

Emotional injuries and OWCP, Part 1



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Workers claiming emotional injuries under the Federal Employees' Compensation Act (FECA) have to meet the same conditions of coverage as workers claiming physical injuries. They have the same burden of proof to establish the five basic elements of their claim: 1) time, 2) civil employee, 3) fact of injury, 4) performance of duty, and 5) causal relationship.

However, establishing these basic elements in emotional injury cases can be much more challenging than in

physical injury cases. Claims examiners are often skeptical in emotional cases. While physical injuries are objectively verifiable through direct observation, clinical studies or imaging, emotional injuries are largely invisible. And in emotional occupational disease cases in particular, the causes of the injury may be complicated and difficult to establish. This is especially true in cases that attribute the emotional condition to misconduct, error, or abuse by Postal Service management. In such cases, the injured employee will also shoulder an additional burden of proof.

Emotional injuries can be either traumatic (CA-1), or an occupational disease (CA-2). For letter carriers, they also fall into two broad categories: 1) in-house emotional injuries that arise through interactions with USPS management or co-workers, and 2) out-of-house emotional injuries that arise from encounters and incidents with the public while performing letter carrier duties, usually outside the office on the street. Although in-house emotional injuries can be traumatic, they usually involve occupational disease. Almost all out-of-house emotional injuries are traumatic and result from assaults, threats, animal attacks or and traumatic accidents.

Historically, most emotional injury cases have been in-house and have involved allegations that the stresses of the workplace environment and management misconduct, or abuse, have led to the claimed emotional condition. In recent years, because of the unfortunate surge in assaults and attacks on letter carriers, out-of-house emotional injuries have become more and more common.

As President Brian L. Renfro describes it in his President's Message in the September 2023 *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 should be covered under FECA.

Because out-of-house emotional injuries almost always involve specific traumatic events, getting them accepted by OWCP has always been more straightforward than in-house emotional injuries. However, prior to 2023, OWCP required a medical report and rationale from either a psychiatrist or a licensed clinical psychologist in order to accept the condition in all emotional condition cases. Letter carriers who sustained emotional conditions as a result of assaults, in particular, had a difficult time finding psychiatrists or licensed clinical psychologists to diagnose and treat these conditions. It often took months or even the greater part of a year before they could receive treatment for conditions that demand immediate attention.

All this changed with *FECA Transmittal 23-04*, published in May 2023, which revised *FECA Procedure Manual* Chapter 2-805, "Causal Relationship," regarding the requirements for a medical specialist needed to establish an emotional condition. With the revision, only extended occupational disease claims for emotional conditions now require a medical report from a psychiatrist or clinical psychologist 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 in traumatic emotional injury cases. This has been a lifesaver for letter carriers who have been emotionally traumatized by assault and are ill-equipped to deal with jumping through bureaucratic hoops. Not only are their claims accepted more quickly, they more promptly receive 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." In such cases, evidence establishing the traumatic event, such as a police report or accident report, should be submitted as part of filing the claim, in addition to the medical report.

The revisions from *FECA Transmittal 23-04* do not apply to emotional conditions in CA-2 occupational disease claims—usually in-house cases that involve allegations of stress or abuse in the workplace by postal management. Not only are these cases much more difficult to get accepted, OWCP also will still require a causal explanation from a psychiatrist or licensed clinical psychologist.

Next month's column will continue the discussion of emotional injuries and will focus on these more complicated in-house cases.