

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



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On April 24, the Office of Workers' Compensation Programs (OWCP) issued Federal Employees' Compensation Act (FECA) Transmittal 26-2 (dol.gov/agencies/owcp/FECA/regs/compliance/DFEC-folio/FECATransmittals#FECAT2602) announcing changes to the *FECA Procedure Manual*. Many of these changes will have an adverse effect on our injured members. These changes not only roll back some of the recent positive changes OWCP has implemented, in some instances

they also go against long-standing Employees' Compensation Appeals Board (ECAB) precedent. Over the next few months, this column will explore the various changes imposed by the transmittal and how it adversely affects injured letter carriers. (This column will resume its ongoing discussion of schedule awards later this year.)

Dealing with injury claims and OWCP has always been frustrating for our injured members as they try to navigate through the bureaucratic requirements of OWCP in order to get their claims accepted and to get their medical treatment and lost wages covered. In recent years, however, OWCP has instituted a number of procedure and policy changes that have greatly benefited injured workers by making the program more accessible and transparent. All that has changed under the new administration. Beginning with FECA Transmittal 25-4 that rescinded both the newly released CA-9 form and OWCP's decision to allow impairment ratings under both the fifth and sixth editions of the *AMA Guides*, (see March *Postal Record*) the process has again become less friendly and more difficult to navigate.

Mandatory SECOPS

FECA Transmittal 26-2 has changed the *FECA Procedure Manual* to require the injured worker in most degenerative occupational disease cases to submit to a second opinion exam (SECOP) with a board-certified specialist before OWCP will accept or expand the case. This change is found in the *FECA Procedure Manual* at PM 2-0800.9(a)(3) and PM 2-0805.3(c). Here is the changed language from *FECA PM 2-0805.3(c)*:

(d) Claims for degenerative conditions require an opinion from a Board-certified specialist in orthopedic surgery or neurology prior to acceptance. This should generally be obtained through a second opinion examination regardless of the type of causal relationship alleged.

PM 2-0800.9(a)(3) provides the following definition of degenerative conditions:

(3) Degenerative Conditions. Degenerative orthopedic diseases, often referred to as degenerative joint disease or osteoarthritis, involve the gradual breakdown of cartilage and other tissues within joints, leading to pain, stiffness, and limited movement. Examples of claims for degenerative conditions include osteoarthritis, osteoporosis, degenerative disc disease (can be cervical, thoracic or lumbar), spondylosis, spinal stenosis and spondylolisthesis.

All of these degenerative conditions are incredibly common among older career letter carriers. This change alone will affect thousands of our members. The new requirement for mandatory SECOPs will turn many routine CA-2 cases into a trip up the Amazon. And it certainly dilutes the injured worker's right under the FECA to have a physician of their choice. (See 5 U.S.C. §8103; 20 CFR §10.300.)

The physicians usually selected by OWCP for SECOPs come from medical referral businesses that have been set up to service the claims community—insurance, corporate, government and legal organizations—with the goal of controlling costs and challenging claims. The *FECA Procedure Manual* actually encourages the office to contract with such medical referral groups for second opinions (see *FECA PM 3-0500.3.b.[2]*). Given the financial allegiance of these physicians who view the paying organization as their client, it's been our experience that most of them don't see themselves or function as advocates for the injured worker.

And while we do see favorable SECOPs, it's also been our experience that when second opinions involve a degenerative condition, such as arthritis, there is a marked tendency for the second opinion physician to attribute the condition entirely to the natural course of the injured workers pre-existing arthritis. To attribute the condition "entirely" to the natural course of the pre-existing condition is significant and can be fatal to a claim since FECA procedures require OWCP to accept a condition if work has been a contributing factor—even a small contributing factor. In more technical terms, OWCP does not apportion causality.

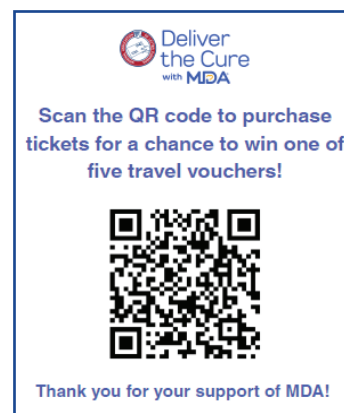
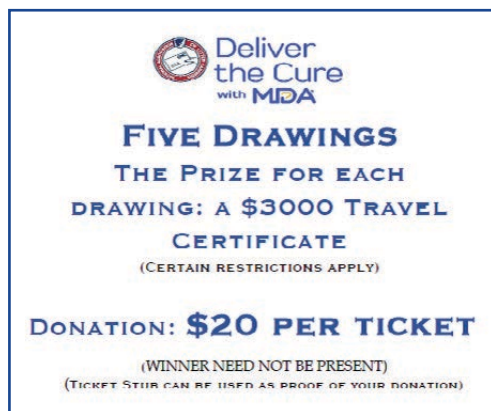
Problems may arise for claimants when a SECOP disagrees with or supplants an attending physician's opinion. How OWCP weighs the SECOP against the attending physician's opinion depends on several factors. OWCP might grant greater weight to the opinion of the SECOP physician if they are a board-certified specialist in the appropriate field and the attending physician is a general practitioner. If both physicians are board-certified, OWCP would give greater weight to the opinion that is based on a more comprehensive examination or to the opinion that is unequivocal. And after an unfavorable SECOP, injured workers who have always trusted the medical establishment may suddenly find themselves thrust into an adver-

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MDA raffle tickets

As NALC members know, the national convention is right around the corner. 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.

NALCConvention26, and the QR code is below. Thank you in advance! See you at the convention.



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

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@mداusa.org or 719-640-8625.

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serial process they are not equipped to deal with.

Because of the new mandatory requirement for SECOPs in cases involving degenerative conditions, it is in the interest of injured letter carriers filing such claims to seek out a board-certified orthopedic surgeon for their attending physician

right at the beginning of the claims process. (The April, May, June and July 2024 issues of *The Postal Record* discuss the medical evidence required to respond to adverse SECOPs.

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

UNI (continued)

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this will substantially increase Amazon's already large presence in the delivery market. In just 12 years, Amazon has built a massive delivery network that directly competes with the Postal Service, benefitting from a largely unregulated delivery market in the United States that allows it to cherry-pick where it delivers and to use employment structures that evade attempts at unionization of its delivery drivers. Amazon Supply Chain Services further threatens the Postal Service's already precarious financial position.

It is clear that reductions in universal service are becoming more appealing to post offices and governments

as a way to address financial crises, and this includes our own. Postmaster General Steiner said recently during a USPS Board of Governors meeting that the agency intends to consider pursuing legislative reform to "remove the mandates that ensure the Postal Service loses money... [like] days and levels of service, the ability to close unprofitable post offices."

UNI's worker demands call into question the message that the expense of universal service is the cause of financial crisis, or at least the sole cause. As this debate heats up in the United States, the country will need to consider what kind of Postal Service it wants. NALC, like UNI, can help shape this debate.