

U.S. Department of Labor

Office of Inspector General—Office of Audit

**REPORT TO THE OFFICE OF
WORKERS' COMPENSATION
PROGRAMS**



**OWCP DESIGNED PROCEDURES TO
PROVIDE REASONABLE ASSURANCE
SECOND OPINION AND REFEREE
PHYSICIANS WERE QUALIFIED AND
IMPARTIAL**

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BRIEFLY...

OWCP DESIGNED PROCEDURES TO PROVIDE REASONABLE ASSURANCE SECOND OPINION AND REFEREE PHYSICIANS WERE QUALIFIED AND IMPARTIAL

December 21, 2018

WHY OIG CONDUCTED THE REVIEW

Second opinion and impartial medical (referee) examinations provide Federal Employee Compensation Act (FECA) claimants and the federal government the checks and balances to ensure claimants are getting the appropriate care for an injury incurred while performing official duties. Due to their significance in deciding the claim, FECA and Office of Workers' Compensation Programs (OWCP) regulations put in place procedures to ensure these examinations are fair and accurate for OWCP and the claimant.

WHAT OIG DID

We performed a review to determine whether OWCP had designed procedures that provided reasonable assurance physicians performing FECA second opinion and referee medical examinations were qualified and impartial.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2019/03-19-001-04-431.pdf>

WHAT OIG FOUND

We found OWCP's procedures for second opinion and referee medical examinations were designed to provide reasonable assurance that the agency used qualified and impartial second opinion and referee physicians.

Second Opinion Physicians – OWCP contracted with medical referral groups to obtain second opinion physicians. OWCP's contracts required second opinion physicians to have advanced medical degrees, the appropriate state license to practice medicine, and Medical Board certifications in their respective specialties. We found OWCP performed sufficient contract reviews to ensure the contracted medical referral groups complied with required procedures.

Similarly, OWCP's contracts with medical referral groups specified procedures to help ensure second opinion reports were unbiased. Our review of the contractors' quality review reports and contract reviews performed by OWCP did not identify any bias issues related to second opinion physicians.

Referee Physicians – To obtain referee physicians, OWCP contracted for current listings of physicians certified by the American Board of Medical Specialties. OWCP uploaded this listing to its Medical Management Application. OWCP's medical examination schedulers were required to use this application to select Board-certified physicians for referee medical examinations.

To eliminate any inference of lack of impartiality in referee medical examinations, OWCP procedures required the services of all Board-certified specialists to be used as far as possible. To accomplish this, OWCP selected physicians (in the designated specialty in the appropriate geographic area) from the Medical Management Application in alphabetical order as listed in the roster and repeated this process until the list was exhausted. Physicians with any prior connection to the claim were excluded from selection. During our review, we found no instances where OWCP did not adhere to its procedures for selecting referee physicians.

WHAT OIG RECOMMENDED

We made no recommendations in this report.

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INSPECTOR GENERAL'S REPORT

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This report presents the results of our review of the procedures used by the Office of Workers' Compensation Programs (OWCP) in obtaining second opinion and referee medical examinations for claims filed under the Federal Employees' Compensation Act (FECA).

FECA provides federal employees who have sustained work-related injuries or diseases with monetary and medical benefits, as well as help in returning to work. In all filings, the claimant must submit a medical report from their treating physician. For wage loss benefits, the report must contain medical evidence showing that the condition claimed is disabling. In certain circumstances, such as where the attending physician's report does not meet the needs of OWCP, the claims examiner may schedule a second opinion examination. If there is a conflict of medical opinion between the treating physician and the second opinion physician, the entire case may be referred for a referee medical examination to resolve the conflict.

We performed a review to determine whether OWCP had designed procedures that provided reasonable assurance physicians performing FECA second opinion and referee medical examinations were qualified and impartial.

To address this objective, we reviewed Federal laws and regulations related to OWCP's procedures for obtaining second opinion and referee medical examinations, interviewed OWCP management and staff, obtained walkthroughs of OWCP's associated procedures from knowledgeable staff, reviewed OWCP contracts with medical referral companies, and reviewed certain decisions resulting from cases appealed to the Employee Compensation Appeals Board (ECAB).

We found the procedures OWCP had designed for administering second opinion and referee medical examinations provided reasonable assurance that the agency used qualified and impartial physicians to perform such examinations. Furthermore, we found no instances where OWCP did not adhere to its procedures in selecting qualified and impartial physicians for these examinations.

RESULTS

FECA schedules approximately 12,000 second opinion medical examinations per year, and about 1,500 referee medical examinations.

Second opinion examinations may be necessary to:

- Determine the causal relationship between work factors and the claimant's specific disease or injury.
- Assess the extent and duration of the physical impairment or disability.
- Establish the appropriateness of therapy, including some surgical procedures.
- Ascertain when the claimant has recovered and is able to return to work.

Referee examinations may be sought when:

- There is a conflict of opinion between the attending physician and the second opinion specialist.
- The conflict will affect decisions about paying, reducing, or terminating benefits.
- Both of the conflicting opinions appear to be medically well-reasoned, based on an accurate and complete history and facts, and are found to be of approximately equal weight.

Strong medical rationale is required to adjudicate a FECA claim. To approve a claim, the claims examiner needs a collection of medical evidence that verifies the relationship between the claimant's illness/injury, diagnosis, and work activity. Second opinion and referee medical examinations are key tools used by claims examiners to obtain and weigh medical evidence, and it is critical that the physicians used to perform both type of exams be both qualified and impartial.

Following are the results of our review of the adequacy of OWCP's procedures for obtaining second opinion and referee medical examinations.

**OWCP PROCEDURES DESIGNED TO
PROVIDE REASONABLE ASSURANCE THAT
SECOND OPINION PHYSICIANS WERE
QUALIFIED AND UNBIASED**

The authority to schedule second opinion examinations is specifically noted in Section 8123 of the FECA, which states:

An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. . . . If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

OWCP may also send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

Second opinion examinations are one of the key tools available to FECA claims examiners to ensure the medical information used in adjudicating a claim is fair, accurate, and current. Accordingly, it is critical that the physician selected to perform the examination be appropriately qualified and unbiased. Our review assessed how OWCP accomplished this.

Second Opinion Physicians' Qualifications

The FECA Procedures Manual, Chapter 3-0500, Paragraph 3, *Second Opinion Examinations*, states that physicians selected to perform second opinion examinations should be administratively qualified in the appropriate branch of medicine. The Manual further states that second opinion examinations are generally conducted by a physician selected by a medical referral group that has contracted with OWCP to provide second opinion medical referrals.

We reviewed OWCP's contracts with medical referral companies to identify the contract's requirements for ensuring qualified physicians performed the second opinion examinations. We observed that contracts contained definitions and requirements for ensuring physicians were qualified in accordance with FECA.

The contracts required specialists at the medical referral companies to utilize a checklist when verifying the physician's qualifications. This checklist was included as a part of the report provided to the FECA Claims Examiner for review. Items on the checklist include whether the physician has:

- advanced medical degrees,
- appropriate state license to practice medicine, and
- Board certifications in their respective specialties by approved medical boards.

The checklist also required the specialist to determine the physician was engaged in an active medical practice, and had not been excluded as a FECA medical provider.¹

OWCP performed contract reviews to ensure that contractors complied with the policies and procedures set forth in the contract. We assessed the frequency and thoroughness of OWCP's reviews to determine the sufficiency of this control. We found OWCP confirmed the second opinion physicians selected by the medical referral groups were licensed and qualified by verifying the following:

- appropriate medical degree,
- state licensing,
- appropriate medical board certification, and
- active medical practice.

We concluded OWCP designed sufficient procedures to provide reasonable assurance that the physicians selected for second opinion reviews were qualified to perform the examinations.

Second Opinion Physicians' Impartiality

FECA claims examiners use second opinion examinations to confirm information provided by the claimant's physician or to obtain additional information not provided by the claimant's physician. As this information is used by claims

¹ 20 C.F.R. 10.450-457 provides the basis for excluding medical providers from participation and payment under the FECA.

examiners in deciding benefits, it is important that the claims examiner receive unbiased information.

As part of its policies, OWCP notes that the method for selecting second opinion physicians is more flexible, since a strict rotation of physicians is not required for this type of examination. While the information from a second opinion physician does not outweigh the information provided by the attending physician, OWCP policy nonetheless requires the second opinion report to present information that is comprehensive, unequivocal, unbiased, and well-reasoned.

In assessing OWCP's procedures for selecting unbiased second opinion physicians, we did the following:

- Examined OWCP regulations and procedures for requirements related to impartiality of second opinion examination physicians.
- Reviewed OWCP's contracts with medical referral companies related to requirements for the selection of physicians.
- Examined OWCP's and the contractors' monitoring reports to ensure reviews were being performed as required and whether these reviews had identified bias issues with second opinion physicians or reports.

In our examination of the FECA, OWCP regulations, and OWCP procedures, we determined that OWCP's procedures reflected the intention and requirements of FECA for ensuring impartiality in obtaining second opinion examinations.

We reviewed OWCP's contracts for procedures for obtaining second opinions and ensuring the reports are unbiased. We observed that the contracts contained such requirements and specified procedures to help ensure second opinion physicians provided unbiased reports.

Our examination of OWCP's contract reviews found the reviews included the monitoring of the contractors to ensure that second opinion reports were unbiased, as required in the contract. Additionally, our review of the contractors' quality review reports did not identify any bias issues relating to second opinion physicians.

We concluded OWCP designed sufficient procedures to provide reasonable assurance that the physicians selected for second opinion reviews were not biased.

**OWCP PROCEDURES DESIGNED TO
PROVIDE REASONABLE ASSURANCE THAT
REFEREE PHYSICIANS WERE QUALIFIED
AND IMPARTIAL**

When a claims examiner reviews a claim with a difference in medical opinions sufficient to be considered a conflict, such as, two reports of virtually equal weight and rationale that reach opposing conclusions,² FECA and its implementing regulations provide for the appointment of a referee physician to examine the claimant (or in a death claim, examine the file) and resolve the conflict.

The FECA Procedure Manual states that because this method of resolving conflicts is provided by the FECA, the probative value of the referee physician's report is great and normally constitutes the weight of the medical evidence of record. Given the importance the FECA places on the referee examination report, it is critical that the physician selected to perform the examination be qualified in the appropriate specialty and has no prior connection to the case.

Qualified Referee Physicians

OWCP's Procedure Manual, Chapter 03-500, Section 4, states physicians selected to perform referee examinations should be qualified in the appropriate medical specialty and who has had no prior connection with the case. OWCP regulations define "qualified physicians" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law and who have not been excluded as a FECA medical provider.³

OWCP manages the process for obtaining referee examinations, including the selection of a qualified physician with a specialized application in its case management system, Medical Management Application (MMA). The MMA contains the names of physicians who are Board-certified. The MMA contains a database of Board-certified physicians available for referee examinations in over 30 medical specialties, including cardiovascular disease, dermatology, gastroenterology, internal medicine, neurology, occupational medicine, osteopathy, orthopedic surgery, physical medicine, and others. To maintain a sufficient listing of qualified physicians, OWCP contracts for the current listing of

² See 20 C.F.R. 10.321

³ 20 C.F.R. 10.450-457 provides the basis for excluding medical providers from participation and payment under the FECA.

ABMS Board Certified physicians, which it then uploads to its MMA. According to OWCP's Procedure Manual, medical examination schedulers are required to use the Agency's MMA, which contains an automatic and strict rotational scheduling feature.

We examined OWCP's process for selecting a qualified physician. We reviewed OWCP's regulations, policies, and procedures to obtain an understanding of the requirements. We interviewed staff responsible for the selection of a qualified physician and monitored performance of a selection. We reviewed OWCP documentation regarding obtaining the list of available physicians from the contractor and the uploading of the information into the MMA for use.

Based on this work, we concluded OWCP designed sufficient procedures to provide reasonable assurance that the physicians selected for referee examinations met qualifications requirements.

Impartial Referee Physicians

FECA states that referee opinions, when sufficiently well-rationalized and based on a proper background, are given special weight in resolving conflicts of medical opinion. As the referee physician's opinion holds special weight in the claims examiner decision, OWCP has a greater need to ensure impartiality of the referee physician.

To eliminate any inference of bias or partiality, OWCP procedures require the services of all Board-certified specialists to be used as far as possible. This is accomplished selecting physicians (in the designated specialty in the appropriate geographic area) from the MMA in alphabetical order as listed in the roster and repeating this process until the list is exhausted.

To help to ensure the referee physician is impartial, OWCP procedures explain those physicians who may not be selected as referees include:

- Those employed by, under contract to, or regularly associated with Federal agencies, such as a physician involved with fitness-for-duty examinations on behalf of the employing establishment,
- Physicians previously connected with the claim or the claimant, or physicians in partnership with those already so connected, or
- Physicians who have acted as medical consultants to OWCP.

OWCP procedures note that the mere fact that a physician has conducted a second opinion examination in connection with the FECA program does not

eliminate that physician from serving as an impartial referee physician in another case.

The process for scheduling a referee examination starts with the identification of the need for a referee examination due to a conflict in medical opinions presented by the attending physician and the second opinion physician. Once the claims examiner establishes the need for a referee examination, the following steps are completed:

- Claims examiner develops a request for a referee examination, prepares a Statement of Accepted Facts, and develops questions that relate to the claim and conflicting opinions.
- Claims examiner submits a Referee Examination Request Form to the District Office medical scheduler.
- Medical scheduler, using the MMA, selects the next qualified referee physician from an automated rotational list of qualified physicians within the vicinity of the claimant.
- Medical scheduler contacts the selected physician, confirms physician's qualifications, and inquires about any previous connections to the claim, claimant, or agency. If any conflict is identified, the medical scheduler records the bypass reason and selects the next qualified physician in the MMA. The medical scheduler repeats this process until a physician is selected.
- When a physician is selected, the scheduler inputs the appointment date and time into the MMA. The application then saves the appointment information and prompts the scheduler to generate the Appointment Notification Report (ME023), for imaging into the claimant's file.
- Claims examiner reviews the claim file to identify any potential conflict, of interest (physician may not have had prior contact with claimant).
- Prior to the examination, the medical scheduler provides the referee physician with the Statement of Accepted Facts, the entire case file, and the list of questions needed for the examination.

Upon completion of the examination, the referee physician develops a report on the examination, including answers to the claims examiner's questions and provides the report to the claims examiner. The claims examiner reviews the report and updates the claim file based on information received.

We performed testing to determine if OWCP's procedures for selecting impartial physician was working as designed. Specifically, we tested the data that was available regarding physicians as well as a selection of appealed cases, and performed a walkthrough of the process. Based on this work, we determined that the procedures provided reasonable assurance that selected physicians were impartial.

Specifically, we reviewed MMA data for the period January 1, 2014, through July 31, 2017, and identified six physicians/practices that appeared to perform both the second opinion and impartial referee medical exams, representing a potential conflict of interest. We compared Physician Identification numbers who completed second opinion and referee exams for the same claim number, and obtained additional supporting documentation regarding the claims. Our further review of OWCP information provided from the six claims revealed no conflicts of interest.

Additionally, we reviewed the results of claimant appeals to identify if OWCP decisions had been reversed by ECAB due to concerns over a lack of impartiality. We tested decisions on claimant appeals for calendar years 2014 to 2016 to determine if ECAB identified any claims where the referee physician was found to be biased or improperly selected. We reviewed 117 of 462 decisions identified by ECAB, which contained impartiality issues. We examined these decisions to identify whether the Board had reversed an OWCP decision based on an improperly selected medical physician. For example, the referee physician was found to be biased due to the claimant having previously been examined another physician in the same medical practice, or OWCP had not provided sufficient evidence to rule out the appearance that the physician was not impartial. We identified no decisions in which ECAB ruled that OWCP had used improperly selected physicians or physicians that lacked the real or the appearance of impartiality.

We concluded OWCP designed sufficient procedures to provide reasonable assurance that the physicians selected for referee examinations were impartial.

OIG'S CONCLUSION

Our examination found that OWCP established sufficient procedures for selecting qualified and impartial second opinion and referee physicians. During our review, we found no instances of non-compliance with those procedures.

We appreciate the cooperation and courtesies OWCP extended us during this review. OIG personnel who made major contributions to this report are listed in Appendix B.



Elliot P. Lewis
Assistant Inspector General for Audit

APPENDIX A: OBJECTIVE, SCOPE, METHODOLOGY, & CRITERIA

OBJECTIVE

The OIG conducted this review to answer to following question:

Did OWCP design procedures that provided reasonable assurance physicians performing FECA second opinion and referee medical examinations were qualified and impartial?

SCOPE

The report reflects the work that we conducted in OWCP's FECA program. Our scope covered the program's policies and procedures for selecting medical specialists to perform second opinion and referee examinations. Our review covered OWCP policy, procedures in place and the data for the period from 2014 – 2017. Our work was conducted primarily with OWCP's headquarter and regional personnel located in Washington, DC, Philadelphia, PA, and Jacksonville, FL.

METHODOLOGY

To address our objective, we reviewed Federal laws and regulations related to OWCP's procedures for obtaining second opinion and referee medical examinations, interviewed OWCP management and staff, obtained walkthroughs of OWCP's associated procedures from knowledgeable staff, reviewed OWCP contracts with medical referral companies, and reviewed certain decisions resulting from cases appealed to ECAB.

In planning and performing our work, we relied on computer-generated data provided by OWCP to establish a universe of impartial medical exam physicians in the FECA program. The data was an extract of the Medical Management Application data from OWCP's iFECS database. We assessed the reliability of the MMA data by: (1) performing tests for validity, completeness, accuracy, and consistency of the data elements used in our work; and (2) reviewing existing information about the data. Although we did find some data anomalies, we determined the data was sufficiently reliable for the purposes of our work.

CRITERIA

The following criteria listed provides the regulations, policy and procedures that govern the claims process for the FECA benefit program along with the specific sections regarding impartial second opinions and referee examinations.

- 20 CFR, Part 10
 - Directed Medical Examinations § 10.320

- DFEC Procedures Manual Part 2
 - Chapter 2-0600, Disability Management.
 - Chapter 2-0810, Developing and Evaluating Medical Evidence

- DFEC Procedures Manual Part 3
 - Chapter 3-0500, OWCP Directed Medical Examinations

APPENDIX B: ACKNOWLEDGEMENTS

Key contributors to this report were: Stephen Fowler (Audit Director), Dan Pompilii (Audit Manager), Barry Weiss, Dave Halstead, and Janet Cucunato.

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