

FEDERAL EMPLOYEES' COMPENSATION ACT CHALLENGES

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FOR THE PEACE CORPS
AND THE IG COMMUNITY

BACKGROUND

In 1908, President Theodore Roosevelt signed a law to provide workers' compensation for certain federal employees in unusually hazardous jobs. In 1916, the Federal Employees' Compensation Act (FECA) was enacted and superseded the 1908 statute. FECA is a workers' compensation law for all civilian federal employees who are disabled as a result of injuries incurred in the course of their employment.

It provides for wage loss compensation, medical care, rehabilitation, attendant's allowance, and survivors' benefits. In the event of death due to employment, the Act provides for funeral and burial expenses and for the administrative costs of terminating a decedent's employee status with the federal government. FECA is administered by the Office of Workers' Compensation Programs (OWCP), Employee Standards Administration, U.S. Department of Labor.

According to the Department of Labor, government costs for FECA have escalated to approximately \$2.4 billion for all agencies,¹ and the Department of Labor Office of Inspector General reported in 2004 that the Department of Labor was paying a "conservative estimate" of \$10 million annually in FECA overpayments.² In light of these developments, numerous federal agencies and the IG community have attempted to find ways to improve the efficiency and effectiveness of the FECA program.³



UNIQUE CHALLENGES AT THE PEACE CORPS



The Peace Corps, for statutory reasons, and because of its volunteer workforce, faces unique challenges with regard to limiting costs and ensuring efficiency in its FECA program.

The Peace Corps has approximately 1300 open FECA claims and estimates that it spends approximately \$11 million in FECA claims for former volunteers and staff who were injured or become ill on the job.

The Peace Corps Office of Medical Services also estimated that over a million dollars is paid annually by the Peace Corps for workers' compensation disability claims for which individuals do not submit any medical bills to Department of Labor during the same fiscal year.

The Peace Corps was established on September 28, 1961 by Public Law 87-293, known as the Peace Corps Act. The Peace Corps Act authorizes the enrollment of qualified citizens and nationals of the United States as volunteers for service abroad in interested countries and areas, to help the people of such countries in meeting their needs for trained workers, and to help promote a better understanding of the American people.

The enabling legislation authorizing FECA claims (5 U.S.C. § 8101 et seq.), addresses the Peace Corps specifically within the context of FECA, and provides that volunteers enrolled in the Peace Corps under the Peace Corps Act are entitled to FECA compensation for injuries or illnesses suffered during their service (see 5 U.S.C. § 8142.)

In addition, Peace Corps staff members are statutorily entitled to the full coverage of FECA. 5 U.S.C. § 8101(1).

Peace Corps is unique in the FECA program in several respects. Generally, under FECA regulations, in order to establish a FECA claim, a claimant must show that

¹ "U.S. Department of Labor Fiscal Year 2006 Budget" <http://www.dol.gov/sec/Budget2006/overview.pdf>.

² Management and Performance Challenges" <http://www.oig.dol.gov/topchallenges.htm> 2004 report.

³ The President's Council on Integrity and Efficiency's Inspection and Evaluation Committee has been particularly active in building a coordinated approach to workers' compensation issues among the IG community.

the injury, disease or death occurred while the employee was in the “performance of duty” or that the medical condition for which compensation is claimed is causally related to the claimed injury (20 C.F.R. § 10.115).

Because Peace Corps volunteers are considered to be on duty 24 hours a day and 7 days a week, the regulations provide for a presumption that any injury sustained by a Peace Corps volunteer while he or she is located abroad has been sustained in the performance of duty, and any illness contracted by a volunteer during Peace Corps service is proximately caused by the employment. See 20 C.F.R. § 10.730.⁴

Because of the regulatory presumption, the standard and burden for a Peace Corps volunteer to establish a FECA claim is considerably lower than for claimants in other federal agencies.

The overall payments are often higher for Peace Corps claimants as well. FECA payments are based upon what the recipient was making at the time of injury with indexing for inflation. According to the regulations, a Peace Corps volunteer submitting a FECA claim would be entitled to disability compensation payments commencing the day after the date of termination of his or her service as a volunteer at a pay rate based upon the GS-7 salary with adjustments over time as that pay rate increases. See 5 U.S.C. § 8142.

However, because of the relatively young age at which most individuals become Peace Corps volunteers, the average age of a Peace Corps claimant at commencement of disability benefits is 37, significantly younger than the average of disability claimants at other agencies.⁵ Peace Corps pays out an average of \$20,000 per year per individual claimant for disability compensation and given that the life expectancy of a disability compensation benefit claimant for Department of Labor purposes is 77, the average life of a Peace Corps disability compensation benefits claim is 40 years, and

thus, the average cost to Peace Corps for each individual disability compensation benefits claimant is \$1 million.

Further, FECA monies paid out to volunteers often do not preclude these former volunteers from working as many recipients have Limited Wage Earning Capacity (LWEC).

To ensure that FECA recipients are not employed in a more than a limited capacity, recipients are required to file Form 1032 (affidavits of earnings and activities) annually in which the recipient declares and certifies their monthly income to the Department of Labor, and based upon these affidavits, the FECA benefit may be offset.

In addition, OWCP has specific procedures that they follow for each claimant to ensure that the proper offsets are made, concluding with the ability to suspend benefits to any claimant who fails to sign and submit the annual Form 1032 as required by law.

However, due to the high volume of claims each OWCP claims examiner carries, the high turnover in claims examiners, the rotation of claims between examiners and districts, and the legitimate need to move the claims through the system in a timely manner, OWCP is often unable to review each claim to determine if the Form 1032 has been filed in an appropriate fashion.



PEACE CORPS OIG INVESTIGATION – INITIAL FINDINGS

The Peace Corps Office of Inspector General initiated a comprehensive investigative effort to uncover waste, fraud and abuse in the FECA system.

The Peace Corps OIG initially began reviewing FECA files to determine how widespread the problem was at Peace Corps.

⁴ This presumption may be rebutted by specific evidence that the injury or illness was caused by willful misconduct on the part of the Peace Corps volunteer, that it was proximately caused by intoxication from alcohol or illegal drugs, or that it was a pre-existing condition. 20 C.F.R. § 10.730.

⁵ As examples, the average age of FECA claimants at Social Security Administration, U.S. Postal Service, and the Transportation Safety Administration is 52, 50, and 44, respectively.

Peace Corps OIG found that the files maintained by the Agency were often out-of-date and incomplete. In several instances, a significantly large portion of the recipients had incorrect addresses on file or were in “limbo” as they changed from one Department of Labor district to another.

The OIG also found significant overpayments in the files they reviewed. In one case, the Peace Corps OIG found that OWCP continued to pay a claimant several years after the claimant had notified OWCP that he/she was no longer disabled.

In several instances, OWCP had waived the overpayments rather than act to recover funds from the claimant, even though the Agency ultimately pays the chargeback for these overpayments. In other situations, the OIG observed that once a claimant had one claim accepted by OWCP, the claimant would file additional claims asserting that those claims were related to the original claim and there was a greater likelihood that the additional claims would also be accepted.

In addition, the OIG noticed that there was a widely-held belief that if the claimant was persistent, eventually one of their claims would be accepted by OWCP, and that claimants would continue to file claims until achieving success. These issues were exacerbated by the fact that there is no time limit for applying to FECA as long as the claimant can show the injury or illness occurred during Peace Corps service.

This initial review of FECA claims also found that a significant percentage of the Peace Corps FECA claims related to mental/emotional/stress-related conditions which were very difficult to disprove because of the lack of visible physical impediments.

There were instances where the attending doctor simply reported that the claimant suffered from post-traumatic stress disorder (PTSD) due to their volunteer service and was therefore unable to function well enough to work. This would enable the volunteer to apply for and receive total disability.

Another example that the OIG observed was the common diagnosis of service-related schizophrenia, which automatically makes the claimant eligible for total disability under FECA and the consequence being

that the volunteer would be able to receive total disability benefits for that person’s entire lifetime. These types of illnesses were very hard to challenge or disprove once they had been accepted by OWCP.

Peace Corps OIG also found that a large number of claimants asserted as their basis for seeking benefits that their pre-existing conditions had been aggravated by their volunteer service.

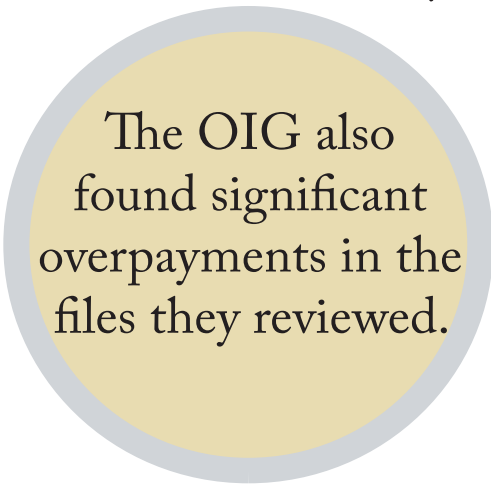
These claims fell into general categories of prior soft tissue, orthopedic and joint injuries or conditions (e.g., lower back pain, osteoarthritis in the knees, hips, shoulders, and neck injuries) that were accepted by OWCP in some cases based solely on the claimant’s subjective descriptions of their chronic conditions without any concrete medical evidence connecting the current condition to an experience, activity or illness that occurred during the volunteer’s Peace Corps service.

PEACE CORPS OIG INVESTIGATION – APPROACH TO REMEDYING THE PROBLEM

Peace Corps OIG developed a multi-faceted approach to dealing with potential fraud, waste and abuse in the Peace Corps FECA system.

The Investigative unit implemented the following measures:

- Coordinating with the Peace Corps Office of Medical Services to ensure that initial claims are closely scrutinized before the claims are accepted and sent to OWCP for review, and recommending that, in appropriate cases, documentation be provided to OWCP that demonstrates why there is no relationship between the injury/condition and the volunteers’ service, to include past history of the volunteer, evidence that he/she failed to disclose a pre-existing condition, any evidence of drug/alcohol use or abuse, or any other medical information that would controvert the claim;



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- Coordinating with the Peace Corps Office of General Counsel to ensure support in defending the Agency in appeals to negative determinations on claims;
- Sending out a mass mailing to all Peace Corps FECA claimants reminding them of their obligations under FECA and the fact that any changes regarding their disability status must be reported to OWCP. The purpose of this mass mailing is to encourage abusers to voluntarily take themselves off the rolls or reduce their benefits without the need for OWCP personnel to investigate or review the claim;
- Highlighting claims that have potential fraud indicators, such as those with no or low medical costs but high compensatory benefits; death claimants who were young when their spouse died, but with no record of having remarried; high medical costs involving potentially addictive drugs; and soft tissue injuries, like carpal tunnel syndrome and lower back pain, as well as nonspecific diagnoses of depression or a mental disorder for targeted correspondence, additional background checks and surveillance activities; and
- Visiting Department of Labor Regional Offices to coordinate action on Peace Corps FECA claims and synchronize review to ensure that Peace Corps FECA claimants are continuing to file Form 1032s on an annual basis.

PEACE CORPS OIG INVESTIGATION – RESULTS ACHIEVED

The Peace Corps Office of Inspector General Investigative Unit, currently headed by Assistant Inspector General Geoffrey Johnson,⁶ has achieved significant and swift results, saving the Peace Corps several millions of dollars in FECA costs.



The OIG's coordination with the Peace Corps Office of Medical Services culminated in the Office of Medical Services hiring additional staff to review FECA claims and to greater scrutiny of claims when they are initially brought forward as well as successful interactions between the two offices to share information about potentially fraudulent FECA claims. The Peace Corps Office of General Counsel successfully litigated several appeals of FECA claimants whose claims were denied, ensuring that frivolous claimants were not given benefits.

As a result of the Peace Corps OIG's first mass mailing, approximately 500 FECA claimants voluntarily dropped off the rolls within a very short period of having received the OIG letter, resulting in a savings of approximately \$500,000.⁷ Surveillance activities and targeted letters led to OWCP denying or reducing claims in numerous cases, including an investigation in California in which the OIG agent discovered that a FECA claimant who had been receiving significant annual disability payments, had been employed in several part-time jobs, and a case where surveillance activities demonstrated that the claimant was engaged in activities inconsistent with his alleged injuries.

⁶ The rest of the investigative team consists of Senior Special Agents Henry Mulzac and Julie De Mello, and Special Agents David Berry and Andraea Boutiette.

⁷ A second mass mailing was recently sent and is also yielding excellent results.

In both cases, OWCP, after receiving the relevant information, changed the claimants' claim statuses, resulting in savings of approximately \$40,000 annually, and incorporating Department of Labor projections, actuarial savings to the Agency for the lifetime of the claims of nearly \$1.4 million.

CONCLUSION

The Peace Corps Office of Inspector General is continuing its efforts to expose waste, fraud and abuse in the Agency's FECA program, and is optimistic about even further progress. In addition to following-up on measures already implemented, the Peace Corps OIG intends to develop a comprehensive guide to identify and investigate suspected problematic FECA recipients which may be utilized by other interested agencies. ⚙️

About the Author



H. David Kotz has served as the Inspector General for the Peace Corps since February 2006. He leads a distinguished team of 20 plus auditors, investigators, program evaluators and administrative staff in the office's efforts to uphold the effectiveness, efficiency, and integrity of the Peace Corps. As of the end of Fiscal Year 2007, 7,749 Peace Corps Volunteers were serving in 73 countries at 67 posts.

Prior to being named Inspector General, David served for over three years as Associate General Counsel for Litigation for the Peace Corps and was responsible for overseeing all Agency litigation, including administrative and federal court proceedings, labor arbitrations and employee grievances. In the Office of General Counsel, David litigated over 25 separate administrative and court proceedings, achieving successful and precedent-setting results relating to veteran's preference, discrimination claims and personnel-related matters.

David is a graduate of the University of Maryland, completing a Bachelor's of Arts degree in political science with the honors of cum laude and Phi Beta Kappa. After graduating from the Cornell Law School, he worked for nearly 10 years for the international law firms of Graham & James in New York City and Pepper Hamilton LLP in Washington, D.C, practicing federal administrative law. While working in private practice, David successfully represented and advised numerous Fortune 500 companies and major Universities. He joined the federal government in May of 1999, and worked in several capacities at the U.S. Agency for International Development (USAID), both in the Office of General Counsel, and as head of all administrative/disciplinary investigations for USAID.