

## SECOPs and IMEs, Part II

**T**his column continues the discussion of Second Opinion Examinations (SECOPs) and Impartial Medical Examinations (IMEs) that began in January's Compensation column.

As discussed in January, OWCP may select a third physician to conduct an IME when the medical report of the injured worker's attending physician and the medical report of either a SECOP or an OWCP medical adviser have equal weight and rationale but reach opposing conclusions. This is also called a referee examination. The selected physician should be qualified in the appropriate specialty and have no prior connection to the case. If the opinion of the referee physician is sufficiently well rationalized and based on a proper factual background, OWCP must give it special weight.

Once OWCP has scheduled an IME, the claimant or their claimant's representative should make a written request for a copy of the Statement of Accepted Facts (SOAF) and the questions that OWCP has prepared for the referee physician to answer. The SOAF and questions define and limit the scope of the IME. Because of this, claimants and their representatives should scrutinize them carefully for accuracy. A future compensation column will discuss in detail SOAFs and the prepared questions.

Given the special weight accorded the IME, the physician whom OWCP selects to serve as a referee should be wholly free to make an impartial and independent medical evaluation. To accomplish this, OWCP has specific procedures for the selection of the specialist. They are designed to provide safeguards against the appearance that the selected specialist's opinion was biased or prejudiced or that preferential treatment exists between the Office and the specialist.<sup>1</sup> These procedures require OWCP to select referee specialists on a strict rotating basis.<sup>2</sup>

In addition, the Employees' Compensation Appeals Board (ECAB) has placed great importance on the appearance as well as the fact of impartiality. The selected referee physician may carry the special weight accorded to an impartial specialist only if OWCP has scrupulously followed the selection procedures that are in place to ensure impartiality.<sup>3</sup> ECAB has held that the Office has an affirmative obligation to verify that it has selected the referee specialist in a fair and unbiased manner by documenting that it properly followed its selection procedures. ECAB has recently set aside decisions where OWCP did not adequately document how it selected the referee physicians for the IMEs.<sup>4</sup>

As was the case with the SECOPs discussed in January's column, an injured employee cannot opt out of an IME. A refusal to participate in the IME could result in the suspension of compensation unless the employee establishes good cause for his or her failure to attend.<sup>5</sup> The employee also has certain rights associated with the IME. Unlike the SECOP, the claimant does not have a right to have his or her physician present for the IME. The claimant, however, can participate in the selection of the impartial medical examiner under certain circumstances:

- When the claimant specifically requests to participate and provides a valid reason;
- When the claimant has a valid objection to the physician selected by OWCP to conduct the IME.

The *FECA Procedure Manual* lists some possible valid reasons for participating in or objecting to the selection process,<sup>6</sup> including:

- Documented bias by the selected physician;
- Documented unprofessional behavior by the selected physician;
- A claimant with a medically documented inability to travel to the arranged appointment when an appropriate specialist may be located closer.

In a recent case from Pennsylvania, ECAB set aside a decision based on an IME because the claimant had documented bias on the part of the selected referee physician. A state workers' compensation judge had determined that the same physician in a state compensation case had been "preposterous throughout, offensive at times, ill willed and entirely not credible."<sup>7</sup>

If OWCP finds that the claimant's reason to participate in the selection process is acceptable, it will prepare a list of three available specialists, including a candidate from a minority group if indicated, and ask the claimant to choose one. This is the extent to which OWCP allows the claimant to participate in the process. ☒

1. *FECA Procedure Manual* 3-0500
2. Raymond J. Brown, 52 ECAB 192 (2001); R.V. Docket No. 11-250 & 11-251 (2011)
3. C.P. Docket No. 10-1247 (2011); J.D., Docket No. 10-1308 (2011)
4. M.A., Docket No. 07-1344 (2008); S.A., Docket No. 11-53 (2011); H.W., Docket No. 10-404 (2011)
5. 5 USC 8123d
6. FECA PM 3-0500.4f. The Procedure Manual does not contain an exhaustive list.
7. J.S., Docket No. 10-2198 (2011)