

Medical Evidence and the FECA



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OBJECTIVES



- Know the medical requirements of a claim
- Understand the types of physicians
- Distinguish weight of medical evidence
- Know how to review medical reports
- Understand medical case management tools

Initial Medical Review of a Claim

Although we think of workers' compensation as a medical process, only 1 ½ parts of the claim process refers to medical

- Fact of Injury (medical) component
 - Has a medical diagnosis been provided by the treating physician?
- Causal Relationship –after reviewing the first 4 parts of the claim
 - Is the diagnosed injury related to the employment?

Fact of Injury – Medical

What to look for: Is there a valid medical diagnosis from a qualified physician?

- “Pain” is considered a symptom only, not a diagnosis
- “Exposure” alone is not enough – there must be a diagnosed medical condition
- The medical report must be signed by a Qualified Physician under the FECA
- Reports from a Physician’s Assistant (PA or PA-C) or Nurse Practitioner (NP) must be countersigned by an MD

For undisputed incidents resulting in minor conditions with visible injuries, no medical evidence is needed:

When the following criteria are satisfied, a case may be accepted without a medical report and no development of the case need be undertaken:

- a. The condition reported is a minor one which can be identified on visual inspection by a lay person (e.g., burn, laceration, insect sting or animal bite);

AND

- b. The injury was witnessed or reported promptly, and no dispute exists as to the occurrence of an injury

(FECA PM Chapter 2-0800-6 - No Development Necessary – Visible Injury)

Physician Definition



Physician is defined by 5 U.S.C. 8101

- 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
 - not an MD or DO
 - treats both skeletal and general medical disorders by manipulation,
 - other passive modalities and sometimes exercise
- Clinical psychologists
 - For work-related emotional conditions

Non-Physician Practitioners

- **Psychologist - PhD**
 - non-MD
 - evaluates and treats mental disorders; cannot prescribe medications
- **Physical Therapist**
 - provides treatment, exercise instruction
- **Masters in Social Work (MSW)**
 - counseling services
- **Licensed Clinical Social Worker (LCSW)**
 - counseling services



Non-Physician Practitioners

➤ Nurse Practitioner (NP)

- 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 (PA or PA-C)

- licensed by states to provide primary care
- must do so under the direct supervision of a licensed physician

Physician Types

- Attending physician - claimant's chosen doctor or specialists that the primary physician consults
- Agency physician
 - Not designated in OWCP manual, but referred to in 2-0810-9(b) (cannot create conflict of medical opinion, does not have probative value)
- District Medical Advisor
 - Works for OWCP to help the CEs interpret medical information.
 - Reviews Schedule Awards to determine percentage of permanent impairment based on the AMA Guidelines
 - Reviews requests for surgery, medical devices, diagnostic testing and other medical issues to be resolved
 - Does not physically examine the injured employee
 - The medical opinion is rendered based only on the DMA's review of the medical evidence of record presented to them by the CE

Agency Directed Examinations

- 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.
- Cannot be the basis for reduction or termination of benefits
- Cannot create a conflict of medical opinion



Sources of Evidence

1. Unbiased sources
 - Treating Physician
 - Consulting Physician (Specialist)
 - DMA (Only reviews Medical Evidence - no physical examination conducted)
 - SECOP (Specialist)
 - Referee IME (Specialist)

2. Biased Sources—Minimal weight but not useless
 - Fitness for Duty Exams—done by an employer requested specialist
 - Employer physician (there are exceptions)

What is needed to establish causal relationship?

- It depends on the type of injury and whether the employee has a pre-existing condition to the same part of their body.
- Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.
- The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship [*Bruce E. Martin*, 35 ECAB 1090 (1984).]

Types of Medical Causes

➤ Direct causation

➤ 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

- A work-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 manifested but for the employment
 - ❖ Ex: Shingles outbreak after exposure to anti-neoplastic drugs in the pharmacy

➤ Consequential injury

- Happened off the job, but arises as a natural consequence of an accepted condition
 - ❖ Ex: An employee with a recent knee surgery is walking up the steps to his house when his knee buckles and he falls, hitting his head and sustaining a concussion

What is Needed to Establish Causal Relationship in Clear-Cut Traumatic Injury Claims?

The claimant's treating physician does not need to provide a well rationalized medical opinion asserting a causal relationship in cases in **traumatic injury cases where the cause of the injury is clear-cut.**

Medical evidence is still needed to confirm the diagnosis, but a "check-the-box" medical opinion on causal relationship is sufficient to establish direct causation in a simple, straightforward traumatic injury claim.

When “Checking the Box” Is Not Enough

- If it involves a claim for occupational disease based on repetitive injury or exposure

OR

- Where there is a pre-existing non-industrial condition that may have been aggravated by a work incident

In these types of cases, a mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim. See *Gary J. Watling*, 52 ECAB 278 (2001)

The Employees Compensation Appeals Board has made clear that the checking of the box "yes" that the condition was caused or aggravated by employment is insufficient, without further explanation or rationale, to establish causal relationship in such cases.

Barbara J. Williams, 40 ECAB 649 (1989); *Lillian M. Jones*, 34 ECAB 379 (1982).

What to look for in Aggravation Cases with Pre-existing Conditions

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 any permanent changes noted on diagnostic tests
- Have symptoms subsided or ended?

Medical Reports

In order to use medical reports effectively we need to understand:

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



Weighing the Medical Evidence

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

What is needed in a Medical Report?

In all cases reported to OWCP, a medical report from the attending physician is required. (20 CFR sec. 10.330)

This report should include:

- (a) Dates of examination and treatment
- (b) History given by the employee
- (c) Physical findings
- (d) Results of diagnostic tests
- (e) Diagnosis
- (f) Course of treatment
- (g) A description of any other conditions found but not due to the claimed injury
- (h) The treatment given or recommended for the claimed injury
- (i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment
- (j) The extent of disability affecting the employee's ability to work due to the injury
- (k) The prognosis for recovery
- (l) All other material findings.

Other Medical Issues to Identify in a Physician's Narrative Report

- **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 a recurrence or aggravation
- **Family History**
 - Is there a family history of the claimant's medical conditions?
- **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

Understanding Medical Evidence

- Educate yourself regarding claimant's medical condition
- Understand treatment protocols
 - If medical treatment is not following prescribed protocol, raise the issue with the treating physician or DOL
- Research what is the usual period of disability for injury/condition.
 - When should you expect the claimant to return to work?
Are there predictive models on RTW?

Medical evidence should be:

- Based on a factual history of an incident or exposure factors that matches other statements 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

Medical Findings

The scope of findings needed in a case will vary based on the type of medical problem and the complexity of the case. The three general classes of findings are:

- (1) Physical findings, which are noted by the physician's visual inspection and examination of the body.
(Includes 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 diagnostic procedures, such as an x-rays, MRI, EMG, etc.

Physician's Interpretation of the Findings and Conclusions

- Has the doctor provided an opinion, interpreting the findings and explaining clearly how they arrived at that opinion?
- Do the objective findings support the doctor's conclusion?
- Are the doctor's findings consistent with the medical and factual history?
- Are the doctor's conclusions plausible?
 - Example: In a soft tissue injury, doctor states that there are no current objective findings but that the claimant is still disabled.
- Is the doctor's opinion well rationalized?



Medical Case Management

Monitor the injured worker's medical care:

- Contact the physician **in writing** for clarification of medical
- Request work restrictions from the physician, from the OWCP nurse, or OWCP
 - **Remember - if you write the treating physician, you must copy the claimant and provide the physician's response.**
- Once back at work, ensure that updated medical restrictions are provided after each medical appointment
- Stay in contact with the treating physician and use physician follow-up dates as cues to follow-up with the treating physician
- Contact the treating physician in writing if restrictions do not change

Is Workers Compensation a Medical Process, Administrative or Both ?

- It's Both
 - 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 an administrative decision based on medical evidence
 - Process requires legal interpretation of medical evidence

Summary

- Understand what comprises a good medical narrative
- Identify the medical specialist and their role in the claim
- Understand medical case management responsibilities
- Workers' compensation responsibilities encompasses review and evaluation of medical evidence



Case Scenario #1 – Heavy Lifting

This is the first and only medical report you have received from an employee who claims they injured their elbow lifting a heavy box at work....

<p>He/She was seen in the Immediate/Convenient Care Center listed above on: 12/14/22 due to a medical illness.</p> <p>He/She may return to work/school as indicated below per provider.</p> <p>ELECTRONICALLY SIGNED BY: <i>Constance Jaegle NP</i> Date: 12/14/22 Time: 1043</p>
<p style="text-align: center;"><u>IMC Return to Work/School</u></p> <p><u>Return To Work / School</u> May Return To: Work Date To Return: 12/14/22</p> <p><u>Comment</u> Return To Work / School Comment: may return with limited use of right elbow until monday</p> <p><i>Form data compiled on 12/14/22 at 10:45am.</i></p>

- 1) Is it sufficient to establish Fact of Injury-Medical? Why or why not?
- 2) Is it sufficient to establish Causal Relationship? Why or why not?

Case Scenario #2 - Dirty Birds

Factual Background: A USPS Letter Carrier filed a CA-2 claiming that she was exposed to dust, dirt, birds, rodent droppings and vehicle exhaust fumes at work on two occasions and that this exposure caused severe allergic reactions.

Medical Evidence Received:

- **2/15/2023 report** stated that the employee experienced severe allergic reactions (hives, bronchospasm and nasal respiratory symptoms) when she entered a new work environment on February 13th. The doctor did not perform any allergy tests and did not identify the specific irritants or allergens which might have caused any allergic reaction. He stated that any one of the named irritants could have resulted in this severe life-threatening reaction.
- **3/18/2023 report** diagnosing “environmentally-related allergic reaction possibly related to a workplace exposure.” She indicated by checking “yes” that the condition was related to the workplace.

Case Scenario #3 - Missteps

Factual Background: An Engineering Equipment Operator for the National Park Service filed a CA-1 stating that on 10/1/2022 he was reaching for a tool and stepped awkwardly, resulting in pain in his left leg and low back.

Medical Evidence Received:

- A medical report dated 10/25/2022 states that the physician has been treating the employee for Lumbar Degenerative Disc Disease with radiculopathy for several years. The report mentioned an x-ray but no diagnostic test results were provided. The doctor states that he believes the DDD was probably caused or aggravated by the patient's federal employment, but no specific work factors or events were discussed.

Questions

