

FECA Transmittal 26-2: Making the claims process more difficult for injured letter carriers, Part 2



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This month's column continues the discussion that began last month of Federal Employees' Compensation Act (FECA) Transmittal 26-2¹ issued on April 24 that announced changes to the *FECA Procedure Manual*, including changes that will have an adverse effect on our injured members. Last month's column discussed the new requirement for mandatory second opinion (SECO) exams before the Office

of Workers' Compensation Programs (OWCP) will accept what it calls "extended occupational disease cases" involving long-term or permanent degenerative conditions. Let's continue our discussion of FECA Transmittal 26-2.

Chapter 2-0800, Initial Development of Claims, has been revised to eliminate the interim review in initial claims adjudication.

This change removes the prior requirement for a second, follow-up, review and related development letter to be sent in new adjudication cases.² On Dec. 23, 2022, President Biden signed the Fiscal Year 2023 National Defense Authorization Act (NDAA) into law; Section 5305(c) provided for an increase in the time period for FECA claimants to supply supporting documentation in new claims from 30 to 60 days. Specifically, the legislation directed the secretary of labor to 1) amend the 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.

The NALC viewed the expanded time frame overall as beneficial for injured letter carriers who were 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.³ Injured letter carriers often had trouble obtaining the required evidence within the 30-day limit. In particular, it was hard to schedule appointments to obtain the necessary medical evidence within such a tight time constraint. Because fixing an initial denial through the appeals process can add months to the eventual acceptance of a claim, the expanded development period allowed for more claims to be accepted during their initial adjudication.

Our one concern at the time, however, was that the expanded time frame might cause delays in OWCP accepting claims, especially straightforward traumatic injury cases that did not require elaborate development or medical evidence. The Department of Labor reassured us at the time that this would not be a problem since in addition to the required change, they would add a new procedural requirement that approximately halfway through the 60-day development period, the claims examiner would conduct an interim review of the evidence to determine if the case could be accepted, and if not, they would issue a second letter to the claimant explaining why.

Claimants will now only see the initial development letter at the beginning of the 60-day period. The interim review and letter have now been eliminated. According to the Transmittal, "this additional administrative requirement is being removed since it is beyond the scope of the statutory and regulatory language," being not specifically mandated by the 2023 NDAA. Given that OWCP's current staffing levels are at historic lows under the new administration, the eliminated interim review most likely represents fiscal triage.

That being said, the elimination of the interim review will have an adverse effect on injured letter carriers and will undoubtedly delay acceptance of many claims. 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 un-

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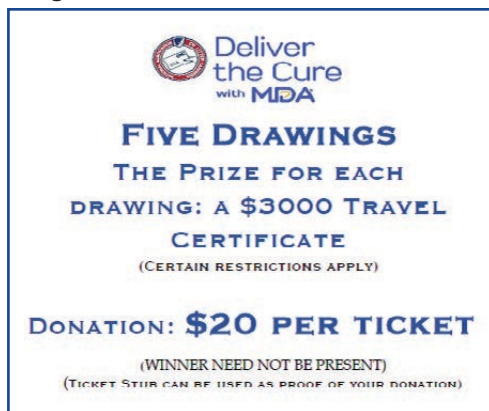
¹ FECA Transmittal 26-2 can be found at: dol.gov/agencies/owcp/FECA.

² See FECA Transmittal 23-02, March 7, 2023; see also this column in the April 2023 *Postal Record*.

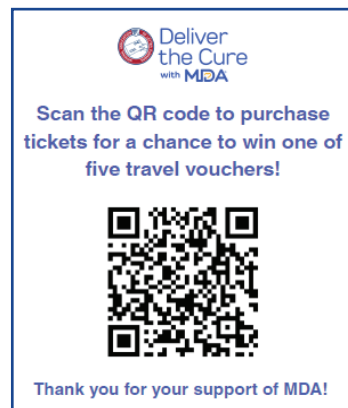
³ Responding to the development letter is discussed in more detail in this column in the June 2022 *Postal Record*. It also should be pointed out here that claims examiners will simply accept a claim and not issue a development letter in cases where they determine, after their initial review of the file, that there is sufficient evidence to establish the claim.

NALC Convention MDA raffle tickets

As NALC members know, the national convention is next month. NALC will sell raffle tickets for MDA at the national convention, but you can get them beforehand. The tickets are \$20 each and there will be five drawings.



Each winner will win a \$3,000 travel voucher. Here is the link for electronic sales: mda.donordrive.com/NALCConvention26, and the QR code is above right.



In addition, if you spend at least \$100 on raffle tickets, you will receive a clear stadium bag. Thank you in advance! See you at the convention.

Also, if there are any events you want NALC to promote or for MDA Coordinator Christina Vela Davidson to attend, send a letter or an email. Have questions or need assistance? Contact the MDA service team member at nalc@mdausa.org or 719-640-8625.

Staff Reports

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til 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 initial development letter and request prompt adjudication of their claim. They can do this both by calling their claims examiner and also by uploading a brief note into the Employees' Compensation Operations and Management Portal (better known as 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 actions 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.

Next month's column will continue the discussion of the changes to the *FECA Procedure Manual* that FECA Transmittal 26-2 has created.