



Recurrence of disability

In workers' compensation, there are two different types of recurrences. One is a recurrence of a medical condition. The other type, a recurrence of disability, is the subject of this month's article.

Injured workers are sometimes confused about the difference between these two kinds of recurrences. That is because, in common usage, "disability" is synonymous with handicap, impairment or a physical condition. However, the word has an entirely different meaning in workers' compensation. In accordance with 20 CFR 10.5(f), OWCP defines disability as an inability to earn wages that are comparable to the employee's pre-injury wages. When thinking of disability, think of dollars, not a medical condition.

To illustrate: A person with physical impairments who is working full time on limited duty is not disabled. By definition, he or she could not be disabled because there is no loss of wages.

With that said, the three ways that a recurrence of disability can occur are:

1. Disability due to a spontaneous return of the symptoms of the employee's accepted medical condition with no intervening cause (not caused by a new injury and without exposure to the work factors that caused the original condition).
2. Disability due to a consequential injury, which is a new injury caused as a consequence of the original work-related injury. For example, an employee may rely too much upon (and cause injury to) his or her left knee following an injury and weakness in the right knee.
3. Disability as a result of management's withdrawal of limited duty (assuming the withdrawal was not due to misconduct or non-performance of job duties).

Situations 1 and 2 above are very rare. Therefore, an employee who thinks he or she might fall within the category of "spontaneous return of symptoms" or "consequential injury" should be sure to seek advice from an injured worker specialist from the local union branch or the National Business Agent. It is important to speak to such a specialist before making the mistake of filling out the OWCP form incorrectly or perhaps even filling out the wrong form altogether.

The third situation, management's withdrawal of limited duty, is more common. There are specific steps an employee should take if the Service does take away his or her limited-duty work. He or she should fill out and submit to the supervisor the following forms: 1) form CA-2a (Notice of Recurrence) to notify OWCP of a renewed inability to work, and 2) a CA-7 in order to claim wage loss compensation from OWCP.¹

The one thing that is vital for the employee to do is to make it absolutely clear on the CA-2a that the recurrence is due to management's withdrawal of limited duty. Although the employee knows the inability to work does not have a medical cause, he or she must realize that OWCP is only aware of what is written on the CA-2a. Therefore, when asked to describe how the recurrence happened, the employee should clearly state that management took away the limited duty, thus denying work. Without that information, OWCP might assume that the recurrence is for medical reasons and deny the claim months later based on a lack of medical evidence.

Along with the CA-2a, the injured worker should submit a copy of the written notice from management withdrawing the limited duty—evidence to show OWCP that the disability was truly caused by management and that it was not the employee's choice.

If management does not give written notice of the limited duty withdrawal, the employee should fill out a 3971 requesting LWOP, clearly stating the reason for the leave as management's withdrawal of limited duty. The 3971 signed by management is important written proof in situations where the supervisor simply sends the employee home with a verbal instruction that work no longer exists (and pretending later that it was the employee's idea to go home).

The employee has the burden of proof in a claim for recurrence just as he or she does in all other OWCP claims. The employee should make it clear and unmistakable on the CA-2a that management caused the recurrence of disability and also include evidence that proves it. ☒

¹Separate from the notifications to OWCP regarding the recurrence of disability, the injured worker should also consult with his or her steward in order to file a grievance for an improper withdrawal of limited duty. If necessary, branch officers can seek assistance from the NBA office in filing such grievances.



The Postal Service's plan to withdraw limited duty

Significant changes may be ahead for employees who have partially recovered from compensable injuries. These changes come in the form of a new Postal Service program called the National Reassessment Process (NRP). The intent of this article is to provide members with an understanding of NRP so that union representatives will be better equipped to protect the rights of injured workers.

Briefly, NRP is the Postal Service's plan to withdraw limited duty from a portion of injured workers and send these employees home based on the Service's assertion that there's no work available. The injured worker then fills out a CA2a and a CA7 seeking wage loss compensation from OWCP. The Service's ultimate goal in NRP is separating injured workers from postal employment, thus reducing its workers' compensation costs.

After lengthy preparation, the Service will begin taking NRP nationwide in early 2007. However, the Service announced that it will not happen immediately everywhere in the nation. Rather, there will be a maximum of 27 districts undergoing NRP simultaneously—three districts in each of the nine areas.

Injured workers and union representatives must remember one thing: The Service may neither reduce nor eliminate its contractual and legal obligations by coming up with a new program and giving it a fancy name. Whether NRP exists or not, the Service's obligation to provide limited duty remains unchanged.

The Service has both contractual and legal obligations toward providing limited duty to injured workers. Starting with contractual obligations, *ELM* 546.142 states:

When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:

- a. Current Employees. When an employee has partially overcome a compensable disability, the Postal Service **must make every effort** toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance. (*Emphasis added.*)

The phrase "must make every effort" provides strong protection. The law requires the Postal Service to do more than make some effort. It must do more than make a lot of effort. It must make every effort. This language mirrors the

wording of the federal regulation 5 CFR 353.301(d)—the source of the Service's legal obligations:

Partially recovered. Agencies **must make every effort** to restore in the local commuting area, according to the circumstance in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973. (*Emphasis added.*)

In addition to the "make every effort" obligation, 5 CFR 353.301(d) gives the employer an example of the bare minimum way that injured workers must be treated—the same treatment that handicapped individuals receive under the Rehab Act. The Service's handbook, the *EL-307 Reasonable Accommodation*, outlines the process that the USPS must follow to meet its legal obligations under the Rehab Act. The *EL-307's* "reasonable accommodation" requirements include considering different ways to perform jobs and also reassignment of the injured worker.

Despite the Service's contractual and legal obligations to make every effort to provide limited duty, it is currently working hard to do the exact opposite. The Service is putting its efforts toward withdrawing limited duty work—some of which has been performed by injured workers for many years.

Injured workers whose limited duty is withdrawn have the right to appeal under the grievance procedure. This brief article is just an overview and branch representatives should not rely solely upon it to file grievances. Instead, branch reps should work hand-in-hand with their NBA office to ensure all necessary arguments are made. Injured workers may also file an MSPB appeal over the issue of restoration to duty regardless of whether or not 1) they are veterans, and 2) a simultaneous grievance was filed. For the MSPB appeal, an injured worker may want to seek the assistance of an attorney with experience in that field.

Union representatives should not be distracted by NRP and should stay focused on meeting the burden of proof that limited duty work exists and that the Service did not make every effort to provide it. The issue is and remains management's obligation to make every effort to provide limited duty. ☒



The new three-day wait

On December 20, 2006, President Bush signed into law H.R. 6407, the Postal Accountability and Enhancement Act. Signing this bill into law had an immediate effect on employees who suffer on-the-job injuries.

An employee who has a traumatic injury remains on pay status for the remainder of the day or shift on which the injury occurs. Prior to the change in the law, if the employee first became disabled within 45 days after the date of injury, he or she would be eligible for continuation of pay (COP), paid by the Postal Service. According to the law as it existed, an employee who was disabled after the COP-eligibility period expired would not be eligible for wage loss compensation from OWCP for the first three days of that disability. The employee's only choice was to use LWOP, not annual or sick leave, during those three days.

In December 2006, the law was changed to say:

A Postal Service employee is not entitled to **compensation or continuation of pay** for the first three days of temporary disability...[and] may use annual leave, sick leave or leave without pay during that three-day period..." (emphasis added)

The change meant that the three-day wait was no longer solely applied prior to compensation, but now to COP as well. However, it also provided the employee with greater options for leave.

Based on communications between the Postal Service and OWCP, here's how the three-day wait will be handled: Following an injury, if an employee is eligible for and elects COP, he or she must be given an opportunity to choose between AL, SL and LWOP for the three-day waiting period.

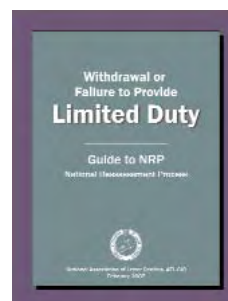
Days that count toward the three-day wait. Any day with a period of disability from work will count, regardless of whether the disability is for the full or just part of a work shift. The three days need not be consecutive and can include non-scheduled days and holidays that fall within a period of work disability.

Medical treatment or examination. An exception to the three-day wait requirement is made for time off work receiving medical care—COP is paid automatically in this circumstance. Note that such a day does not count toward the three-day wait *unless* the employee takes ad-

ditional time off in that same work shift due to disability. To illustrate: A day *will not count* toward the three-day wait if the employee is paid three hours COP for medical treatment and works the remaining 5 hours. A day *will count* toward the three-day wait if the employee is paid three hours COP for medical treatment and takes 5 hours sick leave due to disability.

Converting leave to COP. An employee's sick and annual leave will be re-credited (or the employee will be paid for LWOP) in the event that disability from work ends up exceeding 14 days. The Injury Compensation office will notify the employee's supervisor to process a pay adjustment converting the leave to COP. Do not confuse this with Leave Buy Back, which is the right to buy back leave with workers' compensation payments *after* the COP period expires.

Wage loss compensation. The change in the law does not require an employee to undergo a three-day wait for COP and a similar separate wait before OWCP compensation begins. Therefore, an employee who serves the three-day wait during the COP-eligibility period will be immediately eligible for wage loss compensation after the COP period expires. Likewise, an employee who uses his own sick leave for two days during the COP period will only have to serve one additional waiting day after the COP period expires before becoming eligible for wage loss compensation. As mentioned above, the new law gives employees greater options for leave. OWCP recently informed NALC that, to be eligible for compensation, an employee is no longer limited to using LWOP. An employee may use annual or sick leave, as well. ☒



Limited Duty: NALC has published a guide to help injured workers and their representatives challenge the Postal Service's withdrawal of or failure to provide Limited Duty. *The Guide to NRP* is available online at nalc.org.



NRP and third-party surpluses

My March 2007 article discussed how the National Reassessment Process (NRP) negatively impacts employees through the withdrawal of, or failure to provide, limited duty assignments. However, there is an additional way that employees can be harmed by NRP. Specifically, an injured worker with a third-party surplus will not be paid any OWCP compensation despite being off the clock as a result of NRP. This includes wage loss compensation, injury-related medical expenses, schedule awards and travel reimbursement.

How does an employee end up with a third-party surplus? It can happen when an on-the-job injury is caused by a third party.¹ Examples include an attack by a customer's unleashed dog, a fall from a broken porch step or an accident caused by a negligent driver.

The Federal Employees' Compensation Act (FECA) provides that the United States has the right to try to recover its injury-related expenses from the third party. The Postal Service examines newly received CA-1 forms for potential third-party liability. When possible liability is identified, the Service will send a letter to the injured worker that encourages him or her to seek recovery from the responsible party. The letter informs the employee that, if a monetary settlement is reached, the U.S. Government must be reimbursed for payments made on the employee's behalf.² The employee will also be informed that he or she will be guaranteed a minimum of 20 percent of the net recovery as well as any surplus that may remain after disbursements are made.

OWCP regulations give the injured worker the following choices: 1) hire an attorney to sue the third party, 2) try to settle with the third party directly, or 3) assign the Postal Service to pursue the case for him or her. Cautionary note to injured workers: OWCP may determine that a claimant has forfeited the right to compensation for refusal to either assign the claim or pursue it on his or her own.

If a recovery is obtained, funds are distributed according to a specific formula. First, the gross amount of recovery is reduced by things such as the cost of property damage (e.g., destroyed clothing, damaged automobile), reasonable attorney's fee and court costs. The remainder constitutes

the net recovery, of which 20 percent is paid to the injured worker. This 20 percent is not considered the third-party surplus; it is the employee's to keep. Rather, a surplus occurs if there are any leftover funds from the other 80 percent after OWCP is reimbursed for the total amount paid by OWCP as result of the injury.

When a surplus occurs, OWCP will flag the injured worker's claim in the computer system to prevent future payment of benefits. From that point on, compensation payments are calculated and are charged against the surplus—although no money is sent to the employee. Injured workers will also be given credit for medical expenses related to the work injury. While the worker will not be reimbursed for the expenses, he or she should submit reimbursement requests in order to reduce the surplus.

The only type of medical expenses that the employee would not have to cover while a surplus exists would be if OWCP decides, in the course of normal claim management, to require a second opinion exam, a referee exam or a medical file review. These expenses would be directly paid by OWCP.

The employee will remain in this situation without compensation until the third-party surplus is ultimately reduced to zero. A surplus is reduced when wage loss compensation payments that the employee otherwise would have received (if not for the surplus) are credited against the amount of the surplus. Additional medical expenses incurred by the employee are credited against the surplus in the same way. The third-party surplus is thereby reduced to nothing. Until the surplus is completely absorbed, the injured worker is not eligible for any OWCP compensation. If an administrative error at OWCP results in an accidental payment of compensation benefits to an injured worker while the third-party surplus still exists, it will be considered an overpayment to the employee, which OWCP may require the employee to repay.

The denial of limited duty is just one part of the harm resulting from NRP. Employees with third-party surpluses will suffer another hardship, as well. ☒

¹ Third party claims are also pursued in cases where a death occurs.

² This includes wage loss compensation and medical benefits, but not Continuation of Pay (COP).



Consequences of refusing a job offer

The *Employee and Labor Relations Manual (ELM)* provides employees with certain rights regarding limited duty. Specifically, *ELM* Section 546.142 requires management to “minimize any adverse or disruptive impact” when making a limited duty job offer. It is therefore a violation of the contract to offer work that is outside of an employee’s craft, work schedule or facility when work within each is available.

An injured worker who receives a Limited Duty Job Offer (LDJO) that he or she believes is a contractual violation may be tempted to refuse it on that basis. This would be a mistake. Anyone who unreasonably refuses a suitable job offer, as determined by OWCP, will suffer a penalty—the loss of future compensation benefits including the right to a schedule award (although the employee would retain entitlement to medical expenses for the treatment of the accepted condition).

OWCP naturally does not concern itself with the Postal Service’s or any other federal agency’s individual contractual obligations to limited duty. Rather, OWCP has its own standards for determining whether an LDJO is suitable or not, the primary basis of which is *medical* suitability. The *JCAM* page 13-11 provides instruction on how to deal with an LDJO that may be a contractual violation:

An employee could be offered a limited duty assignment that meets OWCP’s requirements, but fails to meet the requirements of *ELM* 546.142. Carriers refusing such disputed assignments could risk termination of compensation benefits...[*M-01120*] allows a partially recovered employee to accept a limited duty job offer “under protest” and still pursue a grievance concerning the assignment...By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure....


Note also that there isn’t anything that limits LDJOs to just current employees. Retirees, to their surprise, may receive a job offer from the Postal Service and may also be tempted to ignore it. This would also be a mistake because it could result in the same penalty—termination of OWCP benefits. According to OWCP, there are certain

“unacceptable” reasons for refusing a job offer. These include, but are not limited to: retirement, a personal dislike for the offered position, lack of job security and a claimant’s preference for different work hours.

The Postal Service is required to put job offers in writing and must include the following information: 1) a description of the duties to be performed, 2) the specific physical requirements of the position and any special demands of the workload or unusual working conditions, 3) the organizational and geographical location of the job, 4) the date on which the job will first be available, and 5) the date by which a response to the job offer is required.

If the claimant fails to accept a suitable job offer, OWCP will not terminate compensation benefits immediately. Before that can happen, a claimant must first be given the right to provide his or her reason(s) for not accepting the job offer. OWCP will send a letter to the employee notifying him or her that the offered work is suitable and providing 30 days for the employee to submit evidence or reasons for refusing the job offer. The 30-day letter will also advise the claimant about the penalty for unreasonable refusal—termination of compensation. Even if the Postal Service has already notified the employee about that penalty, OWCP must still send the 30-day letter—it is a responsibility that may not be delegated to employing agencies.

Once a claimant submits evidence or reasons for refusing the offered work, OWCP will determine the validity of that refusal. If OWCP deems the refusal unjustified, the claimant will be informed of that fact in another letter allowing 15 additional days to accept the job. No further evidence or reasons will be considered by OWCP at this point.

It is important to note that it would be ill-advised for a claimant to ignore the 30-day letter. If an employee does not respond to the 30-day letter with evidence or reasons, OWCP will prepare a formal decision terminating compensation. The claimant will not be sent the second notification (the 15-day warning letter). Injured workers should use care to respond to job offers from the Postal Service in a manner that does not jeopardize their right to compensation benefits. 



Second-opinion examinations

Referrals for a second-opinion examination occur whenever there is an issue that needs to be decided but the case record contains insufficient medical evidence to provide the answer. It may occur at any point in the life of a claim. For instance, in the early stages, there may be a question concerning the causal relationship of the employee's condition. That is, is the condition related to employment? This must be answered before a claim can be approved.

If OWCP is unable to decide an issue based on reports supplied by the attending physician—in this example, the issue of causal relationship—it may refer the injured worker to another physician for a second opinion.

However, even after a claim is approved, a second-opinion examination may be required by OWCP. There could be an issue regarding the course of medical treatment. For example, should surgery be approved for the condition in question? Likewise, OWCP might question the necessity of physical therapy.

Another issue for a second opinion examination can be the extent of an injured worker's disability. OWCP could be concerned about the attending physician's opinion about the duration of an employee's absence from work. It may appear to OWCP that the length of time off work is inconsistent with the nature of the employee's injury or the physician's physical findings upon examination.

Similarly, a second-opinion examination may be required to determine an employee's work tolerance limitations—his or her physical restrictions upon returning to work. It could also be required to determine the extent of an injured worker's permanent impairment for a schedule award.

It is not uncommon for two physicians to have opinions that differ. When that happens, assuming the opinions are of equal weight, it creates a conflict of medical opinion. Such a conflict requires a third- or referee-opinion to settle the issue.

What does it mean to say that two opinions have equal weight? A medical opinion should be well-reasoned and based on an accurate factual history. It should not be speculative—using words like “might,” “may be,” or “could be.” Also, a comprehensive examination naturally carries more weight than a cursory one. There should be physical

findings upon examination that support the opinion. Consideration is also given for an opinion that comes from a specialist in the appropriate field.

A referee or third opinion might not be required if the opinions of the second physician and the attending physician were not of equal weight. For example, greater weight would be given to a second-opinion physician who is a board-certified specialist in the appropriate field when the attending physician is a general practitioner. In the case where both physicians are board-certified, greater weight will be given to the opinion that is unequivocal and definitive and/or based on an accurate factual history.

An injured worker should certainly cooperate with all OWCP referrals to second-opinion or referee examinations. An employee who refuses to submit to or otherwise obstructs such an exam is subject to a suspension of his or her right to compensation until the refusal or obstruction stops.

The employee does have certain rights or protections associated with these examinations. An injured worker has the right to have a qualified physician present during a second-opinion exam (at his or her own expense). However, an employee is not entitled to have anyone present at the referee examination unless OWCP decides that exceptional circumstances exist. In addition, the employee will be reimbursed by OWCP for all necessary and reasonable expenses related to second-opinion and referee exams—including transportation costs and actual wages lost for the time required to submit to the exam.

In an attempt to ensure the medical reports that result from such exams are as fair and accurate as possible, certain rules have been put into place. A report from a physician who performed a fitness-for-duty exam on the employee for the Postal Service may not be considered as an actual second-opinion report. Such a report is therefore insufficient to create a conflict in medical evidence or to be used to terminate or reduce benefits. That does not mean that a physician who regularly conducts FFD exams for the Service is barred from being a second-opinion physician. However, that protection is in place for the referee opinion—no physician who regularly performs FFD exams for the Postal Service may be considered a referee physician. ☒



Falls at work

You might not think that there would be a set of regulations just for falls at work, yet it's true. There are. Before we look at those specific regulations, let's take another look at the five basic requirements for an injury or illness to be compensable under the Federal Employees' Compensation Act (FECA). They are: 1) the claim was filed in a timely manner, 2) the injured or ill party was a federal employee, 3) an accident (or exposure to a work environment, in the case of occupational illness) did occur that resulted in a diagnosed medical condition, 4) that it occurred in the performance of official duties, and 5) there is medical evidence to show that a particular claimed medical condition is causally related to number 3 above (the accident or exposure).

An injury or illness will not be deemed compensable if an employee is able to prove just three or four of the five above-listed requirements. The employee must prove all five. Therefore, claim approval is not automatic just because a letter carrier files a timely claim for a head injury that was sustained from a fall that occurred while casing mail. The missing element that must be proven is whether the fall occurred in the performance of duty. An employee cannot assume that a fall—even if it occurs while performing normal work duties—has the required connection to employment.

Direct causation—In falls of this type, there is a clear and definite connection to employment. A carrier trips on the edge of a mat at her case and breaks a wrist. A carrier slips on ice on his route and injures his back. Or there is a fall down some front-porch steps while making a delivery, which results in a twisted ankle. In these cases, there is clearly a direct work-connected cause resulting in the claimed condition. The clear work connection makes these types of falls compensable.

Idiopathic falls—This type of fall is caused by a personal or non-occupational condition. As examples, falls resulting from an epileptic seizure or a heart condition would ordinarily be considered idiopathic falls. Injuries from falls

caused by these types of non-occupational conditions would not be compensable because of the lack of a connection to employment—even if they occur while at work. However, there is an exception. If the employee is injured during the fall as a result of some object or furnishing in the workplace, the injuries sustained in that fall would be compensable. Note, though, that there would not be coverage for the underlying non-work-related condition that triggered the fall.

For example, a carrier falls as a result of an epileptic seizure and strikes his head on his case while falling. If he had fallen directly to the floor, no injuries to his head would have been compensable. However, falling against the carrier case creates a connection with employment. Therefore, treatment for a laceration to the head or a concussion would be compensable. Note, however, that treatment for the underlying condition—the epilepsy—would not be compensable.

Falls from unknown causes—Causes of some falls are simply unexplained. That is, there is no medical evidence that shows that a particular fall was caused by an idiopathic or non-work-related condition. This can be true even if an employee has a history of falling for non-occupational reasons. The fact that the cause of a particular fall cannot be determined and remains unexplained doesn't establish the fact that it must have been due to an idiopathic condition. In other words, it can't be assumed that the history of falls has anything to do with the current fall. And because there is no proof that the current fall was the result of a non-work condition, it must be characterized as an unexplained fall. An unexplained fall is compensable assuming, of course, it otherwise occurs while in the performance of duty.

Employees should remember that they have the burden of proof regarding all elements of their claim. Regardless of whether an injury results from tripping (direct causation) or some other cause, the employee must provide the necessary evidence—factual or medical—to establish that the claim is compensable. ☒



Reportable vs. non-reportable cases

When an employee hands his or her Notice of Traumatic Injury Form CA-1 to the supervisor, the form ends up being sent to OWCP in almost all cases. However, some forms will be simply placed in an employee's medical folder instead—without notification to OWCP that the injury ever occurred. Although the number of situations in which this happens is very limited, it is important to understand the process.

Federal regulations require management to complete the CA-1 and send the form to OWCP within 10 working days after receiving it from the employee if the injury will likely result in¹:

1. A medical charge against OWCP;
2. Disability for work or assignment to limited duty beyond the day or shift of injury;
3. The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;
4. Future disability;
5. Permanent impairment; or
6. Continuation of pay.

If none of the above conditions are applicable, the employer does not send the Form CA-1 to OWCP. Instead, in accordance with *ELM* 544.211, management places the form into the employee's medical folder as a permanent record without reporting the injury to OWCP. And, in fact, the Form CA-1 makes reference to this on Line 39 under "filing instructions."

The *EL-505 Injury Compensation* handbook distinguishes between such "reportable" and "non-reportable" first-aid injuries. You might wonder how an employee could receive medical treatment without it being reportable to OWCP. It can occur when an employee voluntarily allows a USPS contract physician to treat his or her first-aid injury. In some of these cases, the Postal Service directly pays the medical bills. Therefore, the first condition listed above—a medical charge against OWCP—would not have been met.

A case automatically becomes reportable to OWCP when an employee, exercising his or her guaranteed right to a free choice of physician, decides to receive treatment from a private physician. That's because the Postal Service will not directly pay such medical bills causing condition 1 to be applicable—"a medical charge against OWCP."

However, just because an employee voluntarily agrees to accept treatment from a USPS contract physician, it does not automatically follow that management may send the Form CA-1 to the employee's medical file instead of sending it to OWCP. Even if an employee voluntarily agrees to accept such treatment, if any of the other conditions listed above exist, the law requires management to submit the CA-1 to OWCP.

For example, an employee who voluntarily agrees to accept first-aid treatment from the USPS contract physician on the day of injury might also be on limited duty the next day because the injury prevented him or her from performing regular letter carrier duties. Such limited duty would meet condition 2 above—"assignment to limited duty beyond the day or shift of injury." Another example would be an employee who voluntarily agrees to accept treatment from the USPS contract physician but whose injury requires more than two visits. This would require management to send the CA-1 to OWCP because condition 3 has been met. In sum, if any one of the above conditions is applicable, the law requires the employer to send the CA-1 to OWCP.

Now, it may occur that an injury—originally deemed to be a non-reportable first-aid injury—ends up being reportable after all because the circumstances changed. For example, a carrier might have originally been deemed capable of working regular duty following an injury. Later, it became clear that the carrier was unable to perform regular carrier work and he was assigned to limited duty. Once this (or any of the six conditions above) occurs, the injury is no longer considered a first-aid injury. When an injury is no longer considered first-aid and becomes reportable, the Injury Compensation Control Office (ICCO) must then send the employee's CA forms to OWCP along with all PS Forms 2491, Medical Report—First Aid Injuries (which were completed by the USPS contract physician during initial medical examinations and treatment).

Looking at the above-listed conditions, it should be obvious that there are very few situations in which a CA-1 would not be sent to OWCP and would instead end up in the employee's medical folder. Although it is not common for an injury to be non-reportable to OWCP, it is important for injured workers and their representatives to understand the circumstances in which it could occur. ☒

1. 20 CFR 10.110(b)



Recurrence of a medical condition

The Compensation article from the January 2007 *Postal Record* pointed out that there are two different types of recurrences. One is the recurrence of disability, which was the topic of January's article. For this article, the focus is on the recurrence of a medical condition.

This type of recurrence is completely unrelated to disability (the inability to earn wages comparable to the pre-injury wages). Instead, it applies to cases where there is no work stoppage, but there is a renewed need for medical care after the attending physician releases the claimant from future medical treatment—in accordance with 20 CFR 10.5(y).

It is very important for an injured worker to understand that a claim for recurrence of a medical condition only applies to situations in which the claim for medical care has been closed by OWCP due to 1) a lack of activity (e.g., medical visits with the attending physician) or 2) written notice from the attending physician that he or she has completely released the claimant from future care. Regarding the latter, written notice like this from the attending physician is not very common. While attending physicians do record things like the diagnosis, prognosis, and so on for the medical file, they typically don't end up writing a formal release from future treatment for a claimant.

In the best-case scenario, a claimant will not have to file a claim for recurrence of a medical condition because the original OWCP claim has remained open for payment of necessary medical expenses. A claim for a recurrence of a medical condition is not required where there is an ongoing need for medical treatment.

This is true even if an injured worker initially anticipates there will be no future medical care required when he or she leaves the attending physician's office. If the injured worker later realizes that additional medical care is needed and the claim is still open, the treatment will be covered.

Generally, a claim will remain open for medical care as long as an ongoing need for treatment has been established through regular visits to the attending physician. However, once the claim for medical care is closed for either of the two reasons mentioned above, an injured worker

may have to fill out a form CA-2a should there be a renewed need for medical treatment.

As with all workers' compensation claims, the injured worker has the burden of proof. In particular, the claimant must provide enough medical evidence to establish that there is a relationship between the medical condition in the claimed recurrence and the original injury.

The level of proof required for the claimant to meet that burden depends upon the amount of time that has passed since the claim was closed. If it is still within 90 days of the release from medical care (measured from the date of the last examination or the date of release as stated by the physician), OWCP can simply accept the attending physician's statement supporting the connection between the condition and the original injury.¹

The claimant's level of proof is much greater once 90 days have passed since the release from medical care. No longer is a simple statement from the attending physician suffi-

“Generally, a claim will remain open for medical care as long as an ongoing need for treatment has been established.”

cient. To meet his or her burden of proof after 90 days have passed, the injured worker must submit an attending physician's report that contains objective findings and supports a causal relationship between the current condition and the accepted injury. The medical evidence needed to establish the causal relationship, once 90 days have passed, must be as conclusive as the evidence that was required for the original claim.

A claim that is still open for medical care is certainly the best situation for an injured worker to be in if additional medical care is needed. However, an employee whose claim has been closed should take the necessary steps to reopen it if further treatment is needed by supplying sufficient medical evidence to meet his or her burden of proof. ☒

1. The only exceptions to the doctor's statement being sufficient to establish the relationship between the condition and the original injury are: 1) if clear evidence exists that there was an intervening injury, 2) if there is an intervening OWCP decision based on another physician's report that negates the relationship, or 3) the case was originally accepted only for temporary aggravation of a pre-existing condition.



Disallowances

The question of whether or not to approve a claim is just the first of many decisions that OWCP will have to make after a claim is filed. When the decision is negative, it is referred to as a disallowance.

Before a disallowance can be issued, OWCP must advise a claimant of his or her burden of proof to show entitlement to the benefit. And the formal decision containing the disallowance must clearly define the specific benefits that are being denied and the reason for that denial. It must also provide appeal rights.

There are six general types of disallowances. They are:

1. Initial disallowances
2. Termination of continuing compensation payments
3. Disallowance of particular benefits
4. Suspensions
5. Forfeiture
6. Rescissions

An initial disallowance is a denial of the claim itself. This can occur because OWCP has determined that the claimant has failed to meet the burden of proof that he or she is a civil employee who filed a timely claim which establishes that an illness or injury occurred in the performance of duty—and that a condition is causally related to that claimed injury or illness.

Once OWCP has accepted a claim and initiated payments, however, the burden of proof shifts to OWCP if it intends to terminate compensation. This type of disallowance can occur for a variety of reasons. For instance, OWCP may, after weighing medical evidence, determine that the cause of the claimant's continued inability to work is no longer related to the original claimed injury. Other reasons for disallowing continuing compensation can be an individual's failure to accept suitable employment or being convicted of workers' compensation fraud.

OWCP can also issue disallowances for specific benefits that an individual may request. This can include requests for a schedule award, wage loss compensation for a particular period of time, recurrences of disability, specific medical treatments, change of physician, modification to a house or vehicle, or attendants' allowance.

A suspension is another form of disallowance. It can occur when a claimant fails to cooperate with OWCP's instructions. Benefits are usually restored to the claimant once he or she


begins following the directions that OWCP issued.

One cause for a suspension can be an individual's failure to appear for a medical appointment that OWCP has scheduled. Federal regulations state that an "employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary."¹ The FECA states, "if an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstructions stops."² Before OWCP can initiate such a suspension, it must ensure that it has placed the individual on notice regarding his or her responsibilities with respect to the scheduled medical examination.

Another cause for suspension can be the failure to submit reports of earnings. Federal regulations require an employee who is receiving wage loss compensation to periodically submit a report of earnings from employment or self-employment (either full- or part-time).³ OWCP periodically sends the form used for this purpose, the CA-1032, to individuals who are on the periodic rolls.

Suspension of benefits can also happen because of a failure to cooperate with Vocational Rehabilitation efforts—by ignoring letters or phone calls from OWCP or failing to keep appointments with the rehabilitation counselor. If the claimant later starts to comply with the direction to undergo vocational rehabilitation, compensation can begin again, but not retroactively.

The fifth type of disallowance is forfeiture.⁴ This occurs in cases where a claimant knowingly fails to report earnings on the CA-1032 form. An individual who omits or understates his or her earnings will forfeit entitlement to compensation for the entire period covered by the CA-1032 report. Do not confuse this with the suspension mentioned above for failing to submit the CA-1032 report. Forfeitures apply to cases in which the report has been submitted, but contains false information.

Rescissions are the last type of disallowance. The FECA provides that OWCP may end, decrease or increase benefits that already have been awarded. However, to do so, OWCP has the burden of proof to show that the original payment was in error. 

1. 20 CFR 10.320

2. 5 U.S.C. 8123(d)

3. 20 CFR 10.525(a)

4. 5 U.S.C. 8106(b)



Medical rationale for traumatic injuries

It is often not enough for a physician merely to give his or her opinion that an individual's physical condition is related to a given traumatic injury. Just because an employee has a knee condition, and also happens to have fallen down some steps, does not mean that the two are necessarily connected. It's possible that they are, but it's also possible that they aren't. For claim approval, it is vital to understand that a physician's mere statement that there is a causal relationship between the two doesn't mean that OWCP will accept it as fact.

That's where "medical rationale" comes in. Medical rationale is a physician's written reasoning that supports his or her medical opinion. Unless a physician provides those reasons for an opinion, the medical report will have very limited value for OWCP. Unfortunately, many injured workers or their physicians do not understand the importance of including medical rationale in medical reports and, therefore, it is often omitted by the physician. If that happens, the claim will very likely be denied.

Medical rationale would not normally be required for obvious traumatic injury cases—where it has been clearly established that the injury occurred as claimed. In such cases, the physician's reasoning connecting the medical condition to the injury is not necessary. For example, an emergency room physician observes a letter carrier's broken right leg immediately after he was hit by a truck on his route. In such an example, it is clear that the truck accident caused the leg fracture. Therefore, it is not necessary for the physician to provide his or her medical reasoning to explain how the broken leg was causally related to the truck accident. It's just plain obvious.

However, don't start believing that this means that medical rationale is never necessary in traumatic injury cases. In cases where the relationship between the medical condition and the reported injury is not obvious, medical rationale would be required:

Questions about the medical condition—A letter carrier who is *attempting to claim a back injury* after tripping and falling forward on his arms may be required to provide medical rationale to explain the connection between the condition and the fall. In situations like these, OWCP might require an explanation because it considers the causal re-

lationship between the back condition and this type of fall injury to be anything but plain and obvious.

Passage of time—Another reason why a traumatic injury might call for a medical rationale is the passage of time between the injury and the development of a condition. In the prior example of the truck accident, the break to his right leg was immediate. However, if a few months later that same individual develops blood clots in his right leg, the amount of time that has passed may cause OWCP to suspect that the clots had a non-occupational cause. To exclude non-work conditions as the cause, OWCP may require the attending physician to explain how the blood clots were causally related to the original injury.

Periods of disability—A claim for disability can also require medical rationale. Just because OWCP accepts that an injury took place and, further, accepts that the individual developed a medical condition from that injury, it does not automatically mean that OWCP accepts that the individual is disabled from work. These are separate things altogether. If the attending physician maintains that an individual is disabled from work for an extended period of time (longer than the normal anticipated time frame for the particular type of injury), OWCP will require the physician to supply a rationalized medical report supporting his or her opinion.

Clearly, it is not enough for a physician to merely declare something to be true. He or she must provide the medical reasoning for that opinion—lest the opinion be discounted. Decisions from the Employees' Compensation Appeals Board (ECAB) have repeatedly stressed how important this is:

A physician's opinion supporting causal relationship between a claimant's disability and a specific employment incident or factors of employment is not dispositive on the issue of causal relationship simply because it is rendered by a physician. To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.

It is important to realize that the most common reason for a denial of OWCP benefits is the lack of rationalized medical evidence. 