



FECA

Burden of Proof

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Claimant's Burden

- Claim was timely filed.
- Claimant was a Federal Employee.
- Fact of injury: an injury, disease, or death occurred.
- The claimed condition is causally related to the claimant's Federal employment.
 - Performance of duty—injury must result from activity reasonably related to employment
 - Causation can include direct causation, but also aggravation, acceleration, and precipitation of an underlying/pre-existing condition.
- Existence and causation of injuries must be established by rationalized medical evidence.

Rationalized Medical Evidence

- Needed to establish both **fact of injury** and **causation**.
- A physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.
- Based on a complete factual and medical background
- Is supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

Performance of Duty

- Injury must have connection to the workplace, such as:
 - It occurred in the workplace premises while the employee is there for a work-related purpose (including parking facilities);
 - Occurred during assigned duties **or** bathroom breaks and other personal comfort activities reasonably incidental to employment;
 - Occurred during mandatory training or agency-sponsored social, recreational, or fitness events.

Statutory Exclusions

- Willful misconduct
- Intoxication
- Intention to bring about injury of another

Burden for Emotional Conditions

- Claimant must prove by reliable, probative and substantial evidence that a claimed emotional condition was caused or adversely affected by factors of federal employment.
- Claimant must submit a detailed description of the employment conditions or factors which he or she believes caused or adversely affected the emotional condition.
- Claimant must identify specific factors of employment so that the Office of Workers' Compensation Programs (OWCP) may make a specific determination regarding the allegations.
- General allegations and references to submitted evidence is not sufficient.

Burden of Proof for Recurrence of Disability

- Recurrence of disability is where a disabling condition ceases, the employee goes back to work, and then, without an intervening new injury, the condition appears again.
- Claimant must establish by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.
- This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.

Consequential Injuries

- Where primary injury is shown to be in POD, every natural consequence that follows from it is also deemed to be in POD (unless the employee's intentional conduct is an intervening cause).
- Employee should provide:
 - Detailed factual statement explaining the causal relationship between new condition and original injury + comprehensive medical report and other medical treatment records.
 - Explanation of any intervening injur(ies) that also played a role in the new condition, if applicable.

OWCP is not a “Disinterested Arbiter”

- ECAB has held numerous times that OWCP is not a “disinterested arbiter” and that proceedings under FECA are not adversarial in nature.
- What this means is that OWCP shares the responsibility in the development of the evidence.
- Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant medical issues in the case.
 - Examples: following up with treating physicians, referring to second opinion physicians.

Modification of Loss of Wage Earning Capacity (LWEC)

- LWEC is a measurement of the difference between a partially disabled employee's new (actual or potential) earnings and pre-injury earnings.
- LWEC determination may only be modified if one of the following criteria is met:
 - The original LWEC was in error.
 - The claimant's medical condition has changed.
 - The claimant has been vocationally rehabilitated.
- The burden of proof lies with the party seeking to modify the LWEC determination.
- Must be based on current, not "stale," medicals.

Burden of Proof for Termination of Benefits

- OWCP bears the burden of establishing that benefits should be terminated.
- Termination may be justified on review of the evidence of record.
- No new evidence is necessary.
- If on the periodic roll, claimant is allowed 30 days from date of **pre-termination notice** to provide contrary evidence. 20 C.F.R. § 10.540.
- Once benefits are properly terminated, burden shifts back to the claimant.

Pre-termination Notice not Required

- OWCP will *not* provide pre-termination notice when compensation is terminated, suspended or forfeited due to one of the following:
 - Claimant's disability is expected not to last long and claimant is receiving one-time "daily roll" payments instead of ongoing compensation;
 - Conviction for fraud in connection with a claim under FECA;
 - Incarceration based on any felony conviction;
 - Failure to report earnings from employment or self-employment on CA-1032;
 - Failure or refusal to continue performing suitable work or accept an offer of suitable work;
 - *Treating* physician indicates further medical treatment is not necessary (medical benefits may be terminated);
 - Compensation based on a CA-7 (which asks for compensation for a specific time period).

FECA Appellate Opportunities

- Oral Hearing
 - 5 U.S.C. § 8124 (b), 20 C.F.R. §§10.615-10.622.
- Review of the Written Record
 - 20 C.F.R. §§ 10.618-10.619
- Reconsideration
 - 5 U.S.C. § 8128, 20 C.F.R. §§10.605-10.610.
- Employees' Compensation Appeals Board
 - 20 C.F.R. Part 501.

Oral Hearing

- Before the Branch of Hearings and Review (BRH).
- Must be requested within 30 days from the date of the claims examiner's determination.
- Claimant may present any new evidence and present argument before the examiner.
- The hearing examiner has de novo review over the decision of the claims examiner. 20 C.F.R. § 10.617.

Agency's Role at the Hearing

- The Agency may have a representative present for observation.
- The representative may not testify unless specifically asked by the claimant or the hearing representative.
- The representative can only testify when that representative has the appropriate level of knowledge. 20 C.F.R. § 10.621.
- The Agency may submit comments in regards to the transcript of the hearing within 20 days from receipt of the transcript. 20 C.F.R. § 10.617.

Review of the Written Record

- Instead of an oral hearing, a claimant may request that the OWCP hearing examiner conduct a review of the written record. 20 C.F.R. §§ 10.618-10.619.
 - With such a request, the claimant should submit all evidence or argument to be considered by the OWCP hearing examiner.
 - The agency will receive all pertinent information, except for the medical evidence, and will be given a period of 20 days to comment on the evidence.
 - The claimant will have 20 days to comment on the agency's response.
 - The OWCP hearing examiner will review all evidence submitted by the claimant and the agency.

Reconsideration

- Review by another Claims Examiner who was not involved with the original decision. An application for reconsideration must be received by OWCP within one year of the last merit based decision. 20 C.F.R. § 10.607(a).
- Must present one of the required elements (discussed on next slide) before new merit review is warranted. 20 C.F.R. § 10.606.
- Determination of whether required elements were presented is reviewed under an abuse of discretion standard.

Reconsideration Requirements

- In order to qualify for a merit review on reconsideration, the claimant must submit evidence that presents one of the following:
 - Shows that OWCP erroneously applied or interpreted a specific point of law;
 - Advances a relevant legal argument not previously considered by OWCP; or
 - Constitutes relevant and pertinent new evidence not previously considered by OWCP.

Untimely Reconsideration

- An untimely request for reconsideration may be reviewed if the claimant establishes clear evidence of error. 20 C.F.R. § 10.607(b).
- Evidence that establishes clear evidence of error is evidence that
 - Is relevant to the issue which was decided by the Office;
 - Is positive, precise and explicit and must be manifested on its face that the Office committed an error; or
 - Is of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office's decision.

ECAB

- De novo review
- Must be filed within 180 days of the decision being appealed
- Review may be by oral argument or review of the record
- Oral arguments are discretionary
- No new evidence may be presented
- The Agency has no role at the oral argument but can submit a brief

Post ECAB Review?

- There is NO higher review body.
- 5 U.S.C. § 8128(b) precludes review of **ANY** determination “allowing or denying a payment” under the FECA in any court.
- Claimant can request reconsideration of ECAB decision from ECAB itself.

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