



FECA BULLETIN NO. 12 - 05

Issue Date: April 20, 2012

Subject: Handling Requests for Communication Assistance, Accommodations, and Modifications Under Federal Disability Nondiscrimination Law by Claimants and Others in the Federal Employees' Compensation Act (FECA) Adjudicatory Process

Background: The Office of Workers' Compensation Programs' (OWCP) Division of Federal Employees' Compensation (DFEC) has long been committed to facilitating effective communication with claimants and employing agencies regarding decisions and other actions in each individual case. Consistent with its responsibilities under applicable Federal disability nondiscrimination laws, with its mission, and with the additional emphasis on the employment of individuals with disabilities as reflected in Executive Order 13548 (issued July 26, 2010), OWCP is issuing this Bulletin to inform DFEC officials and personnel of their responsibilities under federal disability nondiscrimination law (including but not limited to Rehabilitation Act Section 504 obligations, which applies to Federally-conducted programs or activities). The Bulletin explains the type of notice OWCP will require DFEC to provide to claimants about its responsibilities under federal disability nondiscrimination law. The Bulletin also describes the procedures that must be used for handling requests from claimants needing communication assistance, or reasonable accommodations/modifications (see explanation in Section III below), in the claims process. Finally, it sets forth requirements regarding conducting hearings, medical appointments, and other in-person interactions in accessible facilities.

The district office should handle virtually all requests for communication assistance or reasonable accommodations/modifications for claimants with disabilities immediately in the manner in which the claimant requests. Because OWCP bears a high burden for justifying any failure to provide requested assistance, a district office should immediately contact the National Office if it has questions or concerns regarding how to comply with the applicable requirements.

For purposes of disability nondiscrimination law and the obligations discussed in this Bulletin, a "disability" is defined as a physical or mental impairment that substantially limits one or more of a claimant's, or other individual's, major life activities. The obligations and procedures discussed in this Bulletin apply to requests related to **all** medical conditions that can be considered impairments, including conditions that are not employment-related or conditions that may have developed subsequent to the filing of the claim. (This disability definition is distinct from FECA workers' compensation disability and encompasses all impairments that an individual has, not just those that are employment-related.)

In addition to its duty to provide communication aids and services and reasonable accommodations for persons with disabilities, OWCP must reasonably modify its policies, practices, and procedures when necessary to avoid discrimination on the basis of disability. It is also obligated to conduct its programs and activities so that each part of a program or activity is accessible to individuals with disabilities.

Communicating effectively with, providing other types of appropriate assistance and accommodations/modifications for, and ensuring that all aspects of the claims process are accessible to, claimants with varying types of disabilities (including visual impairments) are not only consistent with the non-adversary nature of the FECA adjudicatory process, but are also required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504), which applies to Federally-conducted programs or activities. In addition, in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which amended the Rehabilitation Act as well as other Federal disability nondiscrimination laws, Congress emphasized that the definition of disability "shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by [the terms of the applicable law]," and generally shall not require extensive analysis. Therefore, when responding to a request for assistance, OWCP should focus its attention primarily on how to assist the claimant (or other individual with a disability) most effectively, rather than on whether the individual is, in effect, "disabled enough" to deserve the assistance.

Both applicable law and Department of Labor policy require OWCP to communicate as effectively with persons who have disabilities as the agency communicates with other persons. OWCP bears the general responsibility for providing communication aids and services for claimants with disabilities and for ensuring that the aids and services provided to each individual claimant with a disability are effective for that particular claimant. The obligation to provide equally effective communications applies to the written letters and decisions that OWCP generally provides in paper format telephonic communications, and all other modes of communication.

Finally, the legal duty to provide accommodations/modifications, and to conduct hearings and other in-person interactions in accessible facilities, applies to all phases of the claims process.

Applicability: All National and District Office personnel, field nurses, vocational rehabilitation counselors, medical billing processors and employing agencies.

References: 29 U.S.C. § 794; 29 U.S.C. § 705; 42 U.S.C. § 12102. Note that the ADAAA amended the statutory definition of "disability" for purposes of disability nondiscrimination law (referred to in the Background section above) to broaden that definition and provide rules for construing it. See 29 U.S.C. § 705(20)(B), incorporating by reference the definition of "disability" set forth in 42 U.S.C. § 12102.

For further information about the definition of "disability," as amended by the ADAAA, and guidance on interpreting that definition, see the website of the U.S. Equal Employment Opportunity Commission (EEOC), available at: http://www.eeoc.gov/laws/statutes/adaaa_info.cfm.

The EEOC published a Final Rule in March 2011 that explains in detail how to interpret the definition of "disability" and its component elements; it has also published a fact sheet and Questions and Answers sheets regarding the provisions of the Final Rule. These documents are available at the EEOC web page cited above. Please note that although the EEOC regulations are not directly applicable to FECA, DOL's interpretation of the disability nondiscrimination laws it enforces must be consistent with EEOC's interpretation of Title I of the Americans with Disabilities Act (ADA); therefore, EEOC's regulations and guidance documents are useful tools for learning about DFEC's and OWCP's disability-related legal obligations.

Purpose: To advise OWCP and related personnel of their responsibilities, and of OWCP procedures, for taking certain actions related to disability. These actions include responding to requests by claimants and others for auxiliary aids and services to ensure equally effective communication ("communication aids and services"), or for reasonable accommodations/modifications, on the basis of disability. They also include taking appropriate steps to ensure that all in-person interactions are accessible to persons with disabilities.

Action:

I. General Principles Re: Requests for Communication Aids and Services and Reasonable Accommodations/Modifications

Although this Bulletin primarily addresses requests from claimants needing communication assistance and/or accommodations/modifications under applicable Federal disability nondiscrimination laws, these instructions also apply where an employing agency official (for example, injury compensation specialist), a representative, or anyone else legitimately associated with the claims process requires communication aids and services, or reasonable accommodations/modifications.

1. All OWCP/DFEC personnel must be sensitive to the potential needs of the claimant population and must realize that the law permits claimants to request communication aids and services, and/or reasonable accommodations/modifications, at any stage of the claims process. A claimant who did not need such aids, services, or accommodations/modifications at the initial stages of a claim may later develop a disability requiring one or more of these types of assistance. Under the law as amended by the ADAAA, a person who does not have an actual, current disability, but who has a record of a disability (for example, someone who has recovered from cancer or heart disease), is entitled to reasonable accommodations under appropriate circumstances.

2. Because the same medical condition may affect each person differently, requests for communication aids and services and/or accommodations/modifications **must be analyzed on a case-by-case basis**, and actions appropriate to each individual person with a disability will vary. For example, not every person who is deaf understands American Sign Language (ASL). Some deaf persons rely on lip reading, frequently combined with computer-assisted real-time (CART) transcription; others understand Signed English (which has a different syntax from ASL); and still others understand other sign languages, such as Spanish Sign Language. Information on how to respond to each type of request (for communication aids and services, and for accommodations/modifications) appears in Section III below.

3. Upon receipt of a request for disability-related communication aids and services or reasonable accommodations/modifications, action must be taken immediately. Once OWCP determines that accommodation is required under the particular circumstances, the background color of the header in the Integrated Federal Employees' Compensation System (iFECS) will be changed to purple, so that anyone reviewing the case will immediately understand that special handling is required.

All OWCP/DFEC personnel should know the procedures for responding to requests for communication aids and services and/or accommodations/modifications. Each District Office should have at least one designated point of contact who is responsible for helping

with responses to such requests, and who is knowledgeable about the relevant procedures, law and policy. Any personnel within that District Office should reach out to the designated point of contact should a question arise. As needed, DFEC personnel may also consult with the Branch of Regulations and Procedures and the Branch of Technical Assistance, which may seek out resources available in other Department of Labor agencies or other appropriate federal agencies. For example, DOL's Office of Disability Employment Policy (ODEP) has a Technical Assistance Center called the Job Accommodation Network (JAN) which may be able to assist with interactive services to help determine what accommodations are appropriate for a specific person. Contact with JAN should be handled through the National Office.

II. Notice to Claimants

1. Federal disability nondiscrimination law defines a "disability" as a physical impairment (such as cancer, diabetes, or epilepsy) or a mental impairment (such as autism, bipolar disorder or post-traumatic stress disorder) that substantially limits one or more of the person's major life activities. DFEC will provide notice to claimants that: if they have such a disability, they may request that DFEC provide them with communication aids and services and/or accommodations/modifications; a claimant who has a record of such a disability is also entitled to receive reasonable accommodations under appropriate circumstances; and DFEC will respond to all requests for the above types of assistance as required by Federal law. A sample notice that provides the above information is attached to this Bulletin.

2. This bulletin, the above-cited sample notice, and the procedures for requesting communication aids and services, accommodations/modifications, and/or in-person interactions in accessible facilities will be posted on DFEC's internet site: <http://www.dol.gov/owcp/dfec/index.htm>

3. Communications from DFEC to the claimant will include either this notice or a similar notice that provides the same information, and will also include information about how and where to request communications aids and services and/or accommodations/modifications.

III. Responding to Requests for Assistance

This section explains how to respond to two different types of requests. Subsection A addresses requests for **auxiliary (communication) aids and services**, while Subsection B addresses **other types of requests for individualized assistance**. Requests in the latter category should be considered requests for reasonable accommodations and/or modifications, as explained in subsection B.

A. Requests for Auxiliary (Communication) Aids and Services

DFEC will provide appropriate communication assistance for claimants with disabilities at all stages of the claims process. The circumstances under which communication assistance must be provided extends to claimants' interactions with physicians, field nurses, vocational rehabilitation counselors, or other health providers, and DFEC staff. Appropriate assistance is to be provided regardless of the method of contact -- whether by telephone, postal mail, in person, or some other method.

The type of communication aids or services necessary to ensure effective communication

will vary with the type of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. When deciding what communication aids or services to provide in response to a request from a claimant or other person with a disability, DFEC must honor the choice of the person with a disability, unless DFEC can demonstrate that either: (a) another means of communication exists that will be effective for the particular person with a disability, or (b) use of the means chosen by the person with a disability would result in a fundamental alteration in the nature of the DFEC or OWCP program. In addition, in order to be effective, communication aids and services must be provided by methods that are usable and/or understandable by the individual with a disability; in a timely manner; and in such a way as to protect the privacy and independence of the individual with a disability.

1. The requirement to consider each request for communication assistance individually does not prohibit DFEC from preparing for such requests in advance so that it may respond quickly. Examples:

a. Persons with visual impairments. Blind or visually impaired persons frequently ask for the following types of alternate formats for documents in standard print by first class mail:

1. Standard print and follow-up telephone call
2. Braille and standard print by first class mail
3. Microsoft or text file on a CD by first class mail
4. Audio CD and standard print by first class mail
5. **Large print (18 point)** and/or high contrast type (such as **bold**) by first class mail

Each DFEC office should be prepared to provide documents in each of the above formats when requested. DFEC will identify one or more sources for producing documents in Braille and, if appropriate, on audio CD, and will inform each district office of the turnaround time and procedures for submitting such requests. If the district office plans to supply its own large-print or high-contrast documents, it should ensure that enough staff members know the appropriate computer and printer settings to permit such documents to be produced at any time, without delay. If the district office plans to create its own audio or text CDs, it should keep the appropriate types of blank CDs in stock.

If a person with a visual impairment requests that a document be provided in Braille, audio CD, or data CD/Microsoft Word on CD, the document should be provided both in the usual format (paper or imaged file) and the requested alternate format.

b. Persons with Hearing Impairments

In-person contacts: If sign language interpreting services are necessary, they may be provided in person or through remote Video Interpreting Services.

Interpreters must be *qualified*. Under Federal disability nondiscrimination law, an interpreter is qualified if s/he is able to interpret effectively accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. The law prohibits DFEC from requiring an individual with a disability to bring another person to interpret for him/her, whether that individual is a claimant, an employing agency official, a representative, or someone else who is legitimately associated with the claims process.

In circumstances in which it is permissible for a claimant or other individual with a disability to be accompanied by another adult during in-person contacts, DFEC must not rely on that adult to interpret, or to otherwise facilitate communication, except: in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication; the accompanying adult agrees to provide such assistance; and reliance on that adult for such assistance is appropriate under the circumstances.

Telephone contacts in general: DFEC will provide dedicated contact numbers for telephone contact with individuals whose disabilities limit their capacity to use voice telephones. These dedicated numbers will be available on the DFEC internet site, listed in correspondence, and publicized in other ways. Additional information about the Federal Relay Service and the types of telecommunications services it offers is available at: <http://www.gsa.gov/portal/content/104626>.

Hearings. The Branch of Hearings & Review (BHR) is responsible for providing appropriate communication aids and services for hearings, and for notifying claimants and other appropriate parties that such aids and services are available. For example, for in-person oral hearings before a BHR representative, BHR must provide sign language interpreters, CART transcription services, or other types of communication assistance upon request. For telephonic hearings, BHR must provide TTY or other types of relay services. As with other DFEC branches, when deciding what type of communication aids or services to provide, BHR must give primary consideration to the request of the individual with a disability.

B. Requests for Accommodations / Modifications

1. Claimants and other persons associated with the claims process who have disabilities may request a wide range of adjustments or changes to the process because of their disabilities. Such requests constitute requests for reasonable accommodation or modification; they automatically trigger DFEC's or OWCP's duty to act.

a. To request an accommodation or modification, all that the individual with a disability (or someone acting on his/her behalf) must do is notify the claims examiner, hearing representative, or someone else associated with DFEC or OWCP, that s/he needs an adjustment or change in the claims processing procedures for a reason related to a disability.

Note: A request for disability-related parking assistance, such as for an accessible parking space within the building where a hearing or other in-person meeting is scheduled, is a request for a reasonable accommodation and should be treated as such.

b. The individual may use "plain English": s/he need not mention disability law or use technical language such as "reasonable accommodation" or "reasonable modification of policies, practices, or procedures."

c. The request does not need to be in writing: it may be made during a conversation, or through any other mode of communication. DFEC staff should be alert to such requests, and should recognize their legal and practical significance. The law permits DFEC personnel to write a memorandum or letter confirming the individual's request, or to ask the individual to submit the request in writing. However, the initial request triggers DFEC's and OWCP's duty to take action, and cannot be ignored pending receipt, completion, or processing of written confirmation.

2. When DFEC receives a request for an accommodation/modification as described above, it may simply provide the requested assistance. Otherwise, DFEC personnel should engage in an informal dialogue with the individual with a disability (and/or his/her representative) to clarify what the individual needs and identify the appropriate reasonable accommodation/modification. The exact nature of the dialogue will vary depending upon the circumstances.

a. In many instances, both the disability and the type of accommodation/modification required will be obvious; thus, there may be little or no need to engage in any discussion.

b. In other cases, DFEC may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation or modification.

c. The individual with a disability does not have to be able to specify the precise accommodation or modification needed. However, s/he (or his/her representative) does need to describe the barriers s/he is encountering in the claims process or the way it is implemented.

d. Even if the individual with a disability cannot identify a specific accommodation or modification, s/he may be able to offer suggestions about the type, or general characteristics, of reasonable accommodations/modifications that will help overcome the barrier.

e. Once the interactive dialogue has enabled the district office to ascertain the specific limitations imposed by the disability and barriers imposed by the claims process, where neither the individual nor DFEC is familiar with possible accommodations or modifications, the district office may contact the National Office for assistance from an accommodations expert.

3. Under the law, DFEC is permitted to ask for documentation to support a request for accommodation/modification only in the following circumstances: either the disability itself or the need for an accommodation/modification is not obvious, and the information already in DFEC's possession is insufficient to confirm that the individual has a substantially limiting impairment or needs an accommodation or modification (in the case of a claimant, the information already in the individual's file).

4. In some circumstances, it will be appropriate for DFEC to make adjustments or provide assistance without waiting for a specific request. For example, if DFEC knows that a

claimant has mobility impairments (for example, uses a wheelchair, walks only short distances with the use of a cane or walker, or has respiratory or cardiac-related restrictions on walking), it is entirely appropriate -- as well as good customer service -- for the DFEC staffer to take the initiative to schedule in-person meetings with the claimant in locations that minimize the distance the claimant must walk or propel his/her chair.

IV. Physical Accessibility

DFEC and OWCP are obligated to conduct their programs and activities so that when each part of a program or activity is viewed as a whole, that part is fully accessible to individuals with disabilities, including those with mobility impairments. Because not every facility associated with the claims process is required to satisfy the full panoply of accessibility standards adopted by the General Services Administration (GSA) for Federal facilities, OWCP DFEC is implementing the following accessibility-related policy: ALL IN-PERSON INTERACTIONS MUST BE HELD IN ACCESSIBLE LOCATIONS. Such interactions include, but are not limited to: any meetings with the field nurse or vocational rehabilitation counselor; medical examinations; and all in-person hearings before DFEC Branch of Hearings & Review.

Whether a particular location or facility may be considered "accessible" will be determined pursuant to the accessibility standards that are applicable to Federal facilities (as well as to facilities designed, built, altered, or leased with Federal financial assistance). See <http://www.access-board.gov/aba/index.htm>.

V. District Office Action

Upon receipt of this Bulletin, District Directors will share this information and these procedures with district office staff, discuss, and provide guidance as needed. District Directors will consult with the National Office as necessary. District Directors will update staff as procedures are refined and revised.

Disposition: This Bulletin is to be posted on the DOL website and retained until the Procedure Manual is updated.



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Director for Federal Employees' Compensation

Distribution: List No. 2 – Folioviews Groups A, B and D (Claims examiners, All Supervisors, District Medical Advisors, Fiscal Personnel, Systems Managers, Technical Assistants, Rehabilitation Specialists and Staff Nurses)

Attachment to FECA Bulletin 12-05 — Sample Notices

Requests for Disability-Related Assistance (Forms and Notices):

If you have a substantially limiting physical or mental impairment, Federal disability nondiscrimination law gives you the right to receive help from DFEC in the form of communication assistance, accommodation and modification to aid you in the FECA claims process. For example, we will provide you with copies of documents in alternate formats, communication services such as sign language interpretation, or other kinds of adjustments or changes to account for the limitations of your disability. Please contact our office or your claims examiner to ask about this assistance.

To be added to all other communications:

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.