

Medical evidence and OWCP, Part 1



Regional Workers' Compensation Assistant Coby Jones

In dealing with OWCP, much of what claimants and their representatives do involves medical evidence: obtaining it, evaluating it, fixing it and challenging it. In fact, most OWCP claim denials are due to inadequate medical evidence. While most physicians routinely write reports for medical insurers, they often are unaware of and have no experience with many of the things OWCP requires in medical reports. This is the first in a series of articles to help claimants and their attend-

ing physician understand what claims examiners look for and require in medical evidence and reports.

Current, well-rationalized medical evidence is essential for the following:

- Initial acceptance of the claim.
- Establishing disability to claim wage-loss compensation.
- Authorization for medical procedures, physical therapy, durable medical equipment.
- Challenging decisions by OWCP based on OWCP-directed examinations.
- Expanding a claim to include other underlying or pre-existing conditions.
- Establishing the recurrence of an accepted medical condition.
- Establishing physical restrictions for limited duty and/or vocational rehabilitation.
- Documenting ongoing residuals or continuing disabilities from the accepted condition.
- Establishing permanent impairment for a schedule award.

Given the variety of medical reports OWCP requires, it would be in the injured letter carrier's interest to find an attending physician they can communicate with. The physician should be willing to write any reports that OWCP might require, including any reports that might be necessary to challenge an adverse report from an OWCP-directed exam or to challenge an adverse decision by OWCP. In addition, it would be useful to find an attending physician who is a board-certified specialist in the area of the injured letter carrier's diagnosed conditions. This is especially true if those conditions are long-term or permanent.

Before delving into the specific things OWCP requires in different types of medical reports, attending physicians should understand two basic concepts when writing their reports.

The non-apportionment rule

Work only has to be a contributing factor to the injury for the claim to be accepted. Unlike many state injury compensation programs, OWCP does not apportion causality. State

injury compensation programs sometimes require the physician to determine the percentage of the injury attributable to pre-existing conditions as compared with the conditions that result from exposure to the work environment. The attending physician does not have to do this for OWCP.

The Employees' Compensation Appeals Board (ECAB) has long held that it is not necessary for employment by itself to have caused an injured worker's condition in order for a claim to be compensable. It need only to have contributed to it. Where a person has a pre-existing condition that was not disabling but becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable under the FECA.¹

In fact, the term "contributed to" has been interpreted by the ECAB to mean the slightest work factor and does not require the work factor to be a significant factor leading to the disabling condition.² That said, it should be noted that in cases involving pre-existing conditions, even though OWCP does not apportion causality, it often will expect the attending physician to differentiate between the effects of the work-related factors and any pre-existing condition.

The reasonable medical certainty standard

Even though work may only be a small contributing factor to the injury, OWCP still requires that there be more than just a possibility that the work factors contributed to the diagnosed conditions. While OWCP does not require absolute medical certainty, it does apply a "reasonable medical certainty" standard.

OWCP finds terms such as "could," "may" or "might be" to indicate that a medical report is equivocal, speculative or conjectural, and thus insufficient to be given what it calls "probative value." The use of such terms will result in the claim being denied. OWCP sees the terms "probable," "most likely" and "on a more probable than not basis," as less speculative, but they will still look at the use of these terms in the context of the entire medical report to determine whether the attending physician holds their opinion with reasonable medical certainty. And if the physician's meaning is in question, OWCP will sometimes seek clarification from the doctor.³

With the above in mind, if the attending physician believes that the claimed work factors likely or probably caused or contributed to the diagnosed conditions and that the association between the work factors and the diagnosed conditions exists with "a reasonable degree of medical probability," they should indicate that they hold their opinion with "reasonable medical certainty."

This discussion will continue in next month's column.

¹ Arnold Gustafson, 41 ECAB 0438 (1989)

² Rudy C. Sixta Jr., 44 ECAB 727-731 n 3. (1993)

³ FECA Procedure Manual, 2-0810.6.a(5)