Medical evidence and OWCP, Part 8:

What the attending physician should understand in responding to medical reports from OWCP-directed exams (continued)

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This column continues the discussion from last month on providing guidance to the attending physician on how to effectively respond to adverse SECOP (second opinion) reports.

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After OWCP has determined that a claimant has disability causally related to their employment, it may not terminate or modify compensation without establishing that the disability has ceased, lessened or is no longer causally related to employment. To do this, it relies on medical reports from physicians.

Often these reports come from the attending physician, as they document their patient's progress and recovery from their injuries. Under certain circumstances, however, OWCP may send the injured worker to a SECOP. This can happen when the injured worker's recovery is taking longer than anticipated, especially in cases involving soft tissue, muscle or tendon injuries, or if there is not current medical documentation of disability from the attending physician in the claim file.

If a medical report from a SECOP goes against the findings and opinion of the attending physician, or the injured worker's perception of the nature and extent of their injuries, the attending physician should respond to the SECOP report with a report of their own. The attending physician usually starts with a disadvantage since, unlike SECOP physicians, they often have no experience writing reports to challenge the findings of other physicians.

To aid the attending physician in responding to a SECOP report, they should be made aware of the criteria and procedures claims examiners (CEs) follow when weighing one medical report against another. Although most CEs have no medical training, the procedures they follow in weighing medical evidence is similar to the processes used by other administrative agencies, such as Social Security, MSPB, the VA, OPM or the EEOC (whose functionaries also have no medical training) when they review and adjudicate cases involving disability.

Though CEs must evaluate and weigh medical evidence, they cannot substitute their judgment for that of the physician. OWCP has created rules and procedures that CEs must follow, with general guidance found at 20 CFR § 10.502:

> In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits.

The more specific procedures CEs follow can be found in the *FECA Procedure Manual* 2-0810. *FECA PM* 2-0810.6 outlines the criteria, based on ECAB precedent, that CEs must address when weighing one medical report against another. Based on these criteria, the CE should ask the following questions with regard to each report:

1. Is the opinion based on a complete, accurate, and consistent history covering both the medical and factual aspects of the case?

According to the *Procedure Manual*:

> A medical opinion that takes into account the claimant's medical history, the relevant family medical history, nonwork factors that could have led to the injury or disease, and a complete and consistent history of the incident or exposure or work factors alleged to be the cause of the injury or illness carries more weight than an opinion that has omissions, errors or inconsistencies in any of these areas… An incomplete or inaccurate history reduces the probative value of a medical opinion. The lack of any history in a report also usually diminishes the value of the report.

This is the easiest criterion for non-medically trained CEs to evaluate. It often boils down to which physician has written the more complete and longer medical history. CEs evaluate medical reports similar to how school teachers compare essays, they weigh one report against the other. They do not read chart notes or review the details of specific clinical encounters to obtain the medical history. Credit is given to the physician who has written the more detailed medical history in the report, even when it is the other physician (usually the attending physician) who has actually created that history.

Many SECOP physicians have training on how to do independent medical examinations and how to review medical records and write medical histories that satisfy bureaucratic and legal requirements. As part of any challenge to a SECOP report, the attending physician should ensure that the medical history in their report is at least as detailed as the SECOP's history, if not more detailed.

Next month's column will continue this discussion.