



LHWCA BULLETIN NO. 15-02

Issue Date: June 12, 2015

Subject: Filing and Service of Compensation Orders

Background: Section 919(e) of the Longshore and Harbor Workers' Compensation Act (LHWCA) governs service of compensation orders. It states that:

Filing and mailing of order rejecting claim or making award. The order rejecting the claim or making the award (referred to in this Act as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each.

The Department has implemented this provision by regulation 20 C.F.R. 702.349. Section 702.349(a) provides more detail regarding the filing and service process and extends certified mail service to the parties' representatives. Effective June 10, 2015, a new paragraph (b) has been added to allow parties and their representatives to waive their right to certified mail service and consent to electronic service instead. Revised 20 C.F.R. 702.349(b) provides:

All parties and their representatives are entitled to be served with compensation orders via registered or certified mail. Parties and their representatives may waive this right and elect to be served with compensation orders electronically by filing the appropriate waiver form with the district director responsible for administering the claim. To waive service by registered or certified mail, employers, insurance carriers, and their representatives must file form LS-801 (Waiver of Service by Registered or Certified Mail for Employers and/or Insurance Carriers), and claimants and their representatives must file form LS-802 (Waiver of Service by Registered or Certified Mail for Claimants and/or Authorized Representatives). A signature on a waiver form represents a knowing and voluntary waiver of that party's or representative's right to receive compensation orders via registered or certified mail.

- (1) Waiving parties and representatives must provide a valid electronic address on the waiver form.
- (2) Parties and representatives must submit a separate waiver form for each case in which they intend to waive the right to certified or registered mail service.
- (3) A representative may not sign a waiver form on a party's behalf.
- (4) All compensation orders issued in a claim after receipt of the waiver form will be sent to the electronic address provided on the waiver form. Any changes to the address must be made by submitting another waiver form. Individuals may revoke

their service waiver at any time by submitting a new waiver form that specifies that the service waiver is being revoked.

(5) If it appears that service in the manner selected by the individual has not been effective, the district director will serve the individual by certified mail.

The only method of electronic service OWCP is providing at this time is transmission via email. Thus, 20 C.F.R. 702.349(b) now allows any party to the claim or the party's representative to waive his/her right to certified mail service and to receive compensation orders via email. This includes insurance carriers, self-insured employers, attorneys (for both claimants and employer/carriers) and claimants.

The LHWCA Procedure Manual Chapter 4-600-7 outlines how the Division of Longshore and Harbor Workers' Compensation (DLHWC) prepares orders for service. These procedures have not changed. The only change to the process is the new option for parties to receive orders via email if a signed waiver is on file. **You must continue to serve compensation orders by certified mail on all parties and representatives who do not waive certified mail service in accordance with the procedures below.**

Purpose: To provide guidance regarding waiving certified mail service of compensation orders.

Applicability: All DLHWC Federal Staff

Actions:

1) Industry Notice 152 was issued on June 12, 2015 and provides details on how parties to a claim and their representatives may waive certified mail service, and instead request service via email. If a party or representative wishes to request email delivery, a "Waiver of Service by Registered or Certified Mail" must be submitted. There are two different waiver forms: LS-801 (Waiver of Service by Registered or Certified Mail for Employers and/or Insurance Carriers) for employers, insurance carriers, and their representatives, and LS-802 (Waiver of Service by Registered or Certified Mail for Claimants and Authorized Representatives) for use by claimants and their representatives.

2) Upon receipt of a new waiver form, it should be indexed in the file under the new OWCP Imaging System (OIS) category "Waivers." The subject will be either "801- Employer/Insurance Carrier" or "802 – Claimant/Authorized Representative." The author date of the document is the date the waiver was signed.

3) If the individual who signs the waiver wishes to revoke the waiver or change the email address(es) for delivery, he/she must submit a new waiver form and check the appropriate box at the top of the waiver form to make this clear. These forms should be indexed in OIS in the same manner as a new waiver, except that a document description should be added to indicate whether the waiver has been revoked or the information has changed.

4) When an order is being prepared for filing and service, the file must be reviewed to determine if a waiver is on file for any of the parties or their representatives. The file must also be reviewed to ensure that a more recent waiver form has not been received either revoking the original request or updating the email address(es) to which the order is to be sent.

5) The LS-19 or LS-19a should be prepared as usual, except that the method of service must be clearly identified.

- If the order is being sent to a physical address via certified mail, the physical address for that party or representative must be listed.
- If the order is being sent to an email address, the email address(es) for that party or representative must be listed.

6) All service of the compensation order—including email service and certified mail service—must be accomplished on the same date as the date on the Certificate of Service. If an order is being sent by email, it should **not** be sent separately by regular or certified mail, or fax.

7) Consistent with OWCP Bulletin 08-02 (Case specific email transactions), email between OWCP employees and outside parties uses an external network and therefore does not guarantee security. As such, no reference to the claimant's complete Social Security Number (SSN) or other Protected Personally Identifiable Information (PII) should be made in any part of the email message itself, including the subject line or body of the message. But a person's claim number may be referenced if that claim number is not the claimant's SSN. To further protect the privacy of the injured worker, the order and servicing documents must be password protected.

The following steps are to be used for emailing orders:

- a. Create a single .pdf document by printing from the OIS case file; the LS-19/20 must be combined with the order such that only one document exists. The document should be named with the case number, e.g. 09-999999.
- b. Use the encryption tools in Adobe to password protect the document. The password will be the injured worker's date of birth in the following format: MM/DD/YYYY.
- c. Using the District Office's "noreply" email address, attach the password protected document(s) to an email addressed to the email address(es) provided on the waiver form. If more than one party has requested email service, one email can be sent that includes all of the email addresses.
- d. The subject of the email should be titled "Compensation Order" with the case number included. (The injured worker's name should not be in the subject line or the body of the email.)
- e. Provide notice in the email that the password is the injured worker's date of birth as formatted above. Do not include the actual date of birth since any party to the claim or the party's representative should have that information.
- f. Once the email has been sent, print a copy of the email to .pdf and bronze it into the case file.

8) A reply from the party acknowledging receipt of the email is not required.

9) Special procedures for undeliverable emails. Follow these procedures if the order is sent via email and you receive a notice that it is "undeliverable" or the email otherwise appears not to have been transmitted. (An out-of-office reply is not considered to be an "undeliverable" email.)

- a. Serve the order via certified mail to that recipient in accordance with Procedure Manual Chapter 4-600-7.
- b. Include a written notice to the individual indicating that the attempt to serve the compensation order via email was unsuccessful and that no other orders will be sent to the individual electronically unless he/she files a new waiver form.
- c. Enter code "emns" (email service not successful) into the Longshore Case Management System (LCMS); the written notice should be generated from that code. This notice should then be bronzed into the case file with the same category/subject as the order that was served.
- d. Bronze all emails or other documents evidencing the faulty email transmission into the case file, including a copy of the certified mail label.

Disposition: This bulletin is to be retained until the DLWHC Procedure Manual, Chapter 4-600 has been updated.

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