

Decisions, decisions, decisions

Injured letter carriers during the course of their injury or occupational disease can receive a bewildering variety of correspondence from OWCP. Sometimes it involves what OWCP calls “substantive actions” that actually or potentially affect the level of benefits that OWCP pays. OWCP calls negative decisions regarding benefits “disallowances.”

Disallowances can include: an initial denial of the claim; termination of benefits in an existing claim based on medical recovery or rejecting suitable work; wage-earning capacity determinations used to reduce compensation benefits; rejection or reduction of a requested schedule award; rescission of benefits; forfeiture of benefits for falsely reporting other employment; and suspension of benefits for failure to attend OWCP-directed medical exams, failure to participate in vocational rehabilitation or failure to submit a report of other employment.¹

Disallowances also may involve specific requests from claimants or their attending physician. Claimants may seek to have OWCP reimburse travel expenses, approve surgery or prescription medicines, or authorize physical therapy, medical equipment or health club membership. They also may seek to expand their claim to include a consequential injury, a more serious actual condition or the exacerbation of a pre-existing condition.

In general, when OWCP disallows benefits under the FECA, it must issue a formal decision. The formal decision containing the disallowance must clearly define the specific benefits that are being denied and the reason for that denial. Claimants can identify a formal decision because it has appeal rights attached to it and contains a note that if the claimant disagrees with the decision he or she may pursue the avenues of appeal outlined in the decision.

OWCP also must grant due process to the claimant before issuing a disallowance.² The claims examiner must adequately develop the claim and, where necessary, advise the claimant of his or her burden of proof in establishing entitlement to benefits including the specific evidence the claimant would need to overcome the disallowance. Due process also involves giving the claimant a time frame to respond to the proposed disallowance.

While OWCP usually must issue formal decisions when disallowing benefits, in cases where a claimant requests a specific benefit in connection with his or her accepted claim, the *FECA Procedure Manual* allows the claims examiner to simply write a letter to the claimant explain-

ing why the benefit cannot be granted.³ Such a letter is not a formal decision and does not grant the claimant appeal rights. Sometimes OWCP even appears to ignore entirely a claimant’s request for a specific benefit. There are cases where requests for surgery or the expansion of the claim to include a consequential injury have gone unanswered for years.

In such situations, frustrated injured letter carriers should request that OWCP issue a formal decision regarding the requested benefit. The same section of the *FECA Procedure Manual* that allows claims examiners to issue a letter disallowing requested benefits without issuing a formal decision also states that “a formal decision should be issued upon any request by the claimant for such a decision.” The formal decision is important because it grants appeal rights that the claimant can pursue to have his or her request for a specific benefit acted upon. Without appeal rights, the claimant is stuck in limbo.

Claimants should make their request for a formal decision in writing. The request should document all prior requests for the specific benefit. The request also should include sufficient medical evidence and other evidence to support the requested benefit. For example, a request for physical therapy should include the attending physician’s opinion of the anticipated or actual effects of the regimen for the accepted work-related condition, the treatment goals sought or attained, and the frequency of the attending physician’s examinations to determine the effectiveness or ongoing need for the program. Medical evidence is even more important when a claimant requests a formal decision to expand a claim to include conditions beyond the accepted condition. Such a request requires a detailed medical diagnosis based on objective clinical findings and a detailed medical rationale that discusses the causal and pathological relationship between work factors, the accepted condition and the claimed expanded condition.⁴

Next month, this column will explore the implications that different types of formal decisions have for selecting the proper route of appeal. ☒

1. FECA PM 2 1400; disallowances are discussed in detail in the November, 2007 Compensation Department column in *The Postal Record* (all columns from 1998-present are available online at the NALC website).

2. FECA PM 2 1400-2-b.

3. FECA PM 2 1400-2-a(3).

4. Expanding such claims was discussed in detail in this column in October, November and December 2011.