

OWCP Response to Draft Report

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Employment Standards Administration
Office of Workers' Compensation Programs
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MEMORANDUM FOR: ELLIOT P. LEWIS,
ASSISTANT INSPECTOR GENERALFROM: GARY STEINBERG, ACTING DIRECTOR
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SUBJECT: Defense Base Act Investigation Report

The OIG study of the Defense Base Act was conducted with the objective of answering the following question: To what extent does OWCP ensure that employers and insurers are adhering to DBA claims processing requirements? OWCP has reviewed several versions of the draft study report and continues to have concerns with the study findings as well as the overall context in which this question was addressed.

The claim processing requirements in question were enacted during World War II, intended to regulate claims from American workers employed by American companies returning to America to recover from their injuries. The information, documentation, medical evidence, and other information needed to support a claim were readily available from American sources. Complying with the timelines and reporting requirements under those conditions was relatively simple, comparable to a workers' compensation claim from any U.S. citizen in this country.

The current situation is completely different. Today, federal contractors employ a significant number of workers from around the world under various layers of subcontracting to foreign companies. The claims arise from distant war zones, filed by foreign workers from small remote villages with little, if any, infrastructure and very limited access to medical reports, employment or payroll documents, and other information necessary for filing and adjusting a claim under the Defense Base Act. Although information for American workers is generally available to enable timely filing of claims, even these are complicated, and the information for foreign workers is simply not available to allow the insurers to file reports or pay benefits within the World War II era statutory requirements.

For American workers the situation is better, but not perfect. Although the information needed to adjust a claim is more readily available for American workers than for foreign, the nature and extent of the types of injury and the availability of some types of information from the war zones makes even domestic claims a challenge to adjust quickly. For example, if an insurer questions the work-relatedness of an injury, witnesses or incident reports from remote work sites may take time to locate. The onset of complex PTSD symptoms months or years after an incident overseas create medical issues that are difficult to evaluate and diagnose, and time consuming to

document. The nature of the injuries occurring in war zones are far different than common industrial types of strains and fractures and require more complicated treatment, evaluation, and documentation. Therefore, even for American workers employed in the distant war zones, perfecting a claim under the Defense Base Act is not a simple matter.

The conclusion of the OIG Study is that OWCP is not doing a sufficient job to enforce the (outdated) requirements. OWCP's experience overseeing claims from foreign workers over the past several years indicates that enforcing the outdated requirements will likely result in highly undesirable consequences. Rather than face fines for failure to file reports or pay benefits within the antiquated and impossible timelines, insurers will deny benefits within the 10 day requirement in nearly all claims to gain the time needed to obtain the documentation necessary to perfect the claim. The result of further enforcement of antiquated requirements will be that many more claims under the DBA will be denied and delayed, the litigation rate will increase, costs will escalate, and claimant dissatisfaction levels will increase greatly.

OWCP believes that the focus of the study might have been: To what extent is OWCP simultaneously supporting the timely payment of benefits while protecting all parties' rights in a system with requirements that have been surpassed by time? The answer to that question is found in the current report. OWCP has undertaken major steps and initiatives to assure the reporting and payment of claims as timely as the reality of the overseas war zones and foreign claimants allows.

With regards to the report's recommendations, OWCP agrees that the data system needs to be enhanced and is working toward that goal. OWCP agrees that the DBA statute needs to be revised and is working toward that goal. OWCP also agrees that not every instance of failure to comply with existing, outdated regulations and statute is enforced with fines and penalties – however, the OIG report does not reflect the fact that doing so will most likely be counterproductive to the needs of the injured workers, the contractors, the insurance companies, and OWCP.

At this point, OWCP would like to work with the OIG to address the context of the study in the current environment and develop additional improvements that will help enhance the effectiveness of the program to meet the needs of American and foreign works that become injured or ill while performing work for the US Government overseas.

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