

Decisions, decisions, decisions, Part 11: The ECAB appeals process



**Kevin
Card**

After a brief hiatus, the NALC Compensation Department is resuming our discussion of the appeals process. In previous Compensation Department articles, we have covered both hearings and review, and the reconsideration process. Over the next two months, we will look at the Employees' Compensation Appeals Board (ECAB) appeal process in depth.

Injured workers can mistakenly view the OWCP appeals process as hierarchical and appeal negative decisions in order, from hearings and review to reconsideration to ECAB. While this is how OWCP appeals are presented in the appeals notice attached to decision letters, there is no requirement to follow this precise order. Every appeal should be looked at as a strategic move toward gaining claim acceptance.

ECAB appeals have specific constraints that require careful consideration prior to filing an appeal.

Of primary consideration is the fact that ECAB will not consider new evidence. Therefore, an appeal to ECAB should contain arguments specific to the reason for the denial or disallowance. If new evidence is needed to gain claim acceptance, ECAB is not the appropriate venue of appeal.

An appeal to ECAB is appropriate when three factors are present:

1. When there is sufficient evidence already in the file for claim acceptance,
2. You can identify specific regulations or procedures that were violated by OWCP, and
3. You have no hope that OWCP can be convinced at reconsideration.

In addition, an appeal to ECAB is appropriate when another set of factors is present:

1. When OWCP has issued a non-merit decision,
2. When the non-merit decision is incorrect in that it should have been on the merits, and
3. More than 180 days have elapsed since the most recent merit decision.

In such a case, the file might not be sufficient for claim acceptance, but appeal to ECAB can result in keeping the claim live via a remand to issue a merit decision.

NALC members contemplating an ECAB appeal should request a complete copy of their claim file from OWCP and contact their national business agent's office or the NALC Compensation Department. An expert review of the entire case file by an experienced OWCP specialist should be conducted prior to filing an ECAB appeal.

The ECAB is an appellate body in the Department of Labor separate and apart from OWCP. Decisions are issued by a three-member panel—each member appointed by the Secretary of Labor.

ECAB appeals must be filed within 180 days from the date of issuance of a decision from OWCP.

Only final decisions of OWCP may be appealed to the ECAB. Decisions that are not appealable to the ECAB include: decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers.

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues that directly relate to the issue or issues on appeal. OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues that arise after the appeal as a result of ongoing administration of the case.

Claimants may make the mistake of appealing to more than one of these at the same time: ECAB, reconsideration, or hearings and review. Such appeals will be docketed by ECAB and must await an ECAB decision before further appeals will be considered.

The easiest way to appeal to ECAB is to use Form AB-1, available on the Workers' Compensation page at nalc.org.

If the AB-1 is not used, the appeal must include:

- Date of appeal.
- Full name, address and telephone number of the appellant. In addition, the appellant must provide a signed authorization identifying the full name, address and telephone number of his or her representative, if applicable.
- Employing establishment, and the date, description and place of injury.
- Date and case file number assigned by OWCP concerning the decision being appealed to the Board.
- A statement explaining appellant's disagreement with OWCP's decision and stating the factual and/or legal argument in favor of the appeal.
- Signature—an appellant must sign the notice of appeal. This is important; an appeal absent the signature of the appellant is considered incomplete.

After receiving a request for an appeal, the ECAB will send a letter to the appellant listing appeal docket number.

A request for oral argument must be submitted in writing to the clerk. The application must specify the issues to be argued and provide a statement supporting the need for oral argument. The request must be made no later than 60 days after the filing of an appeal. Oral hearings are conducted in Washington, DC. The claimant can have only one representative at the hearing.

Next month we will discuss the ECAB decision-making process and how researching ECAB appeals can guide your arguments.