

Decisions, decisions, decisions, Part 12—concluded



**Kevin
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This column will conclude our series on the OWCP appeal process by wrapping up our discussion on appeals to the Employees Compensation Appeals Board (ECAB). Every appeal of an OWCP decision should be strategic in nature, none more so than an ECAB appeal. As we discussed in last month's column, the ECAB will consider only evidence that was in the case record at the time of the OWCP decision being appealed. In cases where new evidence is needed to get the claim accepted, appealing to ECAB is the wrong venue.

Claimants must be mindful that ECAB generally defers to prior decisions by OWCP on the medical evidence in the case file. Claimants with cases in need of further medical evidence should get new medical evidence and file for reconsideration, providing the decision being appealed was a merit decision.

If the decision being appealed is based on a lack of specific information needed for claim acceptance, an appeal to ECAB would be appropriate only if valid procedural arguments can be made to keep the claim alive on the merits.

Prior to filing the appeal, claimants should write to OWCP and request a copy of their claim file. A thorough review of the claim file by an experienced workers' compensation specialist at the branch or national business agent's office is necessary to aid in identifying the evidence and arguments relevant to the appeal.

Claimants have 180 days from the date of the adverse decision to appeal to ECAB. Requesting the claim file, reviewing the file and then formulating the arguments for an appeal is a time-consuming process. Claimants should never wait until the last minute to prepare to make an ECAB appeal.

There is no requirement that a written pleading be filed. However, OWCP case files can be large and contain many conflicting documents. A written pleading that references specific evidence and arguments is desirable in making your case to the board. Any pleading should be submitted within 60 days of the filing of an appeal.

Upon receipt of any pleading, by either the claimant or the director of OWCP, the claimant and the director will have the opportunity to submit a response. The clerk of the board will distribute copies of any pleading received by the clerk to ensure that the claimant, his or her representative and the director receive all pleadings.

Claimants may make a motion to the board to take specific action in a pending appeal. Motions include, but are not limited to, motions to dismiss, affirm the decision, remand, request a substitution, request an extension of time, or other such matters as may be brought before the board.

Motions may be filed by the claimant, the claimant's representative and the director. The motion must be in writing, contain the docket number, state the relief requested and the basis for the relief requested, and be filed with the clerk. Any motion received will be sent by the clerk to ensure that the claimant, his or her representative and the director receive all motions.

The clerk will issue directions specifying the timing of any responses and replies. The board may also act on its own to issue direction in pending appeals, stating the basis for its determination.

All filings with the board, including any notice of appeal, pleading or motion shall include an original and two legible copies.

A decision of the board will contain a written opinion setting forth the reasons for the action taken and an appropriate order. The decision is based on the case record, all pleadings and any oral argument. The decision may consist of an affirmance, reversal or remand for further development of the evidence, or other appropriate action.

The decisions and orders of the board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the board. However, merit decisions by the ECAB come with the right to request reconsideration by the district office provided the requirements of 20 CFR 10.606(b) are met. Such an appeal must set forth arguments and contain evidence that either:

1. Shows that OWCP erroneously applied or interpreted a specific point of law
2. Advances a relevant legal argument not previously considered by OWCP, or
3. Constitutes relevant and pertinent new evidence previously considered by OWCP.

The entire OWCP appeals process, from hearings and review to ECAB, can be avoided if claimants take responsibility early in the development and management of their claim. FECA places the burden of proof in every OWCP claim on the claimant.

As letter carriers, we take pride in delivering the right mail to the right address. We should take equal pride in the way we handle our OWCP claims. Just like delivering our routes, it's all up to us.