

SECOPs and IMEs, Part IV: Questions to be resolved

Whenever OWCP sends a claimant to a Second Opinion Exam (SECOP) or an Impartial Medical Examination (IME), it prepares a list of questions to be answered by the selected physician within the framework of the Statement of Accepted Facts (SOAF). After the exam, the claimant or his or her representative should request in writing a copy of the questions, the SOAF, and the forthcoming medical report.

The questions can cover a range of issues: the history of the injury, the diagnosis, prognosis, clinical findings, the causal relationship of work factors with the injury, the nature and extent of disability, the status of the claimant's recovery, the specifics of the treatment plan, projected date of return to work, reasons for the length of disability, recommendations for work restrictions, the appropriateness of medical care, the possibility of vocational rehabilitation, and in cases involving pre-existing conditions, whether or not the work-related worsening is temporary or permanent.

The questions addressed to the referee physician in an IME also must specifically focus on resolving conflicts of medical opinion between the attending physician and OWCP-appointed physicians such as a SECOP physician or the OWCP District Medical Advisor.

Because these questions guide and direct the SECOP or IME physician in his or her exam, they should be scrutinized for accuracy and appropriateness.

The questions should focus on developing the medical facts or resolving the medical issues of the claim. It is never appropriate for OWCP to pose adjudicatory questions in a SECOP or IME.¹ Examples of improper adjudicatory questions include asking a physician whether or not a claim or condition should be accepted; how much weight should be given to specific medical evidence; whether treatment, equipment or compensation should be approved; or stating in the question the consequences a particular medical opinion would have for the claim. It is the responsibility of OWCP, not the selected physician, to decide these adjudicatory questions.

It is also inappropriate for OWCP to ask leading questions of the physician selected for an OWCP-directed exam. In the case of an IME, the FECA Procedural Manual even explicitly prohibits the use of leading questions.² ECAB has defined a leading question as one that suggests or implies an answer to the question posed.³

Partial or inaccurate information may cause a question

to be leading. In a case involving a letter carrier who was seeking to have ankle surgery approved for her accepted claim, OWCP posed the following question to both the SECOP physician and the IME specialist: "Is reconstructive surgery appropriate, given a negative X-ray report of the right ankle on May 24, 2004, and a normal MRI [scan] on August 31, 2004?"

In its analysis of the case, ECAB determined that OWCP had asked an improper question because the question only contained medical evidence that did not support the need for surgery. Since the question suggested a "no" answer, ECAB determined that it was improperly leading and, based on that determination, excluded the medical reports of both the SECOP the IME physicians.⁴

Improper adjudicatory and prejudicial information in the questions can also create leading questions that suggest the response sought by the claims examiner. In a Department of Defense case, the claims examiner framed questions to the SECOP physician this way:

Considering [appellant's] complicated prework-related history of depression, her complicated physical ailments, the fact that her work exposure is from almost a decade ago (an exposure to working overtime—not exactly a life-altering traumatic event), and her test results indicating exaggeration of symptoms, please rationalize your opinion on remaining work-related residuals as opposed to the possibility of [appellant] being disingenuous in order to avoid having her compensation benefits being terminated.

ECAB found that OWCP's phrasing of the above question unmistakably suggested the desired response and compromised the neutrality of the medical opinion. Because of this, ECAB excluded the SECOP medical report.⁵

In cases where OWCP denies a claim for benefits because of the medical opinion from the OWCP-directed exam, claimants and their representatives should review the questions OWCP prepared for the selected physician to make sure that they do not contain inappropriate prejudicial or adjudicatory information or are inappropriately leading. Claimants often can successfully appeal an adverse OWCP decision if it relies on a medical report containing inappropriate questions. ☒

1. Carlton L. Owens 36 ECAB 608 (1985)

2. FECA PM 2-0800-7(e)(3)

3. Carl D. Johnson 46 ECAB 804 (1995)

4. Parde, Docket# 06-318 (2006)

5. L.E. , Docket# 10-378 (2010)