Prepared Statement of
Ron Watson
Consultant to NALC President Fred Rolando
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Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Good afternoon Chairman Akaka, ranking member Johnson, and members of the Subcommittee. I am pleased to be here today on behalf of the nearly 290,000 members of the National Association of Letter Carriers (NALC). Thank you for inviting me to testify at this hearing, titled *Examining the Federal Workers' Compensation Program for Injured Employees.*

The NALC welcomes the prospect of reform to the Federal Employees' Compensation Act (FECA), provided it does not result in unfair harm to the injured workers that the FECA was designed to protect.

In our view, some of the reform proposals being considered meet this test. One proposal would permit the Secretary of Labor to obtain Social Security earnings information for all claimants. Another would add Continuation of Pay to the existing subrogation provisions. These two proposals have been projected by the Office of Workers' Compensation Programs, if enacted, to save nearly 50 million dollars over a 10 year period. The NALC supports both.

There are additional proposals, some of which entail increased monetary benefits to injured workers and some of which are cost-neutral, that the NALC supports.

Some other proposals appear to us to unfairly harm injured workers.

For instance, a proposal has been made to level the rate of wage-loss compensation to 70% (of salary on date of injury, date of first disability, or date of recurrence of disability) for all injured workers. Currently, the compensation rate for injured workers with one or more dependents is calculated at 75%, while the rate for those with no dependents is calculated at 66 2/3%.

The 70% proposal

Proponents of this change argue that FECA benefits calculated at 75% (tax-free) often exceed the injured worker's pre-injury take home pay, and that this creates a significant disincentive to return to work. They argue that benefits should be reduced in order to eliminate the disincentive. This argument seems based on an over-simplified view of the matter, and it is completely at odds with the NALC's experience.

GAO Report GGD-98-174

A GAO report dated August 1998 provided an analysis of the percentages of take-home pay replaced by FECA compensation benefits. It noted a 1972 National Commission Report that recommended that benefits should replace at least 80% of pre-injury spendable earnings (take-home pay). It suggested that legislatures must walk a fine line between benefits that are high enough to provide adequate income, but not so high as to discourage an employee's return to work.

The GAO analysis established that FECA wage-loss compensation, measured as a percentage of pre-injury take-home pay, was dependent on a multitude of factors. These factors included whether the employee lived in a state with an income tax and if so, how high the rate was; whether the employee was single or married and if married whether the spouse had earned income, and if so, how much; the number of dependents; the length of time on the rolls; pay levels; and others. Significantly, the GAO analysis excluded beneficiaries who had established Wage Earning Capacity (WEC) determinations.

The GAO analysis considered data from the year ending June 1997. It began with that year's 78,060 cases involving wage-loss compensation benefits, of which 51, 265 were on the long term rolls. Of these 51,265, about 34,700 (or perhaps 30,057 – the report is unclear) were receiving full wage-loss compensation. (Assumably, the remaining 1/3 of the 51,265 had received LWEC determinations that reduced their wage-loss compensation by a percentage commensurate with their capacity to earn wages.)

GAO further reduced the number of beneficiaries being reviewed to a set of 23,250 in order to complete its analysis. For the 23,250 beneficiaries included in the analysis, GAO estimated that FECA benefits replaced, on average, over 95% of the take-home pay they would have received had they not been injured. Thus, the

estimated average replacement rate (which is below 100%), coupled with the exclusion of cases that include LWEC determinations from that average, suggest that the FECA tax-free 75% rate does not often exceed pre-injury take-home pay.

The GAO report is useful for illustrating ranges and averages of wage-replacement rates given certain variables. However, it does not provide analysis of how those ranges and averages might affect return-to-work disincentives.

Two major points should be considered in any effort to assess return-to-work disincentives in the context of FECA wage-replacement rates. The first is a loss of benefits. The second is the fact that in the Postal Service today, the problem is that hundreds, even thousands, of injured workers who are able, willing and eager to return to work are not being allowed to do so.

Loss of benefits

Generally, pay rate is probably the most significant factor in decisions by workers to seek and accept employment. However, benefits are also a highly significant consideration. Workers are motivated to accept employment offers based on the benefit package as well as the pay package. If we accept that this is true in general it is reasonable to conclude it is also true in the case of injured workers.

FECA beneficiaries receiving wage-loss compensation lose significant benefits.

Upon placement in a leave without pay (LWOP) status by the employing agency, lost benefits include annual leave, sick leave, Thrift Savings Plan benefits, overtime opportunities, promotion prospects, and other pay-increase opportunities.

Once an employee is separated by the employing agency, there are additional lost benefits, including Social Security credits (in the case of FERS employees), CSRS/FERS retirement annuity credits, higher Health Benefit Plan rates, higher basic FEGLI rates (in the case of Postal employees), loss of step increases, and loss of union-negotiated contractual protections.

These benefit losses are substantial and in some cases can be financially devastating to the injured worker.

LWEC determinations

In addition, in the significant number of cases where OWCP determines a Lost Wage Earning Capacity (LWEC) based on a constructed position, the injured worker's wage-loss compensation is further significantly reduced. The typical case involves 50% or more. Thus, a typical LWEC compensation amount will be calculated at (pay rate) X (66 2/3% or 75%) X (50%).

OWCP has authority to make LWEC determinations in cases where the injured worker is partially disabled, as opposed to totally disabled. Disability in this context is an economic, not medical, concept, and is defined as *"the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury – it may be partial or total."* LWEC determinations are intended to fairly and reasonably reflect the injured worker's ability to earn wages on the open job market. LWEC determinations may be based on actual earnings or on constructed positions. When based on constructed positions, OWCP determines that a specifically identified job is within the injured worker's medical limitations and that it is available within the worker's commute area. OWCP then determines the average wage of the identified job and reduces the wage-loss compensation accordingly.

Such LWEC reductions are made irrespective of whether the injured worker is actually able to obtain employment in the job identified by OWCP.

Summary of lost benefits and LWEC reductions

These lost benefits and LWEC reductions should be considered when weighing the balance between setting wage-loss compensation benefits high enough to provide adequate income for families of disabled workers, but not so high that it discourages return to work.

The NALC believes there is no need to reduce the current 75% rate in order to address a perceived imbalance regarding return to work disincentives for injured workers. Instead, there is a need to address OWCP policies that may foster disincentives for employing agencies to allow injured workers to continue working and/or to return to work.

Postal Service disincentives

Prior to 2007, Postal Service national policy was to make every effort to provide limited duty work to employees who had medical restrictions due to accepted on-the-job injuries. In 2007, the Postal Service began a national program, the National Reassessment Program (NRP), that effectively resulted in the withdrawal of thousands of previously provided limited duty jobs.

The NALC has aggressively challenged those withdrawals through our contractual-grievance arbitration system. We have taken approximately 160 of these cases to final and binding regional arbitration. Regional arbitrators have overwhelmingly found in the NALC's favor. In addition, we have made hundreds of pre-arbitration settlements in similar cases.

These are cases involving injured workers who are able to work and want to work, even though most are receiving wage-loss compensation from OWCP. Despite their abilities and desires, and the availability of limited duty work, they are not allowed to work by the Postal Service.

Let me provide an example. I advocated an NRP-related arbitration hearing that involved a letter carrier who had injured his foot on the job. OWCP authorized surgery. A chronic infection of the bone resulted from the surgery. As a consequence, he was medically restricted to very little walking. However, he was able to case or sort mail, and for many years the Postal Service accommodated him with limited duty involving mail sortation. Then, local management implemented the National Reassessment Program, withdrew his limited duty job offer and placed him on LWOP. The sorting work he had previously performed still existed and was reassigned to other, temporary employees. He began receiving OWCP wage-loss compensation. However, he immediately initiated a grievance to get his job back with the Postal Service and he never stopped fighting until he succeeded.

The argument that the 75% compensation rate creates a disincentive for return to work is wholly inconsistent with the NALC's recent experience.

Mandatory retirement

Various proposals have been made to mandate retirement at a specific age. One proposal would terminate wage-loss compensation benefits and transition to

CSRS or FERS retirement upon reaching Social Security retirement age. Another proposal would continue OWCP wage-loss compensation payments but reduce them to 50% at Social Security retirement eligibility.

Proponents of these changes generally argue that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits. These arguments typically rely on comparison of the 75% FECA benefit with the average CSRS annuity of about 60%. There are significant problems with these proposals.

The majority of federal employees today are not covered by CSRS. Instead, they are covered by FERS. Unlike CSRS, FERS is a three-part retirement system that includes a defined benefit annuity, Social Security, and the Thrift Savings Plan. A report by the Congressional Research Service shows FERS retirement amounts will likely far exceed CSRS annuity amounts.

CRS Report 1/11/11
In a report titled *Federal Employees' Retirement System: The Role of the Thrift Savings Plan*, the Congressional Research Service calculated various retirement incomes for a 62 year old employee with 30 years of service, as a percentage of final salary. In almost all of the variable scenarios, the income was greater than the average CSRS annuity of 60%.

For instance, a GS-4 earning a $48,331 final salary, with a 5% TSP contribution rate computed at a nominal rate of return of 6%, would receive a retirement replacement rate of 82%. The same criteria except for a 10% TSP contribution rate results in a replacement rate of 94%.

Thus, it appears that a major argument in support of mandatory retirement (that the 75% FECA wage-loss compensation benefit is far more generous than OPM retirement benefits) is no longer accurate.

Public Law 108-92
In 2003, a law was signed to provide enhanced annuity computation for FERS employees who receive OWCP wage-loss compensation benefits. The law provides for an additional 1% for each year a FERS employee is on LWOP, performing no work, and receiving OWCP benefits.

While this law partially offsets the loss of retirement benefits for FERS employees receiving OWCP wage-loss compensation, there remain problems.

First, the enhanced 1% only accrues during periods of time that an employee remains on the rolls of the employing agency. Once an employee is separated from the employing agency, no further CSRS entitlement accrues, regular or enhanced. (An exception exists where the employee is later reinstated in Federal service and earns title to a FERS annuity.)

Second, even if a 30 year employee drawing wage-loss compensation is kept on the rolls of the employing agency and accrues the enhanced 1% FERS annuity for many years, the final annuity will not come close to equaling the Congressional Research Service projection for an employee with a moderate 5% TSP contribution rate at a moderate 6% return rate.

LWECs

The argument that FECA wage-loss compensation benefits are far more generous than OPM retirement benefits also founders in the presence of Lost Wage Earning Capacity determinations. Where LWEC determinations have been made, based on either actual wages earned or constructed positions, OWCP wage-loss compensation will be significantly less that the identified average CSRS annuity of 60%.

Summary

The NALC supports FECA reform. However, every reform proposal should be consistent, as a basic principle, with the intended remedial nature of the FECA. In our view, proposals to level wage-loss compensation benefits to 70%, and proposals to mandate transition to OPM retirement (or reduced FECA benefits) at Social Security retirement age, as currently written, do not meet that basic principle.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity. I would be pleased to answer any questions that you or other members of the subcommittee may have.