



File Number:

NOV 19 1993

MEMORANDUM FOR: DISTRICT DIRECTORS
FROM: THOMAS M. MARLEY
Director for
Federal Employees' Compensation
SUBJECT: Use of Medical Reports Submitted by
Employing Agencies

It has recently been brought to our attention that medical reports from physicians employed by or under contract to employing agencies are being used to create conflicts in medical evidence. We have determined that these reports should not be considered second opinions for purposes of making determinations of entitlement based on the weight of medical evidence, or for creating conflicts in medical evidence.

The following paragraph is being added to paragraph 9 of Procedure Manual Chapter 2-810, Developing and Evaluating Medical Evidence, to reflect this determination:

A report submitted by a physician employed by or under contract to the claimant's employing agency may not be considered a second opinion report for purposes of creating a conflict in medical evidence or for reducing or terminating benefits on the basis that the weight of medical evidence rests with that report. Such a report must receive due consideration, however, and if its findings or conclusions differ materially from those of the treating physician, the CE should make an immediate second opinion referral.

Please ensure that all claims personnel are advised of this policy, which is to be adopted immediately.

National Association of Letter Carriers

100 Indiana Ave., N.W.
Washington, D.C. 20001

Memorandum

Telephone:
(202) 393-4695

From the Desk of HERBERT A. DOYLE, JR. *HAD*

December 3, 1993

To: All National Officers

Subject: OWCP Use of Medical Reports Submitted by Employing Agencies

OWCP's national office has issued a significant policy decision on the above subject in response to objections filed by the NALC on October 12, 1993 following reviews of three FECA compensation cases from OWCP district offices in New York, Cleveland and San Francisco.

In each case the Postal Service obtained and paid for medical evidence via their own authority to conduct fitness-for-duty examinations; and in each case the district office ruled that the report of the employee's treating physician was outweighed by the medical evidence obtained from the Postal Service-selected physician.¹

OWCP's national office agreed with the NALC's position that medical reports furnished by employing agencies should not be considered "second opinions" for purposes of making determinations of entitlement based on the weight of medical evidence, or for creating conflicts in medical evidence.

A copy of the OWCP national office's initial implementing instructions to their district offices dated November 19, 1993 is attached; and the following will be added to OWCP's internal Federal (FECA) Procedures Manual very shortly:

A report submitted by a physician employed by or under contract to the claimant's employing agency may not be considered a second opinion report for purposes of creating a conflict in medical evidence or for reducing or terminating benefits on the basis that the weight of medical evidence rests with that report. Such a report must receive due consideration, however, and if its findings or conclusions differ materially from those of the treating physician, the claims examiner should make an immediate second opinion referral.

While the instructions do not address retroactivity, the policy decision is applicable to all prior cases where a district office utilized a medical report supplied by an employing agency-selected physician to either create a conflict in the medical evidence or reduce or terminate benefits on the basis that the weight of medical evidence rests with the employing agency physician's report.

HAD/msp
opeiu #2
Attachment

¹ In one case, the Postal Service submitted a report from a panel of three medical specialists, and the district office ruled that the panel's report outweighed the report of the employee's specialist.