and
- (2) Whether the employee transferred to the international organization with the consent of the head of the Federal agency as provided by Pub. Law 85-795. In this situation the Federal agency should always be asked to act as the reporting office.

See also Pub. L. 85-795.