

# Rescission of Claim



# Rescission of Claim

Rescissions 5 U.S.C. 8128(a) allows the Secretary of Labor to "(1) end, decrease or increase the compensation previously awarded; or (2) award compensation previously refused or discontinued."

- This authority includes rescission of claims as a whole, or of specific entitlements.
- However, when the Office of Workers' Compensation programs (OWCP) has accepted a claim and paid benefits, it has the burden of proof to establish that any such acceptance and payment were in error.
- Rescission in a death case should never be attempted absent blatant error or clear indication of fraud (see Federal Employees' Compensation (FECA) Procedure Manual 2-0700.17a).
- Rescission always requires careful and thorough evaluation of all evidence in the context of OWCP's burden of proof.

# Rescission of Claim – Burden of Proof

- To rescind prior acceptance of a claim, OWCP must establish that its prior acceptance was erroneous through new or different evidence. 47 ECAB (Docket No. 95-429, issued December 6, 1995); 47 ECAB (Docket No. 94-1186, issued January 25, 1996); 47 ECAB (Docket No. 94-1157, issued March 15, 1996).
- To satisfy its burden to rescind acceptance, OWCP cannot merely second-guess the initial set of adjudicating officials, but must establish through new evidence, legal arguments or rationale, that its acceptance was erroneous. 47 ECAB (Docket No. 94-828, issued December 7, 1995); 47 ECAB (Docket No. 94-1186, issued January 25, 1996).



# Rescission of Claim – Due Process



- If new evidence is received sufficient to consider rescinding the claim under 5 U.S.C. 8128(a) before any medical and/or compensation benefits have been paid, OWCP may issue a final decision rescinding the claim without providing 30 days due process.
- However, if new evidence is received sufficient to consider rescinding the claim under section Section 5 U.S.C. 8128(a) and medical and/or compensation benefits have already been paid, OWCP must provide the claimant with a proposed termination and allow 30 days within which he/she may submit additional evidence or argument.
- At the conclusion of 30 days, if sufficient evidence or argument has not been submitted, a final decision may be issued rescinding the claim.

# Case Study - Rescission

- A custodian working at a Navy base injured his right shoulder when he was moving a bingo table. The resultant claim was accepted for right shoulder strain. He did not lose time due to this injury, but received medical treatment. He subsequently applied for a schedule award.
- When OWCP requested pay rate information, the inclusion of an unusual pay element of “benefit allowance” alerted the claims examiner (CE) to request a copy of the job description.
- A review of the job description revealed that at the time of the injury, the employee worked on the Navy base for “Morale, Welfare and Recreation.” Further inquiry revealed he was being paid by a Non-Appropriated Funds Instrumentality.

# Case Study - Rescission

- This new information that the injured worker was not a civil employee under the FECA allowed OWCP to reopen the claim under 5 U.S.C. 8128(a) in order to consider the new evidence and propose rescinding the claim.
- Since medical benefits had already been paid, the CE issued a proposed decision to rescind the claim, describing the new evidence that was received and explaining the reasons for the rescission.
- The claimant was then allowed 30 days to submit additional evidence or argument before a final decision rescinding the claim was issued.



# Questions

OWCP can rescind an acceptance when they second guess the initial set of adjudicating officials.

- a) True
- b) False

# Questions

If new evidence received is sufficient to consider rescinding a claim and medical and/or wage loss compensation has already been paid, then OWCP:

- a) May issue a final decision rescinding the claim without providing 30 days due process.
- b) Must provide the claimant with a proposed termination and allow 30 days within which he/she may submit additional evidence or argument.

# Take Away Tips

- 1) Rescissions allow the Secretary of Labor to "(1) end, decrease or increase the compensation previously awarded; or (2) award compensation previously refused or discontinued."
- 2) When the OWCP has accepted a claim and paid benefits, it has the burden of proof to establish that any such acceptance and payment were in error.
- 3) To rescind prior acceptance of a claim, OWCP must establish that its prior acceptance was erroneous through new or different evidence.