

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.

See also Johansen v. United States, 343 U.S. 427, 439 (1952). "[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.

The FECA has special procedures for administering claims involving employees of the Panama Canal Commission, as detailed at 5 USC § 8146.

A. OFFICE OF WORKERS’ COMPENSATION PROGRAMS

The OWCP is comprised of four separate programs, including the FECA program, housed within the Division of Federal Employees’, Longshore and Harbor Workers’ Compensation, which administers the FECA. The *FECA PM*, 0-0100.3, describes the other programs OWCP administers:

OWCP includes four workers’ compensation programs, of which the FECA program is one. The other three are the Longshore and Harbor Workers’ Compensation Program, 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. In August 2020, the Longshore and FECA programs were merged into a single division under the leadership of the Director for Federal Employees’, Longshore and Harbor Workers’ Compensation (DFELHWC). The division directors work directly for OWCP; therefore, the DFELHWC Director reports 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.

In August 2020, the Division of Federal Employees’ Compensation (often referred to as DFEC) and the Longshore and Harbor Workers’ Compensation merged. The Office explained, in FECA Transmittal No. 20-05:

Effective August 2020, the Divisions of Federal Employees’ Compensation and Longshore and Harbor Workers’ Compensation merged to create a single Division (DFELHWC). To that end, the FECA Procedure Manual was

updated to remove references to “DFEC.” References to DFEC were replaced with DFELHWC or the Federal Employees’ Compensation Act (FECA) Program as appropriate for clarity.

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’, Longshore and Harbor Workers’ Compensation

The Division of Federal Employees’, Longshore and Harbor Workers’ Compensation (DFELHWC) is one of four components of OWCP. DFELHWC is responsible for administration of FECA claims. The FECA Program has 12 program offices in various locations. *FECA PM*, Ch. 0-0100.5.

2. Leadership and Branches

Part of the September 2020 merger involved changing leadership structure and branches associated with administering the FECA. The *FECA PM*, Ch. 0-0100.4, provides an overview:

The Director for Federal Employees’, Longshore and Harbor Workers’ Compensation, along with FECA Program’s Deputy Director of Program and System Integrity, Deputy Director of Operations and Claims Management, and the National Administrator of Field Operations, are tasked with the implementation and oversight of the entire FECA program. This includes setting program goals and oversight.

Final authority over FECA program matters remains with the Director for Federal Employees’, Longshore and Harbor Workers’ Compensation. Under the immediate supervision of the Director are two Deputy Directors. Under the Deputy Directors are six specific branches that provide specialized oversight and guidance to National and Field Operations. Each branch has a Branch Chief.

a. *Branch of Regulations, Policies, and Procedures.* This Branch develops recommendations for new FECA 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 FECA Procedure Manual to be used by the FECA offices in adjudicating FECA claims and paying benefits. This branch also conducts ongoing claims audits and develops training materials for claims personnel. The Branch also manages the field nurse and vocational rehabilitation programs.

b. *Branch of Technical Assistance.* This Branch is responsible for developing, preparing, and distributing FECA 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 Information Technology.* 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 Information Technology 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

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 to train or otherwise advise all Offices and branches 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. This Branch houses Fiscal Officers who assists with fiscal-related matters and are responsible for the maintenance of financial management records, changes in health benefits coverage, etc. This Branch also houses Medical Coding Specialists who are responsible for providing technical coding expertise in reviewing, resolving, and auditing billing problems; assisting claims staff with correctly coding accepted condition(s) of injured workers; and monitoring payments for overutilization and abuse. They routinely audit medical bill processing transactions to ensure amounts paid through the medical billing contractor are accurate.

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 Offices. Hearing representatives are responsible for conducting the hearings, which are primarily telephonic although other formats may be used.

f. *Branch of Program Integrity, Fraud Prevention and Prescription Management.* This branch is responsible for developing and adjudicating claims for benefits for injured workers under the FECA, as well as medical treatment requests to include pharmaceuticals such as opioids and compounded medications. Medical Benefit Claims Examiners (MBE) also work to eliminate barriers that could impede necessary medical treatment and manage ongoing claims to include the verification of continuing entitlement to benefits. This Branch also houses Investigative and Program Analysts who analyze data to look for anomalies and potential vulnerabilities with medical and compensation payments. The Branch works closely with the FECA Branch of Fiscal Operations, the OWCP Branch of Medical Standards and Rehabilitation, and the Offices of Inspectors General when potential vulnerabilities or fraud is suspected.

Though this section of the *FECA PM* was revised in 2020, it still contains outdated references to DFEC, which no longer exists. Any references to DFEC should be read to mean the FECA Program within DFELHWC.

3. Program Offices and Functions

As noted above, the FECA Program has 12 offices in various parts of the country. The *FECA PM*, Ch. 0-0100.5, describes the organization:

The FECA Program currently has a total of 12 Offices in Boston, New York, Philadelphia, Kansas City, Chicago, Cleveland, Jacksonville, Dallas, Denver, San Francisco, Seattle and Washington, D.C.

a. **Field Operations.** FECA Program Offices are administered by a District Director (DD), who reports to the FECA program's National Administrator of Field Operations. The National Administrator of Field Operations presides over all Field Operations nationwide.

Each FECA Office includes District Director, who is responsible for operations within that office and for seeing that that FECA claims functions are administered in a timely and efficient manner.

b. **Office Staff.** Employees in the Offices administer the FECA and work to achieve the goals set by the Director.

c. **DFELHWC FECA Office Functions.**

(1) **Claims Functions.** Each office will have Supervisory Claims Examiners, who are responsible for the operation of individual claims units. Each claims unit generally has a Quality Assurance and Mentoring Examiner (QAM) and Claims Examiners (CE). CEs 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) **Disability Case Management Functions.** CEs also have a vital role in the management of disability claims.

In addition to claims staff, the FECA program employs Staff Nurses who are responsible for helping ensure

contract Field Nurses and Triage (COP) Nurses service the needs of the OWCP claimant. Both Triage (COP) Nurses and Field Nurses are professionals contracted by OWCP to provide disability case management services; however, they do not provide clinical treatment. The Triage (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 CE, treating physician, employing agency, and claimant.

The Rehabilitation Specialists (RS) is responsible for helping ensure that contract Vocational Rehabilitation Counselors service the needs of the FECA claimants. The RS manages the counselors, who work under contract with OWCP, to help claimants obtain employment.

The 2020 revisions did away with the term "senior claims examiner" and replaced it with "quality assurance and mentoring examiner" or "QAM." The QAM serves essentially the same functions the senior claims examiner served, providing oversight to the claims examiners and signing off on more complicated matters as required.

4. Jurisdiction

Prior to September 2020, claims were filed based on the claimant's geographic location. An employee injured while working in her office in Boston would file her claim in the Boston district office. The 2020 changes did away with assigning cases by geography. The Office explained the reasoning for this change in FECA Transmittal No. 20-05:

In furtherance of this reorganization, effective September 28, 2020, the FECA Program will eliminate jurisdictional boundaries and cease geographic-based jurisdictional case assignments. Claims examiners will now handle cases based on a rotational assignment model regardless of the claimant's geographic location.

These changes will allow equitable distribution of cases among FECA Claims Examiners and optimize consistent case processing across the country. Further, this reorganization will afford the FECA Program increased flexibility in the hiring process as well as provide the Program with greater agility to respond to unanticipated events.

The Office no longer refers to its 12 offices as "district offices" but instead refers to them as merely offices. For ease of reference and to avoid confusion, this Guide will refer to the 12 offices as "program offices" because the term "Office," used frequently in this Guide, refers to OWCP. The reader is cautioned that the regulations still use the term "district office" as do ECAB decisions issued in claims that arose before September 2020. This is not a concern, as the terminology is immaterial for purposes of interpreting the law.

The *FECA PM*, Ch. 1-0200, describes how cases are assigned as of September 2020:

1. *Purpose and Scope.* This chapter describes the jurisdictions within the FECA Offices. Although the rules set forth below are designed to apply to virtually all claims arising under the Federal Employees' Compensation Act (FECA), the Director for DFELHWC or FECA Deputy Director(s) have the authority to assign a specific claim to any office, unit or branch, either before or after initial adjudication, regardless of where the claim would normally be handled.

2. *General Jurisdiction.* Case jurisdiction is no longer governed by the claimant's home address. Even so, a FECA claimant is expected to provide the home address where he or she resides. A Post Office (PO) Box or attorney/representative address does not suffice for this purpose.

When cases are created they are placed in rotation and subsequently assigned to a claims examiner by rotation within the offices. A new case prefix of 55 (550000000 = 1st case assigned) is established for new cases effective September 28, 2020. All of the cases for an individual claimant will stay together, assigned to one Claims Examiner (CE). Cases with paper and physical evidence will remain in the office where the case file/evidence is physically located.

There are two specialty claims units, a Special Claims Unit and a Department of Labor Claims Unit. The Special Claims Unit in the Consolidated Office will be assigned a Unit Type Code "S." The DOL Claims Unit in the Consolidated Office will be assigned a Unit Type Code "D." These units are addressed further in paragraph (3) of this section.

3. *Special Jurisdiction.* Some cases are assigned by nature of employment or nature of injury, or because compensation coverage is provided by a special provision of the FECA or by a law other than the FECA. Many of these cases have special prefixes, which are shown in Exhibit 1.

- a. Adjudicated and Managed in the National Operations Office, Washington, DC. Cases involving security considerations (and similar considerations), including those arising from the National Security Agency, Defense Intelligence Agency and the Central Intelligence Agency.

b. Adjudicated and Managed in the FECA Special Claims Unit. All claims filed by employees who work for the agencies listed below are adjudicated and managed by the Special Claims Unit.

(1) All claims arising outside the United States, its possessions, territories and trust territories. This group includes claims by U.S. citizens and residents; all foreign nationals, wherever employed, and employees of the former Panama Canal Commission.

Adjudicated cases of American citizens in this group, except those of employees of the former Panama Canal Commission, will be transferred to a Claims Examiner in a non-specialized Office once the claimant returns to the U.S.

- (2) All claimants who move outside the U.S.
- (3) Non-Federal law enforcement officers (These cases are prefixed with "LE.")
- (4) Former Office of Economic Opportunity (OEO) administrative employees only
- (5) Americorps VISTA (Volunteers in Service to America)
- (6) Reserve Officer Training Corps (cases prefixed TC)
- (7) Civil Air Patrol (cases prefixed CP)
- (8) Civilian Conservation Corps (cases prefixed CC)
- (9) Civilian War Benefits (cases prefixed CB)
- (10) Civil Works Administration (cases prefixed CW)
- (11) Contractors, Pacific Naval Air Bases (cases prefixed EA)
- (12) Federal Emergency Relief Administration (cases prefixed FE)
- (13) Florida Hurricane (cases prefixed FH)
- (14) National Youth Administration (cases prefixed NY)
- (15) Old Law (cases prefixed OL)
- (16) War Claims (cases prefixed WC)
- (17) War Hazards Compensation Act (cases prefixed WH)
- (18) War Relocation Authority (cases prefixed RA)
- (19) Members of the Coast Guard Auxiliary and temporary members of the Coast Guard Reserve
- (20) Radiation and similar high energy injury cases
- (21) Agent Orange exposure
- (22) Contract Observers on Vessels (cases prefixed OB)
- (23) Employees of the former Panama Canal Commission
- (24) Gulf War Syndrome
- (25) Death Gratuity Claims under section 8102a (case prefixed DG)
- (26) Federal Firefighters (case designation FIR)

c. Processed in the Special Claims Unit of DFELHWC until Adjudication. All cases listed below are serviced in the FECA Special Claims Unit until they are adjudicated. They may then be reassigned to a claims examiner in a non-specialized office.

- (1) Agency for International Development (AID)
- (2) Department of State American Foreign Service Officers (FSOs) and foreign national employees who have moved to the United States. Claims by non-FSOs may be filed in a non-specialized office.
- (3) U.S. Information Agency (USIA)

Exhibit 1, referenced above, assigns prefixes for cases created in the various program offices, as well as special jurisdiction cases.

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 hears 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 <https://www.dol.gov/agencies/ecab/decisions-info>. The decisions are indexed by month and year at <https://www.dol.gov/agencies/ecab/decisions> and searchable by keyword and date at https://searchappeals.dol.gov/?_ga=2.130524616.636801720.1653758830-1459864723.1649029718.

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)(5).

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 eligible for FECA coverage. 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 quality assurance and mentoring 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 quality assurance and mentoring 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 Quality Assurance and Mentoring Examiner (QAM) for adjudication. The QAM 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.
- (d)
 - (1) The Secretary shall authorize the Director of the Peace Corps to furnish medical benefits to a volunteer, who is injured during the volunteer's period of service, for a period of 120 days following the termination of such service if the Director certifies that the volunteer's injury probably meets the requirements under subsection (c)(3). The Secretary may then certify vouchers for these expenses for such volunteer out of the Employees' Compensation Fund.
 - (2) The Secretary shall prescribe the form and content of the certification required under paragraph (1).
 - (3) A certification under paragraph (1) will cease to be effective if the volunteer sustains compensable disability in connection with volunteer service.

Subsection (d) was added to Section 8142 pursuant to the Sam Farr and Nick Castle Peace Corps Reform Act of 2018. Prior to the Reform Act, Peace Corps volunteers could only file for benefits at the time of separation from service. The new statutory provision permits provision of medical care needed while abroad for the duration of the volunteer's service. The *FECA PM*, Ch. 2-1701, was modified to reflect this change.