

OWCP'S RESPONSE TO DRAFT REPORT

**Division of Federal Employees' Compensation
Response to Office of the Inspector General's Legal Fees Audit Report
03-A13-002-04-430**

The following is the Office of Workers' Compensation Programs (OWCP) response to the Department of Labor's (DOL) Office of Inspector General (OIG) draft report on OWCP's Division of Federal Employees' Compensation (DFEC) procedures for the authorization, notification, and fee approval for representatives under the Federal Employees' Compensation Act (FECA). In its report, DOL OIG makes the following recommendations to protect FECA claimants from excessive fees charged by their representatives:

1. Enforce OWCP's policy to notify FECA claimants and representatives of the requirements for submitting fee applications early in the claims process, and monitor compliance with this policy.
2. Implement controls that monitor the receipt of fee applications and conduct appropriate follow up if they are not received in a timely manner after a claim determination or award.

OWCP DFEC offers the following comments in response to the draft report:

- OWCP takes its statutory responsibility under 5 U.S.C. 8127 seriously and has issued detailed regulations and procedures for the handling of representative fee approvals. While it is true that no government monies are expended, we fully recognize it is our statutory obligation to approve fees when fees are in fact charged to claimants. Our published regulations give legal notice of these requirements to the representative community. In the 2011 FECA regulations, we added language (20 C.F.R. §10.704) to announce that a person who collects a fee without OWCP approval may be charged with a misdemeanor under 18 U.S.C. 292 to provide notice of the potential consequences for failing to comport with the OWCP fee approval process. In addition, the FECA Procedure Manual contains a full chapter of guidance on representatives including guidance on responding to inquiries from bar associations.¹
- OWCP is in the process of revising the representative correspondence to highlight FECA's statutory, regulatory and procedural requirements for representatives. We will also stress to our claims examiners the need to provide written notice of these fee approval requirements to claimants and their representatives.
- Given OWCP's lack of investigative resources and the long life cycle of many FECA claims, we are concerned that continuously monitoring fee approval compliance would require enormous resources that could adversely impact FECA benefit delivery to our injured workers. Because of the wide variation in the time a FECA claim may take; the various FECA benefits that may be paid or denied; and the numerous issues that may arise in connection with a single claim, the regulations and procedures do not specify a single point in a claim at which a fee approval must be submitted. For example, a claims determination such as a schedule award for permanent impairment may be issued on a given date but the representative may seek a hearing or

¹ Because the Employees' Compensation Appeals Board (ECAB) is a separate quasi-adjudicatory body that is completely independent of OWCP, we express no opinion on that portion of the report that addresses ECAB's fee application approval process.

reconsideration seeking an award for additional percentages. Some representatives may choose to seek a fee at the time of the initial award and others may await the results of the appeal.

- Regarding whether fees are in fact charged, as we have explained to DOL OIG, certain representatives such as union representatives do not charge fees for representation. In other instances, the representative's work was so *de minimis* (for example consisting of a single letter) that it seems likely the representative may not have charged a fee requiring OWCP approval.
- The OIG report uses an extremely small sample size of 27. With such a low sample size (particularly compared to the hundreds of thousands of claims filed during the over decade long period encompassed by the sample), the study's error rate may be exaggerated and its conclusions overstated.

In conclusion, OWCP works hard to have a good working relationship with the representative community which includes union representatives, family members, lay representatives and attorneys. While we will work to ensure notice of our statutory requirement is provided to representatives and claimants and will work with DOL OIG to establish a more formalized protocol for referring suspected violations to DOL OIG, we do not believe the report demonstrates a systemic problem of excessive fees.

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U.S. Department of Labor

Employees' Compensation Appeals Board
Washington, D.C. 20210



March 9, 2016

MEMORANDUM FOR ELLIOTT P. LEWIS
Assistant Inspector General for Audit

FROM: CHRISTOPHER J. GODFREY *C.J.G.*
Chairman and Chief Judge
Employees' Compensation Appeals Board

SUBJECT: Response to the Office of Inspector General's Report,
"OWCP and ECAB Did Not Monitor the
Representatives' Fees Process to Protect FECA
Claimants from Excessive Fees"

The Employees' Compensation Appeals Board (ECAB) has received and reviewed the Inspector General's report, "OWCP and ECAB Did not Monitor the Representatives' Fee Process to Protect FECA Claimants from Excessive Fees" and responds to those OIG findings and recommendations specifically addressed to it. ECAB thanks the OIG audit team for its hard work and extensive study of the FECA program. ECAB remains committed to the common goal of protecting FECA appellants from paying excessive fees for representation before the Board.

I. Responses to ECAB Recommendations

Recommendation 3:

Implement controls that monitor the receipt of fee applications and conduct appropriate follow-up if not received in a timely manner after a decision.

ECAB agrees with Recommendation 3. Increased steps have been taken to insure that all appellants and their representatives are aware of the requirement to file a fee petition for work performed before ECAB and the potential penalties for failure to comply. ECAB's website and standard correspondence addressed to appellants and/or their representatives have been updated to provide representatives with detailed instructions on how to properly file their fee petitions and to provide information on how the fee petitions are evaluated by the Board. ECAB has also provided public access to all orders granting and denying representative fees.

Additionally, information regarding the necessity of filing a fee petition for work before ECAB will specifically be included with all ECAB decisions in which a party is represented. ECAB will also highlight and enhance the information provided in all standard correspondence from the Board to appellants and their representatives. Finally, ECAB will periodically review reports following the issuance of decisions to determine whether fee petitions are being filed in a timely manner in cases when the appellant has representation.