

# Meeting OWCP's burden of proof



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**T**hroughout the 100-plus years of the Federal Employees' Compensation Act (FECA), there has been one constant principle in play—the injured worker bears the burden of proving his or her case. Claims examiners working for the Office of Workers' Compensation Programs (OWCP) adjudicate claims under FECA and look for five key elements to fulfill the burden of proof.

**The first element is that the claim** must be timely. The claim must be filed within three years after the date of the injury. However, if the claim is

not filed within three years, the claim can be accepted if written notice of injury was given within 30 days and the employees' immediate superior had actual knowledge (including verbal notification) of the injury within 30 days after occurrence. It is always important to inform your immediate superior of an injury in writing, regardless of the severity.

The second element is whether the injured worker had status as a postal employee at the time of the injury. OWCP considers the supervisor's completion of a claim form as *prima facie* proof of the worker's status as an employee.

The third element is the fact of injury, which has two components: factual and medical. The factual component is satisfied by the employees' statement explaining how the injury occurred, including the date, time and location. The medical component requires a medical diagnosis from a doctor. Statements by nurse practitioners (NPs) and physician's assistants (PAs) will be accepted if co-signed by a doctor.

The fourth element is performance of duty. The performance of duty question normally is satisfied if there is no conflict in the evidence and if the facts establish that the employee was in a duty status, performing work as a letter carrier. OWCP recognizes that letter carriers are on postal property for only part of each working day and that many injuries occur away from the office. Accidents arising from travel to and from the route on the designated route of travel are considered as being in performance of duty.

The fifth and perhaps most important element to be satisfied is an explanation of the causal relationship between the employee's work factors and the diagnosed condition(s). OWCP finds that an injury or disease may be related to employment factors in any of four ways:

1. **Direct causation:** This type of relationship is demonstrated when the injury or factors of employment, through a natural and unbroken sequence, result in the condition claimed. A fractured arm sustained in a fall would be considered a direct result of the

fall. In occupational disease claims, the medical evidence needed to support direct causation requires more comprehensive medical documentation than in traumatic injury claims.

2. **Aggravation:** This causal relationship occurs if a pre-existing condition is worsened, either temporarily or permanently, by an injury arising in the course of employment. For example, a pre-existing shoulder condition may be aggravated by a letter carrier's reaching, lifting, pushing and pulling while sorting and carrying mail.

OWCP will decide, based on the medical evidence, whether aggravation is temporary or permanent. Temporary aggravation involves a limited period of medical treatment and/or disability, after which the employee returns to his or her previous baseline physical status. In other words, if your injury completely recovers after a period of rest and/or treatment, OWCP will find the aggravation temporary.

Permanent aggravation occurs when a condition will persist indefinitely because of the work-related injury or when a condition is materially worsened such that it will not revert to its previous level of severity.

3. **Acceleration:** A work-related injury or condition may speed the development of an underlying condition, and acceleration is said to occur when the ordinary course of the disease does not account for the speed with which a condition develops. For example, a claimant's knee arthritis may have been accelerated by activities such as continuous walking, stooping and squatting in his or her job. Acceleration of a condition carries the same force as an acceptance for direct causation.
4. **Precipitation:** This is an underlying condition that would not have become manifest but for exposure to work factors, and is said to have been precipitated by the work factors. For instance, a claimant may have latent asthma which was then manifested due to exposure to COVID-19 in the workplace. The claim would be accepted for precipitation, but the acceptance would be limited to the period of work-related asthma, and compensation for the condition would cease once the worker recovered.

**While the burden of proof falls on the injured worker,** lack of medical evidence on the causal relationship between a work injury and work factors sinks most claims. An injured worker needs to work closely with his or her doctor so that causal relationship is determined early in the claim.