FECA Fraud

Renee Morris
Jacksonville District Management Advisor

July 2019
Course Objectives

• Understand the difference between fraud and abuse

• Identify indicators used to recognize potentially fraudulent claims

• Become familiar with Fraud Index Tool
Fraudulent FECA Claims

In order to identify fraudulent claims you need to be aware of the two concepts:

- Abuse
- Fraud
Abuse

• Abuse is considered the excessive, extravagant or wrongful use of FECA to acquire additional benefits for personal gain in a manner contrary to its legal intent.

• Abuse is virtually impossible to prove as the claimant may believe they are entitled to the benefit.
Fraud

• Claimant knowingly and willfully falsifies, conceals, or covers up a material fact, or makes a false, fictitious, or fraudulent statement or representation ... in connection with the application for [FECA benefits] shall be guilty of perjury.

• Fraud is punishable by law (Criminal Statute 18 USC § 1920)
  • Felony or Misdemeanor
  • Imprisonment
  • Fines and/or restitution
Abuse vs Fraud

The term "knowingly" is defined in 20 C.F.R. §10.5(n) as "with knowledge, consciously, willfully or intentionally." For an omission or understatement to be considered "knowingly" made, the file must contain positive evidence, such as a statement from the claimant that he or she had earnings, or a statement indicating earnings less than the amount actually earned according to other sources. To determine whether the claimant reasonably should have known that the earnings or employment activity should have been reported to the OWCP, the circumstances of the case should be carefully evaluated with respect to the claimant's age, education level, and familiarity with the reporting requirements, as well as the nature of the employment/earnings involved and any other relevant factors.

“The key difference between fraud and abuse is intent. Abuse may not always be fraud, but fraud is always abuse.”
Abuse or Fraud

• On March 13, 1968 the claimant injured his lower back while performing his federal duties as a plumber. The OWCP accepted the claim for a lumbosacral strain and aggravation of degenerative arthritis. The claimant never returned to the employing agency and received compensation on the periodic roll (PR).

• The claimant completed a CA 1032 annually as he was on the PR. He signed the form indicating he was not employed and he had not earnings from wages.

• OWCP subsequently confirmed that he claimant returned to work He returned to work intermittently as an auctioneer. He never reported earning for this employment to OWCP

• Is this abuse or fraud?
In this case the evidence of file indicates fraud.

This claimant was indicted charged appellant with 27 counts of wire fraud relative to his fraudulent receipt of Federal Employees' Compensation Act benefits.

He pleaded guilty plea to one-count of making a false statement to obtain federal employee’s compensation.

OWCP terminated his compensation for violating 18 U.S.C. § 1920

He appealed the decision on the bases, that the plea agreement never specifically mentioned fraud and found that section 8148 of the Act was applicable

The board held, that the claimant, “made misrepresentations to the Office of the United States Department of Labor on OWCP Forms CA-1032. The misrepresentations included omission of economic activity of the defendant and misrepresentation of his marital status. The misrepresentations were intended to cause and did cause [the Office] to make payments on account of workman’s compensation benefits which would not have been due and payable had true facts been known to [the Office].”

https://www.dol.gov/ecab/decisions/2002/Apr/00-1029.htm
Abuse or Fraud

• A 42-year-old clerk filed an occupational disease claim alleging a musculoskeletal strain as a result of his federal employment. The OWCP his claim for a musculoskeletal strain. The claimant stopped work but subsequently returned to restricted duty.

• The claimant’s TP indicated the claimant experienced a severe musculoskeletal strain.

• The claimant continued to work light duty for over 3 years due to a strain.

• Is this abuse or Fraud?
Abuse

• What actions did OWCP take?
  • OWCP referred the claimant for a SECOP. The SECOP examiner opined the claimant had multiple musculoskeletal complaints were explained by objective findings and were not related to his accepted condition. The claimant could return to regular-duty work without restrictions.

• OWCP determined there was conflict in the medical evidence of file and referred the claimant for a referee exam. The referee found that opined that claimant’s malingered during his functional capacity evaluation and fabricated his capacity for work. He noted no objective findings and opined that appellant had no ongoing injury of any kind.

• The Board found that the Office properly terminated claimant’s compensation and medical benefits

Taking Action to Stop Fraud

• Identify Suspect Claims (Fraud Indicators/Signals)

• Gather additional information to determine if referral for investigation is warranted (Fraud Index Checklist)

• Refer claim to Investigative Services

• Advise OWCP of the Investigation

• Follow-up
FECA Fraud Indicators/Warning Signs Categories

Fraud indicators can be categorized in groups with similar issues:

- Inconsistencies with information
- Suspicious timing of the claim
- Claims that have connections to non-work related issues
- Issues with claim paperwork or documentation
Inconsistencies with information

Inconsistencies are often noted when a thorough review of the evidence of file is conducted.

• Medical treatment of a documented diagnosis is not consistent with the nature of the claimed injury.

• The ICPA may need assistance from the agency's Medical Treatment Facility (MTF) or another medical resource to verify the viability of such a claim.

• Statement--The employee changes the description of how the injury occurred.

• Work Limits--The employee's work restrictions change drastically.

• Witness--The witness provides incriminating statements.

• Employee fails to identify witness--The employee fails to identify witnesses to the injury, although the injury occurred in an area where it should have been observed.
Suspicious timing of the claim

Sometime the timing of the claim may suggest further investigation is required.

• Injury occurs at start of duty Monday, end of duty Friday, or immediately before or after scheduled leave or a holiday.

• Injury occurs after a leave request is denied.

• Injury occurs after notification or announcement of functional transfer, reduction in-force or base closure.

• Injury occurs near termination of temporary employee tenure.
Non-work Related Issues

- Employee has secondary employment.
- Employee has a history of personal financial problems.
- Employee has a history of leave abuse.
- Employee regularly participates in physically demanding activities.
Issues with paperwork/documentation

There may be other factors with a claim that may warrant a further look:

• Employee has a history of falsifying or altering forms.

• The claim is not timely and the claimant is not sure of the date and time of the injury.

• Employee has concealed information regarding a previous injury, physical condition, or medical problem.

• Claimant fails to report earnings on CA 1032.

• Chargeback bill or case file shows little or no medical payments during the billing period, yet employee is on long-term compensation.
Fraud Index Checklist

• You can utilize the Fraud Index Checklist to record claim management items as well as to generate a fraud index associated with the claim.

• The Fraud Factor index will vary based on the number of factors identified.
• The EA determines when that index warrants additional action.
Fraud Indicator Tool

The Fraud Index Checklist is located in DIUCS Agency Case Management page
Detecting Fraud and Abuse Claims

• The existence of these signals or indicators does not prove fraud or abuse.

• The presence of these indicators may warrant further inquiry or investigation.

• Compensation costs can be reduced by identifying fraudulent and abusive claims.
Information provided to Investigators

• Keep in mind that the rules for access are set by DOL, even for copies maintained by the agency (20 CFR 10.11).

• Therefore….DoD follows the same rules as mandated in 20 CFR 10.

• Investigators may not “browse” through agency OWCP files.

• The case file should not be the original source of an investigation.

• If investigators have an open investigation, they have access to any record related to the claim.

• Per DOL, investigators are entitled to a copy of the chargeback report, but they may not use the data in such a report in any computer matching program without first publishing notice in the Federal Register.
Fraud is proven

- Forfeiture of Benefits—under 5 USC § 8148(a); 20 CFR § 10.17 - Any individual convicted of FECA fraud (felony or misdemeanor) under a federal or state criminal statute shall forfeit any entitlement to any benefit to which such individual would otherwise be entitled.

- Termination of Benefits-
  - Effective Date of Termination
  - When guilty plea is accepted by the judge, or
  - A verdict of guilty is returned after trial
  - Not the date of sentencing- 5 USC § 8148(a); 20 CFR § 10.17

- No pre-termination notice required.

- 5 USC § 8148(b); 20 CFR § 10.18 – When a FECA claimant is confined in a jail, prison, or other penal or correctional facility, as a result of any felony conviction, he shall not receive FECA benefits during period of incarceration.
If you have reason to believe a medical provider is committing fraud against the program, we recommend that you present OWCP with the allegations so they can assist in gathering evidence to support your case.

- Start the review process with the provider’s bill payment history
- Refer to your OIG, to us or to DOL OIG
- It may be necessary to request copies of the provider registration and/or submitted medical bills made on a specific case or to a specific provider(s).

* Please note that you are only entitled to receive medical bill payment data for claimants that work for your agency. Therefore your OIG should collaborate with DOL-OIG on such matters.
Abuse or Fraud

A health care provider marketed itself to patients covered by the FECA program claiming to specialize in treating workplace injuries. OWCP received many request for durable medical supplies that appeared to exceed the actual cost. Additionally, the provider may have billed for services and treatment that the claimant never received. It is also noted that representatives of the healthcare facility provided incentives in exchange for patient referrals.

Is this abuse or fraud?

Did the claimants commit the fraud?

This is fraud in the federal health care system. This is not a merely a billing error this is pervasive and the representatives of the health care provider intentionally and knowingly engaged in actions to fraudulently obtain money from Department of Labor Programs intended to treat injured workers.
Fraud

• Provider Fraud

• Union Treatment Center to Pay $3 Million and Be Permanently Excluded from Federal Health Care Programs under False Claims Act Settlement; https://www.justice.gov/usao-wdtx/pr/union-treatment-center-pay-3-million-and-be-permanently-excluded-federal-health-care

• Federal Grand Jury Indicts Eight Individuals Charged In a $158 Million Health Care Fraud Scheme; https://www.justice.gov/usao-ndtx/pr/federal-grand-jury-indicts-eight-individuals-charged-158-million-health-care-fraud
• A physician with a pain management practice in Florida provided medical treatment to Medicare and Federal WC claimants.

• He allegedly submitted false claims for non-reimbursable procedures and services to Medicare and OWCP

• The physician paid $448,794 to resolve allegations that they violated the False Claims Act

• Is this Fraud?
Abuse or Fraud

“The matter was settled prior to filing suit by the United States of America. The claims settled by this agreement are allegations only; there has been no determination of liability. “

Fraud cannot be proven

• If evidence is insufficient to support fraud it may indicate further development is warranted.

• If the evidence suggest the claimant has work capacity that is not in line with current medical evidence the following actions can be taken:
  
  • Request updated medical restrictions.
  
  • Provide information to CE and request assistance obtaining updated medical restrictions.
    • The CE may request the treating physician address work capacity or
    • Refer claimant for a SECOP
Follow-up

- Ensure the proper action has been taken
- Disciplinary action
- Advising OWCP for administrative action
- Referral to DOLIG or other investigative services
- Appropriate prosecution in the criminal court system
Penalties

• **Convictions for FECA Fraud.** If the evidence substantiates that the claimant committed fraud in connection with a claim for FECA benefits, the U.S. Department of Justice may choose to prosecute the individual. When a claimant is convicted of defrauding the FECA in the application for or receipt of benefits, he/she *forfeits entitlement* to any future medical and compensation benefits (including schedule award) for any injury **on or before the date of the conviction**. Termination of entitlement under this section is not affected by any subsequent change in, or recurrence of, the beneficiary's medical condition.

• When a claimant in receipt of benefits under the FECA is convicted and imprisoned due to a felony (for any offense other than FECA fraud), entitlement to all medical and compensation benefits (including schedule award) is suspended during the period of imprisonment. However, the claimant's dependents remain entitled to reduced benefits during the period of imprisonment.

• No action can be taken for any time spent incarcerated due to a non-felony or misdemeanor conviction, or for time imprisoned while awaiting trial.
FECA Fraud Statutes

• Criminal Statute 18 USC § 1920

• Other Federal Criminal Statutes*
  • 18 USC § 1001 - fraudulent statements (most common)
  • 18 USC § 287 - fraudulent claim on U.S.
  • 18 USC § 1341 - mail fraud
  • 18 USC § 1343 – wire fraud
  • 18 USC § 641 – theft (must show less/no entitlement)

• Civil 31 USC § 3729 et seq. - False Claims Act generally is used for medical provider fraud
Take Away Tips

• The existence of these signals or indicators does not prove fraud or abuse.

• The presence of these indicators warrant further inquiry or investigation.

• Identification of fraudulent or abuse claims could result in the reduction of compensation cost.

• Tips regarding possible fraud may not come from OWCP but may come directly to the EA from various sources.

• Investigative Memoranda, physical evidence, and letters to the District Director should still be sent to the usual District Office addresses.

• Termination for FECA fraud cannot be based on a pre-trial diversion.

• Contact your Injury Compensation Management Advisor for assistance.
References

- OWCP Website—DFEC Homepage; http://www.dol.gov/owcp/dfec/
- §8148. Forfeiture of benefits by convicted felons; https://www.dol.gov/owcp/dfec/regs/statutes/feca.htm#8148
- (District Office Addresses and Contacts) http://www.dol.gov/owcp/contacts/fecacont.htm
- FECA Fraud; http://wcconf.org/presentations-2017