

Initial Claim Development



Initial Claim Development

Upon initial receipt of an Office of Workers' Compensation Programs (OWCP) claim form (CA-1, CA-2, CA-2a, CA-5, etc.), the responsible claims examiner (CE) will determine if the initial claim and supplemental documentation is sufficient to meet the following five basic criteria for OWCP claims.



Five Basic Criteria

The Federal Employees' Compensation Act (FECA) five basic criteria:

- (1) Be timely filed.
- (2) Be made by a Federal Civil Employee.
- (3) Establish Fact of Injury, which has both a factual and medical component. *Factually*, the injury, accident or employment factor alleged must have actually occurred. *Medically*, a medical condition must be diagnosed in connection with the injury or event.
- (4) Establish Performance of Duty. The injury and/or medical condition must have arisen during the course of employment and within the scope of compensable work factors.
- (5) Establish Causal Relationship, which means the medical evidence establishes that the diagnosed condition is causally related to the injury or event.

These criteria must be satisfied in the order listed above.



Development and Adjudication

- CE will allow *at least* 30 days for response from the claimant.
 - *Effective March 7, 2023 under the National Defense Authorization Act (NDAA) claimant will have 60 days for initial claims (CA 1, CA 2, and CA 5).
- Failure to allow at least 30 days before making an adverse decision is *reversible error*.
- CE must explain deficiencies in initial evidence – which of the five basics are not established.



Due Process

For OWCP purposes, “due process” means that the claimant is provided an opportunity to perfect his/her claim. This means that the claimant should be informed of the following:

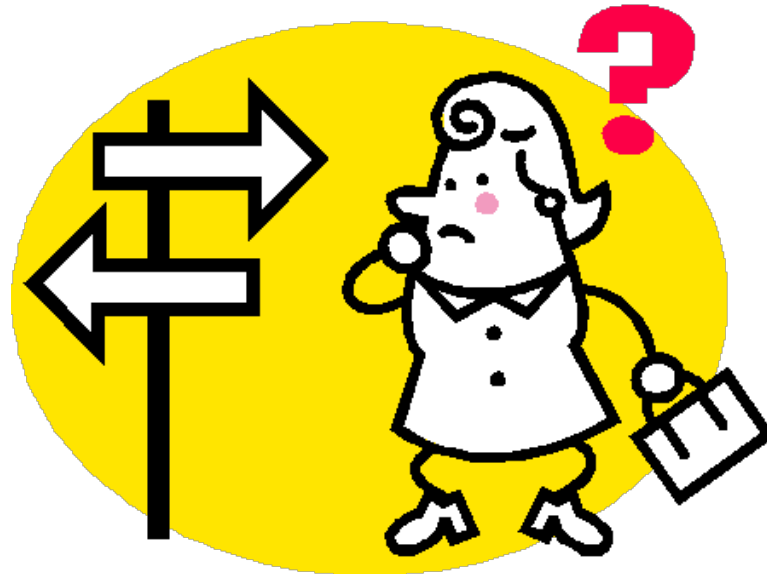
- the deficiencies in the evidence submitted;
- the information they need to submit to correct the deficiencies;
- the deadline for submitting the evidence;
- the consequences of not submitting the information requested; and
- most importantly, where ongoing periodic benefits are at issue, CE must provide notice and opportunity to respond before terminating benefits.

[OWCP will also notify the employee of any relevant challenge or contrary evidence to the claim.]



Initial Decisions

After allowing time for response from the claimant, or if sufficient evidence to accept the claim is present on initial review, the CE will make a decision on the case.

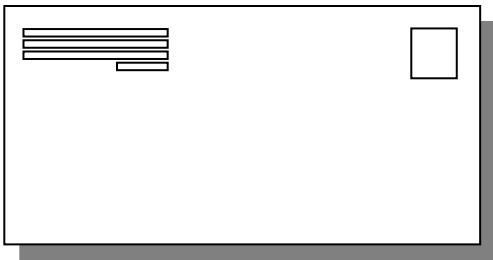


Development and Adjudication

It is the *claimant's* burden to provide all necessary evidence, except that which is in the possession of the employing agency (EA). EA must provide *any* relevant information it has to OWCP.

Development and Adjudication

- All evidence must be submitted in writing.
- At CE discretion, some types of factual evidence may be developed by formal or informal telephone conference. If conducted, written conference memo is provided to participants with time allowed for comment.



Development and Adjudication

- Medical reports must be signed by a physician as defined in the FECA.
- Reports signed by nurse practitioners, physician assistants, etc. are not acceptable, unless countersigned by a physician.
- Reports from chiropractors allowed only if subluxation of spine is diagnosed based on x-rays.



Development and Adjudication

- For some types of conditions, a medical examination (second opinion) is often arranged by OWCP in order to adjudicate the claim.
- Examples:
 - Hearing loss
 - Asbestos/ pulmonary conditions
 - Cardiac conditions
 - Psychiatric conditions



Medical Evidence – Burden of Proof

The employee has the burden to provide *prima facie* evidence to establish the initial claim of work related injury and disability.

- A note on cases involving reemployment: With such claims, which have been accepted as having an injury sustained during federal employment , and resulted in a period of total disability with continued medical restrictions, the burden of proof shifts to OWCP.
- There is no *prima facie* evidence accepted to establish the employee's ability to work. **OWCP must establish by weight of medical evidence the injured employee's current work tolerance level. Medical evidence must be conclusive and not speculative.**

The employees' over all physical and mental condition must be considered (“whole person”). Conditions developed after the injury, conditions that pre-existed, and the injury itself must be taken into consideration.

A medical report (whether from the treating physician, second opinion, or referee physician) must be comprehensive, non-equivocal, and based on a complete factual and medical background. The physician should examine the injured employee and assign specific work tolerance limitations.



Requesting Medical Reports

The first effort is to secure a current medical report from the treating physician. This report should contain all the information as described previously. The treating physician's opinion carries great weight as this physician has the knowledge of medical and treatment history. The work tolerance limitations assigned by the treating physician not only carries a lot of evidentiary weight, but there is less likelihood that the physician will change his/her opinion once a job is modified and offered to the employee.

If the treating physician does not reply, his/her report is equivocal, or the objective findings do not support the restrictions assigned by the physician, OWCP may request a second opinion. EA should never contact the second opinion physician. This action could compromise OWCP's effort to secure an independent opinion.



Requesting Medical Reports

The second opinion report must meet the same standard as any other medical report. The second opinion physician will be instructed to perform an examination. This will include authorization for any non-invasive test and if requested, a functional capacity evaluation. OWCP will evaluate the quality of the report and determine if the opinion carries the weight of medical evidence. **If the weight of medical evidence is with the second opinion, these work tolerance limitations will be forwarded to EA asking if a position can be modified and offered for the employee's reemployment.**

If the second opinion does not carry the weight but is adequate to establish a conflict of medical opinion with the treating physician, OWCP will set up a referee examination. EA must not contact the physician, and all reports must be evaluated by OWCP before any action is taken to reemploy the injured worker.

If OWCP determines the referee examination meets the stipulated requirements and the physician's opinion carries the weight of evidence , then EA must use these work tolerance limitations in designing a modified job for the employee.

Medical – Weighing Evidence

- Claimant's Treating Physician
- District Medical Adviser
- Second Opinion Examiner
- Referee Examiner



[EA medical providers are not listed here, because his/her reports and opinions cannot be used to create a conflict with the treating physician.]

Medical – Weighing Evidence

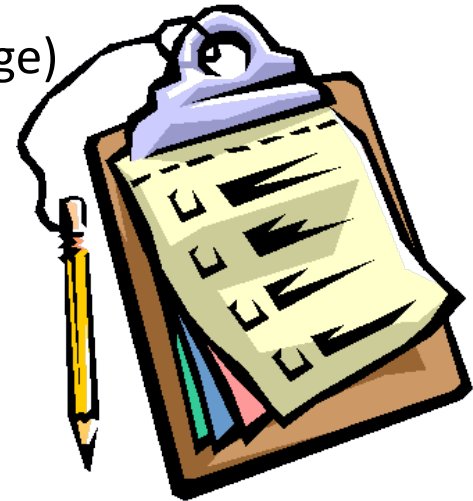
Medical report from the Treating Physician should include:

- Dates of examination or treatment;
- History given by employee;
- Physical findings;
- Results of diagnostic tests;
- Diagnosis;
- Course of treatment;
- Description of any other conditions found;
- Physician's opinion, with medical reasons, as to causal relationship between the condition and the factors of employment;
- Extent of disability; and
- Prognosis for recovery.

Medical – Weighing Evidence

General Criteria:

- Qualifications of the Specialist
- Rationale (statements are explained in view of examination findings, objective test results, etc.)
- Factual Basis (based on an accurate and complete medical/factual background)
- Consistency with Physical Findings (objective evidence)
- Comprehensiveness (all necessary tests and analyses were performed to support final conclusions)
- Equivocalness (does not contain unclear or vague language)



Medical – Weighing Evidence

Second Opinion Examination:

- Employee must submit to examination.
- Employee may have a qualified physician, paid by him or her, present at examination.
- Employee is not entitled to have anyone else present unless authorized by OWCP.
- OWCP may send a case file for a second opinion review where actual examination is not needed.
- A physician who performed a fitness for duty examination for an EA cannot be considered a second opinion specialist.

Medical – Weighing Evidence

- If an employee refuses to attend a second opinion or referee examination without justification, compensation may be suspended.
- Compensation may be reinstated if the employee agrees to, and actually attends, the required examination.
- Compensation is not payable during the period of suspension.

Medical – Weighing Evidence

Referee Examination:

- A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions.
- If a conflict exists between the medical opinion of the treating physician and the medical opinion of either a second opinion physician or an OWCP Medical Advisor, OWCP shall appoint a third physician to make an examination.



Medical – Weighing Evidence

A referee specialist's report is usually given the greatest weight in reaching a decision, as long as the physician's opinion is not vague, speculative or equivocal, **and** is supported by substantial medical reasoning.

Medical – Weighing Evidence

When OWCP determines the weight of medical evidence, only OWCP can consider new medical evidence and determine when the weight of medical evidence changes.



Questions

If additional evidence is needed for an injured employee to meet the five basic criteria of an acceptable *initial* OWCP claim (CA-1, CA-2, or CA-5), the claims examiner (CE) will open the case for development and request the additional information. In this request, the CE will allow how many days for a response from the claimant before making a decision?

- a) 10 calendar days
- b) 15 calendar days
- c) 30 calendar days
- d) 60 calendar days

Questions

OWCP provides 'due process' to an injured employee. This gives them the opportunity to perfect their claim. As part of the 'due process,' the claimant is informed of:

- a) The deficiencies in the evidence submitted
- b) The information they need to submit to correct the deficiencies
- c) The deadline for submitting the evidence
- d) The consequence of not submitting the information requested
- e) All of the above

Questions

When additional medical evidence is needed, OWCP will first look for a medical report from:

- a) The injured employee's treating physician
- b) A second opinion medical examiner
- c) A district medical advisor
- d) A referee medical examiner

Questions

When submitting a medical report from a treating physician to perfect an OWCP claim, it is important for the report to include many facts about the claimant's condition; among those are all of the following except:

- a) Date of examination
- b) Injured employee's current pay rate
- c) History of injury as given by injured employee
- d) Physical findings
- e) Diagnosis
- f) Physician's opinion, with medical reasons as to causal relationship between the condition and the factors of employment

Questions

Which stakeholder makes the determination regarding the weight of medical evidence in file?

- a) Employing agency
- b) Injured Employee
- c) OWCP

Take Away Tips

- 1) Upon initial receipt of an OWCP claim form, the responsible claims examiner will determine if the initial claim and supplemental documentation is sufficient to meet the five basic criteria for OWCP claims.
- 2) For an initial OWCP claim (CA-1, CA-2, or CA-5), the CE will allow 60 days for response from the claimant after issuing a development letter explaining deficiencies in the initial evidence. Failure to allow 60 days before making an adverse decision for an initial OWCP claim is a reversible error.
- 3) For OWCP purposes, “due process” means that the claimant is provided an opportunity to perfect his/her claim. All evidence must be submitted in writing.

Take Away Tips

- 4) After allowing time for response from the claimant, or if sufficient evidence to accept the claim is present on initial review, the CE will make a decision on the case.
- 5) For some types of conditions, such as hearing loss and psychiatric conditions, a second opinion examination may be arranged by OWCP in order to adjudicate the claim.
- 6) A referee specialist's report is usually given the greatest weight in reaching a decision, as long as the physician's opinion is not vague, speculative or equivocal, and is supported by substantial medical reasoning.
- 7) When OWCP determines the weight of medical evidence, only OWCP can consider new medical evidence and determine when the weight of medical evidence changes.