

No. 16

May 20, 1974



NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS
UNDER THE LONGSHOREMEN'S COMPENSATION ACT, AND OTHER
INTERESTED PERSONS

Subject: Policy of OWCP Regarding Utilization of Impartial
Medical Examinations in Evaluating Disability
under the Longshore Act, as Extended

This notice is to advise interested parties of the Office of Workmen's Compensation Programs' policy with respect to the utilization of section 7(e) of the Longshoremen's and Harbor Workers' Compensation Act, in particular with respect to resolving questions of permanent partial disability. The section states that in the event that medical questions are raised in any case, the Secretary of Labor has the power to cause the employee to be examined by a physician employed or selected by the Secretary (or his designee), and to obtain from the physician a report "containing his estimate of the employee's physical impairment and such other information as may be appropriate." The language of the Act is discretionary with respect to the use of such examinations, and neither the employee or the employer-carrier may compel a Deputy Commissioner (the Secretary's designee) to order such an examination.

The authority granted by section 7(e), utilizing the procedures described therein, will be used liberally in cases where medical questions arise regarding the necessity for medical treatment, indications for or against medical procedures, the duration of required treatment, and the effectiveness of such treatment as may have been provided. It may also be used to resolve questions of ability to work, and duration or periods of inability to work.

The procedures in 7(e) may also and are to be used when questions arise as to the degree of "the employee's physical impairment." In this connection it must be noted that questions about the nature and extent of disability are not medical questions, but are adjudicatory or administrative questions, involving an economic, rather than a medical concept. The American Medical Association

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has pointed out that the ascertainment of "disability"

* * * is an administrative, not medical, responsibility and function. Evaluation of * * * disability is an appraisal of the patient's present and probable future ability to engage in gainful activity as it is affected by non-medical factors such as age, sex, education, economic and social environment and the medical factor - permanent impairment. * * *

* * * It is not and never can be the duty of physicians to evaluate the social and economic effects of permanent impairment. These effects must be evaluated by administrators in making determinations of permanent disability. "A Guide to the Evaluation of Permanent Impairment of the Extremities and Back," Journal of the A.M.A., February 15, 1958 (Special Ed.), Preface (emphasis in original).

In referring a claimant for a medical examination in connection with a permanent partial disability rating the physician will be asked to examine the employee and describe his physical impairment, and will not be asked to evaluate the employee's "disability."

Consequently, and for purposes of furthering amicable disposition of contested claims, Deputy Commissioners have been instructed to utilize the section 7(e) procedures extensively to obtain medical information on impairments resulting from injuries when questions arise.

As a general rule, all medical examinations authorized pursuant to Section 7(e) will be conducted in the office of the attending physician or within a recognized medical facility.



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