

Medical evidence and OWCP, Part 3 —Recent FECA transmittals



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Earlier this year, the Department of Labor (DOL) published three Federal Employees' Compensation Act (FECA) transmittals regarding medical evidence that should simplify claim processing and expedite claim acceptance in certain traumatic injury cases.

FECA Transmittal No. 23-01 revises the *FECA Procedural Manual* Part 2, Chapters 800-6 and 805-3c, regarding the adjudication of traumatic injury claims involving minor visible injuries without

medical evidence. With the revisions, a visible, minor injury may be accepted without a medical report if both of the following criteria have been met:

- a. The condition reported is a minor one that 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.

With this revision, the DOL has eliminated a previous requirement that the claimant not lose time from work in order to be considered for acceptance without a medical report. Injured letter carriers, however, should be aware that the issue of disability¹ is separate and distinct from initial claim adjudication; medical evidence remains required within 10 calendar days of filing for payment of continuation of pay. In addition, for wage-loss benefits, the claimant must also submit medical evidence showing that the claimed condition is disabling.²

In *FECA Transmittal No. 23-03*, the DOL again revised *FECA Procedural Manual* Part 2, Chapter 800-6, to further clarify the requirements to establish a claim where no development is needed due to a visible injury. This revision clarifies that corroborating evidence that the injury was actually identified on visual inspection by a lay person is not needed to establish a visible injury. Under this revision, employing agency challenges on the basis that an agency representative did not visually identify the condition hold limited probative value. A condition may still qualify as a visible injury despite not being readily apparent to an agency reviewer.

In recent years, we have seen an increase in the Postal Service's controversions and challenges to claims based on assertions that postal supervisors did not see an injured

body part. We've also seen an increase in postal supervisors insisting on photographing injuries. This transmittal should put a damper on these trends.

The third transmittal addresses the unfortunate reality of dramatic increases in attacks and assaults on letter carriers. As President Brian L. Renfro described it in his President's Message in the September *Postal Record*: "Every day our members are being targeted in neighborhoods nationwide. Violence, assault, robbery, shootings, and even murder have become part of the job in many locations." Not only do letter carriers sustain physical injuries and even death as a result of these assaults, they also often sustain emotional injuries as well. All of these injuries are covered under FECA.

Letter carriers who sustain emotional conditions as a result of assaults, in particular, have had a difficult time finding physicians to diagnose and treat these conditions. It often has taken months or even the greater part of a year before they can receive treatment for conditions that demand immediate attention. This is because OWCP's procedures have required that any causal explanation for acceptance of an emotional injury case must come from a psychiatrist or licensed clinical psychologist with a PhD. *FECA Transmittal No. 23-04* changed this by revising *FECA Procedure Manual* Part 2, Chapter 805, regarding the requirements for a medical specialist needed to establish an emotional condition.

With the revision, only extended occupational disease claims for emotional conditions require a medical report from a psychiatrist or clinical psychologist in order to support the explanation of causal relationship required for the claim to be accepted. The revision allows physicians with other specialties or even family physicians to submit medical reports to establish initial claims and provide treatment. This will be a huge boon for letter carriers who have been emotionally traumatized by assault and are ill-equipped to deal with jumping through bureaucratic hoops. Not only will their claims be accepted more quickly, but they also will receive more promptly the benefits they are entitled to under the FECA such as counseling and wage-loss compensation if they are incapacitated from working due to their condition.

According to the transmittal, the revision is intended to apply to "typically traumatic injuries where the event or events are very specific, unambiguous and are generally clearer to physicians outside the psychiatric specialty as incidents that may naturally result in an extreme emotional reaction." The revision does not apply to emotional conditions in CA-2 occupational disease claims—cases that often involve stress or abuse in the workplace (often with management). These cases will still require a causal explanation from a psychiatrist or clinical psychologist for the claim to be accepted.

Next month's column will continue the discussion of medical evidence and OWCP.

¹ Note here that "disability" for OWCP is an economic concept that refers to an inability to earn a wage.

² See my July *Postal Record* column, which discusses the medical evidence required to establish disability.