

Management of Basic and Extended Occupational Disease Claims

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Objectives

- Identify the difference between CA-1 and CA-2 claims.
- Understand the difference between a claimant timely filing a CA-1 and CA-2.
- The employing agency's role providing the claimant with guidance and direction.
- Learn the differences between basic OD claims and extended OD claims
- Understand the difference between compensable and non compensable factors of employment in stress-related claims.

Definition

- Occupational disease is defined as a condition produced in the work environment over a period longer than a single workday or shift.
- It may result from:
 - Systemic infection
 - Repeated stress (physical or mental) or strain
 - Exposure to toxins, poisons, fumes or other continued conditions of the work environment

Why are Occupational Disease Claims Developed Differently?

- In general, it is easier to establish causal relationship in most traumatic injury cases rather than in Occupational disease cases.
- It is particularly difficult to establish causal relationship for certain kinds of occupational diseases which are not known to be caused by specific injuries or occupational factors (example a claim for Bell's Palsy)



Types of Occupational Disease Claims

- Occupational disease claims are differentiated by complexity of the disease. There are two types of occupational disease claims:
- Basic occupational disease claims - examples are:
 1. Stress fracture from excessive walking
 2. Carpal Tunnel from excessive typing
- Extended occupational disease claims - examples are:
 1. Hearing loss (special procedure for adjudication by DOL)
 2. Claims for emotional condition (stress claim)

Other differences between Basic and Extended OD claims

- The period for adjudication between a basic claim and extended occupational disease are different.
- Basic occupational disease claims are to be adjudicated within 90 days from the date received by DOL.
- Extended occupational disease claims are to be adjudicated within 180 days from date received by DOL.



Filing a Claim for Benefits

The mechanism of injury determines what form to file.

- A CA-1 (claim for traumatic injury) is sort of a “one-shot deal”. Identified by a time, place and specific incident.
- CA-2 (claim for occupational disease) is characterized by continued and repeated exposure to conditions of work over a longer period of time.
 - Issuance of Form CA-35
 - No COP
 - No CA-16 *unless directed by OWCP



Requirements of a FECA Claim

- The requirement for filing an occupational disease claim are the same as filing a claim for traumatic injury.
- These requirements are:
 - **Time – 3 Years (special attention for CA-2 claim)**
 - Civil employee
 - Fact of injury
 - **Factual = how did the injury occur**
 - **Medical = requires a diagnosis (exposure is not a diagnosis)**
 - Performance of duty
 - Causal relationship to employment

Timely Filing for Occupational Disease Claims When Does the Clock Start?

- An original claim for compensation must be filed within 3 years. Claims may be disallowed if not filed within that time unless-
- Latent disability claims, the time for filing claims does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, refer to 20 CFR §10.101 (b) (c)
- Pay attention if employee is exposed to same work environment



Form CA-2 and Timely Filing

Notice of Occupational Disease and Claim for Compensation

Reset

Print

U. S. Department of Labor
Office of Workers' Compensation Programs



Employee: Please complete all boxes 1 - 18 below. Do not complete shaded areas.

Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

Employee Data

| | | | | | |
|--|--|--|--------|--|--|
| 1. Name of Employee (Last, First, Middle) | | | | 2. Social Security Number | |
| 3. Date of birth Mo. Day Yr. | | | 4. Sex | 5. Home telephone | |
| | | | | 6. Grade as of date of last exposure Level Step | |
| 7. Employee's home mailing address (include street address, city, state, and ZIP code) | | | | | 8. Dependents |
| City | | | | | <input type="checkbox"/> Wife, Husband <input type="checkbox"/> Children under 18 years <input type="checkbox"/> Other |
| State ZIP Code | | | | | |

Claim Information

| | | | | | |
|--|--|--|---|--|---|
| 9. Employee's occupation | | | a. Occupation code | | |
| 10. Location where you worked when disease or illness occurred (include street address, city, state, and ZIP code) | | | | | 11. Date you first became aware of disease or illness |
| City | | | | | Mo. Day Yr. |
| State ZIP Code | | | | | |
| 12. Date you first realized the disease or illness was caused or aggravated by your employment | | | 13. Explain the relationship to your employment, and why you came to this realization | | |
| Mo. Day Yr. | | | | | |

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).
- In occupational disease cases where the claim is not based upon a specific incident, the claimant must also submit sufficient evidence to identify fully the particular work conditions such as:
 - Volume
 - Duration
 - Environment/toxins
- It is the claimant's responsibility to prove that work was performed under these specific conditions at the time, in the manner and to the extent alleged.
- Medical evidence must provide a diagnosis and causal relationship.

Reviewing the Claim

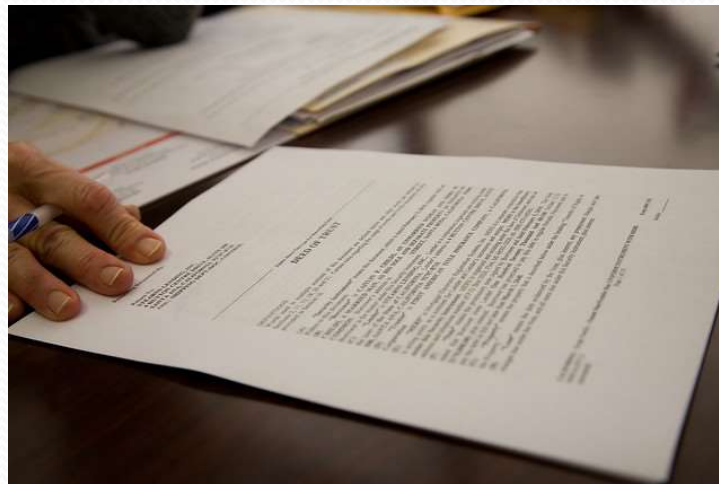
- When did the claimant first obtain medical care? How does this fit in with the condition/disease being claimed?
- When did the claimant report the condition to their supervisor? (Block 26) Does it correlate to box 12?
- When did the claimant stop work? (Block 27)
- When does the Supervisor say the claimant was last exposed to condition alleged to have caused the disease? (Block 29) If the supervisor denies exposure or exposure doesn't correlate to date injury occurred "Red flag it."
- Review box 31-Has the claimant work assignment changed?
 - Is the employee on light duty?

Examining the Back of the CA-2

| | |
|--|---|
| 26. Date employee first reported condition to supervisor Mo. Day Yr. <input type="text"/> | 27. Date and hour employee stopped work Mo. Day Yr. Time <input type="text"/> <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. |
| 28. Date and hour employee's pay stopped Mo. Day Yr. Time <input type="text"/> <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. | 29. Date employee was last exposed to conditions alleged to have caused disease or illness Mo. Day Yr. <input type="text"/> |
| 30. Date returned to work Mo. Day Yr. Time <input type="text"/> <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. | |
| 31. If employee has returned to work and work assignment has changed, describe new duties <input type="text"/> | |
| 32. Employee's Retirement Coverage <input type="checkbox"/> CSRS <input type="checkbox"/> FERS <input type="checkbox"/> Other, (Specify) <input type="text"/> | |
| 33. Was injury caused by third party? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," go to item 34. | 34. Name and address of third party (include street address, city, state, and ZIP code) <input type="text"/> <input type="text"/> City <input type="text"/> State <input type="text"/> ZIP Code <input type="text"/> |
| Signature of Supervisor | |
| 35. A supervisor who knowingly certifies to any false statement, misrepresentation, concealment of fact, etc., in respect to this claim may also be subject to appropriate felony criminal prosecution. I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception: <input type="text"/> | |

Agency Responsibility

- The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time prior to adjudication.
- Issuance of CA-35 to employee
 - Remember CA-35 requests information from the agency.



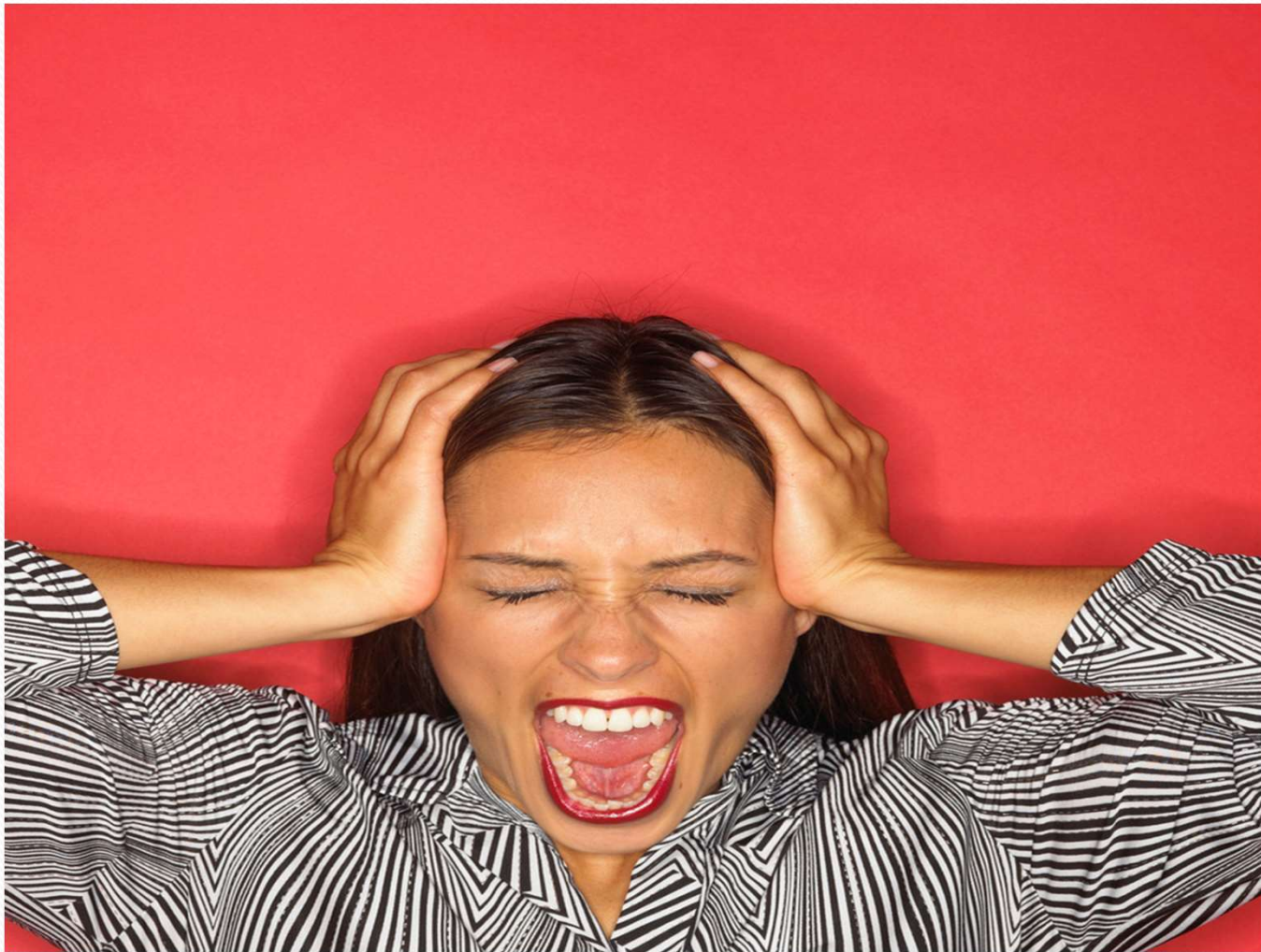
Occupational Disease Checklists

- General checklist (CA-35A);
- Hearing loss (CA-35B);
- Asbestos-related illness (CA-35C);
- Coronary/vascular conditions (CA-35D);
- Skin diseases (CA-35E);
- Pulmonary illness other than asbestosis (CA-35F);
- Psychiatric illness (CA-35G); and
- Carpal tunnel syndrome (CA-35H).

Gathering the Evidence

- WCP works with the supervisor to provide:
 - Copy of the employee's position description or functional statement
 - Investigation of the circumstances surrounding the claim condition
 - Objective and factual evidence to support a dispute or challenge of all or any portion of the claim, when appropriate.
 - Employee's known hobbies, off duty activities, and personal or family stresses that have contributed to the claimed condition. (don't refer to hearsay)

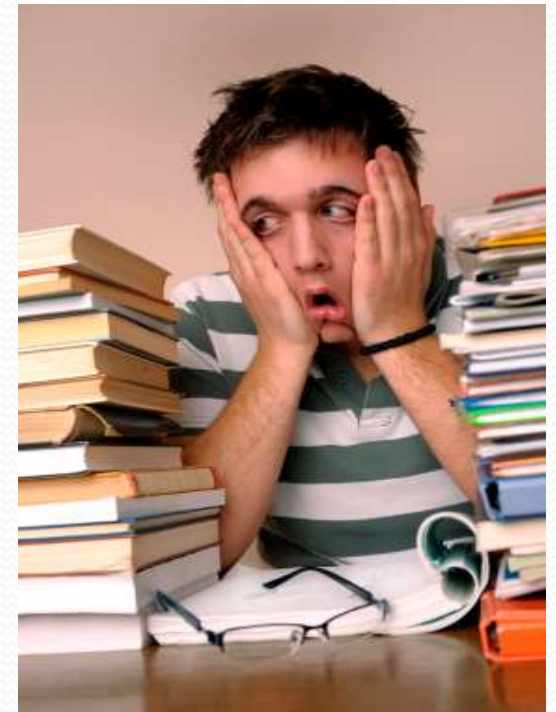
Looking at Stress/Stress Related Claims



Stress Claims

Stress claims are a little different regarding the development of the claim and the type of evidence that is required to support a stress claim.

The specific difference is in regard to Performance of Duty and whether or not the factors stated by the claimant are considered compensable



How Do I Proceed With a Stress Claim?

After reviewing the claim for time and civil employee, at this point the allegation made by the claimant becomes the issue for FOI

- Did the event(s) occur?
- Is the allegation or allegations compensable?
- The problem is knowing what is and is not a compensable factor of employment.
- Keep in mind although an allegation may be factual, it may not be compensable.



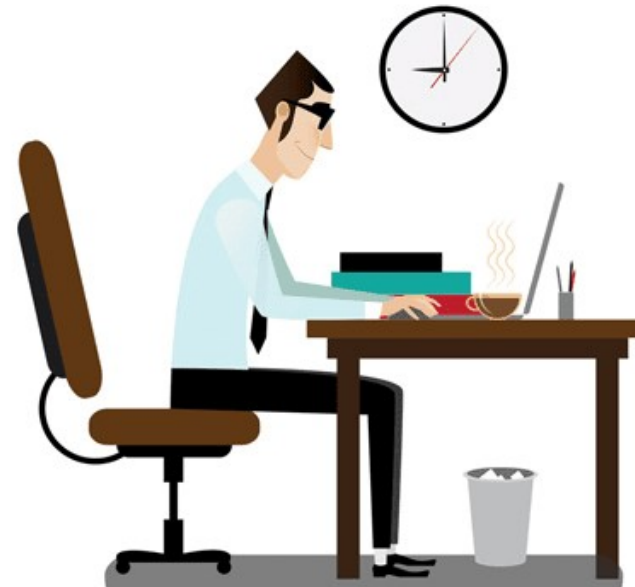
Identifying the Allegations

- General allegations are not sufficient to support the claim. The employee's first burden of proof is to identify specific incident(s) at work that caused a medical condition.
- Reviewing and analyzing the employee's statement, ask yourself the following:
 - Has the employee identified specific incidents related to federal employment? What are the place, dates, and times of the incident(s) alleged? Also, were there any witness statements? Can it be determined the events happened as alleged?
 - Are the allegations in the Performance of Duty (POD)?
- As the agency specialist do not confuse issues. Stick to only the points that the employee is stating is the cause of their stress. DOL will issue a development letter to the agency specialist so be specific in answering the question(s)

Performance of Duty

Generally an injury is said to have occurred in the performance of duty if the injury arose:

- During the course of employment and;
- Out of the employment



Compensable Factor of Employment

- Do you know what is and is not a compensable factor of employment?
- Can the allegations made by the employee be considered compensable?
- Although an allegation may be factual, it may not be considered as compensable.
- Compensable actions must be in the Performance of Duty (POD)

Self-Generated stress

(not in Performance of Duty)

The following do not constitute personal injury sustained in the performance of duty within the meaning of the FECA.

- Frustration at not being permitted to work in a particular environment or to hold a particular position, work (or not work) with a specific person, work (or not work) a specific shift or failure to secure a promotion
- Disabling Conditions Resulting from an employee's feeling of job insecurity
- The desire for a different job
- Feeling underutilized in current position
- Self generated stress because the claimant is not meeting their own personal work goals

Administrative Actions

(Not POD unless error or abuse is proven)

An employing agency needs to be able to make administrative decisions to ensure the agency goal and mission is met.

The following are generally not in the performance of duty unless error or abuse can be proven:

- Issues of denying leave and reprimanding employees falls under administrative actions
- Reaction to letter from claimant's employer, leave use issues, performance evaluation, etc

In determining whether the employing establishment erred or acted abusively, the Board examines whether the employing establishment acted reasonably

Incidents between Co-Workers

(Performance of Duty unless Imported from Outside the Workplace)

If there are incidents between co-workers in the workplace that cause stress, the reaction is in the performance of duty.

- **Exception:** If the conflict was due to a personal relationship from a claimant's domestic or private life, with no contribution by the employment, then it is not in the performance of duty.

An ensuing assault is compensable if the work of the participants brought them together and created the relations and conditions which resulted in the claim, even if the actual assault took place off the employer's premises.



Result of Supervision

(Usually not POD unless error or abuse is proven)

Claim resulting from a supervisor performing supervisory duties is not in the performance of duty.

- **Exception:** If the supervisor does something that is so inappropriate (error or abuse) that it falls outside the supervisory function (e.g. swearing at the employee.) then the action may be in the performance of duty

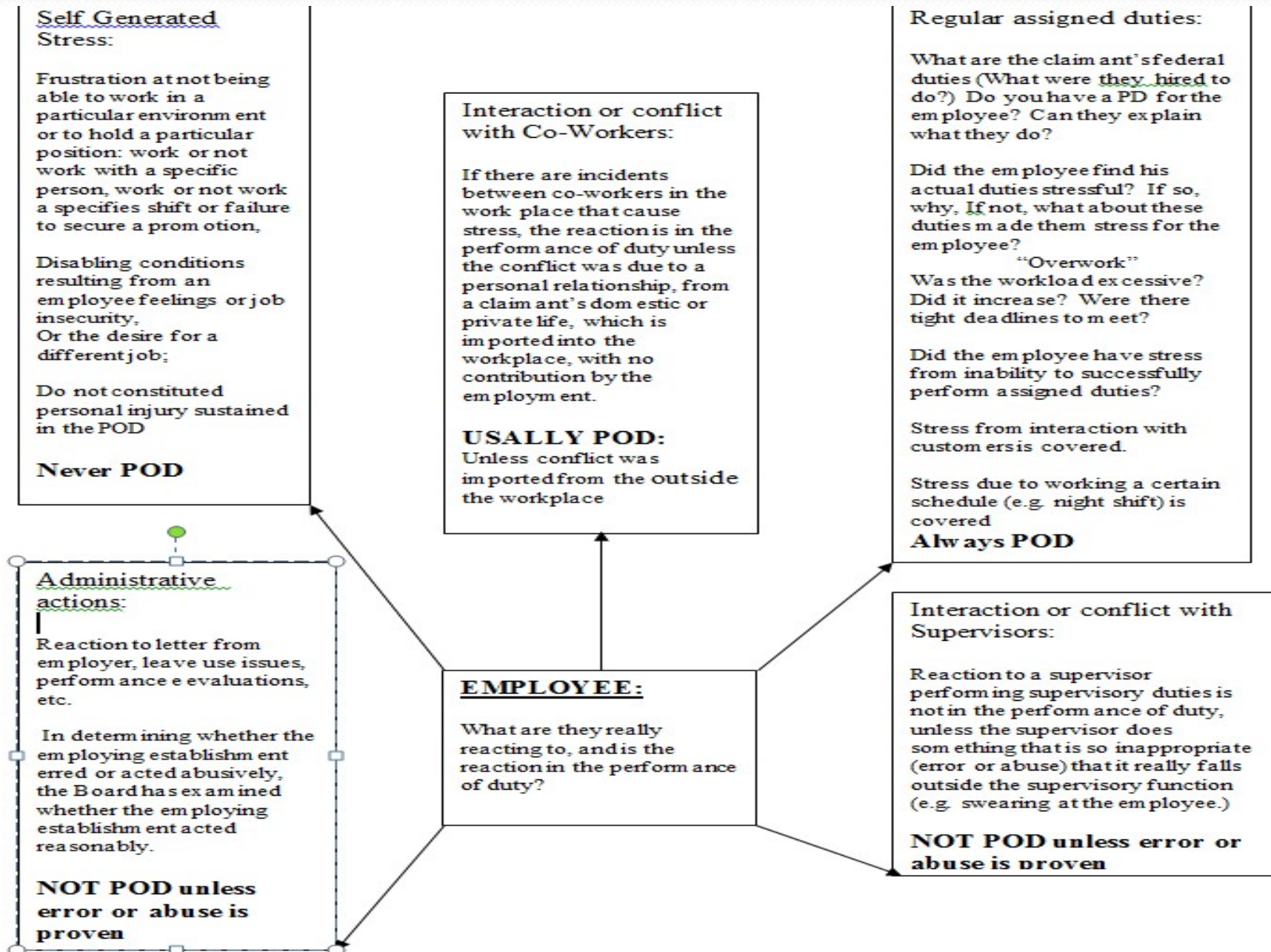


Regularly Assigned Duties

(Performance of Duty)

- What are the claimant's federal duties and do the duties differ from what the claimant was hired to do? Do you have a PD?
- Did the employee find his actual duties stressful? If so, why?
- What made these duties stressful for the claimant?
 - Was the workload excessive?
 - Did the workload increase ?
 - Were there tight deadlines to meet?
- Did the employee have stress from inability to successfully perform assigned duties?
- Stress from interaction with customer (as long as the interaction was due to employment and not imparted from personal life)
- Performance of Duty

Stress Flow Boxes



The Adjudication Process When No Factor Employment is Identified

- Much like FOI (factual), when there is not a compensable factor of employment found, the claim is in posture for a decision.
- After due process and no compensable factor of employment identified in the POD, the claim should be denied. The CE does not need to address the medical evidence.
- Unless an appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary for the Office to address the medical evidence. Sharon R. Bowman, 45 ECAB 187 (1993)

What Happens When a Compensable Factor is Found?

- If a compensable factor is found in POD causal relationship is addressed.
- During medical development the CE should prepare a detailed SOAF and questions for a physician. If medical evidence is submitted that is unequivocal with a medical diagnosis and supports CR received from appropriate medical specialist, usually a Psychiatrist or Clinical Psychologist, a claim can be accepted, but the CE may still schedule a SECOP.
- After medical development, if no medical evidence is submitted with the claim, a FOI medical denial should be issued after having met certain criteria. (issuance of SOAF and questions to the claimant's doctor)
- If Prima Facie medical evidence is received but not from an appropriate medical specialist, i.e. Social Worker, case may be scheduled for a SECOP..

Preparing to Write OWCP

- Review the claimant's relationship to employment statement and the nature of disease or illness on CA-2.
- Review any comments made by the claimant's supervisor.
- If OWCP directs the claimant to forward a copy of the claimant's reply to the OWCP development letter, review the claimant's additional statement.
- Review against the medical reports if possible. Remember to look for history of the injury provided to the physician.
- Identify non compensable factor(s) of employment. (when applicable)

Writing to OWCP when disputing the claim

- Once the agency specialist reviews the claim, each allegation in the claimant's statement needs to be addressed.
- Identify each allegation and if not a compensable factor of employment, address each allegation. Usually best to support by ECAB citation that the allegation is not compensable, supported by precedent case law.
- Stick to the point, and don't reference hearsay when disputing the claim.
- Failure to dispute claim, even if later evidence presents itself, may be interpreted as the agency's acceptance of the facts as submitted by the employee.

Timely Reply 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.

Questions

