

Being a Good Steward of Army's Money: Challenging and Controverting Dubious Workers Compensation Claims

Topics include: Important Concepts

Withholding COP

Red Flags

Sample Challenges

ECAB Decisions

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GOOD CLAIM ... BAD CLAIM

Controverting/Challenging a FECA claim

In OWCP terminology, COP is controverted and an entire claim is challenged. In everyday speech, the term “controvert” is often used interchangeably with “challenge.”

If there is ANY doubt about the validity of a claim, it is essential that the ICPA write up all the reasons a claim is suspect. Army has only one chance to controvert/challenge and that is at the moment when the claim first goes in. Once a claim is accepted, it is almost impossible to get it “un-accepted” – so do your controversion/challenge right away.

Even if a claim is being challenged as not being a legitimate claim, COP must be paid while the claim is being adjudicated by OWCP except in these cases:

Reasons to withhold COP:

1. The disability is the result of an occupational illness or disease. Only injuries qualify for COP !
2. Employee is a volunteer serving without pay or with nominal pay
3. Employee is not a citizen or resident of the US or Canada
4. Injury occurred off the agency premises and employee was not engaged in official off-premises duties
5. Employee caused the injury by willful misconduct, intoxication, or intent to bring about his own injury or death or that of another person
6. Injury was not reported on a CA-1 within 30 days following the injury
7. Work stoppage first occurred more than 45 days after the injury date
8. Injury was reported after employment ended
9. Employee is in the Civil Air Patrol, the Job Corps, Youth Conservation Corps, or another program covered by special legislation
10. If employee does not provide sufficient medical documentation within 10 calendar days after the claim is submitted, COP should be stopped and regular leave charged, even if it appears the rest of the claim is legitimate.

Withholding COP is fairly rare. **What is more frequently found is that the entire claim is challenged.** Worker's Comp claims must meet ALL these proofs:

1. Claim must be filed within the required time limits
2. Employee was a U.S. government employee at the time of injury (contractors and members of the public are NOT covered.)
3. The injury or illness did, in fact, occur
4. The injury occurred while the employee was in performance of duty
5. The illness or injury claimed was caused by the reported incident or situation

Most challenges are based on the last two items.

Two Important Concepts:

“Performance of Duty” means the employee was on the agency premises and doing something related to his official duties. “Premises” is defined as the official boundaries of the federal installation or the actual building or parking area if the agency is located in a rented office in a downtown area. Going to lunch on the premises is covered. Going to lunch off the premises is not covered in most cases. Traveling to work and going home are normally not covered. The coverage starts when the employee reaches the gates or door of the installation, and ends when the employee departs the installation premises. Exceptions: **On travel, the employee is covered 24 hours a day**, provided he is engaged in something reasonably connected to the purpose of the trip. Slipping in the shower at midnight in the hotel is covered; drowning while scuba diving is not covered, unless scuba diving is reasonably related to the purpose of the trip. If an employee is sent off-premises on an errand or to a meeting, he is covered, because he is in performance of duty.

“Work related” means the employee must show by a doctor's written medical reasoning that the illness or injury was caused or made worse by the official duties. For example, just because a heart attack occurs in a worker's cubicle does not necessarily make it “work related.”

How do you find out if a claim is legitimate ?

Before sending a claim to OWCP, make it a habit to **telephone the supervisor privately** on every claim to ask if he/she has any doubts about the validity of the claim. Supervisors may be reluctant to tell you if the employee is sitting close by, or reluctant to write doubts on the CA-1, so telephone the supervisor when he/she is alone.

The most important thing to remember is that if there is any doubt about the validity of the claim, the ICPA **must put in EDI that controversion/challenge will be mailed** in, and then quickly mail the challenge with the supporting documentation. The challenge must list facts explaining why the claim should not be accepted. The challenge can be signed by the ICPA, or by the supervisor. The important thing is that it must be written promptly and sent to London KY *with the claim # written at top right hand corner.*

“RED FLAGS” CHECK LIST ON A FECA CLAIM

If you find any of these, write a challenge that documents the appropriate points:

- Supervisor recommends claim be denied because _____.
- Injury reported immediately after a weekend or holiday
- Unexplained time delay in reporting the injury or seeking medical care
- Disciplinary action, transfer, or downsizing facing the employee
- Employee failed to list any witnesses even though injury claimed to take place in an area where it should have been observed
- If there is a witness, it is someone who frequently serves as a witness for other claims (list claim numbers and dates.)
- Witness statement differs from employee statement
- Witness statement provides evidence that injury did not occur as claimed
- Employee has a multitude of previous FECA claims (list previous claim numbers and dates)
- Employee’s medical statements are from a doctor who often handles suspicious claims.
- Doctor’s statement does not connect the injury/illness with the employee’s work
- Employee changed the account of how the injury happened
- Medical documentation is vague or appears altered, or is from a far-away doctor
- Injury took place off the installation premises and the employee was not engaged in activities related to his employment nor on official travel
- Any other suspicious activity, such as employee reporting for work with heavy clothing on a hot day or boasting that he will get a lot of money from the claim
- Time of the injury was more than 30 minutes before or after the normal work schedule and employee was not on overtime
- Employee’s version of the accident is inconsistent with injuries claimed

(Example: Security guard claims he tripped on curb and suffered carpal tunnel)

____ Injury claimed is unusual for employee's type of work
(Example: office worker claims injury lifting box weighing 75 lbs.)

None of these items alone necessarily mean the claim is false, but they are "red flags" to follow up. A controversion/challenge highlighting these items should be written and signed either by the ICPA or the supervisor. If requested, the ICPA may draft a controversion for the supervisor's signature – or may sign it herself.

Stress Claims

Stress claims are especially problematic. Often a claimant makes these statements on stress claims:

1. Overwork
2. Annoying conduct of a co-worker
3. Disappointment at not receiving promotion or assignment
4. Abuse by a supervisor

If medical documentation is vague, be sure to discuss that in your challenge.

Look at these in more detail:

Overwork: claimant must prove that the amount of work required exceeded the normal amount required for a similar employee of the same grade and series in the same workplace, identified by deadlines, quotas, written assignments, and names of supervisors required the claimed overwork. Just stating, "I was overworked and exhausted" without documentation should be controverted by pointing out the aspects mentioned above are missing.

Annoying conduct of a co-worker: Under the FECA law, this must amount to persistent disturbance, torment, or persecution. Has the employee proved the "annoying conduct" rose to the level required under FECA and documented the events by dates and witness statements? If not, discuss this in the agency response.

Disappointment at not receiving a promotion or assignment: The claimant's emotional response to a disappointment is not compensable. Be sure to point this out in the agency response.

Abuse by a supervisor: Similar to "Overwork" and "Annoying Conduct," a claim of abuse must be documented by date, exact event, witnesses. "My supervisor was always mean and critical," is not sufficient. Claimant needs to point out what the supervisor said, when, under what circumstances, and support with witness statements. If this is missing, point this out in agency statement.

Medical documentation is vague: Doctor does not connect the claimed condition to Performance of Duty or gives almost no supporting explanation. “Ms. X needs to be off work for eight weeks because she is under stress” should be pointed out in your challenge. If the doctor is not a psychiatrist or clinical psychologist, point that out.

Summary on all controversions/challenges:

When controverting/challenging a claim, include **only the facts**, not opinions about the employee. Statements such as, “The employee is a poor performer,” will not persuade a claims examiner. Wherever possible, **include** supporting documentation such as signed witness statements, police report, or even a map of installation boundaries if injury happened off-post.

If the ICPA is writing the challenge, send the draft to the supervisor for review, and have the supervisor sign and date the final copy. If the supervisor is unavailable, the ICPA can sign. If there is ***any doubt*** about the claim, it is the ICPA’s responsibility to ensure the challenge is written and included.

When loading a claim into EDI, always indicate that a controversion/challenge will be mailed. If this is not indicated, the claim is likely to be accepted. As soon as the claim number is received, **immediately** mail your controversion/challenge with the employee’s name and claim number on the top of every page. Holding a challenge too long may cause the claims examiner to accept the claim, thinking that the agency has changed its mind on the challenge. There is no particular format except that the claimant’s name and claim number must be at the top right-hand corner of every page.

The suspicious claim you don’t challenge may become your million-dollar claim in the future.

Attached are a number of sample challenges:

SAMPLE AGENCY CHALLENGES – WEAK AND STRONG

Challenge 1: John Snickelfritz

About 7:15 in the morning on July 31, John Snickelfritz came to me, saying that he had fallen off a ladder. I do not believe what he said because he is definitely my worst employee. I have to stay after him all the time about being lazy and wasting time. Several time I caught him sleeping in the truck. Snickelfritz went to the clinic and the doctor said he had a serious contusion. But I don’t think it happened at work.

Why is this not an effective challenge ?

There is no investigation here, only the supervisor’s statements about events unrelated to the injury claim. Being a poor performer is no barrier to a FECA claim. Challenge 1 is based on undocumented opinion, not facts. Challenges must always be based in facts.

Challenge 2: John Snickelfritz (revised)

This is about the injury John Snickelfritz claims happened on Monday, July 31. Our shift starts at 7:00 a.m. I had just finished giving assignments for the day and my workers were leaving to go to their work sites. Snickelfritz came into my office about 7:15 a.m. just as everyone was leaving and said he fell off a ladder and hurt his arm. I was very surprised as we hadn't had enough time to start any work. How could Snickelfritz already be up on a ladder? I noticed he was wearing a long-sleeve shirt when all the other employees had on tee shirts because it was so hot. I asked to see his injured arm. He slowly rolled up his sleeve and I saw a large ugly black and blue bruise on his lower arm. If he had fallen just a few minutes ago, the injury would not have had time to turn black and blue. I asked who he was working with, who saw him fall off the ladder and he said, "Nobody, I was working by myself." This was strange because we always work in two-man teams. He wanted to go to the clinic to see the doctor. I got a man to drive Snickelfritz to the clinic and starting calling my other employees on their cell phones. Two men told me they saw Snickelfritz hurt his arm Sunday afternoon, leaning out his fishing boat to tie it to the pier at the public marina. The two co-workers have signed statements of what they saw on Sunday, and these statements are attached. **We request OWCP to deny this case, as the injury did not occur in the performance of duty.**

Why is challenge 2 better ?

1. early Monday morning highlighted ... early Monday injuries are suspicious.
2. employee wearing long sleeves when all other employees are in tee shirts
3. no witness when the usual process is to work in two-man teams
4. injury appeared to have happened earlier than the start of the work day
5. supervisor investigated, found true story, got it on paper to send to OWCP

Challenge 3: Connie Constant-Payne

I have supervised Connie Constant-Payne for four years. She has been a problem employee, abusing leave so much that she has been put on suspension for going AWOL. We would really like to fire her, and now she is claiming she hurt her back. We don't do any work here that could cause a back injury. She is just doing this to get money because she knows we want to replace her. This claim should be denied.

Why is this not an effective challenge ?

The supervisor talks only about the poor behavior, which is not a barrier to a Workers Comp claim. He mentions, "We don't do any work here that could cause a back injury," but doesn't go explain this in enough detail for the claims examiner to make a decision.

Challenge 4: Connie Constant-Payne (revised)

Connie Constant-Payne has been a contract specialist under my supervision since 2002. She told me, December 2005, that her back had been hurting her for a long time; a signed witness statement of this conversation is enclosed. On January 26, 2006, she handed me a CA-1 form,

claiming that she had injured her back at work the previous week, lifting a box weighing 75 pounds. In our office we don't have any boxes that weigh 75 pounds. The heaviest thing anyone would lift here is a paper file weighing at most 5 pounds. I asked Connie to tell me who was around when she supposedly lifted this heavy box and she replied, "Nobody, it was lunchtime." I asked her to show me the box and she said the cleaning staff took it away last night. Along with the CA-1, she gave me a statement from the orthopedic surgeon. I noticed that in the statement from her doctor, there were two boxes, one for Work-Related and the other for Non-Work-Related. The doctor checked the box that said, "Not work related." Since Connie gave me the doctor's statement, I read it and noticed that he says nothing about the back injury happening at work. Additionally, I am enclosing as part of our challenge, two personnel actions showing that she has been suspended twice for long-term leave abuse, such as going AWOL for two weeks. Connie knows that she is on the verge of losing her government position and her health insurance. My opinion is that she is trying to get Workers Comp to pay for her surgery for a condition that is not work related. **We respectfully ask OWCP to deny this claim on the grounds it is not work-related.**

Why is challenge 4 better ?

1. back pain reported weeks before date of claimed injury, with witness statement
2. this work site doesn't have heavy lifting
3. claimant unable to point out the box she claimed caused the injury
4. medical statement does not relate injury to employment
5. the two documented disciplinary suspensions are relevant in this case

Challenge 5: Dan Drinkerlot

Dan Drinkerlot submitted at CA-1, saying he had a concussion and a cut on his skull which required 15 stitches. We strongly object to this claim. It happened only because he was drunk and fell down at the Trail's End Club after work. You can ask anybody who was there.

Why is this not an effective challenge ?

Intoxication is claimed but not documented. "After work" is mentioned, but without details. How long after work ? More information about the Trail's End Club would have been helpful. There is no witness statement or other documentation.

Challenge 6: Dan Drinkerlot (revised)

Dan Drinkerlot claims he was injured in a fall on Friday, March 17, at the Trail's End Club. His work schedule is 8:00 a.m. to 4:30 p.m. and he was not on overtime that day. A copy of the signed timesheet for that pay period with Mr. Drinkerlot's signature is enclosed. The time of the claimed injury is 9:45 p.m. which is more than four hours after his work day ended. A statement from the Club Manager, who was on duty and immediately notified of the injury, is enclosed. The manager's statement documents the time of injury. The Trail's End Club is on installation property; however, it is a social club and it is not connected with Mr. Drinkerlot's duties in any

way. **We request that this claim be denied because the injury does not meet the requirement of being related to the performance of official duties.**

Why is challenge 6 better ?

1. written documentation of claimant's work schedule shows his official duties ended four hours before claimed injury
2. information about Trail's End Club is helpful
3. club manager's statement of time of injury additionally reinforces challenge
4. note that intoxication was mentioned in first challenge but not here. Unless there is proof through a police report or doctor's statement about intoxication, is better not to use this type challenge, especially if other documented reasons exist.

Challenge 7: Cathy Complainer

Ms. Complainer has filed a stress claim. She says the work level at the end of the fiscal year was so much that it caused her feelings of physical illness, insomnia, and inability to concentrate on the task at hand. Her gynecologist told her that she was affected by stress and that she should stop working for two months to see if her symptoms improve. We challenge this claim because the end of the fiscal year is difficult for all of us in the Contacts Branch. Ms. Complainer knows how it is every year – after all, she has been here twenty years - and she is exaggerating the feelings all of us have because she wants to stop working. We don't think she has any proof that her situation is any worse than the rest of us.

Why is this not an effective challenge ?

This challenge does not explore what the actual amount of work was. The claimant must show that he/she was given job tasks that were beyond any person's capability or that very exceptional amounts of work are required. The agency should challenge by factually comparing the amount of work the claimant had to do with what other co-workers had to do, such as timecards, number of contract actions processed. Also, the stress claim was documented by her gynecologist, rather than someone with extensive training in psychological diseases, and this should have been pointed out.

Challenge 8: Cathy Complainer (revised)

Ms. Complainer filed a stress claim on October 5, saying that the work load at the end of the fiscal year (the month of September 2005) was unbearable. Ms. Complainer has been employed as a Contract Specialist in this office for twenty years, and the workload for the period she claims, September 2005, was actually less than in previous years. Attached is evidence showing that the number of contract actions processed by our office during September 2005 was 209; September 2004, it was 240, and in September 2003, it was 260. For all of these years, our office has had the same four employees and me as supervisor. All of us know that we will have to use overtime each September to get all the work accomplished by the end of the fiscal year. Attached are timecard records for the month that Ms. Complainer says she was overwhelmed by

work: Employee A had 60 hours of overtime during the month; Employee B had 56 hours of overtime; employee C had 55 hours of overtime, and Ms. Complainer, shown as Employee D, actually had the smallest amount of overtime of any of the four employees, with only 41 hours of overtime, while working her normal 8-hour day for the entire month. She did not miss any regular time during September 2005. Thus we challenge that she had an unbearable amount of work, when it has been documented that she did the smallest amount of overtime and we, as an office, processed a smaller number of contract actions, compared to previous years. The medical evidence submitted by her gynecologist simply says that she has stress from overwork and doesn't give any more information. Additionally, we have attached a signed statement by one of her co-workers, saying that Ms. Complainer told her in August that she was going to figure out a way to retire, as she was fed up with working but didn't have enough years for regular retirement. **We ask that this claim be denied for lack of evidence that the claimed illness was work-related, and that there is insufficient medical evidence for the claim.**

Why is challenge 8 better ?

1. claimant stated she had stress from overwork; supervisor proved by timecards that she did less than any co-workers, none of whom were claiming stress
2. supervisor also proved combined workload for the office was decreasing
3. medical documentation is not strong
4. statement from co-workers that Ms. Complainer told her she was going to figure out a way to stop working even though she did not have enough years of service to retire

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Some notes about ECAB decisions:

ECAB (Employee Compensation Appeals Board) is the "Supreme Court" for Workers Compensation. In fact, their decisions cannot be appealed to another court. Therefore, "ECAB decisions" have a similar importance to Supreme Court decisions in that they set precedence for how similar OWCP cases will be decided in the future. Experienced ICPAs sometime include summarized ECAB decisions in challenges. However, if you are a beginner at writing challenges, you don't have to quote ECAB decisions in order to have a good challenge.

If you do want to search previous ECAB decisions, the web site is:

www.dol.esa/regs/compliance/owcp/INDEXofResources.htm

This will lead to a link where specific injuries or illnesses can be search, for example, ECAB decisions related to Carpal Tunnel.

Rather than spending time searching for an appropriate ECAB decision, it is better simply to write all the facts with proof of why the claim should not be accepted. Opinions rarely influence claims examiners; it is essential to attach proof, such as copies of timecards, signed witness statements, police records of accidents, even maps of accident location. If some proof is contained in the supporting documentation for the claim, make a copy and

attach it to the challenge; don't expect the claims examiner to search through the file looking for it. For example, if the doctor indicates the illness is NOT work-related, copy that page, circle this remark, and attach it with your challenge.

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Remember:

- 1. Telephone the supervisor on every claim to ask if he/she has any doubt this is a legitimate claim before forwarding the claim to OWCP**
- 2. If there is doubt, put in EDI that claim will be controverted or challenged.**
- 3. Immediately assemble information for challenge with written proof.**
- 4. As soon as claim number comes back, mail challenge to London KY with the claim number written at the top right hand corner of every page.**
- 5. You have only one chance to challenge a claim, and that that is when the claim is first sent in. Missing your window of opportunity could cost your installation a million dollars – or more.**