OUTLINE

- Federal Workers’ Compensation Programs
- The Basics
- Understand the critical elements of the medical narrative
- Review and identify medical information in a claim
- Case Management

History of FECA

- In 1908, President Theodore Roosevelt signed legislation to provide workers compensation for certain Federal employees in extra-hazardous jobs.
- The Federal Employees’ Compensation Act, or FECA, was enacted in 1908 and superseded the limited protection and coverage of the 1908 law.
- The FECA was first administered by the Employees’ Compensation Commission (ECC).
- In 1946, the ECC was transferred to the Federal Security Agency, the forerunner to the Department of Health, Education and Welfare, where it was known as the Bureau of Employees’ Compensation (BEC).
- First BEC pilot office was in San Francisco in 1952.
- In 1970, the BEC was combined with other bureaus and became part of a newly established Employee Standards Administration (ESA) with its present structure. In 1973, the Office of Workers’ Compensation Programs (OWCP) was established.
FECA Today

- On November 8, 2009, the Employment Standards Administration (ESA) was abolished and the four major program components of ESA - Office of Federal Contract Compliance Programs, Office of Labor Management Standards, Office of Workers' Compensation Programs and the Wage and Hour Division - became stand-alone programs reporting directly to the Secretary of Labor.

Benefits of the FECA

- The Federal Employee Compensation Act amended over the years
  - Medical benefits, with free choice of physician
  - Full pay for up 45 days after injury (COP)
  - Wage loss compensation
    - 66 2/3% for single workers
    - 75% for workers with dependents
    - Continues as long as evidence supports disability

Other FECA Benefits

- The Federal Employee Compensation Act amended over the years
  - Scheduled awards for permanent loss of function
  - Vocational rehabilitation costs
  - Loss of wage earning capacity
  - Death benefits
    - Wage compensation to eligible survivors
      - 50% for spouse and 15% for each surviving child, up to maximum of 75% of wage upon death
    - Funeral expenses
    - Transportation of remains
The Basics...of FECA

- Administered by Department of Labor (DOL), Division of Federal Employees' Compensation's (DFEC) Office of Workers' Compensation Programs (OWCP)
- Funded through agency chargebacks
- Remedial in nature (i.e., not punitive)
- Non-adversarial – an attorney is not required
- Sole remedy – a Federal employee or surviving dependent is not entitled to sue the US or recover damages for injury or death under any other

Claimant’s Responsibilities

- The claimant has the burden of establishing that the claimed condition is causally related to factors of Federal employment (see 20 CFR 10.100 and FECA PM 2-0805). DOL will help the claimant with guidance and assistance through the issuance of a development letter.

The Basics...Definitions

- Traumatic Injury
  - Wound or other condition of the body caused by external force, including stress or strain.
  - Caused by specific event or series of events or incidents within a single day or work shift.
- Occupational Disease
  - Condition produced over a period longer than one workday or shift (Ex: repetitive motion disorders, asbestosis).
The Basics...Definitions

- Aggravation
  - Occurs if a pre-existing condition is worsened
  - Temporary aggravation involves a limited period of medical treatment and/or disability
    (Ex: rotator cuff bursitis on an elderly car mechanic)
  - Permanent aggravation occurs when a condition will persist indefinitely
- Acceleration
  - An employment-related injury or illness may hasten the development of an underlying condition
    (Ex: elbow fracture in an older worker that rapidly leads to erosive osteoarthritis in that joint)
- Precipitation
  - A latent condition which would not have become manifest but for the employment
    (Ex: Shingles outbreak after exposure to anti-neoplastic drugs in the pharmacy)

Recurrences Not Your Basic Definition

- A recurrence of disability, as defined by OWCP is a work stoppage caused by:
  - A spontaneous return of symptoms or a previous injury or occupational disease without intervening cause;
  - As is noted by Larson in his workers compensation treatise, once the work-connected character of any injury, such as a back injury has been established, the subsequent progression of that condition remain compensable so long as the worsening is not shown to have been produced by an independent non-industrial cause and so long as is it clear that the real operative factor is the progression of the compensable injury.

Consequential Injury—What’s This?

- Consequential Injury, this kind of injury occurs because of weakness or impairment caused by a work-related injury, and it may affect the same part of the body as the original injury or a different area altogether.
- You need to determine the details of the second injury and try and obtain reasons its related to the initial injury.
- Try to obtain a medical report on the second injury which includes an opinion concerning the relationship between the two injuries.
Requirements for Claim Filing

- Each claim for compensation must meet certain requirements before it can be accepted – always addressed in order
  - Timely Filing of Claim
  - Federal Civilian Employee
  - Fact of Injury – factual (did it happen)
    - medical – need a diagnosis
  - Performance of Duty
  - Causal Relationship
- Claims should be reviewed in this order

1.5 of the 5 parts of a Claim are Medical

- Although we think of workers’ compensation as a medical process only 1.5 parts of the claim process are medical
  - Fact of Injury (medical) component, this is the second part of Fact of Injury (is there a medical diagnosis).
  - Causal Relationship – After addressing the first 4 parts of the what makes a claim compensable (is the diagnosed injury related to the employment)

What’s Needed in a Medical Report

- 20 CFR sec. 10.330 What are the requirements for medical reports? In all cases reported to OWCP a medical report from the attending physician is required. This report should include:
  - Dates of examination and treatment;
  - History given by the employee;
  - Physical findings;
  - Results of diagnostic tests;
  - Diagnosis;
  - Course of treatment;
  - A description of any other conditions found but not due to the claimed injury;
  - The treatment given or recommended for the claimed injury;
  - The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;
  - The extent of disability affecting the employee's ability to work due to the injury;
  - The prognosis for recovery; and
  - All other material findings.
Gathering the Medical Evidence from the Claimant

- Sec. 10.116 What additional evidence is needed in cases based on occupational disease? (a) The employee must submit the specific detailed information described on Form CA-2 and on any checklist provided by the employer. OWCP has developed these checklists to address particular occupational diseases.
- The medical report should also include the information specified on the checklist for the particular disease claimed. (b) The employer should submit the specific detailed information described on Form CA-2 and on any checklist pertaining to the claimed disease.

Medical Findings

- Findings: The scope of findings needed in a case will vary based on the type of medical problem and the complexity of the case. Only minimal findings need to be reported for a traumatic amputation of a finger, but the physician should be required to set forth a detailed account of the findings where the nature of injury, causal relationship to employment, or extent of disability is not so apparent.
- The three general classes of findings are:
  - (1) Physical findings, which are noted by the physician’s visual inspection, palpation, and manipulation of the body. They include readings of temperature, pulse, respiration, blood pressure, range of motion, etc.
  - (2) Laboratory findings such as blood tests, urine and tissue samples, etc.
  - (3) Reports of a diagnostic procedure, such as an x-rays, MRI, EMG, etc.

Causal Relationship

- The ECAB has often described the requirements of medical evidence to establish causal relationship. In the language used in ECAB decisions, most cases require:
  - Medical evidence that is reliable, probative (i.e. serving to prove) and substantial.
  - A “well rationalized” statement from a physician supporting causal relationship.
Medical evidence is usually reliable, probative and substantial if:

- Based on a factual history of an incident or exposure factors that matches other description given by witnesses
- Based on a complete and accurate medical history
- Submitted by a physician qualified to treat the illness or injury in question.
- In line with accepted medical opinion regarding the cases (etiology of specific diseases or injuries).
- Supported by examination findings

A report is well rationalized if:

- Contains sound rationale for the opinion expressed, how the work factors led to the condition.
- Is unequivocal and NOT speculative, CR opinion need to flatly say that something happened or was a certain way.
- Is based on a positive statement about CR, NOT on a presumption made because other possible causes cannot be identified.
- Explores and specifically rules on non-work factors that could have led to the illness or injury claimed.

Not to Confuse You - But you Don’t Always Need a Medical Opinion About CR

- When you don’t need a medical opinion about CR
- The claimant’s doctor does not need to provide a well rationalized medical opinion asserting a causal relationship in cases where:
  - The relationship between the injury or exposure is clear-cut or
  - There is a visible injury (contusion, abrasion, laceration, or fracture), i.e. dog bite
  - Medical evidence is still needed to confirm the diagnosis
Medical Reports for the Record
• OWCP criteria for weighing medical reports
  • Physician qualifications: Specialists in the area are better than non-specialists
  • Medical rationale: Opinion supported by a medical explanation
  • Accuracy and completeness: Nothing left out of the analysis, and facts stated agree with written records
  • Comprehensiveness: Reflects all testing and analysis
  • Consistency: Physical findings must substantiate the medical opinion
  • Decisiveness: No equivocating...yes or no, NOT MAYBE

Gathering Acceptable Medical Evidence
• Establishing the diagnosis and a occupational causality requires good documentation from a physician
  • What (or who) is a "physician"? (identify who is treating the employee)
  • What is good documentation?
    • Includes medical history and physical exam, laboratory procedures, imaging procedures, clinical procedures (biopsies, EKG, EEG, etc), consulting physician reports
    • Has a clearly written diagnosis and a clear statement of how the diagnosis came to be as a result of the patient's work
  • How do I get it?
    • Maintain constant contact with employee
    • Request frequent medical updates from the employee or in writing from physician and DOL

Physician Definition
• Physician "as defined by 5 U.S.C. 801
  • Includes surgeons, osteopathic practitioners, podiatrists, dentists, optometrists
  • Chiropractors
    • Operating within the scope of their practice as defined by State law AND only if a diagnosis of subluxation of the spine is made and supported by X-rays
  • Clinical psychologists
    • For work-related emotional conditions
**Injury/Condition Specialists**
- Special cases
  - Hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology (ENT)
  - Pulmonary condition due to exposure to asbestos require an opinion from a Board-certified pulmonary specialist (Pulmonologist)
  - Emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist

**Physician...**
- Defined Physician Types
  - Attending physician
    - The patient’s chosen doctor or doctors that his primary physician consults
  - Agency physician
    - Not designated in OWCP manual, but referred to in 20 CFR 10–9(b) (cannot create conflict of medical opinion, does not have probative value)
  - District Medical Advisor
    - Works for OWCP to help the CE’s interpret medical information.
    - Render expert Second Opinions
    - Review for Schedule Awards
    - Review requests for surgery, medical devices, diagnostic testing and other medical issues to be resolved

**NON-PHYSICIAN PRACTITIONERS**
- Psychologist—PhD, non-MD who evaluates and treats mental disorders; cannot prescribe medications
- Physical Therapist—provides treatment, exercise instruction
- Chiropractor—not an MD or DO; treats both skeletal and general medical disorders by manipulation, other passive modalities, and sometimes exercise
- Masters in Social Work (MSW)—provides counseling services
- Licensed Clinical Social Worker (LCSW)—provides counseling services
NON-PHYSICIAN PRACTITIONERS

- Nurse Practitioner—Registered Nurse with additional formal training, licensed by state to provide primary care. In most states must work under direction of licensed physician. In some states, approved to provide direct care and midwifery without physician supervision.
- Physician's Assistant—licensed by states to provide primary care but must do so under the direct supervision of a licensed physician.

Non-Physician Practitioners

- Evaluations from Social Workers. Social workers are not considered to be physicians under the Act. See Debbie J. Hobbs, 49 ECAB 130 (1999) and Jacqueline M. Johnson, Docket No. 98-2450 (issued March 9, 2000).
- In stress claims medical opinion are often rendered by Licensed Social Workers

Agency Directed Examinations

- Fitness for Duty Examinations Directed by the Employing Agency. A report from such a physician should receive due consideration; however, since the agency directed the examination, reliance upon the findings for case action must be tempered. If the findings or conclusions differ materially from those of the AP, the CE may consider further development, but the reports cannot be used as the basis for a formal reduction or termination of benefits. Also, under FECA procedures, such a report may not be used to create a conflict in medical evidence that requires resolution under 5 USC 8123(a).
Medical Determination from Other Government Agencies

- Findings of other agencies (such as the Social Security Administration or the Department of Veterans' Affairs). The ECAB has held that findings of other government agencies are not dispositive with regard to questions of disability arising under the FECA. See Dona M. Mahurin, 54 ECAB 309 (2003) and Daniel Deparini, 44 ECAB 657 (1993).

Medical Reports and the Agency Specialist

Medical reports provide information that allows employers to initiate management of workers' illness and injuries. In order to use medical reports effectively we need to understand:

- What comprises a good medical report
- Who wrote the report
- Weight of medical reports
- Medical conditions
- Medical tests

How to Read a Narrative Report

- Physician's History of the causal factors in the Case
- Does the doctor's report indicate that they have grasped the factual side of the case completely?
- Medical history
- Does the employee's medical history indicate any prior injury or illnesses of this type?
- Question whether this injury or illness should be treated a recurrence or aggravation.
- Family History - Is there a family history of one of the claimant's medical conditions present in a case.
- Does the employee have any concurrent or pre-existing conditions
- Does the employee have a concurrent or pre-existing condition? If so, realize that the case could be longer-term, need to ensure disability is work-related not due to pre-existing/concurrent condition.
Physician’s interpretation of the findings and Conclusions

- Has the doctor provide an opinion, interpreting the finding and explaining clearly how they arrived at that opinion?
- Is the doctor's report stated in terms that are unambiguous, unequivocal.
- Do the objective finding support the doctor's conclusions? Are the doctor’s findings consistent with the medical and factual history on which they are based?
- Are the doctor’s conclusion’s plausible? Do they violate commons sense? Example: In a soft tissue back injury, doctors states that there are no current objective finding but that the claimant is still disabled. By the injury.
- Is the doctors' opinion well rationalized?

What to look for in Aggravation Cases

- A well rationalized medical opinion in an aggravation case must include:
  - A discussion of the nature of any underlying condition.
  - The natural or traditional course of the condition.
  - How the condition may have been affected by the claimant’s employment?
  - Whether the employment injury or exposure caused permanent changes.
  - Have symptoms subsided or ended?

Weight of Medical Evidence

Source of Evidence—According to FECA regulations

1. Unbiased sources—Progressive weight
   - Treating Physician
   - Referral Physician (Specialist)
   - DMA
   - SECCOP (Specialist)
   - Referee IME (Specialist)
2. Biased Sources—Minimal weight but not useless
   - FFDE—done by an employer requested specialist
   - Employer physician
Medical Rationale

- ICAB decisions pertaining to medical aspects of claims
  - Causal relation is a medical question that can generally be resolved only by medical opinion evidence. Robert G. Morris, 48 ECAB ___ (Docket No. 95-1339, issued December 19, 1996).
  - Every injury does not necessarily cause disability for employment. Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. Patrick H. Hall, 48 ECAB ___ (Docket No. 95-1357, issued May 13, 1997).

- When a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a claim. Law R. Sayward, 48 ECAB ___ (Docket No. 95-1399, issued October 23, 1996). Beverly J. Duffey, 48 ECAB ___ (Docket No. 95-231, issued July 8, 1997).

- The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation. Robert C. Morris, 48 ECAB ___ (Docket No. 95-1339, issued December 19, 1996).

Claim Management

- Medical management options for the claim
  - Can you challenge questionable claims on medical grounds?
  - Offer Limited/Light duty—modified duty
    - Every day employee stays out of work reduces likelihood they will ever return
    - Obtain biomechanical restrictions from treating provider
    - Match employee’s physical limitations to available positions
    - Get an idea of how long the limitations might exist
    - Job offers must be in writing and include job description, physical demands of position, location, accommodations, date available, date response required
    - Notify OWCP if Limited/Light duty is refused
  - Stay in contact with the treating physician and use physician follow-up dates as cues to follow-up with the treating physician.

Case Management

- Medical management options for the claim
  - Monitor the injured worker’s medical care
    - Contact the physician in writing for updated medical information
    - Request work restrictions directly from the physician, from the OWCP nurse, or OWCP Nurse
    - Remind you write the treating physician you must copy the claimant and provide the physician’s response
    - Work with Supervisor to ensure that work is available within the employee’s restrictions
    - Once back at work ensure that updated medical restrictions are provided after each medical appointment
    - Contact the treating physician in writing if restrictions do not change
    - Provide new job offer with increased duties when applicable
Case Management

- Educate yourself regarding claimant's medical condition.
- Understand treatment protocols.
- If medical treatment is not following prescribed protocol develop the issue with the treating physician or notify DOL.
- Investigate what is the usual period disability for injury/condition. When should you expect the claimant to return to work.

Now You Know What’s Needed

- Read medical reports closely.
- Identify what elements of the medical report haven’t been met.
- Based on what you know write to DOL to support your position.
- Be concise and direct when writing DOL address the omissions in the medical report.
- Do not inject personal opinion use the facts as you know them.

Sequential Evaluation Order an Administrative Function

- Review each of the five elements of a claim.
- Pay particular attention to the process at Fact of Injury, remember there are two components to Fact of Injury.
- Fact of Injury (Factual) must be met before looking at the medical evidence.
- If you’re disputing the claim, don’t jump automatically to Causal Relationship.
- Identify to the examiner the specific part to the claim that fails to rise to a compensable element of the claim.
Providing Information to DOL

- §10.119 What action will OWCP take with respect to information submitted by the employer?
- OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee’s representative, if any, and the employer of any action taken. Where an employer contests a claim within 30 days of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

Is Workers Compensation Only a Medical Process?

- The FECA is an administrative and medical process.
- 3 ½ parts of the sequential evaluation process are administrative.
- Fact of Injury is a two (2) part process, and the administrative component of the claim is reviewed first.
- Causal Relationship is a administrative decision based on medical evidence.
- Most Claims Examiners do not have a medical background.

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