

OWCP expands period for submitting evidence in initial claims to 60 days



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On Dec. 23, 2022, President Biden signed the Fiscal Year 2023 National Defense Authorization Act (NDAA) into law. Under Section 5305(c) of the Act, effective March 7, 2023, injured federal workers covered by the Office of Workers' Compensation Programs (OWCP) will now have 60 days to supply evidence in support of an initial claim. Specifically, the legislation directed the secretary of labor to 1) amend the Federal Employees' Compensation Act (FECA) regulations

at 20 CFR 10.121 to increase the minimum time to submit supporting documentation on an initial claim from 30 to 60 days, and 2) modify the FECA procedure manual to do the same. OWCP has explained the revised regulations and changes in *FECA Bulletin 23-03* that it issued on Jan. 9.

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In accordance with the NDAA legislation, on Jan. 6, the Department of Labor published a final rule in the Federal Register (to be effective on March 7, 2023) amending 20 CFR 10.121 to read:

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 60 days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

Note here that the 60-day period applies to cases where the claims examiner, after an initial review of the case, determines that the claim needs additional factual or medical evidence to be accepted. In such instances, the claims examiner will issue what OWCP calls a development letter.¹ The additional evidence sought by the claims examiner in the development letter will always be related to one or more

¹ Responding to the development letter is discussed in more detail in this column in the June 2022 *Postal Record*. It also should be pointed out here that claims examiners will simply accept a claim and not issue a development letter in cases where they determine, after their initial review of the file, that there is sufficient evidence to establish the claim.

of the five basic elements that every claimant has the burden of proof to establish for his or her claim to be accepted.²

The NALC views the new expanded time frame as beneficial for injured letter carriers who are in the initial stages of filing their claims. Historically, claims examiners were required to allow at least 30 days for a response to all initial development letters before denying a claim. Injured letter carriers often had trouble obtaining the required evidence within the 30-day limit. In particular, it was hard for injured workers to schedule appointments with their attending physicians to obtain the requested medical evidence within such a tight time constraint. And it only got worse during the COVID-19 pandemic. When claimants could not obtain the necessary evidence within the 30-day period allowed by the development letter, their claims were denied. Because fixing an initial denial through the appeals process can add months to the eventual acceptance of the claim, the expanded development period will allow more claims to be accepted during their initial adjudication.

While the expanded time frame will be beneficial for claimants overall, the NALC is concerned that in cases where the claimant has obtained and submitted the necessary evidence well before the 60-day period ends, claims examiners might not be aware of this fact and wait until after the 60-day period has ended to issue a decision. Because of this, it is prudent for claimants, once they have submitted all requested evidence, to reach out to their claims examiners to advise them that they have completed their response to the development letter and request prompt adjudication of their claim. They can do this both by phoning their claims examiner and also by uploading a brief note into ECOMP.

Finally, claimants should be aware that the expanded 60-day time frame applies only to the initial adjudication of a claim. In established claims that have been accepted, a 30-day time frame still applies to development letters issued for any number of adjudicatory issues for which OWCP may issue a formal decision: denials of requested wage-loss compensation, denials of schedule awards, denials of reimbursement, denials of requested medical procedures or durable medical equipment, etc. A 30-day time frame also still applies for claimants to respond to notices of proposed action in accepted claims, such as termination or reduction of benefits. And it applies for claimants to respond to proposed sanctions for such things as failing to attend OWCP-directed medical exams, refusing suitable work, failing to cooperate with vocational rehabilitation efforts, or failing to complete required forms, such as the OWCP 1032.

² The five basic elements are discussed in more detail in this column in the January 2022 *Postal Record*.