Challenging Claims

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Course Objectives

• Identify the reasons to challenge a claim
  • Answers the who, what, when, why and where questions

• Explore the process in mounting an effective challenge
  • Answers the how question
Controversion or Challenge

• Controversion as opposed to challenge

• Controversion is the employing agency's dispute, challenge, or denial of the validity of a claim for COP. The term "controversion" applies specifically to the issue of COP.

• Even though a claim is challenged, the employing agency must continue the employee's regular pay (COP) unless one of the statutory exclusions is met.

• The employing agency may controvert an employee's right to COP, but the employee's regular pay shall not be interrupted during the 45-day period unless the controversy is sustained by the OWCP and the employing agency is so notified.
Controversion or Challenge

• The employing agency may controvert COP based on one of the nine statutory exclusions (20 CFR §10.220) but not challenge the claim. These exclusions are:

  • The disability was not caused by a traumatic injury;
  • The employee is not a citizen of the United States or Canada;
  • No written claim was filed within 30 days from the date of injury;
  • The injury was not reported until after employment has been terminated;
  • The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;
  • The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or
  • Work did not stop until more than 45 days following the injury.
Controversion or Challenge

• The agency may both controvert COP and challenge the claim.

• Controversion should be indicated on the original claim form.
Controversion or Challenge

• Challenging a claim encompasses all aspects of the claim.
  • The agency may challenge the claim as a whole based on objections associated with the five basic requirements for FECA coverage.
  • A challenge may apply only to a specific element of the claim.
  • A challenge can be put forth at any time during the life of the claim depending on when evidence becomes available.
Elements of the Challenge

- Challenge must be in writing and contained in the claim file.
  - Can be in memo form or just a regular letter. The correspondence should clearly note it as a challenge.
  - Agency Letterhead is recommended.
- Reasons should be Objective, based on factual evidence.
  - Hearsay is irrelevant.
- Applicable laws can be cited in the challenge letter.
  - 20 CFR part 10
  - Title 5 USC 8101
  - ECAB rulings
  - FECA Procedure Manual (Primarily Chapter 2)
- Address whether the claim meets all five of the Basic Elements.
Understand the Five Basic Elements of the Claim

• Timeliness
  • Filed within 3 years from the Date of Injury

• Civil Employee within the meaning of the Act

• Fact of Injury
  • Events occurred in the manner alleged
  • Medical evidence supports a condition arose as a result

• Performance of Duty

• Causal Relationship
  • Medical evidence must establish that the diagnosed medical condition(s) is (are) a result of the work factors/incident
Initial Claim Filing

• On a CA-1, Controvert the claim in order to have it flagged as a challenged claim at OWCP.

• Should not go to short form closure

• Claim should be listed as UN/UD (Unreviewed which should lead to Under Development).
  • UD cases will not pay bills while the claim is being adjudicated
  • Status can be checked in the AQS screen.

• Evidence should be submitted at the time the claim is filed or very shortly thereafter.
Initial Claim Filing

• All information submitted to OWCP becomes part of the official record.
  • Injured employee or their representative has access.

• Information in support of the claim provided by the Injured worker should be provided to the agency by the OWCP Claims Examiner.
  • Review of the record for injured employee’s submission is sometimes needed in order to obtain the relevant data.
Process in analyzing the claim

• There is a 4 step process when conducting an effective analysis of the claim.
  
  • Identify the issues raised by the injured employee that may require a challenge.
  
  • Prioritize the issues to address in the challenge
    • Verifiable incidents/statements
    • Allegations that have no supporting evidence or documentation
  
  • Collect relevant information to address the issue(s)
  
  • Communicate information to OWCP
Identify the Issues

Example:

Four months after the alleged traumatic injury, an employee files a CA 1 alleging that on 02/10/2019, he slipped and fell while in the performance of duty injuring his right elbow and back as well as sustaining a torn rotator cuff in his right shoulder. The treating physician’s various medical notes state that the date of injury was the end of January. MRI scan of 03/05/2019 reported that the employee’s injury occurred six weeks earlier.
Identify the Issues

When reviewing the claim, start with the employee’s description of the incident or work factor. Note the time, date, and manner alleged. If the employing agency finds inconsistencies; challenge the claim based on fact of injury.

In this case, the inconsistencies point to an agency challenge based upon Fact of Injury.
Prioritize the Issues

When dealing with allegations, it is important that the agency make a list of all the allegations and challenge those that are not factual.

If some allegations made in the claim are supported by information as being factual; the agency needs to determine if these allegations involve compensable or non-compensable work factors.

For example, work factors such as administrative actions (i.e. performance appraisals, leave approval, promotions) absent abuse or error are not compensable.

The important thing to remember is that the Agency address every allegation made by the employee even if the allegation is not supported by any evidence.
Collect Relevant Information

- Collect relevant information - Although witness statements and medical documents are pertinent evidence often used to initiate a challenge; all available evidence pertaining to a claim should be reviewed for significance. This evidence can contain important information to either counter a claim or shed doubt as to the veracity of a claim.
Collect Relevant information

- CA Forms
  - CA-1 or CA-2, CA-7s, CA-1032, CA-20
- Medical reports
- Injured employee’s statement
- Supervisor’s statements
- Witness or coworker statements
- Safety office report
- Leave and attendance records
- Payroll records like time cards
- SF-50 and PD information on Performance of Duty questions
- Other evidence sources like maps, diagrams, photographs
- FECA regulations, ECABS and other legal framework
Collect Relevant Information

Continuing with the earlier example, the agency collects the following information:

• The employee’s direct supervisor contends that: On 03/04/2019, the employee informed him that the injury has occurred Monday, a week before, which would place it at about 02/25/2019.
Collect Relevant Information

Continuing with the same example, the agency collects the following information:

- The medical documents submitted along with this claim shows that the injury happened earlier than reported. These documents are:
  - MRI scan of 03/05/2019 which reported that the employee’s injury occurred six weeks earlier.
  - Employing Agency’s health facility notes on 03/11/2019 listing the date of injury as six weeks prior, which would place the date of injury towards the end of January.
  - Treating physician’s various medical notes stating that the date of injury was the end of January.
  - Treating physician’s medical report dated 04/01/2019 gave a specific date of injury of 01/20/2019.
Communicating with OWCP

• All communication should be in writing
  • Relevant phone conversations should be put into written memo form and uploaded to the claim, via ECOMP if possible.

• State the main objection first and clearly
  • Utilize a bulleted format when listing evidence points.

• Address all allegations made by the employee

• If a large package of information is being submitted, summarize the data and label the exhibits clearly.

• Clearly identify the primary point of contact for any follow-up requests OWCP may have.
Completing the challenge process with the same example, the Agency submits a challenge to OWCP of the claim:

The agency would like to formally challenge the alleged work incident due to inconsistencies in the evidence. The contradictory evidence creates uncertainty and cast serious doubt as to whether the specific traumatic incident occurred at the time, place, and in the manner alleged. For this reason, we believe that the employee has not sufficiently established the factual element of his claim.
Completing the challenge process with the same example, the challenge letter would continue:

The agency notes the following contradictions in the evidence:

1. The employee’s direct supervisor contends that: On 03/04/2019, the employee informed him that the injury has occurred Monday, a week before, which would place it at about 02/25/2019.
2. The medical documents submitted along with this claim shows that the injury happened earlier than reported. These are:
   a. MRI scan of 03/05/2019 reported that the employee’s injury occurred six weeks earlier which would place the injury on the third week of January;
   b. Employing agency’s health facility notes on 03/11/2019 listed date of injury as six weeks prior, placing the date of injury towards the end of January;
   c. Treating physician’s various medical notes stating that the date of injury was the end of January; and
   d. Treating Physician report dated, 04/01/2019, the physician gave a specific date of injury of 01/20/2019.
Completing the challenge process with the same example, the challenge letter would continue:

The Employees’ Compensation Appeals Board has ruled that: “An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.” (Douglas Singer - Docket No. 04-1892, Issued 12/06/2004).

The Agency Point of Contact for this claim is Ms. H.R. Specialist, (123) 345-6789.
Measure the Results

• Keep a listing of the claims that have been challenged.
  • Use DIUCS Notes categories to make this easier. Note categories: Challenged/Unadjudicated, Challenged/Accepted, Challenged/Denied are specifically designed for this purpose.
  • Using these categories for a case note will allow you to pull data giving you a listing of all your challenged claims and whether they were accepted or denied.
• Monitor for the conclusion of the challenge
• Determine the success ratio based on the percentage of claims successfully challenged
  • Based on formal decision prior to any appeals
• Successful target of claims challenged would be a 75-100% success rate
  • Lower than 74% could indicate that either the challenges are not being developed properly or that the wrong things are being challenged when the case is truly valid.
Final Scenario
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An employee files a CA-2, claiming he sustained an emotional condition due to supervisor harassment and agency discrimination. In his attached letter, the employee alleges the occurrence of the following incidents:

1. On 08/11/2017, his supervisor “rudely embarrassed” him in front of his co-workers when the supervisor instructed him loudly to stop socializing during work hours and return to his work station.

2. On 01/02/2019, a co-worker was promoted and he was not, an action which he believed to be discriminatory; and, by which he felt humiliated.
Final Scenario

The employee provided the following supporting documentation:

- Employee statement describing the incident with the Supervisor
- Employee statement regarding the selection of coworker for the promotion. To support his allegation the employee provided the following information:
  - Resume detailing his career experience
  - Performance appraisals for the past three years
  - Documentation of receipt of a Group Award
Process in analyzing the claim

Remember the four steps in the process:

- Identify the issues
- Prioritize the issues
- Collect relevant information
- Communicate information to OWCP
Identify the Issues

What are the issues that need to be addressed in a challenge to this claim?
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1. Employee alleges his supervisor “rudely embarrassed” him in front of his co-workers when the supervisor instructed him loudly to stop socializing during work hours and return to his work station.

2. Employee was discriminated against and humiliated when a coworker was promoted over him.
Prioritize the Issues

Are there any allegations that seem to be supported by the documentation submitted by the employee?

Are there any allegations that would fall outside the scope of compensability? Is the employee alleging actions that fall into the area of administrative actions?
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The employee allegations regarding non selection for promotion fall into the area of administrative actions performed by the agency (supervisor). Absent any evidence of abuse or error these actions would not be considered to be compensable.

The employee allegation of the supervisor “embarrassing” him when instructing the employee to return to work could potentially be compensable depending upon the facts surrounding the incident.
Collect Relevant Information

What information would you collect in support of a challenge to this claim?
Collect Relevant Information

What information would you collect in support of a challenge to this claim?

- Statements of any eyewitnesses to the alleged incident regarding the supervisor instructing the employee to return to work.
- Supervisor’s statement regarding the incident.
Communicate to OWCP

Once all the information is collected, how would you craft the challenge to the claim?
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The agency should respectfully argue that the supervisor was properly exercising his administrative duty and did not abuse his authority when he verbally counseled the employee. The agency can cite an established ECAB ruling to support the challenge such as: “Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity; and, are not compensable as factors of employment.” [Barbara J. Nicholson, 45 ECAB 803 (1994); Barbara E. Hamm, 45 ECAB 843 (1994)].
Communicating to OWCP

With respect to the employee being passed over for promotion; the agency can counter that this is purely an administrative action. You can cite an ECAB ruling that addressed this issue: “Determinations by the employing establishment concerning promotions and the work environment are administrative in nature and not a duty of the employee. Therefore, this matter is not compensable.” [William P. George, 43 ECAB 1159 (1994)]
Summary

• The process to analyze a claim in order to develop a challenge consists for four steps:
  o Identify the issues
  o Prioritize the issues
  o Collect relevant information
  o Communicate to OWCP
• Consider all sources when gathering information to support the challenge
• Address all allegations made by the employee in their claim
• If possible, challenge the claim at the time of claim submission.
• Communicate agency’s position clearly in the opening paragraph of the challenge letter.
• Be objective, factual, and non-adversarial in the challenge letter.
• Maintain metrics to determine the success of challenges and help refine future challenges.
Questions?