

New administration rescinds policies for schedule awards, CA-9 form



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On Feb. 10, OWCP in *FECA Transmittal 25-04* fully rescinded *FECA Transmittal 25-03* that it had implemented just one month earlier. The NALC is deeply disappointed by this policy reversal.

The rescinded *FECA Transmittal 25-03* fully revised *FECA Procedure Manual 2-0808*, "Schedule Awards and Permanent Disability Claims" to enact new policies to permit the use of either the fifth or sixth editions of the *AMA (American Medical Association's) Guides to Evaluation of Permanent Impairment* in calculating impairment for schedule award purposes under the FECA. As part of implementing the new policy, OWCP had created a new form, the CA-9, Claim for Schedule Award, to streamline the process. Below is a summary of what OWCP under the new administration just rescinded.

Under 20 CFR §10.404, evaluations of permanent impairment under the FECA are made in accordance with the edition of the *AMA Guides* specified by OWCP. Historically, OWCP has selected the most recent edition of the *Guides* for the calculation of the degree of impairment and had been using the sixth edition since May 1, 2009, based on the assumption that the most recent edition best reflected current scientific and medical thinking on rating impairments. OWCP's own research and analysis since adopting the sixth edition, however, had concluded that "prior editions of the *Guides*, in some circumstances, may more accurately measure the effects that an injury has on an individual's ability to meet physical work demands."

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The rescinded new policy to include the fifth edition represented a sea change in OWCP's thinking—a change that would have benefited many injured workers who have suffered permanent impairments. When the policy change was first proposed in the March 8, 2024, *Federal Register* (Vol. 89, No. 47, p. 16800), with an attached draft policy paper, the NALC responded with a strong endorsement of the proposed policy revisions, especially the expansion to include the fifth edition of the *Guides*. According to OWCP's own analysis in the policy paper:

Following the move from the Fifth to the Sixth Edition, experience has shown that, in some situations, monetary compensation to federal employees with impairments has been reduced by an amount that was not anticipated at the time of the move to the Sixth Edition and is of such amount that

OWCP finds that this rating would not adequately compensate the claimant.

Our own experience with our members supported the conclusions of the policy paper that many impairment ratings had been unnecessarily reduced under the sixth edition when compared to earlier editions. And, as we pointed out in our response to the *Federal Register*, this went against the broad remedial intent of the FECA.

In addition, our members have found that many physicians will not do impairment ratings under the sixth edition. This is due both to the fact that many state injury compensation systems still currently use earlier editions of the *Guides* and to the fact that some physicians find the sixth edition cumbersome to use. OWCP in its policy paper came to the same conclusion:

Some state governments (and their corresponding workers' compensation programs) have not adopted the Sixth Edition of the *Guides*... As a result, many states lack physicians trained in utilization of the Sixth Edition and its new impairment paradigm. As a national program, FECA should not require claimants to travel significant distances to find a physician qualified in the use of this particular Guide, especially given its potentially detrimental impact on the level of compensation to which they may be entitled under the federal Act.

In conjunction with the policy revisions to the *Procedure Manual*, OWCP on Jan. 10 released a new form, the CA-9, to be used when claiming a schedule award. The new form has also now been rescinded. The DOL sent a prototype of this form to the NALC in September 2022 for comment and feedback. We found the prototype vastly superior to the CA-7 form that claimants were currently using. The problem with using the CA-7 form for schedule awards is that it is primarily used for other purposes: wage-loss compensation and leave buy back. Much of the information solicited on the CA-7, while relevant for its primary purpose of applying for wage-loss compensation, is not relevant for obtaining a schedule award and was confusing for claimants seeking schedule awards.

Moreover, apart from the checkbox in Section 2 on the CA-7 indicating that the claimant was requesting a schedule award, the CA-7 provides no further information regarding schedule awards. In order to understand the process, claimants have to rely on external sources such as the *FECA Procedure Manual*, published articles or the internet to navigate the process. Every section of the new CA-9 solicited information directly relevant to

(continued on next page)

Policies recinded (continued)

(continued from page 42)

the schedule award process. The new CA-9, when read with the attached instructions, constituted almost a one-stop shop for claimants and their attending physicians that explained and walked them through the entire process.

The new CA-9 also recognized that some claimants live in “provider deserts”—areas where it is hard to find a physician who will do impairment ratings. Section 3 of the form contained a checkbox for the claimant to

request that OWCP arrange for them to be examined by an appropriate specialist.

At this point, a number of our members have already either undergone impairment exams or have scheduled exams under the fifth edition based on the now-revoked policy. Again, the NALC expresses its disappointment that OWCP under the new administration has revoked such positive policy revisions that greatly benefited injured workers just one month after issuing them.

Contract Talk

by the Contract Administration Unit

Administrative leave for acts of God (continued)

(continued from page 42)

2. The number of hours the part-time flexible was scheduled to work.
3. The guaranteed hours as provided in the applicable national agreement.

Once a full-time employee reports, they are entitled to eight hours’ work or pay. Part-time flexible employees are entitled to enough hours to complete their scheduled tour. Carriers are not required to take annual leave if sent home and should use PS Form 3971, Request for or Notification of Absence to request administrative leave in such a situation. If administrative leave is denied, this will document that the request was made and show that management sent them home. As always, city carrier assistants should receive their guaranteed hours (either two or four, depending on the size of the installation) if they were scheduled and reported to work in accordance with Article 8, Section 8 of the National Agreement.

As provided for in Section 519.216 of the ELM, employees who were already using annual leave, sick leave or leave without pay are not entitled to administrative leave:

Employees on annual leave, sick leave, or LWOP remain in such status. They are not entitled to administrative leave.

If city carriers believe they have been unfairly denied

administrative leave in community disaster situations, they should contact their shop steward to investigate and, if necessary, file a grievance. Shop stewards should attempt to show that all the criteria listed in Section 519.211 of the *ELM* existed and that carriers exercised reasonable diligence in trying to report to work. To assist shop stewards when filing a grievance over the denial of administrative leave due to an act of God, the NALC has created grievance starters that can be used as a starting point for the grievance.

These grievance starters include a sample issue statement, examples of facts and contentions, recommended documentation needed for the file, and potential remedies. These grievance starters are available in the Members Only section of the NALC website. After logging in to the Members Only page, click on the “Member Documents” button, then select the “Shop Steward’s Guide/Forms” category, which will show all the grievance starters created by NALC. Each grievance starter can be downloaded and edited to fit the specific circumstances caused by the act of God.

Shop stewards and members who need additional information or assistance regarding acts of God can contact the national business agent (NBA) who represents their region. Contact information for each NBA is available on the NALC website at nalc.org/union-administration/nalc-regions.