

## CHAPTER 15

### **WORKERS' (INJURY) COMPENSATION PROGRAM**

#### **Section I – Purpose, Coverage and General Information**

1-1. **Purpose.** The Federal Employees' Compensation Act (FECA), 5 USC Chapter 81, provides workers' compensation coverage to our technicians for employment-related injuries and occupational diseases. The Office of Workers' Compensation (OWCP), U.S. Department of Labor, manages and processes workers' compensation claims. The Injury Compensation Program Administrator (ICPA) in the State Human Resources Office (JFHQ, NGAL-HRO-OWC) administers and serves as your point of contact for the Workers' (Injury) Compensation Program. This chapter explains the Injury Compensation Program and outlines the procedures to be followed when a technician is injured on the job or has a job-related illness.

1-2. **Coverage.** This program covers only the National Guard (competitive and excepted) technicians. State and Contract workers injured on the job should contact their state/contract workers' compensation office. Technicians sustaining work-related injuries while in military status should contact their military unit for a Line of Duty (LOD) determination. If an employee, previously on LOD and released from LOD, subsequently returns to Technician status and then sustains a work-related injury diagnosed as an aggravation of the pre-existing (LOD) condition, the employee may file an OWCP claim for a new injury. Medical history of prior conditions and pertinent medical records should be submitted to OWCP. Temporary aggravation involves a limited period of medical treatment and/or disability, after which the employee returns to his or her previous physical status. Compensation is payable only for the period of aggravation established by the medical evidence, and not for any disability caused by the underlying disease and/or injury. This is true even if the employee cannot return to the job held at time of injury because the pre-existing condition may be aggravated again. For example, if exposure to dust at work temporarily aggravates an employee's pre-existing allergy, compensation will be payable for the period of work-related disability but not for any subsequent period, even though further exposure in the work place may cause another aggravation.

#### 1-3. **General Information.**

a. **Exclusiveness of Remedy.** Except claims involving a third party, a federal employee who is injured while in the performance of duty has no authority to recover damages from the United States for the effects of the injury except through the FECA. The benefits provided by FECA constitute the exclusive remedy for work-related injuries, diseases, or death.

b. **Third Party Liability.** When the circumstances of the employment-related injury or

illness create a legal liability on a third party other than an employee or activity of the Federal Government, the government has a subrogation interest (that is, the right to recover any payment it makes should the claimant collect money from another source). The injured employee may be asked by OWCP to pursue such recovery or assign the right to recover to OWCP. The injured employee's failure to do so can result in a loss of all benefits.

c. **Dual Benefits (Civil Service Annuity and OWCP Compensation).** As a general rule a person may not concurrently receive compensation from OWCP and retirement or survivor annuity from the Civil Service Commission. The injured employee or beneficiary may elect to receive the more advantageous benefits.

d. **Representation.** A claimant may be represented by a Federal Union Official or other individual on any matter pertaining to an injury, disease, or death occurring in performance of duty. The employee must send a signed statement to OWCP authorizing the attorney or representative to represent him or her. Claimants are solely responsible for paying legal fees and other services rendered in respect to a case, claim or award of compensation. However, the Employees' Compensation Appeals Board (ECAB) is an appellate level that is not associated with OWCP and has the sole authority to process an attorney fee request if an attorney represents a claimant before the ECAB.

e. **Penalties.**

(1) Any person who makes a false statement to obtain Federal Employee's Compensation or who accepts compensation payments to which he or she is not entitled is subject to a fine of not more than \$2,000.00 or imprisonment for no more than one year, or both.

(2) Any person charged with the responsibility for making reports in connection with an injury or disease who willfully fails, neglects, or refuses to do so; knowingly files a false claim; induces, compels, or directs an injured employee to forgo filing a claim; or willfully retains any notice, report, or paper required in connection with an injury is subject to a fine of not more than \$500.00 or imprisonment for no more than one year, or both.

f. **Release of Medical Information.** Release of Medical Information Authorization Statement (Appendix F) must be signed and dated by the employee, when employee is requesting a representative in the claim. The request will be forwarded to District OWCP office. The supervisor must ensure the CA-1 and/or CA-2 is signed and dated by the employee in order for this to be considered a valid authorization.

g. **Administrative Procedures.** Administrative procedures, guidance and checklists (Appendixes A-L) for processing claims and completing the various forms (Appendix 15E) under the provisions of the Federal Employee's Compensation Act (FECA) are being provided in the following paragraphs. All referenced OWCP forms are available for download at: <http://www.dol.gov/owcp/dfec/regs/compliance/forms.htm>.

## **Section II - Eligibility and Benefits**

2-1. **Eligibility.** FECA provides compensation and medical care for all National Guard technicians for disability due to personal injuries sustained while in the performance of duty. The term "injury" includes, in addition to injury by accident, a disease proximately caused by employment. A technician is deemed to be within the scope of employment when performing authorized travel in a duty or temporary duty status on commercial, military, or privately owned aircraft or vehicles, regardless of whether the requirement to travel is included in the technician's job description. While in a technician travel status (TDY), technicians are covered by OWCP for 24 hours a day for all reasonable incidents of TDY such as going out to eat, staying in the motel, etc. This does not include traveling to and from your regular work location, traveling while in a military status, or performing in a State active duty status.

### 2-2. **Benefits Available.**

a. **General.** Federal employees are eligible for basic types of benefits under the provisions of the FECA program which apply to any disability or death incurred as a result of an employment-related disease or condition, as well as an on-the-job injury. The types of benefits are: medical benefits (such as compensation for doctor, hospital and drug bills); disability benefits (such as compensation, vocational rehabilitation); death benefits; and health and life insurance benefits.

#### b. **Medical Benefits.**

(1) The FECA provides compensation for any medical service needed to provide treatment to counteract or minimize the effects of any condition, disease, or injury judged to be causally related to employment with the Federal Government. There is no limit on the monetary amount of medical expenses paid, nor on the length of time for which they are paid, as long as the need for medical treatment can be substantiated and related to the injury or disease sustained on the job.

(2) Compensation will be paid for first aid, medical treatment, hospitalization, and physician's fees, as well as for any drugs, appliances, or other supplies directed for use by a qualified physician. Hospitals submit their expenses on Form OWCP-04, Uniform Health Insurance Claim Form. Physicians submit their expenses on form number OWCP 1500 or HCFA 1500. All original hospital forms, physician forms and supporting documents must be sent to JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711. In traumatic injury cases, compensation may be claimed for damage to prosthetic devices, medical braces, eyeglasses, and hearing aids. In the case of eyeglasses and/or hearing aids, this is strictly limited to damage caused at the time of the injury and the injury must require medical attention. If the person does not seek medical treatment, no claim for damaged property can be filed.

**NOTES:**

1. Payment of bills to chiropractors is limited to treatment consisting of manual manipulation of the spine to correct sublimation as demonstrated by x-ray. If injured employee elects to be treated by a chiropractor, such employee must be informed that all chiropractor services are not authorized by OWCP (as stated above) and will be the responsibility of the injured employee. The employee is entitled to use Federal Medical facilities and physicians, but may also elect to use the services of the hospital and physician of the employee's choice.

2. The injured employee has the right to select his/her own physician, provided that the physician is located within a 25-mile radius of the employee's residence or work station. The exception to this rule is when emergency treatment is needed. In those instances, employees do not have to be given the option of selecting a physician. If any employee requests a change in physician, employee's justification and OWCP's prior approval are required. Just because the employee does not like the treatment given, is not sufficient justification for OWCP's approval.

**c. Disability Benefits.**

(1) Compensation. Federal employees who suffer disabilities which are causally related to employment are eligible for one or more of several types of wage loss compensation:

(a) Continuation of Pay (COP). Continuation of an employee's regular pay by the employing agency with no charge to sick or annual leave for the period in which the employee is disabled, not to exceed 45 days (Appendix L). COP is only given in Traumatic Injury Cases. If an employee is unable to work as a result of an "Occupational Disease," employment-related disease or condition, the employee is not entitled to a continuation of pay but is entitled to compensation for wage loss.

(b) Compensation for Wage Loss. Compensation based on loss of wages is payable subject to the waiting days, after the 45th day for traumatic injuries, or from the beginning of pay loss in all other types of injuries. Compensation may not be paid while an injured employee receives pay for leave. The FECA is a conventional piece of worker's compensation legislation in that compensation for wage loss is computed as a percentage of the employee's salary. For traumatic injury or disease:

1. The technician who has no dependents is entitled to compensation for wage loss at the rate of 66 2/3% of the employee's regular pay following a 3-day waiting period.

2. The employee who has one or more dependents and/or a spouse who resides in the same household is entitled to compensation for wage loss at the rate of 75% of the employee's regular pay following a 3-day waiting period.

**NOTE:**

The 3-day waiting period may not be satisfied by using sick or annual leave. The employee must be in a non-pay status. Any day or fractional part of a day in which pay loss occurs can be counted as a waiting day. Saturdays, Sundays, and holidays not falling within a period of leave may also be counted as part of the 3-day waiting period. In cases where disability extends more than 14 days, compensation will be paid for the 3-day waiting period. Provided medical evidence substantiates continued disability, compensation may continue for the lifetime of the employee.

(c) Sick and Annual Leave. The employee has the right to elect whether to receive pay for leave or to receive compensation. If a technician elects to use leave and later wishes he or she had elected compensation, the employee may buy back his or her leave.

**NOTE:**

All OWCP basic compensation benefits are tax free.

(2) Other Benefits Related to Disability.

(a) Attendant's Allowance. If an injury is so severe that the employee is unable to care for his or her physical needs, such as feeding, bathing, or dressing, an attendant's allowance of up to \$1500.00 per month may be granted. Such service must be provided by a licensed health care provider and are paid as a medical expense. This allowance is supplemental and is paid in addition to compensation for loss of wages. This can be given with all classes of disability.

(b) Schedule Awards. In addition to income maintenance benefits such as those described above, the FECA provides for limited term payments in cases where an employee suffers serious disfigurement of the head, face, or neck, or for anatomical loss. Benefits under these provisions are calculated in the same manner as those paid for permanent total disabilities (66 2/3% of the employee's regular pay, or 75% in cases where the employee has a spouse or dependents), but are paid for a specified period of time which is proportional to the severity of loss. In cases where the employee suffers disfigurement of the face, neck, or head, FECA provides that an employee will be paid an award of compensation not to exceed \$3,500.00. A schedule award can be paid even if the employee returns to work. Also, employees may receive wage loss compensation and schedule award benefits for the same injury, but not at the same time.

(c) Vocational Rehabilitation. The FECA provides for the cost of OWCP-directed vocational rehabilitation necessary to counteract the disabling compensable effects of any permanent illness or injury causally related to federal employment. Rehabilitation is paid from the Compensation Fund, and is usually administered through State vocational rehabilitation agencies with approval of OWCP. In addition to the cost of rehabilitation, an employee may qualify for a monthly maintenance allowance of up to \$200.00. Vocational rehabilitation benefits are supplemental, and recipients are also entitled to collect total disability payments during the period of their rehabilitation.

d. **Death Benefits.** The FECA provides a full range of benefits for the survivors of Federal employees who suffer a job-related death. Widows and widowers of deceased employees are eligible for wage loss compensation equal to 50% of the deceased employee's regular pay. If the widow or widower has an eligible child, he or she is eligible for compensation equal to 45% of the employee's regular pay, plus an additional 15% for each child, to a maximum which shall not exceed 75% of the deceased employee's regular pay.

(1) Children who are orphaned by the death of a Federal employee are eligible for compensation equal to 40% of the deceased employee's regular pay, plus 15% for each additional orphan, to a maximum of 75% of the employee's regular pay. Compensation may exceed the regular pay if such excess is created by cost-of-living adjustments; however, it may not exceed 75% of the highest step of grade GS-15.

(2) If a deceased employee leaves no widow, widower, or child; benefits will be paid to the surviving legal dependents of the employee as specified.

(3) Benefits are paid to widows and widowers until death or remarriage if the beneficiary is under age 55. If a widow or widower under age 55 remarries, a lump-sum equal to 24 times the monthly compensation he or she is receiving at the time of re-marriage is made. If marriage is after the age of 55, no change in monthly benefits occurs.

(4) Orphaned children receive benefits until they die, marry, or reach the age of 18. Beyond the age of 18, if a surviving child elects to pursue higher education on a full-time basis (generally 12 semester hours), payments will continue until he/she has completed 4 years of study beyond the high school level, or until he/she is 23 years of age. Payments will in no event extend beyond the semester or enrollment period in which the beneficiary reaches the age of 23, or completes the fourth year of higher education, whichever occurs first.

(5) Funeral expenses are also provided to survivors under the provisions of the FECA. Up to \$800.00 will be paid for funeral expenses. If the employee dies away from his or her home, the cost of transporting the deceased to place of burial will be paid in full. In addition, a \$200.00 allowance will be paid in consideration of the expense of terminating the Federal employment status of the deceased. A \$10,000 Death Gratuity Payment may be payable when a civilian employee dies from a traumatic injury sustained in a job-related injury. The death gratuity is only payable when OWCP has approved the death claim. The \$10,000 death gratuity is payable minus the funeral expense up to \$800 and administrative fee of \$200.

e. **Health and Life Insurance Coverage.**

(1) Health Insurance - LWOP. Under FEHB regulations, an employee in a LWOP

status either pays the employee's portion of health insurance out-of-pocket, or makes arrangements with the HRO to pay the premium upon return to work. This is done at the time the employee enters a LWOP status.

(a) If the employee wants to continue health coverage it is employee's responsibility to contact the Human Resources Office to make payment arrangements.

(b) Health insurance deductions are transferred to the Department of Labor (DOL) upon their request.

(2) Life Insurance.

(a) Conversion to Individual Life Policy. Should an employee desire to convert to an individual policy the JFHQ, NGAL-HRO will, at the technician's request, accomplish a Standard Form 2821, Agency Certification of Insurance Status, and a Standard Form 2819, Notice of Conversion, Privilege, Federal Employee's Group Life Insurance Program.

(b) Continuance of Existing Life Policy.

1. If the employee decides to continue the life insurance, he or she should make application on the reverse side of SF 2821, entering the compensation claim number, signature, and address. The JFHQ, NGAL-HRO will then forward the form (SF 2823, Designation of Beneficiary, Federal Employee's Group Life Insurance Program, the employee may have on file) with a SF 2818, Continuation of Life Insurance Coverage as an Annuitant or Compensation, to OPM. If the employee has not applied for compensation, we will postpone sending SF 2821 to OPM until the employee has applied and a compensation claim number is assigned.

2. Upon receipt of the completed SF 2821, OPM will verify with the Department of Labor the employee's compensation status and will inform the employee whether or not he or she remains insured.

(c) Optional Life Insurance. An employee may retain optional life insurance (not dismemberment) while in receipt of compensation from the Office of Worker's Compensation Programs (OWCP) providing:

1. The employee is eligible to continue basic insurance and,

2. Optional insurance coverage(s) was in force for at least 5 years preceding the date the employee becomes entitled to compensation benefits. If optional insurance has been in force for less than 5 years, then the employee must have had the insurance for the full period from the time the insurance was made available to the employee.

(d) When employee begins to draw compensation. As with health benefits, in the remarks portion of the CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease, show whether the employee has optional insurance and, if so, give the date of birth and the beginning and ending dates of the pay period in which pay ceased. If an employee has a recurrence of disability and applies for additional compensation, employee will need to submit another CA-7.

(e) Cancellation of optional life insurance while receiving compensation.

1. In order to cancel optional insurance, the employee must submit SF 2817, Life Insurance Election (FEGLI), to OWCP declining the optional insurance so that deductions can be stopped. If the employee has been in non-pay status for less than 12 months, OWCP will return the SF 2817 to the employing office for filing in the employee's Official Personnel Folder; if the employee has been in non-pay status more than 12 months, OWCP will send the form to OPM.

2. OWCP will send the agency a copy of the SF Form 2810, Notice of Change in Health Benefits Enrollment, which will verify the transfer of health and optional coverage

**Section III – Responsibilities and Administrative Procedures  
(Traumatic Injuries, Occupational Diseases and Recurrences)**

3-1. **Traumatic Injury.**

a. **Definition.** Traumatic Injury is defined as a wound or other condition caused by external forces including physical stress and strain. The injury should be identifiable as to time and place of occurrence and a member or function of the body affected. Further, it must be caused by a specific event or incident or series of events or incidents within a workday or single work shift.

**b. Responsibilities and Administrative Procedures.**

(1) Authorization of Treatment. The employee's supervisor or someone acting on the supervisor's behalf will issue a CA-16, Authorization for Examination and/or Treatment, and CA-17, Duty Status Report, to the injured employee. The supervisor must complete page one of the CA-16, complete Section A of the CA-17 and give the CA-16 and CA-17 to the injured employee to give to the physician or medical facility of the employee's choice to complete page two of the CA-16 and Section B of the CA-17.

(2) Oral Authorization and/or Emergency Treatment. In emergencies situation, the supervisor may have to give oral authorization to the treating physician and/or medical facility. In this case, the supervisor must issue the CA-16 and CA-17 within 48 hours thereafter to the treating physician or medical facility. Animal bites and eye injuries are among the conditions

considered to be medical emergencies. Any necessary further treatment shall be obtained as soon as possible at the employee's option from:

(a) the hospital, or

(b) the physician who provided the emergency treatment, or

- (c) another qualified local physician of his/her choice.

It is the duty of the supervisor to authorize initial adequate medical treatment for acute injuries exclusive of disease, and to transfer the employee for any treatment subsequently needed to a physician in the manner established above.

(3) Submitting of Traumatic Injury. When an employee sustains a traumatic injury in the performance of duty, the supervisor or someone acting on the supervisor's behalf must complete and submit a CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation at [https://diucs.cpms.osd.mil/static\\_java\\_edi.sup.html](https://diucs.cpms.osd.mil/static_java_edi.sup.html). The injured employee and supervisor must sign, date and forward the original CA-1 along with all supporting documents to JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711.

**NOTES:**

1. Report all injuries, whether requiring medical attention or not on Form CA-1. The injuries not requiring medical attention will be stored in a holding file online.
2. A copy of the front page of the CA-16 must be submitted as soon as possible to the ICPA, JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711.

(4) Delay of Report of Injury. If an injured employee reported an injury several days after the fact, or did not request medical treatment within 24 hours of the injury, the supervisor may still authorize medical care using Form CA-16. Supervisors are encouraged to use discretion in issuing authorizations for medical care under such circumstances, but employees should not be penalized for short delays in reporting injuries. The supervisor may refuse to issue a CA-16 if more than a week has passed since the injury on the basis that the need for immediate treatment would become apparent in that period of time. If the supervisor refuses to issue a CA-16, the supervisor must issue the CA-20, Attending Physician Report, to the employee to be completed by the attending physician. An employee may not use Form CA-16 to authorize their own treatment.

(5) Form CA-17, Duty Status Report. The Duty Status Report will be used to obtain interim medical reports concerning the technician's duty status. The supervisor will place the Employing Agency Address and the State ICPA address (JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711) on page 2 of the Form CA-17 instruction sheet. The supervisor will furnish these forms to the employee for completion by the physician at intervals as required, normally at least every two (2) weeks.

(6) Termination of Disability Pay or Return to Work. The supervisor is required to submit a SF-52, Request for Personnel Action, (return to duty) and CA-3, Report of Termination of Disability and/or Payment to notify the ICPA, JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711, when the injured employee returns to work or disability ceases.

(7) Refusal to Return to Work. During the COP period (45 days), the treating physician indicates the employee is able to return to work but the employee refuses to do so, the continued absence from work will result in an overpayment. The period of absence from the job which resulted in an overpayment will be determined by the OWCP in the course of adjudication of the claim. The supervisor and the employee will be notified of the period of disability which is approved by OWCP. The supervisor may then require the employee to resolve any overpayment.

(8) Disability Beyond COP Period. After 30 days of COP and if medical evidence shows disability is expected to continue beyond 45 days, Forms CA-7, Claim for Compensation, CA-20, Attending Physician's Report, and a SF-52 (LWOP) must be completed before the expiration of the COP days. The supervisor must forward these forms to the ICPA, JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711, no later than the fortieth day of COP.

(9) Form CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease. Form CA-7 is completed if:

(a) medical evidence shows disability is expected (and is not covered by COP in traumatic claims);

(b) the injury has resulted in permanent impairment involving the total or partial loss, or loss of use, of certain parts of the body or serious disfigurement of the face, head or neck;

(c) loss of wage-earning capacity has resulted.

### 3-2. **Occupational Disease.**

a. **Definition.** Occupational Disease is defined as a condition produced in the work environment over a period of longer than one workday or work shift. It may result from systemic infections, continued or repeated stress or strain, exposure to toxins, poison fumes, noise, or other continuing conditions of the work environment.

#### **b. Responsibilities and Administrative Procedures.**

(1) When an employee sustains an occupational disease in a work related environment, the injured employee or someone acting on his or her behalf, should give notice of occupational disease to the supervisor in writing on Form CA-2, Notice of Occupational Disease and Compensation, which may be obtained from the internet at <http://www.dol.gov/owcp/defec/regs/compliance/forms>. The supervisor should issue to the employee two copies of the appropriate checklist, Form CA-35A-H, Evidence Required in Support of a Claim for Occupational Disease. The supervisor should advise the employee that Occupational illness or disease cases require special effort and extensive documentation; therefore, the employee must address all

items on the checklist and provide supporting medical and factual documentation requested on the checklist. If possible, the information should be submitted with the form. The supervisor should address all items in column marked "From Employing Agency" on the CA-35A-H.

(2) The supervisor should submit Form CA-2 online at [https://diucs.cpms.osd.mil/static java edi.sup.html](https://diucs.cpms.osd.mil/static/java/edi.sup.html). The supervisor and the employee should sign, date and forward the original, along with all supporting documentation, to JFHQ, NGAL-HRO-OWC, P.O. Box 3711, Montgomery, AL 36109-0711 within 10 working days of receipt of the CA-2. However, a claim will meet statutory requirements if filed no later than three years after the date of first awareness of disease or illness. An occupational disease claim should not be held for receipt of supporting documentation.

**NOTE:**

If a retired employee is filing an Occupational Disease Claim, the CA-2 cannot be submitted online. The supervisor may use the online system as a word document and complete the form online but will only be allowed to print.

(3) Advise the employee of the right to elect sick or annual leave, pending adjudication of the claim by the OWCP.

**NOTE:**

The 45-day continuation of pay (COP) is not applicable in occupational disease cases.

(4) Medical Care.

(a) The injured employee has the option to initially select a duly qualified private physician or hospital in the area. Generally, this area is defined as within 25 miles of the employing establishment; or the employee's home. The physician selected should be contacted by telephone if at all possible to determine if the physician is available and will accept the employee for treatment. If not, the employee must select another qualified physician. Should the employee wish to change physicians after the initial choice, OWCP must be contacted for approval, through JFHQ, NGAL-HRO, prior to treatment.

**NOTE:**

The physician selected by the employee must be enrolled as a provider with OWCP's central bill payment and medical authorization unit. If the physician is not yet enrolled, it is imperative that the physician contact the central bill payment and medication authorization unit at 1-850-558-1818 to initiate the enrollment process. Until the physician has become enrolled, no medical bills will be paid. The physician will have to contact the central bill payment and medical authorization unit to obtain specific medical treatment authorizations.

(b) The term "physician" includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors within the scope of their practice as defined by State Law. The term "physician" includes chiropractors only to the extent that

their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct an abnormal subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary of Labor.

**NOTES:**

1. If this cannot be determined, and x-ray's have not been utilized, the employee is responsible for payment of services, and OWCP will not honor this claim.

2. Naturopaths, faith healers, and other practitioners of the healing arts are not recognized as physicians within the meaning of the law.

(c) Physical therapy is normally authorized for up to 6 months. Therapy beyond that time must have prior approval from OWCP.

**3-3. Recurrence (Traumatic or Occupational Disease).**

a. **Definition.** Recurrence is when the same injury causes additional time loss from the job. (Follow-up medical care for a traumatic injury or disease which causes time loss is not considered a recurrence, but part of the original injury. Unless the claimant has been permanently released from further treatment, time loss is attributable to the original injury and claimed as such).

**b. Responsibilities and Administrative Procedures.**

(1) After the employee returns to work and the same injury causes additional time loss from the job, the supervisor must notify the ICPA, JFHQ, NGAL-HRO-OWC. Unless the injury is an emergency, the supervisor will not authorize medical treatment until approved by the ICPA. However, if the original claim has been disallowed or more than six (6) months have elapsed since last occurrence, the supervisor must obtain (through the ICPA) prior approval from OWCP before authorizing treatment.

(2) Whenever an employee has a recurring injury that causes additional time loss from the job and OWCP has approved the original claim then the supervisor must promptly complete the CA-2a, Notice of Recurrence. The employee must inform the supervisor whether he/she wishes to continue to receive regular pay, or wishes to charge the absence to either sick or annual leave.

**NOTES:**

1. If there is still a remainder of COP 45 calendar day balance, and forty-five (45) days have not expired, the employee is entitled to the remainder of the original 45 calendar days of the initial period of disability. However if the employee has used the COP forty-five (45) days or the COP days have expired and the employee has neither annual nor sick leave, the supervisor will authorize Leave Without Pay (LWOP). The supervisor will advise the employee that the

employee can choose to go on the OWCP payroll for compensation and that there is a 6-8 week waiting period before compensation is received.

2. In cases of recurring injuries, the employee is not entitled to any additional COP after a forty-five (45) day lapse and when injured employee has used all COP (45 days).

(3) The employee will file claim for any wage loss on Form CA-7 for compensation from OWCP.

(4) If the recurrence happens less than six (6) months following the employee's most recent medical treatment, the supervisor shall authorize required medical care by use of Form CA-20.

#### **Section IV – Types of Disabilities and Light Duty Assignment,**

4-1. **Disabilities.** Disabilities are classified on the basis of the nature and extents of disability incurred, and are defined as a permanent total, temporary total, or permanent partial

4-2. **Physician's Determination.** If the physician determines the technician has a:

a. **Permanent Total Disability.** A determination that an employee whose employment-related injuries are so severe that they leave the employee permanently and totally disabled for any type of work.

(1) An excepted military technician is required to have military membership for technician federal employment. When employee is medically disqualified from the military for injuries resulting from on the job injury, they will be separated as a technician under 5 USC Chapter 81 (OWCP). The Human Resources Office will issue SF-52, Request for Personnel Action (Separation). The SF-52's nature of action code should be entered as 460, and the authority code must read Q3K. The remarks section should read, "The employee is expected to be

paid under 5 USC 81." The injured employee will remain on the Permanent Roll under the Office of Workers' Compensation. The employee will be compensated for wages while on permanent roll. Without dependents, an employee is entitled to 66 2/3% of the salary. With dependents, the employee is entitled to compensation at the rate of 75% of the salary. The injured employee's OWCP case remains open for all medical expenses. The injured employee has a year to request a Special Provision Retirement from OPM. Once OPM approves the Special Provision Retirement, the injured employee will elect either OPM or OWCP benefits.

(2) The ICPA is responsible for making sure current documentation is submitted when required and maintaining (in the Human Resources Office - Workers' Compensation Office) a state OWCP file on the employee.

b. Temporary Total Disability. A determination that an employee sustains an employment-related traumatic injury or occupational disease, and the medical evidence shows that the employee is totally disabled to perform any type of work for a certain period of time.

(1) When an employee is expected to receive compensation benefits, the supervisor must make sure the injured employee submits to the ICPA for transmittal to the Region Office a CA-7, Claim for Compensation; CA-20, Attending Physician's Report; and SF-52, Request for Personnel Action (LWOP). The SF-52's nature of action code should be entered as 460 (LWOP/OWCP), and the authority code must read Q3K. The remarks section should read, "The employee is expected to be paid under 5 USC 81." The employee will be placed on OWCP's periodic roll until the injured employee is able to return to light, limited, or regular work. The employee will be compensated for wages while on permanent roll. Without dependents, an employee is entitled to 66 2/3% of the salary. With dependents, the employee is entitled to compensation at the rate of 75% of the salary. The injured employee's OWCP case remains open for all medical expenses.

(2) The supervisor must keep in contact with the injured employee to check on his or her recovery progress. The Injury Compensation Program Administrator (ICPA) or supervisor must send a CA-17, Duty Status Report, to the treating physician in order to determine medical restrictions and whether to initiate a Light Duty Offer (Appendix J).

(3) Light or limited duty is provided to an employee who has sustained a job-related injury and has physical limitations identified by the treating physician. The light duty assignment should be within the limitations imposed by the treating physician. When the employee return to duty (RTD), the supervisor should immediately notify and submit to the ICPA a SF-52, Request for Personnel Action (RTD), and CA-3, Report of Termination of Disability and/or Payment for submission to the Regional Office to ensure compensation has been terminated.

c. Permanent Partial Disability.

(1) An injury which prevents the employee from performing the job held at the time of injury. However, the injury does not prevent the employee from performing some type of employment consistent with the work limitations imposed by the injury.

(a) When a military technician is injured and unable to full-fill their military commitment, the employee will be separated.

(b) The employee will have the option to select (if qualified) either OPM or OWCP for benefits. The technician will be made aware that if OWCP annuity is selected that OWCP's potential obligation is to seek other employment within the injured employee's limitations. If the employee declines the offer of employment, compensation benefits may be terminated.

(2) The term, permanent partial disability, also applies to an employee who may or may not be able to return to the job held at the time of injury, but the employee sustained permanent impairment of a member or function of the body.

(a) A Non Dual Status (NDS) technician is a competitive civilian employee. If unable to perform the duties of the technician position, the employee will have the option to select (if qualified) either OPM or OWCP for benefits. The technician will be made aware that if OWCP annuity is selected that OWCP's potential obligation is to seek other employment within the technician's limitation. If the employee declines the offer of employment, compensation benefits may be terminated.

(b) OWCP provides for payment of compensation for permanent loss or loss of either partial or total of certain internal and external organs; members or functions of the body such as arms, legs hands, feet, fingers, toes, eyes; or loss of hearing or loss of vision. Each extremity or function has been rated for a specific number of weeks of compensation that can be paid in addition to full salary. This benefit is a Scheduled Award. An employee cannot receive wage loss compensation and scheduled award benefits concurrently for the same injury. The employee must submit a CA-7, Claim for Compensation, to the ICPA to be submitted to the Region Office for processing.

## **Section V - Continuation of Pay (COP) and Controversion of COP**

### **5-1. Continuation of Pay (COP).**

a. Definition. Continuation of an employee's regular pay by the employing agency with no charge to sick or annual leave. It is only given in Traumatic Injury Cases and is given for a maximum of 45 calendar days. In order to qualify for COP, the employee must file a written notice of the claim on a CA-1 within thirty (30) days of the date of injury and provide medical documentation justifying COP.

#### **NOTES:**

1. Full-time, and temporary employees are treated alike in instances of COP.
2. COP is taxable and all regular deductions (health, life insurance, etc.) are taken from the normal check.

#### **b. Dates of Eligibility.**

(1) In determining dates of eligibility, it is essential to know that the first day of COP is the day following the date of injury (DOI) when there is immediate time loss. If there is immediate time loss on the day of injury and the employee was injured during the official work day, the DOI is considered to be administrative leave. In this case, the first day of COP is the day after the injury. However, if the employee is injured before the official work day begins

and if time is lost that day, the first day of COP is the DOI beginning at the start of the official work day. In other words, the first day of COP is the first full day of disability providing it takes place within forty-five (45) days of the injury. In cases where there is no immediate time loss, the first time loss following the DOI which is due to the injury is the first day of COP. Additionally the regulations state that the first day of COP must be taken within forty-five (45) days from the DOI and medical documentation must be provided. Otherwise, the employee would not be eligible to take COP.

**NOTE:**

This does not mean that the employee loses eligibility for compensation, but rather just COP entitlement.

(2) Once the employee has begun taking COP, the employee is entitled to a maximum of 45 calendar days of COP. However, they need not be successive days. The law allows forty-five (45) days from the first working day on which the employee returns to work (RTW) to begin using any balance of the full 45 days. However, COP days used must be continuous if COP goes beyond the forty-five (45) days. Once disability stops beyond the forty-five (45) days, the employee loses all remaining COP days, but is entitled to claim compensation for time loss.

c. Counting COP. In counting COP days, one must use calendar days not work days. This includes holidays, weekends, and scheduled days off. Two things are important to remember:

(1) Only days are counted (e.g. if one hour is used to see a physician and seven hours are worked, it is still counted as one day of COP); and

(2) The time loss must be certified by a physician as being a result of the job related injury.

**NOTES:**

1. In rare instances, an employee may have two claims which involves two separate injuries.

2. COP is calculated for each injury. One COP period is not added to another.

d. Charging Time Loss to Employees' Time and Attendance (T&A) Records.

(1) COP cannot be charged until after the Date of Injury (DOI), except when the time of the injury is prior to the workday or work shift.

(2) COP must be charged in one (1) day increments.

(3) Time and attendance card should reflect actual time worked and COP hours taken.

(4) Time and attendance card should reflect the daily work hours' charges for weekend, holiday or regular day off as COP days used, as applicable. Example: If an injured employee's date of injury occurs on Thursday and Friday is counted as a COP day then Saturday, Sunday and Monday (day off) would be counted as COP days.

**5-2. Controversion of COP.**

a. The Form CA-1 indicates that the supervisor of the injured employee has the right to "controvert" COP. Controversion is the option of the employee's supervisor to oppose COP, generally on the basis of at least one of the following nine (9) categories:

(1) Disability was not caused by a traumatic injury or from an occupational disease or illness; or

(2) The employee is excluded by 5 USC 8101 (1) B or E; or

(3) The employee is neither a citizen nor a resident of the United States or Canada; or

(4) The injury occurred off the employing agency's premises and the employee was not involved in official "off premise" duties; or

(5) The injury was caused by the employee's willful misconduct, intent to bring about injury or death of self or another person, or was proximately caused by employee's intoxication; or

(6) The injury was not reported on Form CA-1, within 30 days following the injury; or

(7) Work stoppage first occurred forty-five (45) days or more following the injury; or

(8) The employee initially reported the injury after his/her employment was terminated; or

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Youth Conservation Corps, Work Study Programs or other similar groups.

**NOTE:**

The Supervisor may only oppose COP; OWCP makes the final determination for eligibility for COP. The OWCP office will accept reasons other than the 9 given in the Federal Regulations only when the agency submits documented facts with sound reasons for recommended action. In the meantime an agency must continue COP. (Reasons for controversion are also listed in the instructions attached to the CA-1 Form).

b. **Termination of COP.** The agency may terminate, or not begin COP only if the controversion is clearly based on one of the 9 acceptable categories. However, OWCP makes all final determinations and can overturn the agency controversion and require the COP be paid.

### **Section VI - Restoration from Compensable Injury**

6-1. **Authority.** Section 8151 of Title 5, United States Code, provides restoration rights to employees who sustain a compensable injury or disability under the provisions of chapter 81, Subchapter 1 of Title 5, United States Code.

6-2. **Position of Reemployment.** The Adjutant General of Alabama will restore a recovered technician, immediately or unconditionally, to the position the technician left or an equivalent one, when the technician recovers within one (1) year of the date he or she began receiving compensation. (Technician is not separated from his/her position for at least one (1) year). Technicians being restored after recovering from a compensable injury are generally entitled to be treated as though they had never left. The entire period an employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, and completion of the probationary period. However, employees do not earn sick and annual leave while in a non-pay status.

6-3. **Fully Recovered Technician.** Fully recovered (as the term applies to restoration rights arising from compensable injury) means that the employee is able to perform all the duties of the position he or she left, or an equivalent one. An employee is considered recovered for restoration purposes when the Department of Labor ceases paying compensation.

6-4. **Partially Recovered Technician.** If an employee has partially recovered from the injury or disability within one year after the date compensation begins and is able to return to limited duty, TAG will make every effort to restore him or her at an appropriate position consistent with the circumstances in each case.

6-5. **Retention Rights.** Technicians who sustain a compensable injury enjoy no special job protections as a result of the injury. Therefore, they are subject to reduction-in-force procedures just as are other agency employees. They must, however, be granted whatever rights they would have had to another job had they not been injured.

6-6. **Duration of Absence.** Technicians who sustain a compensable injury should be granted paid leave or a leave of absence (leave without pay) for at least the first year they are receiving compensation under 5 U.S.C. Chapter 81. Extensions in increments of six months or one year may be granted when a review of a case indicates an employee may be able to return to work at the end of that time. However, if, at the end of the initial year, review of the case indicates that an employee will not or cannot return to work within a reasonable period of time, additional leave without pay should not be granted and appropriate steps should be taken to separate the employee.

6-7. **Leave Status.** Injured technicians must elect between using their accrued sick or annual leave or being placed on leave without pay. They cannot receive payments for leave and injury compensation at the same time.

6-8. **Return to Duty.** Technicians who were granted a leave of absence for compensable injury are expected to report for work as soon as possible after they have fully recovered. This will usually be the first regularly scheduled workday after the date compensation would stop based on a medical determination that a technician is able to resume regular duties, unless circumstances agreeable to the agency and the employee dictate otherwise. An employee who fails to report to work within the time limits set in this chapter is subject to agency rules on explanations and discipline for failure to report for scheduled work.

6-9. **Denial of Reemployment.** If The Adjutant General of Alabama determines that it is impossible to reemploy a technician who has recovered from a compensable injury, then the technician will be advised in writing that he/she will not be re-employed and advised of further rights and/or options.