

Consequential and intervening injuries



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When an employment injury contributes to a later injury, the subsequent injury is called a “consequential injury.” This kind of injury occurs because of weakness or impairment caused by a work-related injury. And it can affect the same part of the body as the original injury, or a different area altogether.

The Office of Workers' Compensation Programs (OWCP) develops and adjudicates consequential injury claims based on longstanding Employees' Compensation Appeals Board (ECAB) precedent. For example, in *Schaffer*, 39 ECAB p. 1222, the Board describes consequential injuries as follows (quoting Larson, Workmen's Compensation Law, §§ 13.00, 13.11):

The basic rule respecting consequential injuries, as expressed by Larson, is that ‘when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributed to claimant’s own intentional conduct.’ The subsequent injury ‘is compensable if it is the direct and natural result of a compensable primary injury.’

A consequential injury might be a completely new injury or an aggravation of an existing injury. In addition, the primary injury, and not some intervening factor, must have directly caused the new injury or aggravation of the existing injury. Consequential injuries can result from either a traumatic event or arise over time from repetitive activities.

FECA PM (Procedure Manual) 2-0805.7a gives this example of a traumatic consequential injury:

A claimant with an accepted knee injury may fall at home because the weakened knee buckled. This incident will constitute a consequential injury whether the affected part of the body is the knee or some other area, such as the back or arm.

It also gives this example of a consequential injury arising over time:

A claimant with an injured eye may compensate for loss of functioning by overuse of the other eye, which may result in a consequential injury.

Other consequential injuries that arise as a direct and natural consequence of a primary injury include injuries that result from medical treatment such as surgery or physical therapy for conditions accepted by OWCP in the primary claim or injuries that result from directed vocational rehabilitation services.

ECAB also has recognized post-traumatic stress disorder (PTSD) as a compensable consequential injury under

circumstances where a certain triggering event has been medically demonstrated to have caused a reawakening or exacerbation of PTSD symptoms.

The injured worker bears the burden of proof to establish a claim for a consequential injury. As part of this burden, they must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The injured worker should provide OWCP with copies of all medical records for the work-related condition from the date of discharge or date of last medical care through the present, including office visit notes, treatment notes, diagnostic test results, etc.

In addition, *FECA PM 2-0805.7a(2)* contains the following list of items for the attending physician to address in their rationalized opinion:

- (1) A description of the original mechanism of injury/work exposure and summary of the medical care received.
- (2) A description of the current symptoms.
- (3) Current objective findings upon examination.
- (4) Results of all current diagnostic studies.
- (5) Current diagnosis.
- (6) The physician’s opinion supported by a medical explanation as to the relationship between the accepted work-related condition(s) and the claimed consequential condition, if any.
- (7) If disability is claimed as result of the consequential condition, a description of the work duties that the claimant cannot perform and the objective medical findings that form the basis of renewed disability for work.
- (8) The recommended course of treatment.

OWCP makes a distinction between “consequential injuries” and what it calls “intervening injuries.” Intervening injuries occur outside the performance of duty to the same part of the body as the original injury. For an intervening injury to be accepted by OWCP, the claims examiner must determine that the effects of the original accepted injury contributed to intervening injury and resulting disability. According to *FECA PM 2-0805.7b*:

Unless the second injury breaks the chain of causation between the original injury and the disability claimed, the disability will be considered related to the original incident.

The *Procedure Manual* gives this example of an intervening injury:

If the claimant is recovering from rotator cuff surgery and slips on ice leaving the house and lands on the same shoulder and reinjures it, this would be considered an intervening injury. But since the claimant had not fully recovered from the approved shoulder surgery, the effects of the original shoulder injury and subsequent surgery would still be contributing to the disability,

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Injuries (continued)

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therefore the chain of causation was not completely broken.

Letter carriers claiming consequential injuries do so by filing a CA-2a form. While the NALC generally advises injured workers not to file CA-2a forms, consequential injuries are an exception to this advice. It also should be noted that CA-2a forms currently cannot be filed in ECOMP; hard-

copy forms must be submitted.

Finally, in cases where the injured worker has returned to work and new exposure to the work environment has contributed to either a new injury or a worsening of an existing injury, the injured worker should file either a CA-1 or CA-2 claiming a new injury even if there is a consequential component linking the new injury to an existing injury accepted by OWCP.

**Director of
Retired Members**

Disability retirement (continued)

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FERS disability annuitants under age 60 are deemed restored to earning capacity if earnings for any calendar year equal or exceed 80 percent of the current salary rate of the position they retired from. After age 60, there is no limit on earnings.

Cost-of-living adjustments are not payable for the first 12 months if under age 62 and the annuity was computed using 60 percent of the high-3 average salary. After the first 12 months, or after age 62, cost-of-living adjustments are payable.

Receipt of disability benefits from OPM and total or partial disability benefits from the Office of Workers' Compens-

sation Programs (OWCP) at the same time is considered a dual benefit and is prohibited. The annuitant can elect to receive whatever benefit is more advantageous. However, receiving an OWCP schedule award and OPM benefits at the same time is not prohibited.

Disability retirement can be complicated and can exacerbate a stressful time in life. Please reach out to the NALC Retirement Department if you have any questions. We can be reached by calling 800-424-5186 (toll free) Monday, Wednesday or Thursday, 10 a.m. to noon or 2 p.m. to 4 p.m. Eastern Time, or by calling the NALC Headquarters switchboard at 202-393-4695 Monday through Friday, 9 a.m. to 4:30 p.m. Eastern Time and asking for the Retirement Department.

When an active letter carrier dies...

- Notify the employee's immediate supervisor, postmaster and Human Resources Shared Service Center (HRSSC) at 877-477-3273. HRSSC will advise about any benefits payable, and how to apply for them. It will provide and render assistance in completing the application for death benefits under the employee's retirement system, as well as the claim for death benefits—Federal Employees' Group Life Insurance (FEGLI) and claim for unpaid compensation.
- Notify the Thrift Savings Plan (TSP) at 877-968-3778.
- Notify the letter carrier's NALC branch.
- If the employee was a veteran, notify Veterans Affairs at 800-827-1000.
- Call the Social Security Administration at 800-772-1213.
- Notify banks and other financial institutions.
- Notify insurance companies (life, health, home, automobile, etc.). If the employee had a policy with NALC's Mutual Benefit Association (MBA), call 202-638-4318 between 8 a.m.-3:30 p.m. EST, or write to MBA, 100 Indiana Ave. NW, Suite 510, Washington, DC 20001-2144.
- If the employee had health insurance through the NALC Health Benefit Plan, call 888-636-6252. If the employee had health insurance through a different Federal Employees Health Benefits (FEHB) plan, call the number on the back of the insurance card. Health insurance coverage for a surviving spouse and dependent children continues automatically if the employee had family coverage at the time of death and if a monthly survivor annuity is payable.
- Obtain a sufficient number of death certificates for your needs from the mortuary.