

Basic Elements of a Claim



Burden of Proof

- It is the claimant's responsibility to establish the five basic requirements of a claim, which is known as the "burden of proof."
- It is OWCP's responsibility to establish willful misconduct, injury caused by intoxication, or intent to cause an injury (Statutory Exclusions) during the adjudication phase of the claim.



Burden of Proof - Employee Responsibilities

- The burden of proof to establish the essential elements of the claim
- Submit factual evidence as required by OWCP
- Provide medical evidence as requested
- Keep supervisor informed of condition
- Return to work as soon as medically able

* Only OWCP has the authority to approve/disapprove a claim.

Basic Elements of a Claim

- Time
- Civil employee
- Fact of injury
- Performance of duty
- Causal relationship



ALL 5 ELEMENTS MUST BE MET
BEFORE BENEFITS CAN BE AWARDED

Time

- An original claim for compensation for disability or death must be filed within three years after:



- Date of Injury (DOI)
- Date when the injured employee becomes aware, or reasonably should have been aware of a possible work related disease or condition
- Date of Last Exposure

Time – Traumatic Injury Claims

- An injured worker (IW) has three years to file a traumatic injury (TI) claim.
- In a TI claim, time begins to run from the date of injury where the injury can be identified as to time, place, and circumstances of occurrence.
- NOTE: A claim for continuation of pay (COP) must be filed within 30 days of DOI on Form CA-1.

Time – Occupational Disease Claim

- An IW has three years to file an occupational disease (OD) claim.
- In OD claims, the condition generally arises gradually over a period of time.
- In these cases, time begins to run on the LATER of the following two dates:
 - the date of last exposure to the employment conditions believed to be the cause, or
 - the date when the employee is aware or reasonably should have been aware of a possible causal relationship



Time – Occupational Disease Claim

- Where the exposure to possible injurious employment-related conditions continues after this knowledge, time begins to run on the employee's last exposure to the injurious conditions.
- If the employing agency (EA) has a testing program that detected a condition, this would establish that the EA had knowledge of the condition, and the time requirement would be met.

Civil Employee

- Any civilian employee in any branch of Federal government, including temporary employees, is covered.
- Volunteers performing job duties similar to Federal employees are usually covered.
- Independent contractors or employees of independent contractors are usually not covered, but the contract would need to be reviewed.
- Non-Appropriated Fund employees are generally not covered.



Civil Employee - Included Individuals

Also Included:

- Peace Corps and Job Corps
- Most volunteers
- Temporary and part-time Federal employees
- White House employees and Congressional representatives and staff

Fact of Injury (FOI) = Two Parts

- Factual: Must establish the claimant actually experienced the accident, untoward event, or employment factor which is alleged to have occurred.
- Medical: Must establish a medical condition diagnosed in connection with the accident/incident/exposure.



Fact of Injury - Factual

- An IW's statement alleging that an incident occurred at a given time, place and in a given manner is of great probative value, and will stand unless refuted by strong or persuasive evidence.
- However, OWCP also considers circumstances surrounding the claimed injury, in determining if FOI is established, such as: unexplained delay in filing claim and ambiguous/inconsistent statements.



Fact of Injury - Medical

- A medical report is required from a qualified physician, as defined in 5 U.S.C. 8101(2), which states that, "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."
- The medical report must provide a diagnosis linked to the injury, except in cases of visible injury.
- The diagnosis does not have to match the exact condition claimed and does not need to address the issue of causal relationship in order for FOI- Medical to be substantiated.



Performance of Duty

In order to establish that the claimed injury occurred in the “performance of duty”, the employee must establish the following:

- “In the course of employment”: This deals with the work setting, locale, time, and circumstances.
- “Arising out of the employment”: This is the requirement that an employment factor caused the injury; it must be related to the performance of day-to-day regular duties, to specially assigned duties, or to a requirement imposed by the employment.

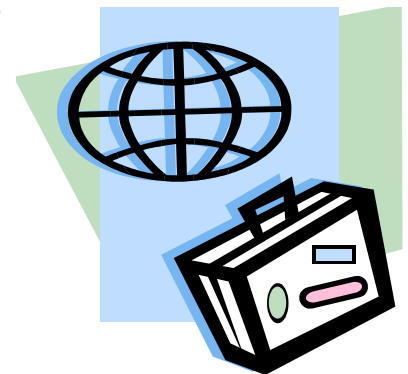
Performance of Duty – Industrial Premises

- Injuries arising on the premises may be approved by the claims examiner (CE) if it is shown the injury occurred on the premises and the employee was performing assigned duties, or the employee was engaged in an activity reasonably incidental to the employment such as:
 - Eating meals, lunches, snacks
 - Reasonable time before/after shift OK (usually 1/2 hr)



Performance of Duty – Off Premises

- There are four broad classes of off-premises workers:
 - Messengers, letter carriers, and chauffeurs who, by the nature of their work, perform service away from the employer's premises;
 - Traveling auditors and inspectors, whose work requires them to be in a travel status;
 - Workers having a fixed place of employment who are sent on errands or special missions by the employer; and
 - Workers who perform services at home for their employer.



Performance of Duty – Off Premises



Injuries sustained while commuting to and from work are not covered unless:

- Where the employment requires the employee to travel;
- Where the employer contracts for and furnishes transportation to and from work;
- Where the employee is subject to emergency duty, as in the case of firefighters;
- Where the employee uses the highway or public transportation to do something incidental to employment with the knowledge and approval of the employer; and
- Where the employee is required to travel during a curfew established by local, municipal, county or state authorities because of civil disturbances or for other reasons.

Performance of Duty – Travel/TDY

- Covered on travel for activities reasonably incidental to the travel
- Covered while eating, sleeping, brushing teeth, taking a walk
- Not covered during a substantial deviation for personal activities such as sightseeing or skydiving
- **IMPORTANT:** It is an overstatement to say there is 24/7 blanket FECA coverage for all activities during travel.



Performance of Duty - Telework

- Employees may be in the performance of duty while teleworking. Evaluated on a case-by-case basis.
- “Personal Comfort” doctrine does not apply.
- When an employee claims an injury while teleworking, the EA should provide to OWCP: arrangements made for performing work at home; particular work employee was performing when injured; and official supervisor’s opinion on whether employee was performing official duties at the time of the injury.



Performance of Duty – Parking Lot

- The industrial premises include the parking facilities owned, controlled, or managed by the employer.

An employee is in the performance of duty when injured while on such parking facilities unless engaged in an activity sufficient for removal from the scope of employment.

- Proximity rule: Hazardous condition proximate to the premises may be encompassed (example: highway or railroad crossing).



Performance of Duty – Other Factors

- Other factors to consider:
 - Recreation
 - Horseplay
 - Assault
 - Union Representation
 - Coworker Harassment or Teasing
 - Idiopathic Falls
 - Emergencies
 - Willful misconduct, intoxication, or intention to bring about injury or death to self or another

Performance of Duty – Recreational Activities

- An employee is considered to be in the performance of duty when:
 - At the time of the injury, the deceased or injured employee was engaged in a recreational activity organized and directed by the employing establishment and the employee was being paid for participating, or
 - The activity was required and prescribed as a part of the employee's training or assigned duties.



Performance of Duty – Recreational Activities

“Structured Physical Fitness Programs” (PFP)

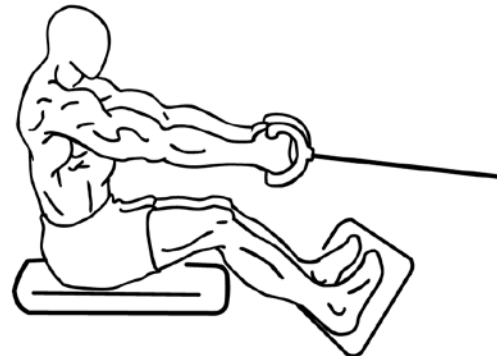
- If the employee’s position requires that a certain level of fitness be maintained, they may have a structured program where work time may be allocated for exercise. Off duty exercise performed under the auspices of the fitness program is also within performance of duty.
- Typically include agency-appointed fitness coordinators, physical assessment tests and structured exercise while off duty.
- Employees enrolled in a PFP are in the performance of duty for FECA purposes while doing authorized PFP exercise.



Performance of Duty – Fitness Center on Premises

During established work hours:

Employees who are injured while exercising or participating in a recreational activity during authorized lunch or break periods in a designated area of the employing establishment premises have the coverage of FECA whether or not the exercise was part of a structured PFP.



Performance of Duty – Fitness Center on Premises

Outside of established work hours:

Injuries which occur during the use of fitness and recreational facilities furnished by the employing establishment outside of official work hours, on or off the premises, are not compensable if the employee was not participating in a structured PFP. The mere fact that the employing establishment allows employees to use its facilities on their own time does not create a sufficient connection to the employment to bring any resulting injury within the coverage of FECA.

Performance of Duty – Horseplay

- An employee injured during horseplay is considered to be in the performance of duty if the horseplay was of a character that could reasonably be expected where a group of workers is thrown into personal association for extended periods of time.
- It is important to determine whether the particular activity was one that was a reasonable incident of the employment or was an isolated, unanticipated event which could not reasonably have been expected to result from the workers' close association.

Performance of Duty - Assault

- An employee is considered to be in the performance of duty if the assault was accidental or arose out of an activity directly related to the work environment.
- An assault is not compensable if it arose out of a personal matter having no connection with the employment.
- An assault occurring off the agency's premises and outside of work hours may be compensable if it arose for reasons related to the employment.

Performance of Duty – Union Activities

- Employees performing representational functions, which entitle them to official time, are in the performance of duty.
- Activities relating to the internal business of the union organization, such as soliciting new members or collecting dues, are not included.

Performance of Duty – Harassment or Teasing

Employees who are harassed, teased or called derogatory names by coworkers are considered to be in the performance of duty provided that the reasons for the harassment or teasing are not imported into the employment from the employee's domestic or private life.

Performance of Duty - Falls

- A distinction must be made between idiopathic falls and those falls which are merely unexplained
 - “Idiopathic falls,” caused by a personal, non-occupational pathology (such as a myocardial infarction, fainting spell, or epileptic seizure), are not covered, unless the employee strikes a “hazard” (such as a desk); in those cases, injuries caused by the hazard are covered, but the underlying condition is not.
 - If a fall is not shown to be caused by an idiopathic condition, it is simply unexplained and is therefore compensable if it occurred in the performance of duty.



Performance of Duty - Emergencies

Coverage may be extended to employees who momentarily step outside the sphere of their employment to assist in an emergency such as to extinguish a fire or help a person hit by a car. Each case will be decided differently based on the degree to which the employee diverged from duty.



Performance Of Duty Is Usually Not Met:

- Assault based on outside personal association
- Traveling to and from a fixed place of employment (commute)
- Significant deviations
- Idiopathic fall (non-work-related condition) to supporting surface (e.g., floor)
- Statutory exclusions (discussed later):
 - Willful misconduct
 - Intoxication
 - Intent to injure oneself or another

Performance of Duty – Stress Claims

Think EVENT not INTENT

- When an employee experiences emotional stress in carrying out assigned employment duties, or has fear and anxiety regarding his or her ability to carry out these duties, a resulting disability is considered to have "arisen out of and in the course of employment." Similarly covered is a disability arising from a special assignment or requirement imposed by the employing establishment.
- Not Covered -- personnel or administrative events (e.g., leave issues, performance appraisals, adverse actions) except when EA error or abuse is determined.

Performance of Duty – Stress Claims

- To be covered under the FECA, an emotional condition must arise: “out of and in the course of employment.”
- The mere fact that an employee has an emotional condition during a period of employment does not entitle him/her to benefits.



Performance of Duty – Stress Claims

- An employee who suffers from a medical condition resulting from an emotional reaction to factors of employment can be considered to be in the performance of duty.
- The reaction must be to the requirements of the employee's position.

Performance of Duty – Stress Claims

Compensable factors of employment:

- Regular and specially assigned work duties
- Duties need not be excessive, but overwork must be established if alleged
- Altercations/difficult relationships with supervisors if documented
- Erroneous or abusive personnel actions
- Requirements of the employment
- Dispute with origin in the workplace

Performance of Duty – Stress Claims

Non-Compensable factors of employment:

- Failure to receive a promotion, without error or abuse
- General allegations of stress
- Reassignment
- Unsubstantiated claims of harassment
- Desire to work in a particular job or environment
- Investigations into illegal activity
- Emotional reaction to evaluation or appraisal, without error or abuse
- Personnel actions, without error or abuse
- Mere fact grievance is lessened or settled is not error or abuse

Statutory Exclusions

Three Statutory Exclusions exclude coverage under the FECA if basic requirements are met:

- Willful Misconduct
- Drug or Alcohol Intoxication
- Intention to Bring About Injury or Death to Self or Another



Statutory Exclusion – Willful Misconduct

- The question of willful misconduct arises where at the time of the injury the employee was violating a safety rule, disobeying other orders of the employer, or violating a law.
- Must be deliberate and intentional disobedience of rules/orders – not carelessness or heedlessness
- Simple negligent disregard of safety rules, regulations, orders, or law is not sufficient to deprive an employee of entitlement to compensation.
- The burden is on OWCP to establish that willful misconduct resulted in an injury.

Statutory Exclusion – Willful Misconduct

Bottom line: If the EA has evidence that there was willful misconduct, present that evidence at the earliest opportunity!

Remember. . . mere negligence or an employee's failure to follow the EA's recommended practices is not considered willful misconduct.



Statutory Exclusions – Intoxication

- The record must establish: the extent to which the employee was intoxicated at the time of the injury; and the particular manner in which the intoxication caused the injury.
- It is not enough merely to show that the employee was intoxicated. It is OWCP's burden to show that the intoxication (by alcohol or any drug) caused the injury.
- This requirement, however, does not provide EA personnel with any additional authority to test employees for drug use beyond that which exists under other statutes or regulations.

Statutory Exclusion – Intent to Injure Self or Others

- Where it appears that an employee brought about his/her own injury or death, or that of another, the intent must be established. If the factual and medical evidence show that the employee was not in full possession of his/her faculties, the injury may be compensable.
- Thus, suicide may be compensable if the work related injury (or disease) and its consequences directly caused a mental disturbance or physical condition which produced a compulsion to commit suicide.
- OWCP requires a statement from the EA on why they believe the employee intended to injure himself, and a statement from a doctor or hospital describing the employee's state of mind.

Causal Relationship

- Causal Relationship is the link between work related exposure/injury and medical condition found on examination
- Based entirely on medical evidence provided by physicians who have examined and treated the employee
- Opinions of employee, supervisor, injury compensation specialist ,or witness are not considered – nor is general medical information contained in published articles



Causal Relationship

Type of Causal Relationship:

- Direct cause
- Aggravation (worsening of a pre-existing condition)
- Acceleration (hastening of an underlying condition)
- Precipitation (a latent condition which would not have become manifest but for the employment)

Questions

There are 5 Basic Elements of a Claim. They are Time, Civil Employee, Fact of Injury, Performance of Duty, and Causal Relationship. In order for a claim to be awarded, all 5 elements must be met.

- a) True
- b) False

Questions

How long does an injured employee have to file a traumatic injury claim?

- a) 30 Days
- b) 1 Year
- c) 3 Years
- d) 10 Years

Questions

Generally, all of the groups below are considered Civil Employees under FECA except:

- a) Any employee in any branch of Federal government
- b) Volunteer performing job duties similar to Federal employees
- c) Peace Corps and Jobs Corps employees
- d) Independent contractors
- e) Temporary and part-time employees

Questions

When evaluating whether an injured employee satisfied the requirements for Fact of Injury, they would only need to establish one of the two parts, either the factual element or the medical element.

- a) True
- b) False

Questions

There are many injuries that take place during a period of employment, but do not meet the criteria for Performance of Duty under FECA. Which of the choices below are situations where Performance of Duty is not met?

- a) A significant deviation from assigned duties
- b) Injured while traveling to and from a fixed place of employment
- c) Drug or Alcohol Intoxication
- d) Intent to injure another
- e) An emotional reaction from failure to receive a promotion
- f) All of the above

Questions

When making a determination on whether an injured employee satisfied the requirements of Causal Relation, DFEC will base that determination on the opinion of the:

- a) Injured Employee
- b) Supervisor
- c) Witness
- d) Physician who examined and treated the employee
- e) Injury Compensation Specialist

Take Away Tips

- 1) It is the claimant's responsibility to establish the five basic requirements of a claim, which is known as the "burden of proof."
- 2) There are 5 basic elements of a claim: Time, Civil Employee, Fact of Injury, Performance of Duty, and Causal Relationship. All 5 elements must be met before benefits can be awarded.
- 3) An original claim for compensation for disability or death must be filed within three years after either the Date of Injury, Date when the injured employee becomes aware, or reasonably should have been aware of a possible work related disease or condition, or Date of Last Exposure.

Take Away Tips

- 4) Any civilian employee in any branch of Federal government, including temporary employees, is covered.

- 5) Fact of Injury is comprised of two parts:
 - Factual: Must establish the claimant actually experienced the accident, untoward event, or employment factor which is alleged to have occurred.
 - Medical: Must establish a medical condition diagnosed in connection with the accident/incident/exposure.

Take Away Tips

- 6) In order to establish that the claimed injury occurred in the “performance of duty”, the employee must establish the injury occurred in the course of employment and arising out of the employment.
- 7) An employee who suffers from a medical condition resulting from an emotional reaction to factors of employment can be considered to be in the performance of duty; however, the reaction must be to the requirements of the employee’s position.
- 8) Causal Relationship is the link between work related exposure/injury and medical condition found on examination. It is based entirely on medical evidence provided by physicians who have examined and treated the employee.