

Medical evidence and OWCP, Part 10

What the attending physician should understand in responding to medical reports from OWCP-directed exams (continued)



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This column concludes the discussion on providing guidance to the injured worker and their attending physician on how to effectively respond to adverse SECOP (second opinion) reports.

After the claims examiner (CE) considers and weighs the comprehensiveness of the medical history and the thoroughness of the reasoning and rationalization in a medical report, the next criterion that CEs follow in weighing one medical report against another is to look at the

credentials and expertise of the physicians who authored the reports. According to the Employees' Compensation Appeals Board (ECAB), a physician's qualifications might have a bearing on the probative value of their opinion.¹

The *FECA Procedure Manual (FECA PM) 2-0810.6(a).3* sets up a hierarchy, giving weight to credentials and expertise:

- 1. Specialist vs. non-specialist:** “[T]he opinions of physicians who have training and experience in a specialized medical field have greater probative value concerning medical questions pertaining to that field than the opinions of other physicians.” For example, many letter carrier injuries involve muscles, tendons, bones and joints. In such injuries, the opinion from an orthopedic surgeon would have greater probative value than that of a family practitioner, all other things being equal.
- 2. Board certification:** OWCP will give the opinion of a board-certified specialist in the relevant medical field more probative value than the opinion of a non-board-certified specialist. Most medical specialties have boards that certify practitioners in that specialty. For example, the American Board of Orthopaedic Surgery (ABOS) would be the board that certifies specialists to treat injuries mentioned above. Each specialty board establishes certification programs with qualifying standards of medical training and practice that ensure the quality of care that its certified members provide. Boards also often have additional certification programs in subspecialties. The ABOS, for example, offers a subspecialty certificate in the orthopedic surgery of the hand.
- 3. Board-certified specialist of professorial rank or acknowledged expert:** OWCP may also give additional weight to the opinion of a board-certified professor in a medical school or a published board-certified expert in the appropriate field.

Because almost all SECOPs used by OWCP are board certified in the appropriate field, it would be in the interest of the injured worker to find a physician to respond to the SECOP's report whose level of expertise and qualifications are at least at the level of the SECOP, if not higher.

After the CE weighs the expertise and qualification of the physician writing the report, the next criterion they consider is whether that physician has enough knowledge about the injured employee to arrive at a sound medical opinion. *FECA PM 2-0810.6(a).4* states:

A comprehensive report is one which reflects that all testing and analysis necessary to support the physician's final conclusions were performed. Generally, greater probative value is given to a medical opinion based on an actual examination. An opinion based on a cursory or incomplete examination will have less value compared to an opinion based on a more complete evaluation... Other things being equal, the probative value of an opinion increases when the physician reports specific detailed findings, based on a full and careful physical examination, x-ray studies, and appropriate laboratory and clinical tests. Opinions not supported by medical findings, or otherwise indicative of cursory examinations, carry little weight compared to opinions based on detailed examinations and findings.

Note that this criterion overlaps significantly with the second criterion of giving weight to a report that is well reasoned and rationalized. While one might assume that this criterion should give weight to the attending physician who has seen and treated the injured worker many times more than the SECOP, unfortunately this is not the case. *FECA PM 2-0810.6(a).4* states:

In cases where the medical issue is the current extent of disability, the well-reasoned opinion of a well-qualified specialist who examined the claimant only once can weigh as heavily as, or even heavier than, that of a non-specialist who has seen the claimant regularly over time. If the specialist was provided with the appropriate medical records contained in the case as well as the Statement of Accepted Facts (SOAF), he or she will have a sufficient history to render a well-reasoned opinion regarding the extent of disability following his or her examination of the claimant.

The final criterion found at *FECA PM 2-0810.6(a).5* that CEs apply when weighing medical evidence is whether or not the medical opinion is speculative or equivocal. As noted in my September 2023 column, OWCP finds terms such as “could,” “may” or “might be” indicative that a medical report is equivocal, speculative or conjectural, and thus insufficient to be given “probative value.” While the attending physician should always follow their best medical judgment, they should avoid such terms if at all possible.

1. Lee R. Newberry, 34 ECAB 1294, 1299 (1983)