

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210

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Paulette Jones
Program Manager
Fraudulent Workers' Compensation
United States Postal Inspection Service
475 L'Enfant Plaza W SW
Room 3141
Washington, D.C. 20280-8957

Dear Ms. Jones:

Thank you for your patience in waiting for this response to your question on the Office of Workers' Compensation Program's (OWCP) regulations at 20 CFR 10.506. That regulation limits employing agencies to *written* contact with physicians treating injured workers covered by the Federal Employees' Compensation Act (FECA). I understand that Postal Inspection Service investigators have been told by some OWCP district offices that they are subject to that rule in conducting investigations.

As I stated in our meeting regarding this subject, it is not the intent of the regulation to cover physician contacts by investigative agencies such as the Postal Inspection Service, when conducting official investigations related to fraud, waste or abuse. Like all investigative bodies, the Inspection Service has authority to determine the manner in which it conducts investigations. If evidence gathered as part of the official investigation is submitted to the district office, OWCP will not dismiss the evidence merely because it was gathered through direct contact with the physician, and will take action appropriate to the evidence submitted. I will transmit a copy of this letter to each of our district offices to ensure that this policy is clear.

I believe this clarifies the application of the regulation vis a vis official investigations. I need, however, to add a cautionary statement. I expressed during our meeting the importance of ensuring that the actions taken by your investigators not be a substitute for case management actions. It appears in some instances, that the fact finding undertaken by investigators is not to ascertain whether there is criminal action, but whether the individual can do the date of injury job. This seems to be more properly a case-management function, (which should be conducted by the agency injury compensation specialist) and therefore identical to the type of activity which the regulations were designed to cover. While OWCP cannot state what constitutes an investigation, it is

essential that the actions taken by your investigators be official investigations. I will bring to your attention any examples of actions that appear to more case management than investigative actions so that we can work through problems of this nature.

Another item that requires clarification involves the specific action we can take on evidence presented to us by your investigators. I have seen several examples where the investigators have interviewed physicians, submitted notes to our offices describing the statements made by the physicians, then expected us to take action based on those investigative reports as if those reports constituted medical evidence. In at least one case, the physician actually submitted a report after the date of the interview which was not consistent with the statements attributed to the physician in the investigative report. It is essential that your investigators understand that where the issue is one requiring medical evidence, only a report by a licensed physician may be considered as evidence. We cannot take action based on a report of what the physician stated to an investigator.

I hope this clarifies the purpose the regulation. I look forward to continuing to work with you to ensure proper implementation of this rule.

Sincerely,



Dennis Mankin
Acting Director for
Federal Employees' Compensation