

FECA BULLETIN NO. 21-01

Issue Date: October 21, 2020

Subject: Special Case Handling in COVID-19 FECA Claims Processing and adjudication

Background: The Federal Employees' Compensation Act (FECA) covers injury in the performance of duty; injury includes a disease proximately caused by federal employment. The U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) administers FECA. FECA provides to an employee injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." See 5 U.S.C. 8103. FECA pays compensation for the disability or death of an employee resulting from injury in the performance of duty.

While all federal employees who contract COVID-19 related to their federal employment are entitled to FECA coverage, special case handling considerations apply. FECA Bulletin No. 20-05 was released on March 31, 2020, to provide targeted instructions to claims staff on the handling of COVID-19 FECA claims, including for employment designated by the FECA program as high-risk employment, which are expanded upon here.

Purpose: To provide additional guidance regarding special case handling of COVID-19 FECA claims.

A. High-Risk Employment Determinations by Position

As outlined in FECA Bulletin No. 20-05, OWCP recognizes that federal employees who have direct and frequent in-person and close proximity interactions with the public may be considered to have high-risk employment as it relates to COVID-19. This includes, but is not limited to, members of law enforcement, first responders, and front-line medical and public health personnel.

1. To make high-risk determinations by position, OWCP must first make a factual determination regarding exposure to COVID-19, based primarily upon the employing Agency's input. Questions by OWCP to the Agency will focus on the conditions of employment, with an emphasis on exposure to individuals known to have COVID-19 and/or required exposure to the general public and/or COVID-19 affected populations such as patients. Initial fact-finding will focus on the following:

1. Nature of Exposure and Contact (e.g., direct contact with one or more person(s) confirmed to have COVID-19, direct contact with the general public and/or COVID-19 affected populations such as patients, and the proximity);
2. Volume of Exposure (e.g., less than 10 people, 10-50 people, etc.);
3. Duration of Exposure (e.g., less than 2 hours per shift, 2-4 hours per shift, etc.); and

4. Other (e.g., any pertinent information specific to the exposure or the employee's position).

Where the facts provided by an agency are not limited to an individual employee, but are applicable to all employees in a specific position, at a specific location, and during a specific time frame, OWCP will utilize this information to efficiently make a factual high-risk determination on the position itself. The high-risk determination pertains only to the positions, geographic locations, and timeframes, as indicated by the employing Agency. Additionally, the employing Agency can challenge the high-risk determination on any individual case, since the work duties of specific individuals may be inconsistent with the high-risk determination. For example, the employee may hold that position but be temporarily assigned to different duties.

2. An internal team, designated as the COVID-19 Task Force, and consisting of the FECA Director (now the Director of DFELHWC) and his designees, the FECA Policy Chief, and the OWCP Chief Medical Officer¹, will review the available evidence of likely workplace exposure to COVID-19 for each specific position. This review includes an examination of how COVID-19 was caused by the position's work-related activities. The Task Force makes the high-risk employment determination by position based upon the facts presented by the Agency and the contemporaneous epidemiologic understanding and related science accepted by the [Centers for Disease Control and Prevention](#) (CDC) regarding the virus and its transmissibility. Based on that review, the Task Force finds whether there is sufficient evidence to accept that the diagnosis of COVID-19 is proximately caused by employment.

If the COVID-19 Task Force determines that the position is high-risk, OWCP will designate the position as high-risk. When this occurs, a position-based high-risk determination memorandum is created and placed in the applicable FECA case files at the time of adjudication. In each of those instances, OWCP will accept that the exposure was proximately caused by high-risk employment and no further medical evidence explaining the relationship between the confirmed COVID-19 diagnosis and the employment is required.

These high-risk position level reviews occur primarily for those positions with a higher volume of claims. Examples include a physician or nurse at the Department of Veterans Affairs or a Correctional Officer for the Bureau of Prisons.

B. High-Risk Employment Determinations by Case Specific Facts

In other instances, OWCP may collect information about an individual case that indicates a possible high-risk employment determination for a specific employee, but not a high-risk determination for all employees in this position. If a claimant/employee's position has not been classified as high-risk, but the individual case employment circumstances are the same or similar to the circumstances for high-risk determination by position, and there is indication (of likely exposure at work to COVID-19), then a memorandum will be created by the claims examiner and submitted to the Task Force. The memorandum should include details specific to that case regarding the job duties, nature and duration of exposure, and all other pertinent facts obtained from the claimant/employee and the employing Agency.

The COVID-19 Task Force will review this memorandum and make a high-risk case specific determination based on the facts submitted in the memorandum and the contemporaneous epidemiologic understanding and other science accepted by the [CDC](#) regarding the virus and its transmissibility. The Task Force's review includes examining how COVID-19 may have been caused by the employee's work-related activities. Based on that review, the Task Force determines whether there is sufficient evidence to accept that the diagnosis of COVID-19 was proximately caused by employment.

If the COVID-19 Task Force determines the case specific employment is considered high-risk, a high-risk determination memorandum is created and placed in the applicable case file at the time of adjudication. In each of these cases, OWCP will accept the exposure was proximately caused by high-risk employment and no further medical evidence explaining the relationship between the confirmed COVID-19 diagnosis and the employment is required.

C. All Other Determinations

If the claimant's position is not considered high-risk or the claimant's specific case is not considered high-risk, the claimant/employee should be asked to provide medical evidence from a physician to include the diagnosis of COVID-19 and an explanation of how COVID-19 was caused by the employee's work-related activities.

D. Additional Development and Adjudication of Claims

All COVID-19 FECA claims will be fully developed to establish the five basic elements set forth in [20 CFR 10.115](#), pursuant to the special handling procedures further addressed in items 1-5 below.

1. Medical Development. The claimant/employee will be asked to submit the laboratory test results that confirm the diagnosis of COVID-19. If there are any questions regarding the laboratory test result submitted, the claims examiner should refer to OWCP's Chief Medical Officer for review and clarification.

1. If the Task Force has made a high-risk determination based on position or case specific facts, as indicated in section A and B above, and a positive COVID-19 laboratory test result is submitted, no further medical development is necessary. However, in certain instances, and where the facts of a case warrant, OWCP may request a medical statement of the causal relationship of how the COVID-19 was employment-related, in addition to the COVID-19 test result.
2. If the Task Force has not made a high-risk determination, as indicated in section C above, the claimant/employee should be asked to provide medical evidence from a physician to include the diagnosis of COVID-19 and an explanation of how COVID-19 was caused by the employee's work-related activities.
3. While an antibody test may be submitted to confirm that the employee had COVID-19, the medical evidence should also address how the diagnosis of COVID-19 is employment-related and/or include a contemporaneous indication that the claimant was diagnosed with/treated for COVID-19 by a physician.

4. If there is a claim that COVID-19 aggravated, accelerated, or precipitated another ancillary medical condition, the claimant/employee should be asked to provide additional medical evidence from a physician.
5. If the employing Agency has copies of responsive medical documentation (such as lab results, antibody test results, or health unit entries), the Agency should promptly provide such documents to the DFELHWC.

2. Extensions. A period of 30 days is generally allowed for the submission of any evidence requested by OWCP. An extension of additional time can be granted in the following circumstances:

1. If the claimant/employee requests an extension;
2. If a positive test result has been submitted, but the factual evidence is missing; or
3. If there is a positive laboratory test result on file, but the official laboratory report is missing and OWCP's Chief Medical Officer (or his designee) determines that the medical evidence is insufficient, an official laboratory test result must be requested.

3. Adjudication/Disposition

1. All cases will be accepted for COVID-19 if the five basic elements set forth in 20 CFR 10.115 are established.
2. The case will be denied if the medical evidence does not support that the injured worker contracted COVID-19 (where no laboratory report or medical evidence supporting the diagnosis is submitted).
3. If the claim does not meet the five basic elements for acceptance, but the medical evidence supports the diagnosis of COVID-19, the case will be administratively closed and suspended for adjudication. The FECA Procedure Manual allows for administrative closure of cases without formal adjudication by claims staff² for very simple/minor traumatic injuries that are not expected to involve large medical expenses. If the claim was filed within 30 days of the injury and the employee provides the evidence described in [20 CFR 10.210](#), the employee is entitled to Continuation of Pay (COP).³ The employer may terminate COP when the conditions outlined in [20 CFR 10.220](#) are met. Suspended adjudication does not constitute a formal denial, and the employee will be advised of the additional documentation needed should they wish to pursue their claim further.

4. Withdrawal of Claim. Certain COVID-19 claims may have been filed as a preventive for exposure only, due to quarantine, or otherwise filed prematurely. In such circumstances, an employee may decide not to pursue his or her claim. A claimant may withdraw his or her claim in writing (but not the notice of injury) at any time before OWCP determines eligibility for benefits. See [20 CFR 10.100 \(b\)\(3\)](#). However, any COP granted to an employee after a claim is withdrawn must be charged to sick or annual leave, or considered an overpayment of pay consistent with 5 U.S.C. 5584, at the employee's option.

5. Reopening Cases that were Administratively Closed and Suspended for Adjudication. Cases suspended for adjudication under item 3(c) above should be reopened for full development and adjudication if:

1. The employee requests a formal decision; or
2. The employee claims wage loss compensation after the expiration of the COP period. In this instance, supportive medical evidence from a physician on the relationship between the illness and the claimed disability and/or medical expenses is needed regardless of the employment determination (high-risk or not high-risk); or
3. The medical bills or other related expenses submitted for payment on the case exceed \$1,500.00.

6. Death benefits. Claims for COVID-19 death benefits are adjudicated in a manner similar to other claims for death benefits.

1. The claimant has the burden of establishing the essential elements of the claim, which includes the existence of a causal relationship between an employee's death and federal employment. Medical evidence addressing the cause and effect relationship between death and employment is required.
2. The evidence must establish that the employee's death was causally related to federal employment by cause, aggravation, acceleration, or precipitation. COVID-19 need not be the sole cause of death, and the fact that the employee may have had other non-work related medical conditions does not preclude a survivor's entitlement to benefits.
3. If the employment is considered high-risk, a positive COVID-19 laboratory test result is sufficient to find the COVID-19 was employment-related. If a COVID-19 laboratory test is not available, COVID-19 listed on the death certificate as a primary or contributing cause of death is also highly probative and will be considered along with the evidence discussed above.
4. It is recognized that obtaining a positive COVID-19 laboratory test result may not be possible in death cases and available medical records may be limited. As such, the claims examiner may refer the available factual and supportive medical evidence to OWCP's Chief Medical Officer or a District Medical Advisor (DMA) for an opinion on the medical diagnosis and causal relationship where appropriate.

Applicability: Appropriate National and District Office personnel.

Disposition: This Bulletin is to be retained until incorporated into the FECA Procedure Manual.

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Director for

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Distribution: All Appropriate DFELHWC Staff

¹ OWCP's Chief Medical Officer (CMO) is currently a physician who holds a master's degree in public health, and is certified as a specialist by the American Board of Preventive Medicine. The CMO is trained in disease prevention and control, risk assessment, risk management, and risk communication, and has extensive experience protecting military and civilian personnel from infectious disease, occupational injury, and environmental hazards.

² See FECA Procedure Manual 1-0400-4. If the case is administratively closed for payment of expenses up to \$1500, a letter is sent to the employee/claimant with his/her claim number providing information on how to access case information and how to submit documentation and medical reports in the event that medical bills are expected to exceed the established threshold (which would necessitate the case be reopened for formal adjudication by claims staff).

³ If COVID-19 is contracted during a single workday or shift, and therefore meets the definition of a traumatic injury (see [20 CFR 10.5\(ee\)](#)), COP is payable. Since the date and time of transmission may not always be known due to the nature of the virus, OWCP DFELHWC will use the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the date of injury.