

SUSPENSIONS, REDUCTIONS AND TERMINATIONS



Entitlement Decisions

The Federal Employees' Compensation Act (FECA) (5 U.S.C. 8124(a)) requires the Office of Workers' Compensation Programs (OWCP) to make findings of fact with respect to each claim filed, and to make an award for or against the payment of compensation. When the outcome is negative, OWCP must issue a formal decision.



Formal Decisions

Formal decisions must be issued when claim forms have been submitted. They may also be issued in response to letters requesting benefits or on OWCP's initiative. There are four basic types of decisions:

1. **Initial Decisions**: A formal decision is required in any case where OWCP has received a Form CA-1, CA-2, CA-5 or CA-5b, and it is clear after appropriate development that one or more of the five basic requirements of the claim is not met.
2. **Claims for Compensation**: A formal decision is required in any case where the OWCP has received a Form CA-7, claiming compensation, and determined that the claim cannot be paid after appropriate development.

Formal Decisions

Types of Decisions:

- 3. Specific Benefits:** When a claimant submits a medical request for a particular benefit (e.g., a certain kind of medical treatment), the claims examiner must evaluate the request. If the medical request cannot be authorized for obvious reasons, a letter explaining why the request cannot be authorized may be sufficient, rather than a formal denial. When development has occurred, and the medical request cannot be authorized, a formal denial should be issued.
- 4. Continuing Entitlement:** When a claimant who is receiving compensation benefits is no longer entitled, benefits must be terminated or reduced. OWCP initiates such decisions.

Reduction of Continuing Compensation Payments

Wage Earning Capacity Determinations

- Employees who are able to perform some work, even though it is not the date of injury job, are considered partially disabled. If a claimant returns to work earning less than the current pay rate, OWCP may pay the difference. This is called a loss of wage-earning capacity (LWEC) determination.
- The object of an LWEC is to estimate an injured employee's earning capacity as close as possible to parity with current pay for the grade and step held on date of injury. There are no provisions to compensate injured employees for grade or step increases he/she might have received had he/she not been injured. The mathematical determination of a employee's wage earning capacity is made with the Shadrick formula.

Disallowances of Particular Benefits

- Continuation of Pay
- Particular Period of Disability
- Recurrences of Disability
- Permanent Partial Impairment
- Specific Medical Services or Medical Provider
- Changes in Status of Dependents
- Attendance Allowance
- Housing or Vehicle Modification

Suspensions

Suspension of benefits can result from:

- Failure to Appear for Medical Appointment
- Failure to Submit Reports of Earnings
- Failure to Cooperate with Vocational Rehabilitation Efforts
- Refusal to Undergo Treatment for Substance Abuse
- Conviction and Imprisonment for a Felony: This situation differs from the one described as “fraud conviction” above [5 U.S.C. 8148(b)(3)]. Here, the imprisonment must occur for a felony conviction of a crime other than fraud related to a claim under FECA. The legal authority is found at 5 U.S.C. 8148.



Forfeiture

- An employee who (1) fails to make an affidavit or report when required, or (2) knowingly omits or understates any part of his earnings, forfeits his right to compensation with respect to any period for which the affidavit or report was required.
- When a finding is made that compensation was forfeited, a formal decision is issued.

Rescission

- The FECA (5 U.S.C. 8128(a)) allows the Secretary of Labor to "(1) end, decrease or increase the compensation previously awarded; or (2) award compensation previously refused or discontinued." This authority includes rescission of claims as a whole, or of specific entitlements.
- However, when OWCP has accepted a claim and paid benefits, it then has the burden of proof to establish that any such acceptance and payment were in error.

Other Types of Decisions

- Loss of Wage-Earning Capacity Determinations
- Representative's Fees
- Overpayments
- Reconsiderations

Due Process

- Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.
- A claimant has a property interest in not having his/her benefits terminated, and failure to notify the authorized representative effectively denies appellant's property interest in not having his/her benefits terminated.

Due Process: Pre-Termination/ Reduction Notices

Issuance of Pre-Termination and Pre-Reduction Notices are required in the following situations:

- All cases where benefits are being paid on the periodic roll or if the claimant has been paid on the daily roll for at least one year;
- Terminating augmented compensation because a dependent unmarried child over 18 years of age is no longer incapable of self-support;
- Terminating a survivor's benefit on the grounds that the survivor is over 18 years of age and is no longer incapable of self-support;
- Terminating or reducing a schedule award before its expiration date because OWCP miscalculated the award, resulting in a decrease in the amount payable, or the medical evidence justifies only an award of shorter duration than that already granted.

Due Process: Pre-Termination/ Reduction Notices

- Terminating an authorization for treatment that was issued 60 days or less in the past;
- Terminating the services of a specific physician, even with no written authorization, if OWCP has paid the physician to treat claimant's work related injury;
- Terminating a specific service which claimant has received, or expects to receive, on a fairly regular and recurring basis for 60 days or more, and for which OWCP has paid; or
- Terminating all medical treatment.



Due Process: Other Situations

As a matter of due process, OWCP must give notice of reduction to claimant when:

- Authorization of treatment (in the last 60 days)
- Services of a physician (if OWCP paid in the past)
- Specific service claimant has received
- All medical treatment (such terminations are usually associated with disallowances of all compensation payments because the claimant is no longer disabled, or the disability is no longer related to the work injury)
- Compensation for wage loss, whether whole or partial

Due Process: Pre-Notice Not Required

A pre-termination notice is not needed in the following instances:

- To end daily roll payments if such payments have continued less than a year;
- Claimant dies;
- Claimant returns to work;
- Claimant is convicted of defrauding the FECA program;
- Claimant fails to submit Form CA-1032
- Termination of Augmented Compensation (from $\frac{3}{4}$ to $\frac{2}{3}$)
- Physician indicates that further medical treatment is not necessary or that treatment has ended; or
- OWCP denies payment for a particular charge on an exception basis.

Suspension for Failure to Complete and Return Form CA-1032

- Form CA-1032 is sent annually to claimants in receipt of compensation on the periodic roll or schedule award.
- Form CA-1032 verifies work activities, changes in dependents, & receipt of other benefits.
- If a completed Form CA-1032 is not received within 30 days of issuance, compensation for wage loss may be **SUSPENDED** until completed form is received.
- Appeal rights are provided, but if a completed form is received, benefits can be retroactively reinstated without an appeal.

Failure or Refusal to Seek and Accept Suitable Employment

- If an injured worker fails to accept a suitable job, he/she is provided with a written warning that all compensation will be suspended unless he/she accepts the job and reports for duty, or provides valid reasons for refusal.
- If claimant provides his/her reason(s) for refusal and reasons are not considered valid under the FECA, claimant is provided a 15-day written notice that compensation will be suspended.
- If he/she does not report for duty, compensation for lost wages and schedule award is suspended the date of the decision.

Failure to Cooperate with Medical Appointment

- The FECA authorizes OWCP to direct an injured worker to attend a second opinion examination and if necessary, an Independent medical Examination (IME) exam, if there is a conflict of opinion.
- If claimant does not fully cooperate with examination and any tests ordered by the physician, claimant is advised in writing that claimant has 14 days to express his/her cooperation with another appointment.
- Compensation is suspended if reasons for non-cooperation are insufficient, or if claimant fails to respond.
- If claimant expresses willingness to cooperate with a new appointment, and claimant does indeed cooperate, then compensation is retroactively reinstated only to the date claimant expressed cooperation.
- Compensation lost between date of suspension and date of letter expressing cooperation is not payable.

Subrogation

- In some cases, claimant is injured as the result of act or omission of a third party (e.g., a letter carrier falls on icy steps because homeowner has not cleared the ice off). If claimant sues the third party, receives a settlement from the third party and the amount results in a surplus, all benefits (including medical benefits) are suspended immediately until the surplus is exhausted.
- No appeal rights are usually provided in this context.

Vocational Rehabilitation

- The FECA (5 U.S.C. 8104) provides the authority for OWCP to direct an individual to undergo vocational rehabilitation, and 5 U.S.C. 8113 allows OWCP to prospectively reduce compensation in accordance with a claimant's wage-earning capacity if he/she refuses, without good cause, to undergo vocational rehabilitation.
- The sanction remains in effect until the individual in good faith complies with the rehabilitation effort.

Vocational Rehabilitation Sanctions

- If injured worker refuses or impedes rehabilitation process during this early phase and medical evidence indicates that claimant does have the ability to work (following due process), compensation can be reduced to zero under 5 U.S.C. 8113(b) and 20 C.F.R. 10.519(c).
- If claimant is in plan development, claimant is refusing and file contains the documentation needed in order to make a determination on claimant's wage-earning capacity, (following due process), then compensation should be reduced based on claimant's ability to earn wages at the time of the sanction decision.
- If claimant is in the training phase and claimant is refusing or impeding the vocational rehabilitation process (following due process), compensation can be reduced based on job(s) targeted in approved training plan.

Vocational Rehabilitation Sanctions

- If injured worker refuses or impedes during the placement with new employer period, then it is important to note that non-cooperation with vocational rehabilitation during the placement stage does not generally result in a sanction decision under 5 U.S.C. 8113(b). If non-cooperation occurs during placement, the rehabilitation counselor should submit a final report and list the job(s) for which placement was being attempted.
- Continuing placement services for the full 90-day period is not required if claimant has not cooperated. Upon receipt of this information, compensation can be reduced based on injured worker's wage earning capacity prospectively pursuant to 5 U.S.C. 8115 [not 8113(b)] based on one of the selected positions.

Questions

There are many instances when formal decisions must be issued. A formal decision is required for all of the following except:

- a) Where OWCP receives Form CA-1 and one or more of the five basic elements of the claim is not met.
- b) Where OWCP receives Form CA-7 and determined that the claim for compensation can be paid.
- c) After development of a medical authorization request it is determined that the request cannot be authorized.
- d) When compensation benefits are terminated or reduced.

Questions

Some types of decisions will notify injured employees that their benefits are being suspended. A suspension of benefits can result from:

- a) Failure to appear for a medical appointment
- b) Failure to submit reports of earning
- c) Failure to cooperate with vocational rehabilitation efforts
- d) All of the above

Questions

An employee who either fails to make an affidavit or report when required, or knowingly omits or understates any part of his earnings, forfeits his/her right to compensation with respect to any period for which the affidavit or report was required.

- a) True
- b) False

Questions

If a claimant is receiving compensation on the periodic roll and the evidence of record indicates that they have recovered from their accepted condition, OWCP can terminate benefits without giving the claimant due process.

- a) True
- b) False

Questions

There are times when a pre-termination notice and due process is not needed before terminating or reducing benefits. All of the following are instances when due process is not necessary except when the:

- a) Claimant's medical benefits will be terminated
- b) Claimant dies
- c) Claimant returns to work
- d) Claimant fails to submit Form CA-1032

Take Away Tips

- 1) The Office of Workers' Compensation Programs is required to make findings of fact with respect to each claim filed, and to make an award for or against the payment of compensation. When the outcome is negative, OWCP must issue a formal decision.
- 2) Formal decisions must be issued when claim forms have been submitted. They may also be issued in response to letters requesting benefits or on OWCP's initiative. There are four basic types of decisions: Initial Decisions, Claims for Compensation, Special Benefits, and Continuing Entitlement.
- 3) If a claimant returns to work earning less than the current pay rate, OWCP may pay the difference. This is called a loss of wage-earning capacity (LWEC) determination.
- 4) An employee who (1) fails to make an affidavit or report when required, or (2) knowingly omits or understates any part of his earnings, forfeits his right to compensation with respect to any period for which the affidavit or report was required.

Take Away Tips

- 5) Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.
- 6) If a completed Form CA-1032 is not received within 30 days of issuance, compensation for wage loss may be suspended until completed form is received.
- 7) If a claimant fails to return to suitable employment after due process, compensation for lost wages and schedule award is suspended effective the date of the decision.
- 8) After providing due process, compensation may be suspended if a claimant does not fully cooperate with a medical examination and any tests ordered by the physician.