

Medical evidence and OWCP, Part 7

What the attending physician should understand in responding to medical reports from OWCP-directed exams



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Many decisions from the Employees' Compensation Appeals Board (ECAB) contain this written observation: "It is well established that proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of evidence to see that justice is done."

There are times, however, in many Office of Workers' Compensation Programs (OWCP) claims where the process seems anything but non-adversarial to the injured worker. Nowhere is this truer than when a claimant has to deal with a second opinion examination (SECOP).¹ While SECOPs may be valuable in developing the medical evidence to support or expand a claim, they can also be a prelude to the termination of medical benefits or compensation.

The Federal Employees' Compensation Act (FECA) at 5 USC 8123a grants OWCP the authority to order an examination of an injured employee as frequently and at the times and places as may be reasonably required. SECOPs may occur whenever OWCP determines that the case record contains insufficient medical evidence to answer questions that arise during the life of the claim.

In the early stages of the claim, there may be questions concerning the causal relationship of the employee's work environment to the diagnosed condition. After the claim is approved, OWCP may require a SECOP to resolve an issue regarding the course of treatment, such as should physical therapy, gym membership or surgery be approved? OWCP may also use a SECOP to clarify work restrictions or to determine the extent of an injured worker's permanent impairment for a schedule award.

An injured employee cannot opt out of a SECOP. A refusal to participate in the SECOP could result in suspension of compensation unless the employee establishes good cause for their failure to attend.²

OWCP has great flexibility in selecting physicians to conduct SECOPs. Per the *FECA Procedure Manual*³, SECOPs are generally conducted by a physician selected by a medical referral group that has contracted with OWCP to provide second opinion medical referrals.

While NALC has seen positive results come from SECOPs, the medical reports from SECOPs often challenge not only the findings and opinion of the attending physician, but also the injured worker's perception of the nature and extent of their injuries. It's an unfortunate fact that most medical referral groups such as those used by OWCP have a business model that relies on supplying physicians to corporations, insurance companies and attorney groups for the purpose of providing evidence for litigation and challenging claims. And the physicians they employ have experience in writing reports that will survive legal challenges.

Problems may arise for claimants when a SECOP disagrees with or supplants an attending physician's opinion. For example, the fact that degenerative disc disease can be permanently aggravated or accelerated by factors at work may seem obvious both to letter carriers who suffer from it and to their attending physicians. There are, however, physicians who see degenerative disc disease as part of growing older and view any exacerbation of the condition as temporary at best.

How OWCP weighs the SECOP's opinion against the attending physician's opinion depends on several factors. OWCP might grant greater weight to the opinion of the SECOP physician if they are a board-certified specialist in the appropriate field and the attending physician is a general practitioner. OWCP will also give greater weight to a medical report that contains a more complete medical history over one that does not (even if the medical history in the SECOP report was generated by the attending physician).

Other factors that OWCP may consider in weighing medical reports include the presence or absence of equivocal language in the report and the level of detail in any rationalized opinion that explains the physiological mechanism or process by which work factors caused or contributed to the injury.

While most SECOP physicians have training and experience in writing medical reports to withstand both legal and administrative scrutiny, attending physicians treating injured letter carriers rarely have such experience or training. Over the next few months, this column will examine how OWCP claims examiners read and weigh medical evidence with the goal of evening out the playing field by providing guidance to the attending physician on how to effectively respond to adverse SECOP reports.

Surely, it is in the interest of all parties that the medical development of a case, if possible, be left in the hands of the attending physician who has a deeper understanding of the injured worker's medical history, diagnosed conditions and work environment than the SECOP physician.

¹ For a full discussion on challenging SECOPs and referee exams (or impartial medical exams/IMEs) in the appeals process, see this column January through May 2012.

² 5 USC 8123d

³ *FECA Procedure Manual* Part 3-0500.3.b.2