Sound medical evidence: key to FECA claims

When the cause of injury is not obvious, claimants filing for Federal workers' compensation need their physicians' medical rationale supporting the medical opinion

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The 75th anniversary of the Federal Employees' Compensation Act (FECA) provides an opportunity to discuss the role of detailed medical evidence in the adjudication of claims. This article examines the medical information the Office of Workers' Compensation Programs (hereinafter referred to as the Office.), the Department of Labor agency responsible for administering FECA, requires to determine that an injury or illness is work-related and thus qualifies the claimant for Federal compensation benefits.

Although there are no statistical data on the role of medical evidence in the adjudication of claims, persons who are experienced with such claims will undoubtedly agree that benefits are denied more because of a lack of proper medical evidence than for any other reason. Claimants must provide medical proof that they qualify for benefits. When the injury or illness is not obvious, a definitive medical statement from an appropriate physician containing the physician's opinion and supporting medical rationale is mandatory.

As in other workers' compensation laws, medical evidence is an essential part of claims filed under FECA, assuming that Office examiners have determined that the injured, ill, or deceased employee is covered by FECA; the claim was filed within FECA's time limitations; and the incidents or factors described as the basis of the claim are work-related.

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First, the claimant must prove that an injury has occurred or a medical condition has manifested itself. A medical report from a qualified physician showing a clear and conclusive diagnosis is necessary.

Second, the claimant must prove that the medical condition was caused by a work incident (history of injury) or factors of employment (conditions of employment). Cause, as used in FECA, includes direct cause, aggravation, acceleration (hastening), or precipitation. Hence, a physician's report must show that a causal relationship exists between the medical condition and the work incident or factors of employment.

Weighing the evidence

Claims examiners apply two values to medical evidence—"probative value" and "weight of the evidence:"

Probative value is the value given to a particular fact or contention. For example, a medical report containing the physician's opinion that the diagnosed medical condition is causally related to the work incident or conditions of employment, with medical reasons for that opinion, would have more probative value than a physician's report that contains an opinion but no supporting medical reasons. Excerpts from medical or other publications would have no probative value, as they do not directly apply to

the claimant's specific medical history or the claimant's history of injury or conditions of employment.

Weight of the evidence refers to the *quality* of evidence—not the quantity. For instance, a report from an appropriate medical specialist would have more "weight" or value than a report from a general practitioner.

Office claims examiners, in evaluating medical evidence, generally consider:

- If the physician received and considered an accurate account of the history of injury or description of the conditions of employment.
- If the medical findings from tests, x rays, and so forth are sufficient to justify the physician's diagnosis.
- If the physician has provided sufficient medical reasons or rationale to support his or her opinion that the diagnosed medical condition is causally related to the history of injury or conditions of employment (that is, how did the physician, from a medical point of view, arrive at his or her opinion?).
- If the physician is qualified under FECA. In this respect, the term "physician" is defined to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors[1] and osteopathic practitioners within the scope of their practice as defined by State law.[2]

Role of physicians

Office staff physicians or medical consultants provide claims examiners with medical advice on, among other things, the probative value and weight of the medical evidence submitted in an individual case. If the medical advisor believes additional medical information is needed, the claims examiner usually will ask the claimant to have his or her physician supply the information.

The claims examiner also has the authority to send a claimant to a physician selected by the examiner for a "second opinion examination" if there are questions about the medical evidence submitted by the claimant or if an independent opinion is believed to be necessary. In this case, the Office, not the claimant, is responsible for obtaining the additional information from the physician. Furthermore, the Office is obligated by a provision of FECA to arrange for a third or "referee" medical opinion to resolve conflicts between the medical opinions of a claimant's physician and an Office medical advisor or its selected second-opinion specialist.[3]

The medical referee, usually referred to as an "impartial medical specialist," is almost always a specialist with a medical board certification; and the Department of Labor's Employees' Compensation Appeals Board, the final appellate authority for the review of Office decisions,[4] requires that the opinion of such a specialist "must be given special weight when sufficiently well-rationalized and based upon a proper factual background."[5]

In most cases, Office medical report forms designed for routine traumatic injuries will provide sufficient medical evidence if the history of injury is clear and there is little, if any, question that the physician's diagnosis supports the history of injury. A laceration due to a work-related fall is an example. A laceration may not be routine for such an accident, but, nevertheless, it is a condition that one could logically expect to result from a fall.

The Office forms do not, however, provide a sufficient basis for occupational disease claims or for claims based on a traumatic injury where it is not obvious or clear that the condition resulted from the history of injury (for example, aggravation of an arthritic condition due to a fall). In this respect, medical evidence in all but the most obvious claims filed with the Office should be in the form of a narrative medical report, dated and signed on the physician's stationery, and should include (in addition to dates of examination and treatment, description and results of tests given, results of x rays, and so forth) the following items:

1. *A written statement reflecting knowledge of the claimant's history of injury or conditions of employment believed to be the causative factors.* The physician should ideally include or attach a copy of a written statement prepared by the claimant describing the history of injury or conditions of employment; and the claimant's statement should be referenced in the physician's opening remarks. This is necessary to prove that the physician has been provided with an accurate "frame of reference" for his or her opinion. Without this frame of reference, the physician's opinion loses probative value.

2. *Definitive diagnosis, no impressions.* This is to show that the diagnosis is certain—a diagnosis of, say, "probably bursitis" is not a definitive diagnosis.

3. *Opinion in definitive terms, no speculation.* Was diagnosed condition caused, permanently or temporarily aggravated, accelerated (hastened), or precipitated by the history of injury or conditions of employment described by the claimant? If the claimant's medical condition is temporary, the opinion should specify the length of time involved.

4. *Medical reasons for opinion.* That is, how did the physician, from a medical point of view, arrive at the opinion? This statement is *very important* because it explains the pathological or other medical relationship between the diagnosis and the history of injury or conditions of employment.

5. *Periods of disability and the extent of disability during the periods.* This specifies whether the claimant is partially, as opposed to totally, disabled. If the injury causes the claimant to be partially disabled, the physician should list the work limitations involved.

Of all the five items, the fourth one—medical reasons for opinion—appears to cause the most problems, requiring claims examiners to request additional information from the physician. Admittedly, some time and effort is needed to provide written reasons in support of medical opinions. Each compensation case involves specific individualized factors unique to the specific claimant, and there is no "standard" medical rationale to use in all cases. □

Footnotes

[1] See 5 U.S.C. 8101 (2). FECA limits reimbursable services of chiropractors to the manual manipulation of the spine to correct a subluxation shown to exist by an x ray. The Office holds that the opinion of a chiropractor on any subject other than a subluxation of the spine (demonstrated to exist by x ray) has no value.

[2] *Ibid.*

[3] See 5 U.S.C. 8123 (a).

[4] See 5 U.S.C. 8145 and 8149.

[5] James P. Roberts, 32 Employers' Compensation Appeals Board 1010, 1980.

Career-continuous jobs are needed

Today's older Americans are financially secure and unlikely to be motivated to return to the labor force unless the conditions are right. They are more likely to take short-term jobs, off the books, to earn a little extra money and so as not to jeopardize their Social Security payments or to turn to self-employment to maintain continuity with their career work. Ironically, it appears that the policies of today's employers are pushing older Americans away from employment rather than enticing them toward it. Yet there remain certain older Americans such as women with intermittent work histories, members of minorities, and those with health problems who continue to want to work but find neither the opportunities nor the right conditions.

—Kathleen Christensen
"Bridges Over Troubled Water:
How Older Workers View the Labor Market,"
in Peter B. Doeringer, ed., *Bridges to Retirement: Older Workers in a Changing Labor Market.*
(Ithaca, NY, Cornell University,
School of Industrial and Labor Relations, 1990), p. 204.