

HQ Injury Compensation Program Administrator FAQs

What are my re-employment case resolution options?

Several options exist for resolving a re-employment case. They are listed below.

- *Termination with No Continuing Injury-Related Disability.* Where nurse or rehabilitation services are underway and the Claims Examiner determines that injury-related disability has ceased, it is proper to issue a pre-termination notice. As the claimant's response may overcome the initial determination to terminate compensation, the OWCP will continue nurse and/or rehabilitation services during the notice period until a formal decision is issued.
- *Re-employment with No Loss of Wages.* Unless the claimant has returned to the job held at time of injury, the Claims Examiner must prepare a formal decision which includes a finding that the claimant's earnings fairly and reasonably represent his or her wage-earning capacity, even if the claimant has a 0% Loss of Wage Earning Capacity.
- *Re-employment with Loss of Wage Earning Capacity.* The Claims Examiner should prepare a formal decision addressing whether the earnings fairly and reasonably represent the claimant's wage-earning capacity, even if the position represents modified duty with the previous employer.
 - The Claims Examiner should continue to monitor cases with Loss of Wage Earning Capacity decisions to assess whether injury-related disability continues and whether the claimant's work limitations have changed.
 - Claimants who remain on light duty may claim recurrences of disability if the light duty is withdrawn. The Claims Examiner should monitor the medical status of such claimants and set up compensation payments based on actual earnings until the claimants have reached their maximum wage-earning capacity. Claimants should not be rated in light duty positions unless the medical evidence clearly establishes that they cannot return to full duty.
 - Employing agencies may be asked to perform fitness for duty examinations when they believe a claimant in a light duty position may be able to return to the date of injury job or to another regular position.
- *Finding of Employability.* Even after provision of nurse and rehabilitation services, the claimant may not obtain employment during the 90-day placement period. In this event, the Claims Examiner will prepare a pre-termination or pre-reduction notice addressing the claimant's loss of wage-earning capacity based on a suitable position for which the claimant received training and/or placement efforts.
- *Assignment of PN Status (Periodic Roll, No Wage Earning Capacity).* If no rehabilitation plan can be developed due to the severity of the claimant's medical condition and/or the job market in the claimant's commuting area, assignment of status code PN (PERIODIC ROLL, NO WAGE EARNING CAPACITY) may be appropriate. The Claims Examiner will need to monitor these cases to determine if injury-related disability continues.

What are the Timeframes in the Reemployment Process?

Each step in the re-employment process has a timeframe:

- *Within one year of the date wage loss began*, the OWCP will have issued a decision to most claimants with a disabling job-related injury or occupational illness. This decision will state that the claimant has:
 - Completely recovered from employment-related disability and thus has no ongoing entitlement to compensation for wage loss;
 - Returned to work with the previous employer, either at full duty, full-time light duty, or part-time light duty. Such a decision will include an Loss of Wage Earning Capacity determination
 - Returned to work with a private employer or another Federal agency, and include an Loss of Wage Earning Capacity decision; or
 - Been notified that OWCP will provide vocational rehabilitation assistance leading to re-employment, either in the private sector or with another government agency. Because the claimant will be able to return to work, benefits will be adjusted to reflect a Loss of Wage Earning Capacity.
- *The importance of issuing this decision* within one-year stems from Section 5 U.S.C. 8151(b)(1) of the Federal Employees' Compensation Act, which provides that:
 - The department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position
 - It is therefore critical that re-employment with the original agency, or a finding of capability for such re-employment, be made within one year of the date that wage loss begins, after the expiration of any Continuation of Pay. The same policy applies to recurrences of compensable wage-loss disability.
- *Within two years of the date wage loss began*, most claimants who did not return to work with their employing agencies will either be:
 - Receiving the assistance that will allow them to take other employment. OWCP will make entitlement decisions based on the selected jobs, regardless of actual employment status; or
 - Issued decisions stating that they have no wage-earning capacity.

Tell me about Functional Capacity Evaluations...

A Functional Capacity Evaluation (FCE) is a systematic process of assessing an individual's physical capacities and functional abilities. The Functional Capacity Evaluation matches human performance levels to the demands of a specific job or work activity or occupation. The Functional Capacity Evaluation establishes the physical level of work an individual can perform. The Evaluation may be useful in determining job placement, job accommodation, or return to work after injury or illness. Functional Capacity Evaluations can provide objective information regarding functional work ability in the determination of occupational disability status.

The Functional Capacity Evaluation may be used:

- To determine the individual's ability to safely return to work full time or on modified duty.
- To determine if work restrictions, job modifications, or reasonable accommodations are necessary to prevent further injury
- To determine the extent to which impairments exist, or the degree of physical disability for compensation purposes
- To predict the potential ability to perform work following acute rehabilitation or a work-hardening/work-conditioning program

Who Should Be Referred for a Functional Capacity Evaluation?

- Individuals who have achieved maximum medical improvement but continue to have issues related to re-injury and return to work.
- Individuals who need quantification of their physical capacities for determination of disability status.
- Individuals who need their function quantified prior to vocational job search and/or return to work

How Restoration Rights Work...

We are frequently asked to explain Restoration Rights. They are as follows:

Employee Obligations

The employee has an obligation to cooperate with the agency, to keep the agency informed of his or her medical status, and to seek restoration as soon as the medical condition permits.

Restoration Rights

The restoration rights of employees who sustain compensable injuries fall into four separate categories depending on the length and extent of recovery. Other factors affecting restoration rights are the timeliness of the application for restoration, the employee's performance and conduct prior to the injury, and the availability of positions.

- *Fully recovered within one year.* An employee who fully recovers within one year from the date compensation began has mandatory restoration rights to the position he or she left, or to an equivalent position. An employee's basic entitlement is to a position in the former commuting area. If a suitable vacancy does not exist, the restoration right is agency wide. The employee must be restored immediately and unconditionally.
- *Fully recovered after one year.* If full recovery takes longer than one year from the date compensation begins, the individual is entitled to priority consideration for the former position or an equivalent one, provided he or she applies for restoration within 30 days of the date compensation ceases. Priority consideration means the agency enters the individual on its reemployment priority list. If the agency cannot place the individual in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. There is no absolute right to restoration.
- *Physically disqualified.* An individual who is medically unable to return to his or her former occupation, but who is able to do other work, is considered to be physically disqualified. He or she is entitled, within one year of the date compensation begins, to be placed in a position that most closely approximates the seniority, status, and pay to which otherwise entitled, according to the circumstances in each case. This restoration right, too, is agency wide. After one year, the individual is entitled to the same restoration rights as individuals who partially

recover. **NOTE:** For purposes of restoration rights, a position with the same seniority, status, and pay means a position that is equivalent to the former one in terms of pay, grade, type of appointment, appointment, tenure, work schedule, and, where applicable, seniority. Standing in the organization, such as first or second supervisory level, is not a factor.

- *Partially covered.* An individual who has not yet fully recovered, but who is able to work in some capacity, is entitled to be considered for employment in the former commuting area. The agency must make every effort to place the employee. If the individual is restored at a lower grade or pay level, OWCP will make up the difference in pay, or the agency may elect to pay the employee at the former rate. If the employee later fully recovers, he or she is then entitled to the restoration rights of fully recovered employees, according to the timing of the recovery.

(The difference between a physically disqualified employee and one who is partially recovered is that the partially recovered employee is expected to fully recover eventually. By contrast, the physically disqualified employee typically has a permanent medical condition, such as the loss of an arm, which is disqualifying and makes it unlikely that he or she will ever be able to return to the former position.)

A partially recovered employee has an obligation to seek employment within his or her capabilities. If a partially recovered employee refuses to accept a suitable job offer, OWCP may terminate compensation. OWCP determines whether an agency job offer is suitable according to the individual's medical restrictions, education, and vocational background.

Effect of Performance and Conduct on Restoration Rights

If an employee was separated because of a compensable injury, the agency cannot refuse to restore the individual because of alleged poor performance prior to the injury. In other words, the agency may not use the injury as a basis to circumvent performance-based or adverse action procedures that would otherwise apply. However, an allegation of an on-the-job injury by an employee does not stop an agency from taking action against the employee for performance or conduct. If an employee is removed for cause (performance or conduct) he or she has no restoration rights.

Status Upon Recovery

An employee who is restored following compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, time-in-grade restrictions, leave rate accrual, and completion of the probationary period. However, an employee does not earn sick or annual leave while off the rolls or in a non-pay status. The injured employee is also generally entitled to be considered for promotion as though still present. This means that an employee who occupies a career ladder position, or whose position is reclassified at a higher grade, is entitled to be considered for promotion under the provisions of the agency's merit promotion plan. However, an employee on compensation is generally not entitled to a promotion unless it is clear that the employee would have been promoted if the injury had not occurred.

Important Considerations When Making a Job Offer

Making a job offer that is medically suited to a disabled worker's limitations can help reduce an agency's workers' comp costs, but only if it is done right. Several recent Employees' Compensation Appeals Board (ECAB) decisions illustrate how employing agencies often fumble the return-to-work process.

The ECAB was created in 1946 by statute to hear appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of federal employees injured in the course of their employment. The Board has final authority to determine the liability of the Federal government with respect to the disability or death of employees injured in the scope of their employment. There is no further administrative or judicial appeal of ECAB decisions. The Board, by statute, consists of three Members appointed by the Secretary of Labor, one of whom is designated as Chairman of the Board and administrative manager.

The Board's mission is to hear and decide cases on appeal from decisions of the Office of Workers' Compensation Programs (OWCP) in an impartial and expeditious manner. The decisions of the Board are made in accordance with its statutory mandate, based on a thorough review of the case record as compiled by OWCP. Injured federal workers have the opportunity for a full evidentiary hearing with OWCP's Branch of Hearings and Review prior to review of the record by the Board.

Take a look at these cases so your agency can avoid mistakes and make a job offer that is truly beneficial to the agency and the injured worker.

[Docket No. 06-2135 - S.J. and Department of the Navy Puget Sound Naval Shipyard, Bremerton, VA](#)

[Docket No.08-906 - P.L. and Department of the Navy, Naval Weapons Station, Earle, NJ](#)

[Docket No.07-1449 - R.J. and US Postal Service, Milledgeville, GA](#)

[Docket No.08-684 - J.B. and Department of the Navy, Camp Lejeune Marine Corps Base, Camp Lejeune NC](#)

[Docket No. 07-1436 - M.M. and US Postal Service, Boston, MA](#)

[Docket No. 05-1153 - R.C. and Department of Defense, DISA, Arlington, VA](#)

[Docket No. 06-319 - M.G. and Department of the Army, Hunter Army Airfield, Ft. Stewart, GA](#)

[Docket No. 08-1859 - M.B. and Department of the Navy, Naval Amphibious Base, Norfolk, VA](#)

[Docket No. 06-1787 - E.G. and US Postal Service, Seaside, CA](#)

[Docket No. 07-1515 - M.G. and US Postal Service, San Francisco, CA](#)