



## Appeals before the ECAB

*Note: This article should be read in conjunction with an article in the January 2000 issue of *The Postal Record* concerning the entire FECA appellate process.*

**A**ppeals before the ECAB should not be confused with oral hearings and reviews of the written record by OWCP's Branch of Hearings and Review (see articles in the February, March and April issues of *The Postal Record*) or with reconsiderations by OWCP's district offices (described in the May issue).

The ECAB is an appellate body in the Department of Labor separate and apart from OWCP. Decisions are issued by a three-member panel—each member appointed by the Secretary of Labor.

The ECAB will consider only evidence which was in the case record at the time of the OWCP decision being appealed. An appeal should be requested within 90 days of the OWCP decision; however, the ECAB will consider requests received within one year if good cause is shown for the delay. No appeals are accepted after one year.

The 90 days/one year runs from the date of the OWCP decision being appealed—either OWCP's initial decision, the decision of an OWCP hearing representative, and/or an OWCP decision based on a request for reconsideration.

An employee or survivor may be represented before the ECAB by any responsible individual. The ECAB limits employees and survivors to a single representative—i.e., it is not possible for both a private attorney and an NALC representative to represent an employee or survivor before the ECAB.<sup>1</sup>

A request for an appeal must be in writing and sent to: Employees' Compensation Appeals Board, 200 Constitution Ave. NW, Room N-2609, Washington, DC 20210—and must include the following:

- OWCP case file number;
- date of OWCP decision being appealed; and
- name and address of designated representative, if any.

After receiving a request for an appeal, the ECAB will inform the employee or survivor of the appeal docket number.<sup>2</sup> This number represents the order in which the appeal will be processed by the ECAB.

The ECAB will then send a copy of the appeal to OWCP. OWCP has 60 days to send the case file to the ECAB and to respond to the appeal. The response, prepared by attorneys

for the OWCP,<sup>3</sup> frequently is a brief statement indicating that OWCP elects to forgo a response. However, it may be a "Memorandum in Justification" of OWCP's decision, or in some cases a "Motion to Remand" the case back to OWCP for further action and a new decision.

Whatever response is made, the ECAB will send a copy of the response to the employee or survivor (or to the employee's or survivor's representative, if any). The employee or survivor may then submit:

- written argument (an informal brief or "pleading") showing why he or she believes OWCP's decision is in error; or
- a request for oral argument (note that the ECAB will not hear oral argument other than in Washington, DC).<sup>4</sup>

Most appeals involve written argument—with oral argument reserved for unique, highly complicated cases where a written argument will not suffice.

**"The ECAB will consider only evidence which was in the case record at the time of the OWCP decision being appealed."**

After reviewing the evidence in the compensation case file, the ECAB will make its decision and send a copy of the decision to OWCP and to the employee or survivor (or to the employee's or survivor's representative, if any).

This concludes a series of articles on FECA appellate rights that began in January 2000. The three appellate options—hearings and reviews of the written record, reconsiderations, and appeals before the ECAB—are quite different and members should be guided by the information provided.

Further information can also be obtained from NALC National Business Agents and knowledgeable branch officers. ☒

1. NALC members can designate the Director of the NALC Compensation Department as their representative in an appeal to the ECAB. Copies of the appeal letter must be sent to the Compensation Department and to the applicable NALC National Business Agent.

2. If a representative has been designated, all ECAB communications will be sent directly to the representative. It is then up to the representative to keep the employee or survivor informed.

3. Attorneys for the OWCP are located in the Department of Labor's Office of the Solicitor (OSOL).

4. The employee or survivor must bear the cost of the trip to Washington, DC.