Agency Sponsored Medical Examinations

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Agency Sponsored Medical Examinations – Scenario

- Amy Farrah Fowler is an employee with your agency. She was injured on the job and has been off work since January 15, 2015. She is collecting workers’ compensation wage loss benefits. You would like to know when or if she can return to work because you have identified a potential position for her. However, the medical information in her file is vague and outdated. The Office of Workers’ Compensation Program (OWCP) is not willing to take action at this time to secure a current medical report.

Would you know what steps to take?
Objectives

- Discuss when the agency can request a medical examination of an employee
- Discuss the procedure for requesting and arranging the examination
- Discuss how to use the results of the examination to accommodate the employee or facilitate a return to work
Agency Sponsored Medical Examinations - Code of Federal Regulations

- 5 CFR § 339.301 to 339.306 discusses reasons why an agency can require or could offer a medical examination as well as the process and steps to take once the examination has been completed.
- 20 CFR § 10.324 discusses agency medical examinations in workers’ compensation cases.
Agency Sponsored Medical Examinations-
Code of Federal Regulations

• 5 CFR § 339.301
  • § 339.301 Authority to require an examination.
  • (a) A routine pre-appointment examination is appropriate only for a position which has specific medical standards, physical requirements, or is covered by a medical evaluation program established under these regulations.
  • (b) Subject to § 339.103 of this part, an agency may require an individual who has applied for or occupies a position which has medical standards or physical requirements or which is part of an established medical evaluation program, to report for a medical examination:
    • (1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);
    • (2) On a regularly recurring, periodic basis after appointment; or
    • (3) *Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of a position.*
  • (c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination to determine medical limitations that may affect placement decisions.
Why would an agency offer or require a medical exam?

• Determine the nature of a medical condition
• Determine the extent to which the medical condition affects the employee’s ability to perform his/her job
• Determine any work restrictions the agency needs to accommodate in order to return the employee to work and/or place the employee into a vocational rehabilitation program
  • Parts 339 and 353 of OPM regulations grant authority for the agency to arrange a medical examination for any employee who has filed a workers’ compensation claim
Why would an agency offer or require a medical exam?

- Evaluate a request for a reasonable accommodation
- The position requires a certain level of physical health/fitness (e.g., police officer and firefighters)
- Employee’s medical condition may pose a direct threat to him/herself or others
- Employee sustained an injury (not necessarily work related) that could impact performance but the employee wants to return to work

**Reasons for requesting the exam must be logical and work-related; otherwise, the agency can be accused of discrimination and any action taken by the agency could be reversed.**
Scenario

Ricky Allen is an IT Specialist with the Department of the Army. Several times with the past 2 months, Ricky has been calling his supervisor and requesting sick leave. He does not provide an explanation for his absences and does not provide a note from his doctor. As a result of his frequent absences, Ricky is falling behind on his work and it is affecting the operations of the office. Ricky’s supervisor is becoming annoyed with Ricky’s behavior and ‘wants to get to the bottom of this.’ The supervisor therefore, is demanding that Ricky be sent for a medical examination.

As the HR Specialist, how would you handle this situation? What advice would you give to the supervisor?
When an agency can REQUIRE a medical exam

• Prior to appointment or selection for a particular position
• On a recurring or periodic basis after appointment
• There is a question about the employee’s ability to meet the physical or medical requirements of a position
• An employee has applied for or is receiving Continuation of Pay or wage loss compensation as a result of a work-related injury
• When the employee is released in a reduction in force
  • If the position to which the employee has reassignment rights has medical standards or specific physical requirements which are different from those required in the employee’s current position
When an agency can REQUIRE a medical examination

• 5CFR 339.301(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:
  • (i) The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others, or
  • (ii) A psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under this part.

• (2) A psychiatric examination or psychological assessment authorized under (i) or (ii) above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.
When an agency can OFFER a medical examination

- The agency needs additional medical documentation to make an informed management decision
- The employee has a performance or conduct problem which may require agency action
- The employee requests, for medical reasons, a change in duty status, assignment, working conditions, or any other benefit or special treatment including:
  - reasonable accommodation
  - reemployment on the basis of full or partial recovery from a medical condition
Agency sponsored medical exams are useful in providing the employer with medical information on which to base employee decisions in workers’ compensation cases

- Medical information provided by the employee often does not provide sufficient detail to make a job offer or a referral to vocational rehabilitation
- Results of the examination may not necessarily affect workers’ compensation benefits
- Agency must notify the Office of Workers’ Compensation (OWCP) that an exam is scheduled and must send the results to the appropriate District Office
- Agency must inform OWCP if the employee fails to show up for the scheduled exam
Will the agency medical exam carry weight with OWCP?

• The agency must forward the medical report to the OWCP
• OWCP will consider this report when making determinations regarding benefits and job suitability but the **agency medical report cannot be the sole basis for reducing or terminating benefits**
  • Reports from an agency medical examination are one additional piece to consider
• OWCP will weigh the probative value of **all** the medical reports in the file (attending physician, second opinion specialist and/or agency appointed physician)
  • If medical reports contain differing opinions but are equally well-reasoned, OWCP may arrange another examination with a referee physician to resolve the conflict
  • **Agency medical reports cannot be the sole basis for creating a conflict in the medical evidence**
Scenario

Sam Blake is employed by the Department of Defense as a supervisor. Three months ago, he injured his back at work when he fell out of his office chair while reaching for a pen that had fallen to the floor. He stopped work immediately and filed a claim for workers’ compensation that was accepted for a back strain. He has been placed on the Periodic Roll and has not returned to work. He has not submitted a medical report since the CA-20 that he submitted with his CA-1.

What is your next step? Would you send him for an agency medical examination? Why or why not?
Agency Sponsored Medical Examinations - Reasonable Accommodation

- Reasonable Accommodation: “Adapting the job site or job functions for a qualified person with a disability to enable an individual with a disability to enjoy equal employment opportunities”
- An employee can request a Reasonable Accommodation for a disability
- Employee must submit medical evidence to support the disability
- If the disability is not readily apparent, the agency can request a medical examination to determine the accommodations needed for the employee to perform the essential functions of the job
Agency Sponsored Medical Examinations – Reasonable Accommodation

• Reasonable Accommodations may include:
  • Making existing facilities accessible
  • Restructuring the job (but not lowering and/or altering the requirements)
  • Utilizing part-time or modified work schedules
  • Adjusting or modifying training materials, tests etc
  • Providing qualified readers or interpreters
  • Acquiring appropriate equipment or modifying existing equipment
Scenario

Tim Hoff has been offered a job with the Department of Navy. He has informed his new supervisor that he has a disability – Chronic Fatigue Syndrome-and is requesting reasonable accommodations as a result. He would like an office with a nap mat so he can rest during his lunch period and break times. He is also requesting the option to take an extended lunch period (without having to take leave). None of the other employees in his position have an office.

*What is your next step? Why would you take this action?*
Agency Sponsored Medical Examinations – Procedures

• The agency (preferably the HR office or HR Director) selects the physician and pays the cost of the examination
• The agency must offer the employee an opportunity to submit medical documentation from his or her physician/practitioner
• The agency must notify the employee in writing
  • Reason for the exam
  • Date, time and place of the exam
  • Consequences for not attending the exam
    • Refusal or failure to report could result in a determination that the applicant is not qualified for the position
    • Disciplinary or adverse action could also result due to refusal or failure to report
      – Refer to Labor and Employee Relations for guidance
Agency Sponsored Medical Examinations – Scenario

• Amy Farrah Fowler is an employee with your agency. She was injured on the job and has been off work for several months. She is collecting workers’ compensation wage loss benefits. You would like to know when or if she can return to work but the medical information in her file is vague and outdated. The Office of Workers’ Compensation Program (OWCP) is not willing to take action to secure a current medical report.
Dear Ms. Fowler,
You have been off work since January 15, 2015 due to an on-the-job injury for which you have an accepted workers’ compensation claim. You have been receiving wage loss benefits for this injury.

The agency would like to determine when or if you can return to work in some capacity. However, the last medical report on file from Dr. Leonard Hofstadter dated July 9, 2017 is outdated and does not provide sufficient information regarding your current medical condition or your ability to return to work.

Therefore, you are being referred for a medical examination, at the expense of this agency, with a qualified physician. You have an appointment on June 23, 2019 at 1pm with Dr. Sheldon Cooper at 123 Caltech Drive, Pasadena CA 91125.

A copy of this letter along with your response and results of the examination will be sent to the OWCP Claims Examiner for review and inclusion into your file. Refusal or failure to attend the examination could result in disciplinary action being taken against you.
Agency Sponsored Medical Examinations-Examination Report

- The report from the examining physician should be detailed and provide sufficient information regarding the employee’s medical condition/disability and work restrictions/modifications needed as appropriate.
- The report must be sent to the OWCP if the employee sustained a work-related injury.
- Agency can use examination findings:
  - to create a job offer
  - make a referral to vocational rehabilitation
  - assist with the return to work of an injured employee
  - provide accommodations to a disabled employee
  - make management decisions
Agency Sponsored Medical Examinations –
Scenario

- Marge Blakeman is employed as a firefighter with the Army. She slipped on the ice at her home, fell and broke her hip. She had surgery and was off work for 8 weeks as a result of this injury. She would like to come back to work.
Scenario – Step One

• Ask Marge if she can provide a medical report from her treating physician releasing her to work full-time and outlining any work restrictions
Scenario – Step One

• Marge provides a note from her physician releasing her to work full-time
• The physician’s note fails to provide the restrictions Marge would require in order to safely perform her duties as a firefighter
Scenario – Step Two

• Offer Marge the opportunity to undergo an examination sponsored by the agency
• Explain reasons why the agency is offering the opportunity for an examination
  • She wants to return to work but the agency needs to ensure that she can safely return to work
  • Agency needs to determine whether work restrictions are necessary and if so, what those restrictions would be
  • Agency needs to determine whether the work restrictions can be accommodated
Scenario – Step Three

- Marge agrees to undergo a medical examination offered by the agency
  - Inform Marge, in writing, of the details of the exam – date, time, place, name of physician, consequences for not attending exam
Scenario – Step Four

• Marge attends the examination and a report from the physician is submitted to the agency representative

• Agency representative reviews the medical report to ensure that it provides examination findings, test results (if any), a well-reasoned opinion as to whether Marge can return to work and if so, in what capacity.
• How many hours per day she can work
• What work restrictions she requires, if any
• Work restrictions should be very specific – e.g., can work 8 hours per day, sit and stand as needed, no lifting or carrying over 10 pounds
Agency Sponsored Medical Examinations - Summary

- There are numerous scenarios in which an employee can be required (or requested) to undergo a medical examination at the expense of the agency.
- The agency representative should clearly document the reasons for the examination and inform the employee in writing of these reasons as well as the details of the examination.
- The medical report submitted to the agency should be thorough and well reasoned and address the issues that generated the examination.
References

- 5 CFR 339.301 – reasons why an agency can request a medical examination
- 5 CFR 339.206 (e) – agency medical examinations for psychiatric conditions
- 5 CFR 339.202 – reasons why an agency can offer a examination
- 20 CFR 10.324 – agency medical examinations in workers’ compensation cases