

Do you think of cancer as a hazard of wildland firefighting?

The Department of Labor, Office of Workers Compensation Program and Presumptive Illness for Federal Wildland Firefighters

Presumptive Illness: Certain medical conditions presumed to be a result of employment.

Richard has been a wildland firefighter since he turned 18 years old; he is currently 33. In January 2022 he was serving as an Engine Foreman when out of nowhere he had a seizure. Two weeks after an MRI showed the presence of a tumor in Richard's brain, he was having emergency brain surgery. A pathology report a month later showed that the tumor was cancerous. On April 11, 2022, Richard started radiation treatment.

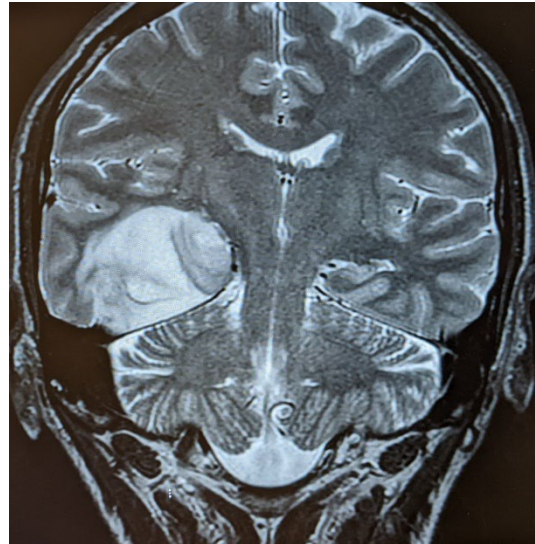


Figure 1: MRI imagery showing the tumor in Richard's brain.

Meanwhile in Washington DC...

On April 19th, 2022, the US Department of Labor, Federal Employees Compensation Program released FECA Bulletin 22-07 which states:

“As the result of the specific exposures that routinely occur in the course of their employment, Federal firefighters are at increased risk of certain types of cancers, heart disease and lung disease.” - FECA Bulletin 22-07

The text of the bulletin goes on to explain since they are in “high risk employment” there is an “implicit

Straight from the Horse's Mouth

To read the two documents that cover presumptive illness for federal wildland firefighters, follow these links:

[FECA Bulletin 22-07 \(April 2022\)](#)

[FECA Bulletin 23-05 \(March 2023\)](#)

[FY23 NDAA \(Scroll to Section 5305\)](#)

You can also read crucial excerpts in Appendix B and C at the end of this document.

recognition” that firefighters have a higher likelihood of developing certain medical conditions. This bulletin came out a little more than a week after Richard began his radiation treatment, but he wasn't yet aware that it existed.

Later in the year, in December 2022, Congress passed the FY23 National Defense Authorization Act (NDAA). Section 5305 of that law is titled “Fairness for Federal Firefighters.” This law codifies that certain conditions will be “presumed” to be work-related for “federal employees in fire protection activities.”

Section 5305 of the NDAA includes a list of currently recognized presumptive illnesses (see below). In addition, the Department of Labor has the ability to add more

illnesses and diseases as research indicates. Just because something is not currently on the list does not mean it won't be covered by workers compensation: if you or your physician believes your diagnosis could be a result of work-related exposures, it is recommended you file a claim with the Office of Workers Compensation Program (OWCP).

Illnesses and diseases currently presumed to be work-related cause of disability or death for Federal employees in fire protection activities include:	
(A) Bladder cancer.	(J) Multiple myeloma.
(B) Brain cancer.	(K) Non-Hodgkin lymphoma.
(C) Chronic obstructive pulmonary disease.	(L) Prostate cancer.
(D) Colorectal cancer.	(M) Skin cancer (melanoma).
(E) Esophageal cancer.	(N) A sudden cardiac event or stroke suffered while, or not later than 24 hours after, engaging in the activities described in subsection (a)(1)(C).
(F) Kidney cancer.	(O) Testicular cancer.
(G) Leukemias.	(P) Thyroid cancer.
(H) Lung cancer.	
(I) Mesothelioma.	

With the above table it is important to reiterate that this is the list of presumptive illnesses included in Section 5305 of the NDAA at time of publication, not a final, unchangeable list of conditions that OWCP will cover. Critically, Section 5305 also includes direction that breast cancer, gynecological cancers, and rhabdomyolysis will all be evaluated for inclusion to this list within 3 years.

Pioneering Line

Richard was hesitant to file a claim with the Office of Workers Compensation Program (OWCP) for his diagnosis because of how difficult the system can be. In this case though, he felt he didn't have anything to lose, since his treatment was well underway, with medical expenses largely covered by his private health insurance. Knowing that the agency and Department of Labor's OWCP would have a learning curve with newly authorized presumptive illnesses, Richard hoped that by opening the door it could help others and make the process better for the next person that came after him.

So, Richard filled out his CA-2 Form through his agency's injury and illness reporting system (eSafety) on May 2, 2022. This submission was not initially accepted by OWCP because his first claims examiner was unaware of the changes included in FECA Bulletin 22-07. Prior to Bulletin 22-07, the claims examiner would need proof that the diagnosed illness or disease was directly attributable to his employment. FECA Bulletin 22-07 changed that – now his illness was *presumed* to be a result of his employment. Two months after sharing the bulletin with his claim examiner, Richard's claim was approved, in late June 2022.

Date of injury is important with long term illnesses and diseases. Initially, Richard had indicated his date of injury was the day he received his cancer diagnosis because

Why CA-2 and not CA-1?

Form CA-1, "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation" is used to report traumatic injury.

Form CA-2, "Notice of Occupational Disease and Claim for Compensation," is used to report an occupational disease.

that's what made sense to him. It turned out he needed to make his date of injury when he first had a medical bill associated with the illness. This was actually months prior to his cancer diagnosis. It was the bill for his emergency room visit that resulted from his seizure back in January.



Figure 1: Post-surgery photo showing incision scar

Once his case was accepted by the Department of Labor, just like any other OWCP claim, Richard had to remain diligent. A case being accepted doesn't mean it's easy. He still had to remind every office he visited to bill the Department of Labor OWCP. Because this process is so new in our world, healthcare providers would sometimes reply, "what are you talking about?" It's not very often that someone walks into an oncologist to get chemotherapy and it's covered by workers compensation. The healthcare provider might not know how to bill OWCP because they've literally never done it before.

Ensuring your Human Resources claim manager has everything they need from you in a timely manner and being responsive to requests for information is important for your claim to be adjudicated as efficiently as possible.

Back to the Law

Let's go back and look at who is eligible for presumptive illness coverage under Section 5305 of the NDAA.

What exactly constitutes an employee in "fire protection activities"? Like in many laws, the definition is multi-faceted and somewhat convoluted.

Here it is:

- (1) Employee in fire protection activities.--The term 'employee in fire protection activities' means an employee employed as a firefighter (including a wildland firefighter), paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker who--
 - (A) is trained in fire suppression;
 - (B) has the legal authority and responsibility to engage in fire suppression;
 - (C) is engaged in the prevention, control, or extinguishment of fires or response to emergency situations in which life, property, or the environment is at risk, including the prevention, control, suppression, or management of wildland fires; and
 - (D) performs the activities described in subparagraph (C) as a primary responsibility of the job of the employee.

Section 5305 also states the person must be employed at least “five years in aggregate,” and diagnosed with a condition no more than ten years after they were employed as a wildland firefighter. Aggregate means cumulative time worked but not necessarily in consecutive months or years. Considering the varied nature of the federal fire employment, you should consider filing a claim even if you aren’t sure if the above definitions exactly apply to you.

Lessons Richard Learned and Wants to Share:

- ✓ Don’t be scared or discouraged to file a claim. Don’t assume that something in the law doesn’t apply to you and let that keep you from filing.
- ✓ There are several people and agencies with [roles and responsibilities](#) when it comes to having a federal workers compensation case adjudicated. It’s important to understand your role and responsibilities as well as those supporting your claim. For additional information see Appendix A.
- ✓ The Department of Labor, Office of Workers Compensation has a website called [ECOMP](#) which is Federal Employees’ Compensation and Operations & Management Portal. If you are a federal employee you can access and manage your claim information and request support such as elevating your case if necessary. It is a tremendous resource and employees are encouraged to utilize it, however, it does not replace agency specific injury and illness reporting requirements in FSM 6730. It is imperative agency policies and procedures, i.e. eSafety, are followed to ensure agency Human Resource representation is engaged throughout the process.



- ✓ You can attach documentation (such as those listed below) to your CA2 in eSafety to make the process more efficient and therefore faster.
 - Diagnosis from a Doctor that states you have one of the conditions listed in the presumptive illness list.
 - Official position description that states you meet the definition of an “Employee in Fire Protection Activities”.
 - IQCS Master Record indicating fire experience.
 - Proof of employment (SF50s from HR) that indicate employment for not less than 5 years in aggregate as an employee in fire protection activities. Which your assigned HR representative can help you with.

Keep in mind that a lot of this is new and not only is the Department of Labor Office of Workers Compensation learning about it, but our agency's Human Resources case managers are learning about it too. Not to mention all the providers out there. Be patient, have your documentation dialed in, and educate yourself.

Patient Update

Looking back over the difficulties and triumphs of the past year, Richard is grateful that he submitted his CA-2. Having persevered through his OWCP claim to gain financial support for his medical expenses Richard encourages his colleagues to pursue OWCP coverage for work related injuries and illnesses. He completed standard of care maintenance chemotherapy in May of 2023. He has been supported by his supervisor through everything and was able to provide administrative support to his unit while working through his treatment. Due to on-going health concerns, he is transitioning out of Primary Fire and into a role where he can utilize his field experience to continue working in support functions in wildland fire. Richard is working with the Forest Service to establish a protocol for transitioning into a non-fire position while maintaining his fire retirement eligibility through the [First Responder Fair RETIRE Act, P.L. 117-225](#).

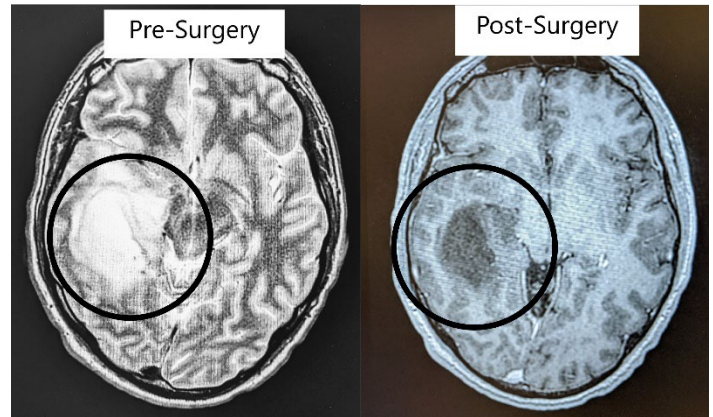


Figure 3: Magnetic Resonance Imaging (MRI) pre- and post-surgery. The black circle indicates the area of the brain tumor removed during Richard's surgery.

This is a factual representation of a true story. The name has been changed to protect the privacy of the individual.

Appendix A: Roles and Responsibilities in DOL OWCP Claims Process

This table shows the roles and responsibilities of different people and organizations for employees of the USDA Forest Service. The names of agency-specific systems will be different in other federal agencies.

Employee/ Supervisor	Forest Service - Human Resources Department	Dept of Labor – Office of Workers Compensation
<p>Self-initiates the appropriate compensation form or has another individual initiate the compensation form on their behalf via eSafety.</p> <p>Responsible for communicating their medical status and providing supporting medical documentation to their supervisor and FS Workers' Compensation Case Manager.</p> <p>Works with and replies in a timely manner to DOL directly on issues related to claim compensation or billing/payment issues.</p>	<p>Serves as the liaison between DOL and FS employees to ensure the Workers' Compensation process runs smoothly and provides assistance to employees while they navigate the process. Provides guidance to employees and their supervisors to support the initiation of compensation forms via eSafety</p> <p>Reviews appropriate compensation forms to ensure accuracy and completeness.</p> <p>Interfaces with DOL OWCP to manage the submission of FS Workers' Compensation claims.</p> <p>Manages the overall Workers' Compensation process from case initiation to closure.</p>	<p>Applies the law, regulations, and procedures as set forth by the Federal Employees' Compensation Act (FECA) to determine if Workers' Compensation claims submitted by employees will be accepted or denied.</p> <p>Reviews factual and medical evidence provided by employees to determine if an associated Workers' Compensation claim for compensation will be paid.</p>

Table 1: USDA USFS HRM Workers Compensation [Webpage](#)

Appendix B: FECA Bulletin 22-07

FECA Bulletin 22-07 described special case handling for certain firefighter FECA claims. The background section reads:

Background: The Federal Employees' Compensation Act (FECA) covers injury in the performance of duty; injury includes a disease proximately caused by federal employment. The U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) administers FECA. FECA provides to an employee injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." See 5 U.S.C. 8103. The FECA pays compensation for disability or death of an employee resulting from injury in the performance of duty.

[Chapter 2-0805-6](#) of the FECA Procedure Manual provides for special case handling for those employees who are engaged in employment that places them at a high risk for exposure to infectious diseases. Conditions such as HIV infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions, and drug treatment centers, among others, than in Federal workplaces as a whole. More recently, the FECA program recognized high-risk employment for those employees who routinely came in contact with the public and were exposed to COVID-19. See FECA Bulletin 20-05. The same principle that applies for high-risk employment regarding exposure to infectious diseases, also applies to those positions that routinely expose employees to substances that increase the risk of occupational diseases such as cancers, heart disease and lung disease. While all federal employees who contract an occupational disease related to their federal employment are entitled to FECA coverage, special case handling considerations should apply to those employees engaged in high-risk employment.

As the result of the specific exposures that routinely occur in the course of their employment, Federal firefighters are at increased risk of certain types of cancers, heart disease and lung disease¹. Accordingly, firefighters may be considered to be in high-risk employment triggering the application of [Chapter 2-0805-6](#) of the FECA Procedure Manual when filing claims for these specific medical conditions. In such cases, there is an implicit recognition of a higher likelihood of illness related to such federal employment.

OWCP will continue to monitor medical developments in this area and update its list of specific medical conditions as appropriate.

Appendix C: FY23 National Defense Authorization Act, Section 5305

NDA Section 5305 is the current law in force regarding DOL OWCP coverage of certain presumptive illnesses. It reads, in part:

SEC. 5305. FAIRNESS FOR FEDERAL FIREFIGHTERS.

(a) Certain Illnesses and Diseases Presumed to Be Work-related Cause of Disability or Death for Federal Employees in Fire Protection Activities.--

(1) Presumption relating to employees in fire protection activities.--

(A) In general.--Subchapter I of chapter 81 of title 5, United States Code, is amended by inserting after section 8143a the following:

Sec. 8143b. <<NOTE: 5 USC 8143b.>> Employees in fire protection activities

(a) Definitions.--In this section:

(1) Employee in fire protection activities.--The term 'employee in fire protection activities' means an employee employed as a firefighter (including a wildland firefighter), paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker who--

(A) is trained in fire suppression;

(B) has the legal authority and responsibility to engage in fire suppression;

(C) is engaged in the prevention, control, or extinguishment of fires or response to emergency situations in which life, property, or the environment is at risk, including the prevention, control, suppression, or management of wildland fires; and

(D) performs the activities described in subparagraph (C) as a primary responsibility of the job of the employee.

(2) Rule.--The term 'rule' has the meaning given the term in section 804.

(3) Secretary.--The term 'Secretary' means the Secretary of Labor.

(b) <<NOTE: Time period.>> Certain Illnesses and Diseases Deemed to Be Proximately Caused by Employment in Fire Protection Activities.--

(1) In general.--For a claim under this subchapter of disability or death of an employee who has been employed for not less than 5 years in aggregate as an employee in fire protection activities, an illness or disease specified on the list established under paragraph (2) shall be deemed to be proximately caused by the employment of that employee, if the employee is diagnosed with that illness or disease not later than 10 years after the last active date of employment as an employee in fire protection activities.

(2) Establishment of initial list.--There is established under this section the following list of illnesses and diseases:

(A) Bladder cancer.

(B) Brain cancer.

(C) Chronic obstructive pulmonary disease.

(D) Colorectal cancer.

(E) Esophageal cancer.

(F) Kidney cancer.

(G) Leukemias.

(H) Lung cancer.

(I) Mesothelioma.

- ``(J) Multiple myeloma.
 - ``(K) Non-Hodgkin lymphoma.
 - ``(L) Prostate cancer.
 - ``(M) Skin cancer (melanoma).
 - ``(N) A sudden cardiac event or stroke suffered while, or not later than 24 hours after, engaging in the activities described in subsection (a)(1)(C).
 - ``(O) Testicular cancer.
 - ``(P) Thyroid cancer.
- ``(3) Additions to the list.--
- ``(A) In general.--
 - ``(i) Periodic review.--The Secretary shall--
 - ``(I) in consultation with the Director of the National Institute for Occupational Safety and Health and any advisory committee determined appropriate by the Secretary, periodically review the list established under paragraph (2); and
 - ``(II) <<NOTE: Determination.>> if the Secretary determines that the weight of the best available scientific evidence warrants adding an illness or disease to the list established under paragraph (2), as described in subparagraph (B) of this paragraph, make such an addition through a rule that clearly identifies that scientific evidence.
 - ``(ii) Classification.--A rule issued by the Secretary under clause (i) shall be considered to be a major rule for the purposes of chapter 8.
 - ``(B) Basis for determination.--The Secretary shall add an illness or disease to the list established under paragraph (2) based on the weight of the best available scientific evidence that there is a significant risk to employees in fire protection activities of developing that illness or disease.