



## Fitness-for-duty examinations

**T**he code of federal regulations allows employing agencies to require employees with work-related injuries or illnesses to report for an examination under the provisions of 5CFR339.301:

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.

Such examinations are usually referred to as fitness-for-duty examinations (FFDs) within the Postal Service. FFDs for work-related injuries or illnesses are covered by Section 545.62 of the *ELM*. It states in part that a “fitness-for-duty examination is not limited to the employee’s regular duties, but should be based on whether the employing installation has any alternative duties available that the employee may safely perform.”

If the results of the fitness-for-duty examination disagree with the findings of the attending physician, and the disagreement cannot be resolved with the attending physician, the matter, along with justification for the Postal Service position, is referred to OWCP for resolution. No administrative action may be taken to change the employee’s compensation or employment status until the medical issue is settled by OWCP.<sup>1</sup>

Also keep in mind that the Postal Service procedures described in *ELM* 545.62 apply only to FECA cases. Different procedures apply to other situations involving Postal Service-authorized fitness-for-duty examinations (e.g., general employability and disability retirement).

**Fitness-for-duty examinations are not second opinions.** FFDs cannot be considered second opinion examinations by OWCP. ECAB has ruled, “A physician who performed a fitness-for-duty examination of the claimant for the employing agency may not be considered a second opinion specialist for purposes of creating a conflict in medical evidence or for reducing or terminating benefits based on the weight of medical evidence.”<sup>2</sup>

Because employing agency-ordered FFDs are outside OWCP’s authority, an employee’s refusal to undergo or otherwise not cooperate with an FFD is not in itself a bar to continuation of pay (COP) or compensation benefits. Refusal to undergo or cooperate in an agency-ordered FFD examination may, however, result in disciplinary action.

Agency-ordered FFDs are not specifically authorized or prohibited by the FECA. However, the FECA does provide OWCP with the authority to require second opinion medical examinations whenever OWCP believes it necessary.<sup>3</sup> The FECA also states that if an employee refuses to submit to or obstructs an OWCP-ordered examination, his or her right to compensation may be suspended until the refusal or obstruction stops.

While OWCP does not authorize or request an employing agency to conduct an FFD, OWCP must consider the results of the FFD examination submitted by the employing agency—just as it would any evidence submitted by the employing agency.

**Functional capacity evaluations**—As part of agency-ordered FFDs or OWCP-ordered examinations, a functional capacity evaluation (FCE), sometimes called “isokinetic testing” or “physical capacity testing,” is often requested. While the local instructions vary to some extent, the purpose is clear: an evaluation of an employee’s physical strength capabilities and pain level—particularly in regard to the back, shoulders, elbows or knees. An FCE may involve the use of equipment that is somewhat similar in appearance to body-building equipment at physical fitness facilities.

The employee should immediately contact his or her attending physician to determine if the FCE could possibly be injurious. If so, a medical report from the attending physician should be presented to OWCP and to the Postal Service if the FCE was ordered by the agency.

Like the FFDs, refusal to undergo a Postal Service-requested functional capacity evaluation is not in itself a bar to receipt of COP or compensation benefits. Employees faced with Postal Service demands that they undergo an FCE should also contact an NALC branch officer or their national business agent for advice and assistance on a case-by-case basis, whether or not the employee is threatened with disciplinary action.

In no situation should an employee sign a consent form in which the employee provides written evidence that he or she agrees to an FCE. A consent form may release the evaluating facility and/or equipment manufacturer from liability should the FCE result in injury to the employee. ☒

1. *ELM* 545.64
2. M.B. & USPS, 93-2326 (1996)
3. 20CFR10.320, 5USC8123