

**U. S. Department of Housing and Urban Development
Office of Inspector General for Investigations
Inspections and Evaluations Division**



Evaluation of HUD's Workers' Compensation Program

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Executive Summary

The Office of Inspector General, Inspections and Evaluations Division, conducts independent, objective examinations of U. S. Department of Housing and Urban Development (HUD) activities, programs, operations, and organizational issues.

We completed an evaluation of HUD's management of its Workers' Compensation Program (WCP). Our primary objectives were to determine whether HUD's contractor, Lifecare Management Partners (Lifecare) of Alexandria, VA, managed the program in accordance with its contract terms and identify opportunities to improve program policy and procedures. We also wanted to determine the level of program noncompliance and potential fraud among HUD's 371 former employees and WCP beneficiaries. Lifecare has administered HUD's WCP agency-wide since April 1997.

We conducted our initial evaluation between April and August 2008 and expanded the review in December 2009 to include 371 active WCP cases. We performed our detailed tests of the individual case files and related system data at Lifecare's corporate offices.

We concluded that Lifecare managed the program in accordance with its services contract. It maintained a comprehensive case management system for each injured employee, monitored claims on a continuing basis, and provided training and periodic management information reports to HUD as required. However, based on our tests for indicators of program fraud and discussions with Lifecare, we identified 13 of 371 former HUD employees and WCP beneficiaries that may be abusing their entitlement. These WCP claimants certified to the U.S. Department of Labor's (DOL) Office of Workers' Compensation Program (OWCP) that they were not employed outside HUD and/or involved with a business enterprise. Our computerized search of public records and review of Lifecare case files found inconsistencies, including potential wage and business income, contrary to the claimants' certifications.

We recommend that HUD modify Lifecare's contract to add fraud detection steps similar to our testing of public records and a formal referral process to ensure full investigation, where warranted.

If you have any questions concerning this report, please call Windell Durant, Acting Director, Inspections and Evaluations Division, Office of Investigation at (202) 709-0390.

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Abbreviations

WCP	Workers’ Compensation Program
HUD	U.S. Department of Housing and Urban Development
FECA	Federal Employees’ Compensation Act
DOL	U.S. Department of Labor
OWCP	Office of Workers’ Compensation Program
COP	Continuation of pay

Introduction

The Federal Employees' Compensation Act (FECA) as amended, 5 U.S.C. (United States Code) 8101, provides for the payment of workers' benefits to Federal civilian employees for disability due to personal injury or disease sustained while in the performance of duty. The benefits include wage loss, medical care and assistance, funeral expenses, and travel to medical care. FECA also provides for survivor benefits to an employee's dependents if the work-related injury or disease results in the employee's death. Benefits provided under the FECA program constitute the sole legal remedy against the United States for work-related injury or disease.

FECA is administered by the U.S. Department of Labor's (DOL) Office of Workers' Compensation Program (OWCP). The following briefly describes the responsibilities of OWCP and the U.S. Department of Housing and Urban Development (HUD).

OWCP Responsibilities

OWCP is responsible for adjudicating claims and making payments to claimants. OWCP provides wage replacement benefits, payment for medical treatment, vocational rehabilitation, and certain other benefits to injured workers and their dependents. It also provides assistance in returning to work, to include counseling on alternative work choices, and an appeal process available to injured employees if the claim is denied.

OWCP makes payments related to FECA claims out of the employees' compensation fund (established at the beginning of the fiscal year and under the control of DOL) and bills the employing agency annually. The employing agency then reimburses this fund through annual operating appropriations. Additionally, OWCP provides the employing agency a quarterly listing of payments made to claimants and service providers. This listing is called a chargeback report. The chargeback billing period is from July 1 to June 30 of the following year.

HUD's Responsibilities

HUD's responsibilities are set out in DOL's publication, CA-810, Injury Compensation for Federal Employees. These responsibilities include

- Ensuring that supervisors understand their responsibilities under FECA.
- Notifying the injured employees of their rights and obligations under FECA.
- Controverting inappropriate continuation of pay (COP)¹ and/or questioning a claim. (A controversion is an agency's action to dispute the entitlement of COP for a traumatic injury, such as disability due to a back injury.)
- Initiating FECA claims and notifying OWCP in a timely manner.
- Helping employees return to work as soon as possible by providing light or modified work duties.
- Monitoring the medical status of injured employees.

¹ For most employees who sustain a traumatic injury, FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days.

- Reviewing the chargeback report. (The chargeback system is the mechanism by which the costs of compensation for work-related injuries and deaths are assigned to employing agencies.)

HUD has no authority for approval or denial of claims filed under FECA. HUD may question the claim and dispute the entitlement of COP for a traumatic injury. However, once OWCP has approved wage loss compensation, it is final and not subject to appeal or challenge.

HUD has contracted with Lifecare Management Partners (Lifecare) of Alexandria, VA, to administer its Workers' Compensation Program (WCP) on an agency-wide basis since April 1997. Lifecare provides comprehensive claims processing, case management, and periodic management information reports to HUD management. It works with the injured employee, supervisors, human relations personnel, and safety and medical personnel including the claimants' care provider, HUD Employee Service Center staff, and the OWCP claims examiner. Lifecare uses an automated case management and tracking system specifically designed to manage WCP. Once the required data for an employee are received from HUD and entered into the case management system, Lifecare files claims electronically with OWCP for adjudication. The system also stores records of claimant activity, such as medical records; letters; and case management contacts with claimants, officials, and medical personnel. Lifecare also maintains a paper file to provide a supporting audit trail for the computer records.

Lifecare maintains data on the costs and participation levels in WCP. For the 12-month period ending June 30, 2008, HUD's cost was \$5.6 million for 371 program beneficiaries.

Scope and Methodology

To achieve our objectives, we identified and reviewed pertinent Federal laws and regulations. We reviewed prior WCP audit reports issued by the U.S. Government Accountability Office, the U.S. Department of Veterans Affairs, and the Social Security Administration.² To develop our evaluation plan, we obtained and reviewed protocols for DOL Office of Inspector General audits, evaluations, and investigations of the FECA program. To obtain an overview of current DOL responsibilities, we interviewed the District Director, DOL, OWCP, Chicago office.

We reviewed HUD's management policies and administrative procedures regarding its WCP and examined contract terms of Lifecare. We reviewed Lifecare's internal policies and procedures

² Workers' Compensation Report to Congressional Committees, entitled "Action Needed to Reduce Payment Errors in SSA [Social Security Administration] Disability and Other Programs," issued by the U.S. Government Accountability Office, May 2001.

"Audit of VA's [U.S. Department of Veterans Affairs] Workers' Compensation Program," issued by the Office of Inspector General, U.S. Department of Veterans Affairs, July 1, 1998.

"Audit of High-Risk Areas in the Veterans Health Administration's Workers' Compensation Program," issued by the Office of Inspector General, U.S. Department of Veterans Affairs, December 21, 1999.

"A Nationwide Review of Federal Employees Who Received Compensation for Lost Wages for Periods When Earned Wages Were Reported on the Social Security Administration's Master Earnings File," issued by the Office of Inspector General, Social Security Administration, May 18, 2007.

and interviewed Lifecare personnel responsible for the daily operation of the program. We examined the chargeback reports and other reports prepared by Lifecare for HUD management. We also interviewed HUD personnel in Chicago's Employee Service Center.

For our detailed tests, we initially selected a nonrandom sample of 20 claim files, 16 recent injury claims (2007-2008), and four claims of employees who had received multiyear benefits. We determined the reliability of the data for our evaluation by matching the electronic files with the paper files. Based on our analysis, we then expanded the selection, using Autotrack software, to include all 371 WCP claimants and searched for indicators of employment or business associations/affiliations. Autotrack flagged 30 claimants who may have earned wage or business income while receiving WCP benefits. For these 30 claimants, we examined the case files at Lifecare and the data in its computerized management system.

The initial evaluation was performed between April and August 2008 and expanded in December 2008 through February 2009. We conducted our detailed record tests at Lifecare's corporate offices.

We conducted the evaluation in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Observation 1: Lifecare Managed the Program According to Contract Terms

Lifecare's contract requires it to operate HUD's agency-wide system for workers' compensation claims processing and case management and implement appropriate follow-up action on HUD claimants. The contract also requires Lifecare to monitor chargeback reports and provide periodic management information reports to HUD.

We noted no operational deficiencies in Lifecare's management of WCP for HUD. We observed that Lifecare provided written narrative reports to HUD as required and routinely monitored the chargeback reports. Lifecare also kept a working relationship with OWCP and aggressively monitored continuing cases on the long-term rolls. The administrative and claims records were properly and professionally documented. Data in the case management system accurately reflected documentation in the paper files and was submitted to OWCP on a timely basis. Lifecare also provided required training to HUD employees and supervisors including four seminars in 2008.

Controlling COP payments. Lifecare staff routinely reviewed HUD COP reports to ensure that the payments were proper and questioned inappropriate claims. From July 2007 to December 2008, Lifecare challenged 56 COP claims from WCP beneficiaries. As a result, HUD recovered \$66,349 from the claimants, either in the form of reimbursement or as chargebacks to their leave balances. Three examples illustrate the review and recovery of COP payments.

- A claimant received COP payments for 3 days leave from work. The claim was denied by OWCP. Lifecare staff found that HUD's timekeeper had not adjusted the employee's leave records to recover the 24 hours of COP leave and corrected the oversight.
- A claimant was injured in November 2007 and was incorrectly paid COP beyond the 45-day period allowed by the regulations. Lifecare staff informed HUD, and the overpayment of \$5,838 was recovered in June 2008.
- A claimant filed for WCP, claiming that her knee locked and caused her to fall. Lifecare questioned the claim, as the claimant did not present medical evidence to show that the injury occurred during duty hours. As a result, HUD recovered 64 hours of COP in the amount of \$2,012.

Aggressive monitoring. Lifecare kept complete claims files for beneficiaries receiving compensation due to work-related injuries. Staff monitored these cases, as required by contract terms, and took appropriate actions when required. The following are two examples of aggressive monitoring:

- A claimant's widow received compensation as a beneficiary. During a case file review at the OWCP district office in 2008, Lifecare staff found that the claimant's mail had been returned to OWCP stamped "deceased." The overpayments were estimated to exceed \$13,000. OWCP is pursuing repayment.
- A claimant was injured in October 1979, when she was 28 years old, and has since been receiving workers' compensation benefits for a neck and back injury. The injury was allegedly caused by a fall from a defective chair.

Lifecare began case management for the claimant in 2000. No records of the claimant had been kept at HUD from 1979 to 1999. On March 27, 2002, the claimant's physician certified that she was totally disabled and could not work. Lifecare questioned the certification and asked OWCP to obtain a second independent opinion. In October 2002, the second physician certified that the claimant was capable of working. OWCP stopped the workers' compensation. In January 2003, a third physician's examination was conducted at the request of the claimant. The physician certified that the claimant was able to return to work with restrictions for 4 hours a day and then, over time, to 8 hours a day. The claimant appealed her case. In January 2004, the Hearing Board ruled in her favor and recommended that OWCP restore her benefits based on testimony that she was totally disabled. The OWCP claims examiner and Lifecare staff challenged the ruling. Lifecare, with HUD's permission, hired an investigator to videotape the claimant to show that she was not totally disabled.

Persistent follow-up. Lifecare conducted follow-up to ensure recovery of improper compensation payments. The following three examples evidence the results of Lifecare's persistence.

- OWCP did not adjust a claimant's compensation to reflect health insurance for a 6-year period. Although OWCP knew of this mistake, it did not recover the funds. At the urging of Lifecare, OWCP started deducting \$244 per month to cover the overpayment of \$25,866.
- OWCP erroneously included a U.S. Air Force claimant on the HUD 2007 chargeback bill. Lifecare staff discovered the error and directed OWCP to remove the case from HUD's chargeback.
- OWCP overpaid a claimant who retired in April 2004. The workers' compensation check should have stopped on the retirement date. Beginning in August 2004, Lifecare staff continued follow-up with OWCP to recover the \$3,280 overpayment. The overpayment was repaid on November 15, 2007.

As demonstrated by the cited examples of controlling COP payments, aggressive case monitoring, and persistent follow-up, Lifecare has managed WCP for HUD in accordance with its contract.

Observation 2: Some Claimants' Disability Certifications May Be Questionable

While concluding that Lifecare provided its services according to contract terms, we conducted additional tests beyond the scope of the contract to determine whether claimants correctly certified that they were unable to work due to continuing disability.³ We searched public records, using Autotrack software, for the 371 former HUD employees receiving workers' compensation. Autotrack identified 30 claimants with possible employment other than HUD and/or business affiliations. For these claimants, we then reviewed the workers' compensation case files maintained by Lifecare for inconsistencies and anomalies that could indicate intentional misstatement or fraud. Special attention was paid to items such as use of a post office box for an address rather than a physical location, high compensation costs compared to medical costs, type of injuries or disease, and circumstances surrounding the original injury.

From our review of the 30 claimants, we identified 13 with questionable continuing disability certifications. These former HUD employees represented that they had no income from employment or a business affiliation. We found evidence to the contrary. As an example, we cite the case history of a Santa Ana, CA, workers' compensation beneficiary and former HUD employee.

Case file history. A 44-year-old female worked at a Santa Anna HUD office and filed a claim for workers' compensation in December 2001 for stress caused by harassment at work. She had

³ Annually, claimants receiving workers' compensation benefits are required to report employment, self-employment, or involvement in a business enterprise and whether they received income from these sources. Reporting is done on DOL Form CA 1032. It includes a certification statement and warning that anyone who makes a false statement or misrepresentation of a material fact in claiming a benefit under FECA may be subject to criminal prosecution.

worked at HUD for 2 years before filing the claim. Lifecare controverted the claim, and OWCP initially denied the claim in April 2002 because the claimant could not establish “fact of injury.” She appealed the decision, and OWCP reversed or vacated its denial and accepted the claim based on a diagnosis of depressive disorder. In December 2003, OWCP notified Lifecare that an independent assessment would also be obtained for two other alleged work-related conditions. As a result, in March 2004, OWCP accepted the additional diagnosed conditions of bruxism and TMJ (temporomandibular joint disorder).⁴ The claimant was paid \$90,993 in compensation and \$9,101 in medical benefits for 2008.

Certification. From 2005 to 2007, the claimant certified on DOL Forms CA 1032 that she had no employment income or involvement with a business enterprise.

Public records search. An Autotrack search of public records showed that the claimant may have been employed or had other business affiliations. Autotrack listed a national realty firm as a possible employer but did not identify dates of employment. Autotrack also listed a possible business affiliation as a “development corporation” in Boca Raton, FL. Two vehicles registered at the address belonged to an attorney, according to Lifecare case records, that represented the claimant in her disability appeal.

Other documentation. The Lifecare files also contained an official OWCP document, “CA-2 Notice of Occupational Disease and Claim for Compensation,” from the Florida business affiliation that showed her address as a post office box in Palos Verdes, CA. The U.S. Postal Service verified the physical address in Palos Verdes, which, according to the postmaster, was also the location of a mail order business. Postal records also showed two additional post office box addresses at different Florida locations.

We believe the inconsistencies between the claimant’s certifications and unexplained evidence of employment or business affiliations bring into question this beneficiary’s continued entitlement to workers’ compensation.

Recommendations

We recommend that HUD modify Lifecare’s contract to add fraud detection steps similar to our testing of public records and a formal referral process to ensure the proper investigative agency receives the information when appropriate.

⁴ TMJ is an umbrella term covering acute or chronic inflammation of the temporomandibular joint, which connects the jaw and skull.