

§ 10.501

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the wages earned before the work-related injury if the evidence establishes that the employing agency had offered, in accordance with OWCP procedures, a temporary light duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. 8106(c)(2) will not be imposed on such assignments under this paragraph.)

(b) Each disabled employee is obligated to perform such work as he or she can. OWCP's goal is to return each disabled employee to work as soon as he or she is medically able. In determining what work qualifies under 5 U.S.C. 8115 for determining the wage-earning capacity for a particular disabled employee, OWCP considers all relevant factors, including the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area and the employee's qualifications to perform such work.

(c) A disabled employee who refuses to seek or accept suitable employment within the meaning of 5 U.S.C. 8106(c)(2) is not entitled to compensation.

(d) Payment of medical benefits is available for all treatment necessary due to a work-related medical condition.

§ 10.501 What medical evidence is necessary to support continuing receipt of compensation benefits?

(a) The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation where an employee has been found entitled to periodic benefits, narrative medical evidence must be submitted whenever OWCP requests it but ordinarily not less than once a year and with any filing of a form CA-1032. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) For those employees with more serious conditions not likely to improve and for employees over the age of 65, OWCP may require less frequent documentation, but ordinarily not less than once every three years.

(3) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical limitations based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. Failure to undergo such testing will result in a suspension of benefits. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

§ 10.502 How does OWCP evaluate evidence in support of continuing receipt of compensation benefits?

In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a third, impartial referee examination to resolve the issue, which will be given special weight in determining the issue.

§ 10.503 Under what circumstances may OWCP reduce or terminate compensation benefits?

Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation,

benefits will not be terminated or reduced unless the weight of the evidence establishes that:

- (a) The disability for which compensation was paid has ceased;
- (b) The disabling condition is no longer causally related to the employment;
- (c) The employee is only partially disabled;
- (d) The employee has returned to work;
- (e) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or
- (f) OWCP's initial decision was in error.

RETURN TO WORK—EMPLOYER'S
RESPONSIBILITIES

§ 10.505 What actions must the employer take?

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term "return to work" as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered after one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

§ 10.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

§ 10.507 How should the employer make an offer of suitable work?

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee in writing of the specific duties and physical requirements, the employer shall notify the employee in writing immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee in writing of the duties, their physical requirements and availability.

(c) The employer must make any job offer in writing. However, the employer may make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.

(d) The offer must include a description of the duties of the position, the physical requirements of those duties,