Federal Workers Compensation

Agency Medical Exams

3rd Annual Federal Worker's Compensation Conference

Chicago, Illinois

David L. Hull, MBA

Workers Compensation Program Manager

MidSouth Healthcare Network (VISN 9)

Agency Medical Exams

- **Agency Medical Exams are most useful in acquiring objective medical information, upon which an employing agency may base informed employment decisions involving medical conditions, based upon objective medical evidence.**
- **An Agency Medical Exam is an employing agency's qualified right to determine an employee's physical ability to perform the essential functions of their job.**

Agency Medical Exams

(Continued)

- **Oftentimes, medical information provided by an employee, does not provide sufficient detail with which the employer might construct light duty offers, alternate duty assignments, or modifications to existing positions, that would meet the employee's physical limitations.**

Medical Standards

- OPM may establish or approve medical standards for a government-wide occupation. 5 CFR 339.202
- Standards must be established by written directive
- Standards must be directly related to the requirements of the job

Physical Requirements

- **Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are essential for successful job performance.**

  5 CFR 339.203

Physical Requirements

(continued)

- **Physical requirements [established by Agencies] must be clearly supported by the actual duties of the position and documented in the position description.**

Legal Authority

To Order Agency Medical Exams

- **Agency Medical Exams must be offered or ordered, in writing, usually by the Employing Agency's Appointing Authority (commonly the Chief of Human Resources). Such examinations are governed by 5 CFR Part 339.**

Legal Authority

(Continued)

- **Employing agencies may require an employee who has applied for, or is receiving, benefits, as a result of an on-the-job injury, to undergo a medical examination that may affect placement decisions. 5 CFR 339.301 (c)**

Examination Procedures

- **The Agency must inform the employee in writing of the reason for the exam and consequences of failure to cooperate.**
  5 CFR 339.303 (a)
- **The Agency designates the physician, but must offer the employee the opportunity to submit medical documentation from their own physician.**
  5 CFR 339.303 (b)

Examination Procedures
(continued)

- Agency must review and consider all medical documentation submitted by employee's physician. [Notice must give the physician's name, location, date and time of examination in order to be enforceable.] 5 CFR 339.303 (b)
- Agency must pay for exam, ordered or offered. 5 CFR 339.304

Examination Procedures
(continued)

- **General Medical Exam must precede Psychiatric Exam. ***

  5 CFR 339.301 (e)

- **Agency must report to OWCP the failure of an employee to report for an ordered examination.**

  5 CFR 339.305 (c)

*** Except in cases of claims for work-related emotional disorders**

Examination Procedures
(continued)

- **The Agency must forward all reports and medical documentation, resulting from exams relating to on-the-job injury claims, to the Office of Workers Compensation Programs. The Agency must also report the failure of any workers compensation claimant to report for a properly ordered examination.**

  5 CFR 339.305 (c)

Examination Procedures
(continued)

- **Agency Medical Examinations are not sufficient, in and of themselves, to cause OWCP to render decisions on the level of medical impairment of a workers compensation claimant. OWCP must, however, consider any other medical reports in the file. 20 CFR 10.502**

Examination Procedures
(continued)

- **Agency Medical Examinations may provide conflicting medical evidence, if it exists, that would support OWCP's decision to order a second opinion medical examination.**
  20 CFR 10.321 (a)

Examination Procedures
(continued)

- **An employee who refuses to submit to or obstructs an examination ordered by OWCP, may have their entitlement to compensation suspended for the duration of the obstruction. Such obstruction also includes an employee's representative.**
  20 CFR 10.323

IMPORTANT CONSIDERATIONS

- **A person who claims benefits has the burden of establishing the essential elements of his claim, including the fact that he sustained an injury while in the performance of duty, and that he had disability as a result. As part of this burden the employee must present *rationalized medical opinion evidence, based on a complete factual and medical background*, showing a causal relationship between the injury and the disability.**
  ***Daniel R. Hickman*, 34 ECAB 1220 (1983)**

IMPORTANT CONSIDERATIONS
(continued)

- **The fact that a disabling condition exists does not establish a right to compensation benefits, nor does it raise an inference of causal relationship between such condition and an employment injury.**
  ***Dolph G. Stuart*, 13 ECAB 480 (1969)**

IMPORTANT CONSIDERATIONS
(continued)

- **The employee's belief that the condition was caused by or aggravated by employment conditions is insufficient to establish causal relationship.**
  ***Alberta S. Williamson*, 47 ECAB 569 (1996)**

IMPORTANT CONSIDERATIONS
(continued)

- **Where a person has a pre-existing condition which is not disabling, but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable. If the medical evidence reveals that an employment factor contributes *in any way* to the employee's condition, the condition is considered to be employment related.**

  ***Arnold Gustafson*, 41 ECAB 131 (1989)**

LIMITED / ALTERNATE DUTY

(for work-related injuries)

- **Physical restrictions must be provided by attending physician (use Form OWCP 5 or CA-17)**
- **To be effective, Agencies MUST provide limited duty, if medically feasible**
- **An employee MUST accept any light duty, offered by the Agency, that meets the attending physician's statement of physical limitations or the employee may loose eligibility for compensation benefits.**

Reasonable Accommodation

(for non work-related injuries)

- **To be useful, physical restrictions MUST be provided obtained based upon objective medical evidence**
- **The employing Agency MUST identify and document 'essential functions' of the position in question**
- **The employing Agency MUST comply with EEOC regulations [29 CFR 1614.203] with regard to reasonable accommodation**
  5 CFR 339.103

Medical Report Requirements

(Continued)

- In all cases, a medical report from the attending physician should include:
- (a) Dates of examination and treatment;
- (b) History given by the employee;
- (c) Physical findings;
- (d) Results of diagnostic tests;
- (e) Diagnosis;
- (f) Course of treatment;

Medical Report Requirements

(Continued)

- **(g) A description of any other conditions found but not due to the claimed injury;**
- **(h) The treatment given or recommended for the claimed injury;**
- ***(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;***

Medical Report Requirements
(Continued)

- (j) The extent of disability affecting the employee's ability to work due to the injury;
- (k) The prognosis for recovery; and
- (l) All other material findings.

20 CFR 10.330

EEO DECISIONS

- **"A claimant may not use the EEO process to launch a collateral attack on the workers compensation process."**

  Story v USPS, EEOC 05960314 (10/18/96)

- **"The Commission has recognized that an agency has the right to represent its position and interest in the OWCP Forum, and will not review decisions, which would require it to judge the merits of a workers compensation claim." Hogan EEOC 05940407**

EEOC DECISIONS

- **The Commission stated: "…it is well established that an Agency has an obligation to controvert an employee's workers compensation claim where there is a dispute as to the employee's entitlement."**

  Andel v. USPS EEOC 01975337

OTHER CONSIDERATIONS

Kevin Clark

v.

USPS

[Merit Systems Protection Board]
[NY-0752-95-0155-I-1]

Example of consequences of failing to follow regulations pertaining to Reasonable Accommodation issues.

MEDICAL EVIDENCE

- **Objective medical evidence is <u>REQUIRED</u> to make an informed employment decision (which includes separation from employment)**
- **If an employing agency does not have suitable medical facilities or access to appropriate medical specialists, Agency Medical Exams may be contracted with appropriate private sector companies, who specialize in providing such examinations.**

SAMPLE LETTER 1

This letter may be used in accordance with 5 CFR 339.301 to order an employee to undergo an Agency Medical Exam for non-work-related reasons. Because this issue deals with the appointment qualifications of a Federal employee, this letter should be issued by the Appointing Authority (normally the Personnel Officer) in order to ensure all employment related issues are addressed.

SAMPLE LETTER 2

This letter may be used to request medical information when an employee has filed a claim for workers compensation and there is some question about the medical evidence that affects placement decisions. 5 CFR 339.301(c)

Resulting medical evidence must then be forwarded to OWCP. 5 CFR 339.305 (c)

SAMPLE LETTER 3

This letter provides notification to an employee that they must provide acceptable medical documentation. This letter also gives the employee proper notice of the type of information needed and potential consequences for failure to provide it.
5 CFR 339.303 (a)

It is used in accordance with 5 CFR 339.302 when an employee requests any benefit or special treatment , to include reasonable accommodation, due to a non-work related medical condition.

Contact Information

David L. Hull, MBA

Workers Compensation Program Manager
MidSouth Healthcare Network (VISN 9)
VA Medical Center
1540 Spring Valley Drive
Huntington, West Virginia 24704

Phone: (304) 429-6755 x 2334
Fax: (304) 429-0371
E-mail: david.hull@med.va.gov