

SECOPs and IMEs, Part III: The SOAF

Whenever OWCP sends a claimant to an OWCP-directed exam, it must prepare a Statement of Accepted Facts (SOAF) and also medical questions for the selected physician to answer.¹ After the exam, claimants or their representatives should always request in writing from OWCP a copy of the SOAF, the questions and the selected physician's forthcoming medical report. The SOAF and questions define and limit the scope of the Impartial Medical Examinations (IME) or Second Opinion Examinations (SECOP). Because of this, claimants and their representatives should scrutinize them carefully for accuracy, completeness and appropriateness.

The SOAF is supposed to represent what OWCP has accepted as factual in the case. It provides the framework within which physicians form an opinion regarding a particular medical issue or question. The SOAF is also the mechanism that separates factual findings from medical findings and opinions. In principle, this should prevent claims examiners from inadvertently making medical decisions about the case and physicians from making erroneous factual assumptions about the case.

While the FECA Procedure Manual 2-0809 contains the methods that claims examiners must follow in developing the SOAF, the final product depends on the skill, experience and judgment of the claims examiner. Every SOAF must contain certain essential elements (FECA PM 2-0809-5): date of injury, date of birth, job held on date of injury, employing agency, employment history, mechanism of injury, and condition claimed or accepted.

The SOAF also may contain a number of optional elements (FECA PM 2-0809-6): prior medical history; medical treatment received; personal habits, such as drinking or smoking; concurrent medical conditions; off-duty activities; family circumstances; and description of the claimant's work.

The SOAF should exclude information that is inappropriate or prejudicial. The FECA Procedure Manual 2-0809-7 lists the following to be excluded: evidence, justifications for conclusions reached, medical opinions, payment of OWCP compensation, issues for determination, definitions of terms, discussion of legal issues, and appeals and administrative actions.

ECAB consistently has held that when a district medical advisor, SECOP or IME renders a medical opinion based on a SOAF "which is incomplete, inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously

diminished or negated altogether."²

In one case, for example, ECAB determined that the SECOP physician had arrived at an opinion outside the framework of the SOAF when he determined that the claimant had not, in fact, experienced the condition listed as accepted in the SOAF. Because of this, ECAB concluded that OWCP did not meet its burden of proof that the claimant no longer had employment-related residuals of her accepted conditions.³

Physicians in OWCP-directed exams also improperly arrive at opinions outside the framework of the SOAF when they make extra medical judgments about the claim, either by introducing new non-medical facts about the case or by engaging in an analysis of the legal issues of the case.⁴

Other common errors include a claims examiner's failure to list all of the accepted conditions, or to provide a complete medical history in the SOAF.⁵ The SOAF may also erroneously contain inaccurate or prejudicial information.⁶ For example, it would be improper for the claims examiner to put unsubstantiated allegations made by the employing agency into the SOAF. According to the FECA Procedure Manual, "histories of appeals, remands, and administrative actions of OWCP, such as requests for investigations, do not help to resolve medical issues and may actually prejudice the outcome of a claim."⁷

In cases where the medical opinion from the OWCP-directed exam undercuts the viability of the claim, claimants and their representative should review the SOAF carefully to make sure that it includes all the required elements and does not contain items that should be excluded. Claimants often can successfully appeal an adverse OWCP decision if that decision relies on a medical opinion based on an erroneous SOAF or a medical opinion made outside the framework of the SOAF.

In next month's column, we will conclude our examination of SECOPs and IMEs by discussing the questions that claims examiners prepare for physicians in OWCP-directed exams. ✉

1. SOAFs may also be provided to attending physicians, district medical advisors (FECA PM 2-0809-1), SOAFs and are also required in all psychological/emotional stress claims prior to adjudicating the claim (FECA PM 2-0809-2(d)(3)).
2. Walker, Docket #00-0215 (2001)
3. C.D., Docket # 08-1266 (2009)
4. McNeal, Docket #01-2163 (2002)
5. C.H., Docket #10-0935 (2011)
6. Anderson, Docket #98-0726 (2000)
7. FECA PM 2-0809-7(h)