

# SECOPs and IMEs, Part I

**M**any decisions from the Employees' Compensation Appeals Board (ECAB) contain the following written observation: "It is well established that proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of evidence to see that justice is done."

There are times, however, in many OWCP claims where the process seems anything but non-adversarial to the injured worker. Nowhere is this truer than when a claimant has to deal with a Second Opinion Examination (SECOP) or an Impartial Medical Examination (IME). While SECOPs or IMEs may be valuable in developing the medical evidence to support or expand a claim, they can also be a prelude to the termination of medical benefits or compensation.

This two-part article will explain what SECOPs and IMEs are and how claimants and their representatives should approach them. It will also look at recent ECAB decisions and orders that clarify and reinforce the strict neutrality of the IME.

**The FECA grants OWCP the authority to order an examination of an injured employee as frequently and at the times and places as may be reasonably required.<sup>1</sup>** SECOPs may occur whenever OWCP determines that the case record contains insufficient medical evidence to answer questions that arise during the life of the claim.

In the early stages of the claim, there may be questions concerning the causal relationship of the employee's work environment to the diagnosed condition. After the claim is approved, OWCP may require a SECOP to resolve an issue regarding the course of treatment: Should physical therapy, gym membership or surgery be approved? OWCP may also use a SECOP to clarify work restrictions or to determine the extent of an injured worker's permanent impairment for a schedule award.


An injured employee cannot opt out of a SECOP. A refusal to participate in the SECOP could result in suspension of compensation unless the employee establishes good cause for their failure to attend.<sup>2</sup> The employee also has certain rights associated with SECOPs. They may have a qualified physician of their choice present at the examination (at the employee's expense). OWCP will also reimburse the employee all reasonable expenses associated with the examination, including lost wages and transportation costs.

**OWCP has great flexibility in selecting physicians to conduct SECOPs.** When OWCP selects a physician to perform an IME, it is required to follow a strict rotation to ensure the impartiality of the examination. It has no such requirement when selecting a physician for a SECOP. OWCP generally selects a physician from a medical referral group that it has contracted with to provide second opinion medical referrals.<sup>3</sup>

Problems may arise for claimants when a SECOP disagrees with or supplants an attending physician's opinion. How OWCP weighs the SECOP against the attending physician's opinion depends on several factors. OWCP might grant greater weight to the opinion of the SECOP physician if they are a board-certified specialist in the appropriate field and the attending physician is a general practitioner. If both physicians are board-certified, OWCP would give greater weight to the opinion that is based on a more comprehensive examination or to the opinion that is unequivocal.

Because of this, it is crucial that claimants' attending physicians conduct thorough examinations and document objective clinical findings that support their opinions. In cases where there may be a conflict over whether work factors caused the diagnosed condition, they should also provide a well-rationalized opinion that explains the physiological mechanism or process by which work factors caused the injury.

Such thorough medical development is especially important in cases where doctors may hold divergent views. For example, the fact that degenerative disc disease can be permanently aggravated or accelerated by factors at work may seem obvious both to letter carriers who suffer from it and to their attending physicians. There are, however, physicians who see degenerative disc disease as part of growing older and view any exacerbation of the condition as temporary at best. It is vital in such cases that the medical development be done from the outset by the attending physician rather than leaving it in the hands of a SECOP physician who has less understanding of the injured worker's medical history and condition.

**If OWCP determines that the SECOP and the opinion of the attending physician have equal weight, it will decide that a conflict exists that will require an IME or referee opinion to resolve.** This column in March will discuss further aspects of SECOPs and IMEs. 

1. 5 USC 8123a

2. 5 USC 8123d

3. FECA Procedure Manual Part 3-0500.3.b.2