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 role providing the claimant with guidance and direction.
• Know the difference between basic occupational disease and extended occupational disease 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
### Requirements of a FECA Claim

- The requirement for filing a workers compensation occupational disease claim are the same as they are for filing a claim for traumatic injury. These requirements are:
  - **Time** – 3 Years (special attention for CA-2 claim)
  - **Civil employee**
  - **Fact of injury**
    - Injury = happened on one isolated event
    - Illness = happened in the course of one shift or over more than one shift
  - **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, of the causal relationship of the compensable disability to employment.
  - Refer to 20 CFR §10.101 (b) (c)
  - If person is exposed to same work environment pay attention how claim is filed.

### Form CA-2
Fact of Injury CA-1 vs. CA-2 How is the Claim Filed?
The mechanism of injury determines what form to file.
• A CA-1 (claim for traumatic injury) is sort of a "one-shot deal", a CA-2 (claim for occupational disease) is characterized by continued and repeated exposure to conditions of work over a longer period of time.
• To determine fact of injury in occupational disease claims it must be established the claimant was exposed to certain elements (amount, volume, density or duration). Claimant must have disease, exposure does not qualify to support disease/condition.

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

Are there 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.
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). DOL will help the claimant with guidance and assistance through the issuance of a development letter.
- 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 alleged to have caused the disease and show that the employee was exposed to the conditions claimed. 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.

Agency Responsibility

- Employing Agency. When issuing a Form CA-2, the supervisor or injury compensation specialist should provide the claimant with a checklist CA-35 showing the type of evidence which is to be submitted.
- 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.

List of Occupational Disease Checklist

- 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).
Examining the Back of the CA-2

- When did the claimant stop work? (Block 27)
- 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) Is the date logical given the dates when the claimant found out about the disease /condition relative to obtaining initial medical care.
- 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?

Why are Occupational Disease Claims Developed Differently?

- In general, it is easier to establish causal relationship in most traumatic injury cases 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.

Bringing it Together for Non-Stress Claims

- Review the claimant’s relationship to employment statement and the nature of disease or illness on Form 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.
- If applicable contest the claim, however, remember the final decision is with OWCP.
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 factors of employment which is the Fact of Injury component of a claim.

What’s the Difference Between Stress Claims and Other OD Claims?

Should you stress out over a stress claim?

- Not at all, there really isn’t a difference, all five factors of establishing a claim must be met.
- In stress related types of claims the causes are varied and usually not as clear cut, but it doesn’t change the way the claim is developed or managed.
- Don’t correlate a stress claim an emotional condition. Claims with a stress component have other medical manifestations.

So 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.

- Is the allegation or allegations compensable?
- The problem is knowing what is and is not compensable factor of employment.
- Keep in mind although an allegation may be factual but it may not be compensable.
Identifying the Allegations

- General allegations are not sufficient to support the claim. The employees' first burden of proof is to identify specific incident(s) at work that caused a medical condition.
- Reviewing and analyze the employees' 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 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 send a development letter to the agency specialist, 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.

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 has examined 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.
- This is so even if the actual assault took place off the employer’s premises.

Result of Supervision
(Usually not POD unless error or abuse is proven)
Relating to 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).
- POD

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 decision.
- After due process and no compensable factor of employment identified in the course of POD the claim should be denied and 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, no medical evidence 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.

Writing to DOL Disputing the Stress 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 and 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.

Providing Information 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.
Contact Information

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