

Division of Longshore and Harbor Workers' Compensation (DLHWC)

CHAPTER 2-201 — DISABILITY

1. **Purpose and Scope.** This Chapter contains the procedures for the initial review of a disability case file by the Claims Examiner (CE) or Claims Examiner Clerk (CEC).
2. **Routine Cases.** On receipt of a primary case with Form LS-202, Employer's First Report of Accident or Occupational Illness (Exhibit 16, PM 10-200), the CE or CEC checks the items listed in subparagraphs a to h, below, and recommends penalties or other action where necessary. Routine cases are closed or called-up. In some instances, only one review of a case, by an experienced CE, may be required. Such cases include those where lost time did not exceed three days and no permanent partial disability is indicated, or those in which the appropriate payment for a short period of temporary disability has been paid and reported at the time of review. (See also PM 2-300.) The initial review of routine cases includes all of the following:
  - a. **Timeliness.** The CE/CEC checks the LS-202 for completeness of information and timely submission of the report by the EC. The LS-202 should be received in the district office within ten days after the injury or the date the employer had knowledge of the injury/illness. If the injury/illness did not immediately result in disability the ten day period is measured from when disability commences. Action to be taken when a late report is received is described in subparagraph 3f, below.
  - b. **Compensable Lost Time.** The timely submission of Form LS-206, Payment of Compensation Without Award (Exhibit 19, PM 10-200) by the EC indicates that compensation is being paid for time lost from work. For the procedures pertaining to the imposition of penalties and interest please refer to Part 8 of the Procedure Manual.
  - c. **Medical Report.** There should be the timely submission of the first report of treatment by the attending physician, Form LS-1, Request for Examination and/or Treatment (Exhibit 1, PM 10-200). (See also PM 5-300.) The CE/CEC reviews the medical evidence and assesses the severity of the injury, to determine whether or not the injured employee needs the care of a specialist and how long the anticipated disability may continue.
  - d. **Payment of Compensation Without Award.** When the EC makes voluntary compensation payments in accordance with the entitlements set forth in PM 0-300, the EC notifies the DD by submitting Form LS-206, Payment of Compensation Without An Award (Exhibit 19, PM 10-200). If Form LS-206 is among the initial reports received, the CE checks the compensation rate for accuracy as prescribed below in paragraph 3b. The LS-206 should be submitted to the DO by the EC immediately after the first payment of compensation is made, and should reflect first payment within twenty-eight days of the injury or the date disability began (for late payment penalties, see PM Chapter 8-202).

- e. **Identification of Cases in Compensation Status.** If Form LS-206 has been received, indicating that compensation payments are continuing, the CE should record this information in the LCMS (See Chapter 4, LCMS User's Manual.)
  - f. **Review of Cases for Right to File Claim.** Many routine cases require only one review. Such cases include those where time lost did not exceed three days and no permanent partial disability is reflected in the medical data, or those in which the appropriate payment for a short period of temporary disability has been paid and reported at the time of review. In the event no claim is received and the case is to be closed, but the CE considers the injury to be of a serious nature, a Form Ltr. LS-403, Letter to Employee on Right to File claim for Disability Compensation (Exhibit 38, PM 10-200) is sent to the employee apprising him or her of the right to file a claim. A call-up for thirty days is to be placed on the case after releasing Form LS-403. If no reply is received at the end of the thirty day period, the file is marked "closed", dated, initialed, and placed in the central files.
  - g. **Separate the More Complicated Cases.** The cases which require full, systematic, and thorough review should be separated from those which can be routinely closed or called up. For those cases (including claims) which require full review, consider each of the factors identified in paragraph 3, below.
  - h. **Check for Return to Duty Date.** Form LS-202 may not include the date that the claimant returned to duty. In such situations, the EC may file Form LS-210, Employer's Supplementary Report of Accident or Occupational Disease (Exhibit 23, PM 10-200). This Form may also be used where the injured employee has returned to duty and later becomes disabled again.
3. **In-Depth Case Review.** Cases involving serious injuries, occupational diseases, or other complications or other disputed issues, will require in-depth review. The CE must examine and resolve each issue which is or could become controversial. If these issues can be recognized and addressed at the time of the first review, it will simplify the later processing of the case. The file cannot be handled in a cursory manner.
- a. **Determine Eligibility.** There are five basic requirements which must be met for an injured worker (or survivor in case of death) to be eligible for LHWCA coverage: timely filing of a claim, jurisdiction, fact of injury, course of employment and causal relationship. These issues are discussed in detail in PM Chapter 0-300.
    - 1. **Timeliness.** Claims regarding compensation for disability or death must be in writing and filed by or for the individual claiming benefits with the District Director (DD) of the compensation district in which the injury or death occurred. Eligibility requirements, time limitations, and exceptions are set forth in PM 0-300.4.
    - 2. **Employee (Jurisdiction Situs and Status).** The situs/status factors influencing the coverage accorded maritime workers under the Act are explained in PM 0-300.5 and **Program**

Memorandum No. 58, August 10, 1977. Please also refer to the Longshore Desk Book (Note, however, that the decisions therein do not necessarily comport with the Director's administrative construction).

3. Fact of Injury. There must be evidence of injury to an employee in a "covered" situation in order to establish eligibility for compensation. See PM 0-300.6.
  4. Course of Employment. To be eligible for benefits, the covered employee must have sustained an injury which occurred in the course and scope of his/her employment, section 2(2) of the Act. Also, please refer to the Longshore Desk Book for a discussion of this issue (Note, however, that the decisions therein do not necessarily comport with the Director's administrative construction).
  5. Causal Relationship. In addition to occurring in the course and scope of employment, to be compensable, an injury must arise out of the employment, section 2(2) of the Act. The section 20 presumption aids the claimant in establishing that the injury arose out of and in the course of the employment. See PM 0-300.3 and the Longshore Desk Book for a further discussion of this issue (Note, however, that the decisions therein do not necessarily comport with the Director's administrative construction).
  6. The phrase "arising in the course of employment" relates to elements of time, place and work activity. To occur in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the employer's business, at a place where the employee may reasonably be expected to be in connection with the employment, and while the employee was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. This alone is not sufficient to establish entitlement to compensation. The concurrent requirement of an injury "arising out of the employment" must be shown. The phrase "arising out of employment" relates to the element of causal connection, the requirement being that a factor of employment caused the injury.
- b. **Verify Compensation Rate (Wage Rates, AWW).** If Form LS-206 is among the initial reports received, the CE checks the compensation rate for accuracy.
1. Partial Earnings Rate. If the compensation rate appears low or otherwise indicates that all income may not have been considered, the CE should send Form Ltr. LS-557 (Notice of Compensation Rate, Exhibit 51, PM 10-200) for the period in which the injury occurred if this Form has not previously been sent.
  2. Tentative Rate. The CE should send Form LS-426 (Request to Employee for Earnings Information Data on Employee's Earnings, Exhibit 39, PM 10-200) to the employee,

requesting wage data.

3. Minimum/Maximum Rates. The CE should check for the applicability of minimum/maximum rates payable pursuant to section 6(b) (Exhibit 26, PM 10-300).
4. Accurate Rate. If the compensation rate appears to be accurate, the CE may place a call-up on the case file, (see Chapter 3, LCMS User's Manual), and await supplemental medical reports and Form LS-208 (Notice of Final Payment, Exhibit 21, PM 10-200).

Division of Longshore and Harbor Workers' Compensation (DLHWC)

CHAPTER 8-202 — LATE PAYMENT: SECTION 14(E) PENALTY

1. **Purpose and Scope.** This Chapter contains guidelines, procedures, and instructions for computing and applying the 10 percent additional compensation due. It is payable to a claimant when an installment (or any part of an installment) of compensation that is payable without an award is not paid within fourteen days after it becomes due. In these cases, the 10 percent additional compensation is to be applied and awarded in addition to the interest granted for delayed and past due payments. (See PM 8-201 for details on interest.)
2. **General.** Section 14(e) provides that if any installment of compensation payable without an award is not paid within fourteen days after it becomes due, an additional 10 percent shall be added to the compensation. This 10 percent is applicable unless a notice of controversion, stating good-faith grounds for non-payment, is filed pursuant to section 14(d) of the Act within 14 days after the employer obtains knowledge of the injury or after a controversy arises (e.g., the unilateral reduction or termination of payments). However, the delay in payment may also be excused by the DD if timely payment could not be made as a result of conditions beyond the employer's control.

3. **Definition of Late Payment.**

- a. **Section 14(b) requires that compensation be paid** initially on the fourteenth day after the employer is notified or aware of the injury, and that all compensation then due shall be paid. Following the initial payment, compensation is to be paid bi-weekly unless the DD determines otherwise. The usual practice is to pay compensation at two-week intervals. Since the 10 percent penalty does not apply to the first installment until fourteen days after the "due" date, this in effect allows 28 calendar days (from the date the employer first obtains knowledge of the injury) in which to pay the first installment. Compensation is "paid" when it reaches the claimant. If payment is not made within 28 days, 10 percent additional compensation must be paid. Note that in cases of delay between the injury (or the onset of disability) and employer awareness, all back compensation then accrued is due and subject to 10 percent augmentation if not paid within 14 days or controverted within 28 days (see PM 8-202.5). This often occurs in hearing loss and other occupational disease cases.
- b. **The 10 percent may also be applied** to each bi-weekly installment not paid within fourteen days after it becomes due. Until fourteen days have passed following the due date of any installment, however, the additional payment is not applicable.
- c. **If partial payments are made by the employer,** the Section 14(e) provisions apply only to the difference between the amount owed and the amount paid. This usually occurs when the employer pays benefits under a State Workers' Compensation Act and is then held liable under the LHWCA and a timely controversion has not been filed.