

# Decisions, decisions, decisions Part 2: An overview of the appeals process

**L**ast month, this column discussed formal decisions. The decision should contain findings of fact and a statement of reasons that explain why the decision was made. The decision also outlines the claimant's appeal rights that may include the following options:

- 1) Oral hearing before or review of the written record by an OWCP hearing representative.** The request must be made within 30 days of an initial OWCP decision.
- 2) Reconsideration by OWCP based on submission of new evidence.** The request must be made within one year of the latest decision.
- 3) Appeal to the Employees' Compensation Appeals Board.** The request must be made within 180 days of the latest OWCP decision.

For each option, there are time limitations, specific instructions on how to file the appeal, and other restrictions that may apply. Not all options are available for all decisions. A claimant only can request one form of appeal at a time. Neither OWCP nor ECAB decisions are appealable to the courts.<sup>1</sup>

**Sometimes claimants mistakenly** treat the OWCP appeals process like the grievance-arbitration procedure and mechanically move an appeal of an adverse decision from one level of appeal to the next—often in the order listed above. Other times, they think they can cut through red tape by appealing an initial adverse decision directly to ECAB. And sometimes, after multiple appeals and adverse decisions at hearings and review and reconsideration, they throw in the towel and appeal to ECAB out of desperation.

It is useful to view the various avenues of appeal based on what a claimant can tactically accomplish in each avenue rather than as parts of a hierarchical structure.<sup>2</sup> The decision to appeal an adverse decision should always be a strategic one, and the avenue of appeal should be carefully determined by the nature of the adverse decision and by the evidence or lack of evidence in the file.

Choosing an appeal route without a clear objective can delay, complicate or even fatally end a claim.

For example, ECAB will not consider new evidence in deciding the appeal of an adverse decision. Claimants who appeal a decision to ECAB for a claim that requires additional evidence not only will complicate their claim with an adverse decision from ECAB, but they will also delay any acceptance of their claim by up to a year or more. Claimants who appeal a non-merit decision to ECAB without a clear objective for doing so risk exhausting their avenues of appeal and so dooming their claim.<sup>3</sup>

**In the coming months, this column will explore the various** avenues of appeal to help claimants and their representatives understand and choose the appropriate appeal route based on the specific facts of their case and based on the nature of the adverse decision they are appealing. It also will outline the procedures required by each avenue of appeal.

Claimants should remember that even with the information provided by these columns, they should always consult with someone who has expertise and experience in dealing with OWCP—a branch specialist or their national business agent's office—before selecting an appeal route. Because an appeal to

Hearings and Review must be made within 30 days of the formal decision, that consultation should take place immediately upon receipt of the decision. ✉

## Appeal rights:

- ◆ Hearing
  - Oral
  - Review of the written record
- ◆ Reconsideration
- ◆ ECAB

**1.** A narrow exception to this is an appeal based on constitutional grounds. Successful appeals on constitutional grounds are extremely rare. In fact, this writer only knows of one such case: *Kendall v. Brock* (1987), which created the requirement for OWCP to grant due process to a claimant before issuing a disallowance.

**2.** The hierarchy does exist: ECAB is the highest authority in workers' compensation claims and is an appellate body in the Department of Labor separate and apart from OWCP.

**3.** Many claimants and even some representatives don't understand the difference between merit and non-merit decisions. Failing to grasp the implications of a non-merit decision can have fatal consequences for the outcome of a claim. A future column in this series will explain these implications and explore strategies for responding to a non-merit decision.