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Testimony of H. Allan Hunt, Ph.D.: [Hearing on "Examining the Federal Employees' Compensation Act and its Benefits for Workers"]

H. Allan Hunt

W.E. Upjohn Institute for Employment Research, hunt@upjohn.org

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*Testimony of
H. Allan Hunt, Ph.D.
Upjohn Institute for Employment Research*

Good afternoon. My name is Allan Hunt, and I am the Assistant Executive Director of the Upjohn Institute for Employment Research in Kalamazoo, Michigan. The Upjohn Institute has operated as an independent, non-profit organization devoting its resources to finding and promoting solutions to employment-related issues at the regional, state, national, and international levels since 1945.

The broad objectives of the Institute's research and grant programs are to:

- 1) link scholarship, evaluation, and experimentation with issues of public and private employment and unemployment policy;
- 2) bring new knowledge to the attention of policymakers and decision makers; and
- 3) make knowledge and scholarship relevant and useful in their applications to the solutions of employment and unemployment problems.

While the major support for Institute research and publication programs comes from our endowment, the Institute also engages in selected contract research, where the Institute believes the work is in the public interest. In fiscal year 2003, about 16 percent of the Research Division budget of \$5.0 million came from such external sources. Those sources include the U. S. Department of Labor. Last year the Employment Standards Administration funded a "Program Effectiveness Study" of the FECA program by ICF Consulting under a GSA Contract (Schedule GS-23F-8182H).

I served as a Subject Matter Expert (SME) under that contract and participated in the study as both an advisor and investigator. I also made a field visit to the Dallas District Office of OWCP. I am not here today to give a full report on that study, but will try to provide some comparative context for the FECA program by using data from the state and provincial workers' compensation systems in the United States and Canada, including some material that I developed for the ICF study of FECA.

Workers' Compensation Systems

As you are probably aware, there are only three countries in the world that have established sub-national workers' compensation systems for workers disabled by their employment: Australia, Canada, and the United States. Over the last 29 years, I have accumulated significant research experience in all three of these countries, and in the different types of workers' compensation systems that they present. Let me summarize that experience by simply saying it is very difficult to make any performance comparisons among systems, and it is nearly impossible to say anything that is universally "true" for all workers' compensation systems.

Nevertheless, my assignment for the ICF study was to try and develop some benchmarks for FECA system performance. Together with my colleague, Professor Peter Barth of the University of Connecticut, I also wrote a chapter on "Promising Practices in Workers' Compensation" for the ICF report. That chapter sought to identify new ideas from other workers' compensation systems that might be implemented in the FECA program.

There are three main objectives for a workers' compensation system:

- 1) Prevention;
- 2) Compensation; and
- 3) Rehabilitation and Return to Work.

If prevention is successful, and no injury occurs, there is nothing to compensate; and, of course, no need for rehabilitation. However, if prevention fails and a disabling injury does occur, there are a host of issues that arise in the appropriate compensation of workplace injuries and illnesses. Depending upon the nature of the injury, there may be very complex and contentious issues involved in determining what sort of rehabilitation is needed and what would be an appropriate return to work under the circumstances.

Government's role in these sub-national systems generally consists of some combination of the following four functions:

- 1) to provide oversight of the system, including policy expertise;
- 2) to determine the benefits that will be provided;
- 3) to regulate or provide an insurance mechanism; and
- 4) to provide dispute resolution services.

Dispute resolution mechanisms are usually required because of a fundamental design challenge in workers' compensation systems. The benefits are paid to injured workers, while the costs are paid by employers. This places workers' compensation in the realm of labor-management relations, with all that entails. The insurer (whether private or public) is caught in the middle, and the government provides a neutral referee for the resolution of the inevitable disputes.

One of the main structural differences among workers' compensation systems is in the nature of the insurance mechanism. In all Canadian provinces and five U.S. states (North Dakota, Ohio, Washington, West Virginia, and Wyoming – the so-called “exclusive fund” states), a public fund is the only authorized insurer for workers' compensation. In the rest of the U.S. states, private insurance is allowed, frequently in competition with a non-exclusive public fund. In addition, self-insurance is generally allowed for large, financially secure employers, with more or less restrictive access depending upon the jurisdiction. Approximately half the states have competitive public funds, and they are the dominant insurer in a handful of those states.

In the U.S., private insurance carriers accounted for 55 percent of all benefits paid in 2001, with self-insurers at 23 percent and state funds at 16 percent. All federal workers' compensation programs (FECA, Black Lung, LHWA, and EEOICA) account for the remaining six percent of the total. (NASI, 2003, table 5, p. 14) In my view, the FECA program operates much like an exclusive state or provincial workers' compensation fund, but just for federal workers. Therefore, I have compared FECA performance with both U.S. and Canadian workers' compensation systems.

The “Program Effectiveness Study” that I participated in was funded by the Employment Standards Administration and was designed to provide an outside review of program performance. The Statement of Work indicated:

The study should produce insightful analyses and useful recommendations to enable top Employment Standards Administration and OWCP management to assess FECA program effectiveness in the context of Federal government standards for strategic planning and performance management and in relation to the workers' compensation industry at large.

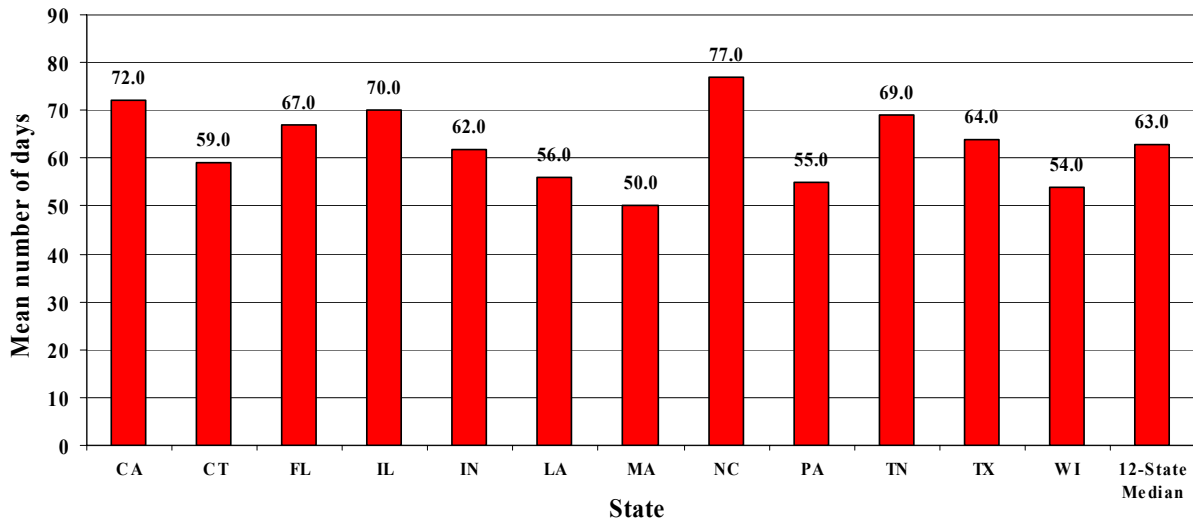
We had considerable difficulty in securing performance measures that were comparable to those available from other workers' compensation systems. This was not unexpected, as each workers' compensation system in the world has evolved under a different set of statutory provisions, legal interpretations, and administrative rules. It was further complicated in this case by the fact that OWCP was in the process of converting to a new data system for the FECA program. So we were somewhat frustrated at what we were able to accomplish in terms of performance measure comparisons.

Promptness of Payment

However, there are a few comparisons that you should see. First is the promptness of payment issue. When workers are injured, maintaining an uninterrupted stream of income is one of their major concerns. Workers' compensation systems have not generally demonstrated good results on this dimension of performance.

Figure 1 shows the promptness of payment results for 12 U.S. states that are included in the CompScope™ series of publications of the Workers Compensation Research Institute (WCRI) in Cambridge, Massachusetts. The typical elapsed time from date of injury to the first income replacement payment is 63 days, with a range from 50 days in Massachusetts to 78 days in North Carolina. Only about 45 percent of wage-loss claims see their first payment within 21 days, according to the most recent WCRI study. (Telles, Wang, Tanabe, p. 15)

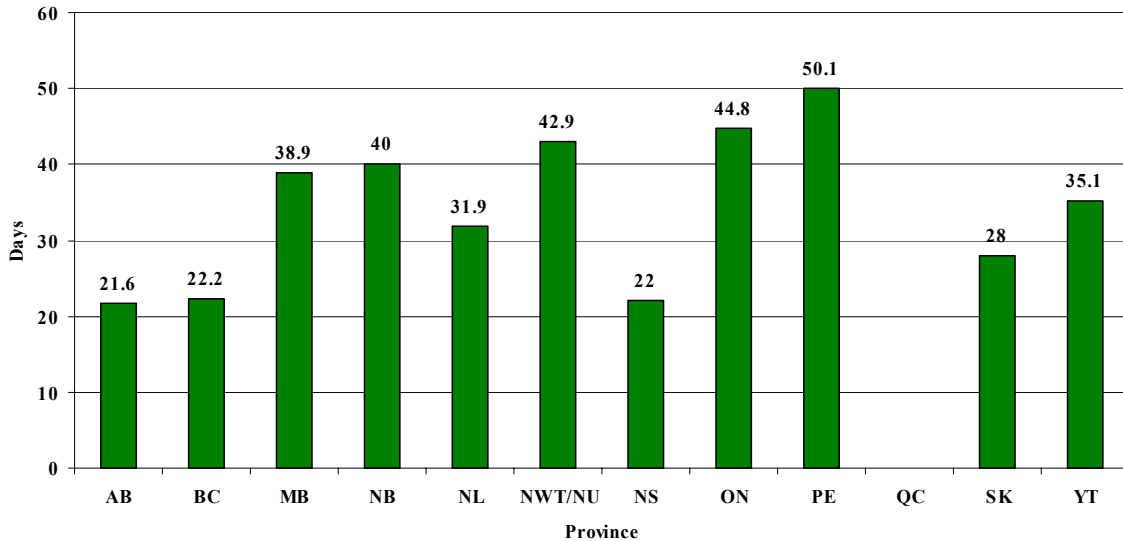
Exhibit 1 Average Calendar Days from Date of Injury to First Indemnity Payment (WCRI CompScope™ States)



SOURCE: Telles, Wang, Tanabe, 2004.

Figure 2 shows the same measurement for the Canadian Provincial systems. The promptness of payment ranges from about 22 days in Alberta, British Columbia, and Nova Scotia to 50 days in Prince Edward Island, with an average around 30 to 35 days. Thus, the “state of the art” in promptness of payment is not very good from the workers’ perspective.

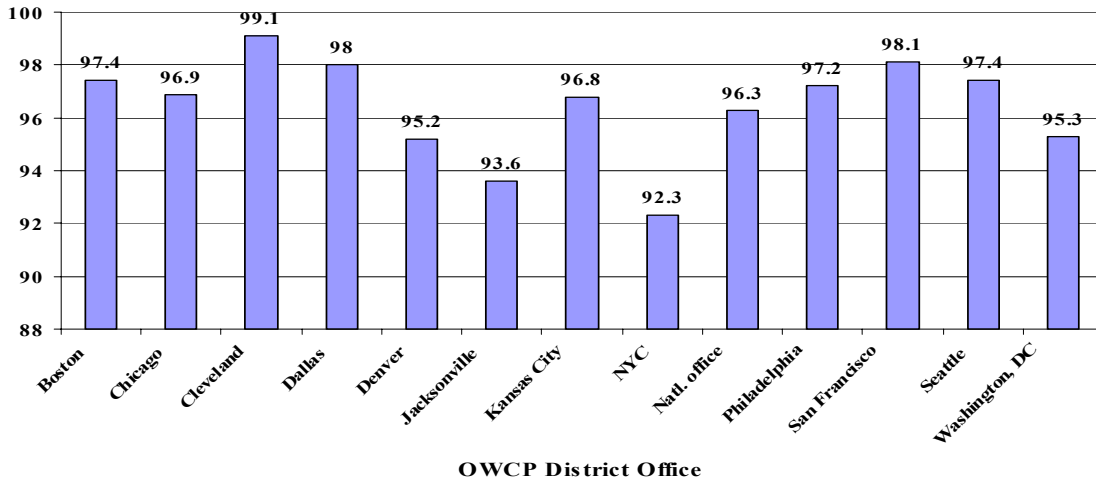
Figure 2 Average Calendar Days from Injury to First Payment Issued—Canadian Provincial Systems



SOURCE: AWCBC, 2003.
 Note: U/A = Unavailable

The situation under FECA is not directly comparable to these results because of the Continuation of Pay (COP) provision of the statute. Injured federal workers can elect to have their normal pay continued for up to 45 days following injury. If a claim for compensation is filed subsequently, OWCP processes the claim for workers’ compensation wage replacement payments. Figure 3 shows one of the performance measures that OWCP uses to assess this dimension of performance. They seek to process 90 percent of traumatic claims within 45 days, 80 percent of claims w^{U/A}) days for non-traumatic injuries, and 70 percent of “extended” claims within 180 days. Figure 3 indicates that from 92 to over 98 percent of traumatic claims are adjudicated within 45 days, depending upon the District Office. Non-traumatic claims and extended claims take significantly longer, but generally achieve the FECA performance standards. However, it is important to remember this is after the COP period, during which the injured worker

Figure 3 Percent of FECA Traumatic Claims Adjudicated within 45 Days by District Office



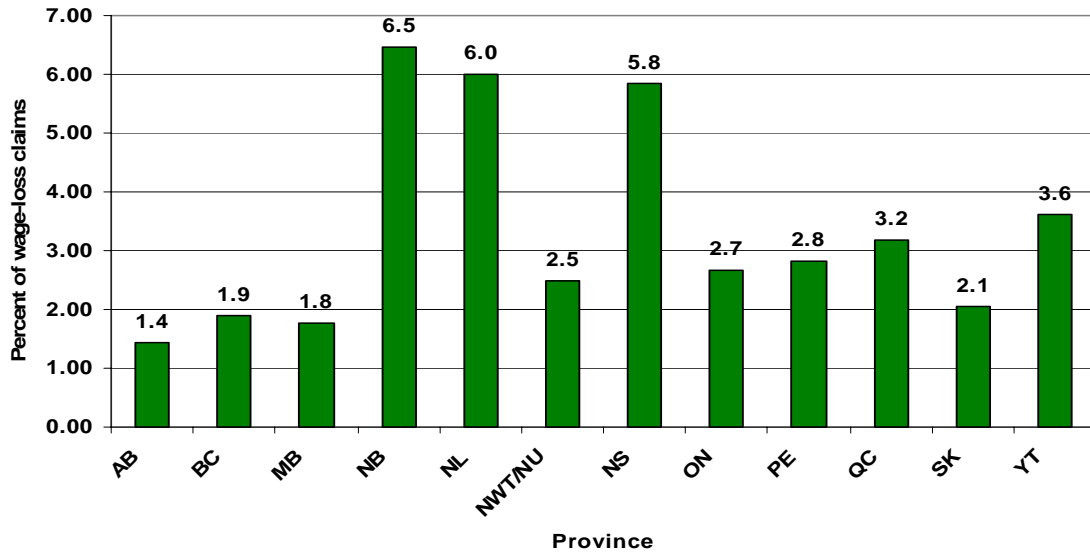
SOURCE: OWCP Administrative Data

receives his or her regular salary. Unfortunately, we do not have a measure of the distribution of timeliness of payment, but it seems likely that the average delay in payment would be comparable to the workers' compensation systems reported above.

Duration of Disability

OWCP was not able to provide us with duration of payment statistics that were comparable with those available from other systems, but they were able to match up on one important indicator of durations. Figure 4 shows the percentage of wage-loss claimants that are receiving benefits at the end of the second calendar year following their injury. This provides a rough indicator of the number of long-term claims. Figure 4 shows considerable variability among the Canadian provincial systems. The range is from 1.4 percent in Alberta to 6.5 percent in New Brunswick.

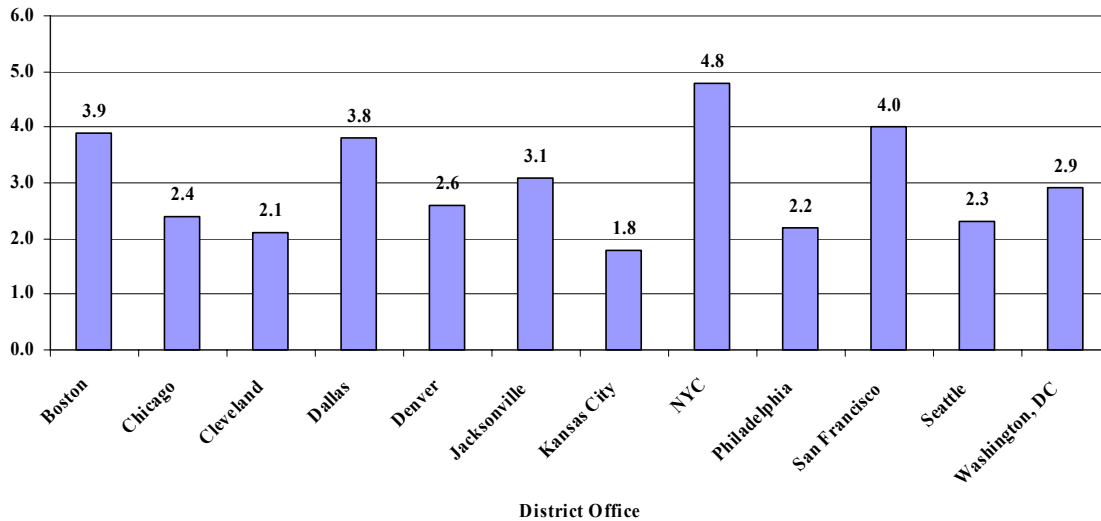
Figure 4 Percentage of Lost-Time Claims Receiving Benefits After Two Years – 2001 Injuries



Source: AWCBC, 2003.

Figure 5 shows a comparable figure for FECA claims by District Office. As shown in the figure, the percent of lost-time claims that are receiving payments at the end of the second calendar year following the injury is roughly comparable to the Canadian numbers, ranging from 1.8 percent to 4.8 percent. It is important to mention that in neither case do we know if the claimant was continuously in payment status since the injury; this is a snapshot only. However, it does not appear that FECA claims last significantly longer than those in Canadian workers' compensation systems. Unfortunately, we do not have this measure available for U.S. systems.

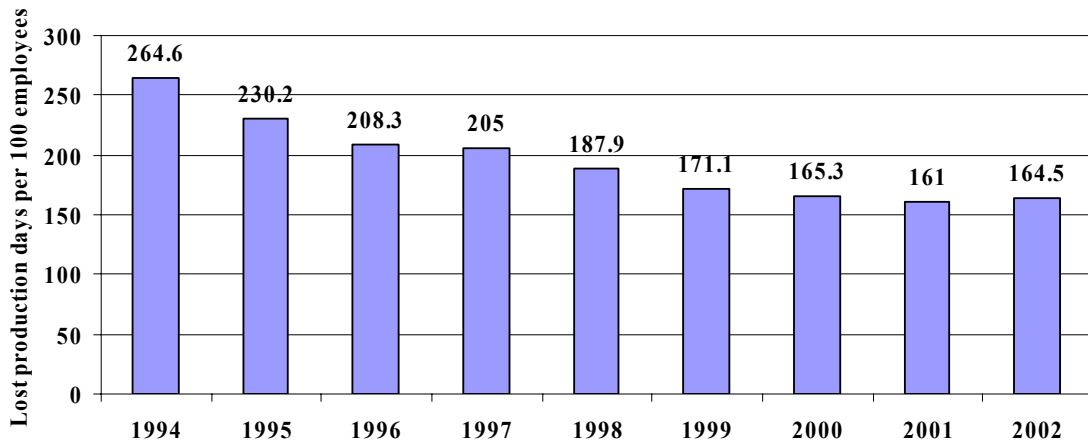
Figure 5 Percent of Lost-Time Cases Receiving Benefits after Two Years—2001 Injuries



SOURCE: OWCP

Thus far I have shown that FECA performance seems pretty typical of other workers' compensation systems. But there is another measure that I particularly want to bring to your attention. OWCP measures one part of their overall program impact with the best indicator that I have seen, lost production days. Under the Government Performance and Results Act (GPRA), OWCP developed the lost production days (LPD) performance measure, which combines the incidence and duration of injuries into a single indicator. I regard this as the best outcome measure that I have encountered in the workers' compensation world because it captures the desired outcome, minimizing the work time lost to occupational injury and illness.

Figure 6 Average Annual Lost Production Days per 100 Employees, QCM Program



SOURCE: Adapted from ICF Consulting, 2004.

Figure 6 shows that OWCP has driven the lost production day rate down by one-third in the past decade. They have done this with a disability management program called Quality Case Management (QCM), which is applied to new wage-loss claims that have no specific return-to-work date. LPD includes the COP days as well as the wage-replacement payment days under FECA, so it is a solid attempt to measure the amount of work time being lost due to injury and illness.

Conclusions

I was aware in a general sense that the GAO had been critical of the administration of the FECA program. And I was aware that the Postal Service had particular problems with workers' compensation issues. So, I accepted the role of Subject Matter Expert for the FECA Program Effectiveness Study at ICF Consulting with some trepidation. But I felt that it was essential that the study be informed by a broader workers' compensation experience if a credible and useful evaluation was to be done.

In the event, I was pleasantly surprised by the level of policy development, commitment to plan, and the goal orientation of OWCP in administering FECA. I was particularly impressed with the field visit I made to the Dallas office. Of course, I did not speak with a random sample of employees, as they were hand-picked by management, but I was struck by the high level of understanding they had of the overall mission and

their individual part in it. Their customer orientation was also greater than I had expected beforehand.

I also found that OWCP relies on their strategic plan and annual performance plans in a way that would make the authors of GPRA proud. The plans are specific, performance is measurable, and the goals are taken very seriously. I have already mentioned the lost-work-day measure. That is an example of how OWCP has advanced the state of the art in workers' compensation performance measurement.

So my conclusion is that OWCP is doing a very good job of administering FECA. Of course there are areas that could be improved, and we tried to identify those in the ICF report. Workers' compensation systems are very complex organisms, with lots of hidden interconnections and subtle influences. It is very difficult to do workers' compensation reform and I would urge you to be cautious in your approach to change or reform the program. We must always remember that the FECA program serves the interests of both federal employees and the federal employing agencies.

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