‘Appellant did not respond’

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The Employees’ Compensation Appeals Board (ECAB) publishes its monthly decisions on the Department of Labor’s website. ECAB is somewhat like a Supreme Court for federal injury appeals. Every ECAB decision has the same format, with subsections explaining the issues in the case, the factual history, the legal precedents relevant to the case, an analysis of the facts and a conclusion.

In the course of representing injured letter carriers, we regularly review ECAB decisions to find how the board has ruled on issues relevant to the cases we are working on. You can learn a lot by reading ECAB decisions. You learn about the claimants, the agencies they work for, the doctors involved in the case and how ECAB applies federal regulations to the issue at hand.

One of the common claimant errors you find in an ECAB decision is where a claims examiner sent a letter requesting additional factual information and the claimant did not respond. When there was no response, the board writes: “Appellant did not respond.” Not responding to a claims examiner’s request often leads to claim denial, and the board generally affirms the denial.

The responsibility of the Office of Workers’ Compensation Programs (OWCP) examiners in adjudicating a new claim is to review the facts presented and determine whether there is enough to accept the claim. A claims examiner will look at the employee’s statement, the medical evidence submitted and any challenges raised by the employing agency. If the evidence meets OWCP’s requirements, the claim will be accepted.

If the medical evidence is insufficient, a claims examiner will send a letter to the injured worker requesting more medical documentation. The letter affords the injured worker 30 days to provide the medical documentation. OWCP refers to these as “30-day letters.”

The introduction to the 30-day letter normally identifies the date the claim was filed, where the employee works and a brief description of the injury. The letter also will list the evidence received in support of the claim and whether or not the claim was challenged by the Postal Service.

The 30-day letter then lists the following:

> In order for a claim to be accepted under the Federal Employees’ Compensation Act (FECA), the claim must meet 5 basic elements. The claim must:
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> (1) Be Timely Filed.
> (2) Be made by a Federal Civil Employee.
> (3) Establish Fact of Injury, which has both a factual and medical component. Factually, the injury, accident or employment factor alleged must have actually occurred. Medically, a medical condition must be diagnosed in connection with the injury or event.
> (4) Establish Performance of Duty. The injury and/or medical condition must have arisen during the course of employment and within the scope of compensable work factors.
> (5) Establish Causal Relationship, which means the medical evidence establishes that the diagnosed condition is causally related to the injury or event.
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> The documentation received to date has been reviewed, and it is insufficient to support your claim.

Some injured letter carriers often read the beginning of this letter and incorrectly assume the claim has been denied. Other injured letter carriers never open the letter or open it after the 30 days have elapsed. Failing to respond to a 30-day letter normally leads to a claim being denied.

Injured workers must always be mindful that the responsibility in every facet of a claim is placed squarely on the shoulders of the injured worker. And while getting the proper medical evidence to prove a claim requires a thorough medical report from a doctor, the injured worker must make sure that the doctor knows what’s needed in a report and that the report gets submitted to OWCP.

The 30-day letter is designed to do just that: Inform the injured worker of the deficiencies in the evidence in the file and advise what is needed to accept the claim.

OWCP claims examiners adjudicate the list of the five basic elements in order. If the claimant fails to meet one of the elements, the claims examiner stops right there and does not determine whether the subsequent elements below have been met.

In many cases, claimants fail to prove Fact of Injury because the explanation of the injury is unclear or because a doctor has failed to provide a diagnosis. Both of these are easily fixed by providing a better description of the incident and/or work factors and requesting a new medical report containing a diagnosis.

However, the injured worker still has to prove the fourth and fifth basic elements; that the injury occurred in the Performance of Duty, as well as the causal relationship between the injury and work factors.

Medical reports such as chart notes rarely, if ever, provide the type of causal narrative needed to get a claim accepted. Some health maintenance organizations (HMOs) are notorious for providing only chart notes, which usually dooms a claim.

Injured workers should take a photocopy of the 30-day letter to his/her attending physician as soon as possible. You never want the ECAB writing “Appellant did not respond” to a 30-day letter in your case.