



ECAB changes appeal time limits

The Department of Labor (DOL) published in the *Federal Register*, dated October 20, its final rule updating the rules and guidance to all federal employees who seek to appeal decisions of the Office of Workers' Compensation Programs (OWCP) to the Employee Compensation Appeals Board (ECAB).^{*} The regulation changes were effective November 19.

Change in ECAB appeal time limits—For all appeals of OWCP decisions issued on or after November 19, the time limit will be 180 days. Previously, the time limit was 90 days, but ECAB routinely accepted appeals up to one year. This change essentially cuts the appeal time in half. ECAB maintains discretion to extend the time period for filing an appeal if an applicant demonstrates “compelling circumstances.” Compelling circumstances means circumstances that are beyond the appellant’s control that prevent the timely filing of an appeal and does not include any delay caused by the failure of an individual to exercise due diligence in submitting a notice of appeal.

The 180-day time period begins to run the day following the date of the OWCP decision that is being appealed. If day No. 180 of the appeal period falls on Saturday, Sunday or a federal holiday, the period runs to the close of the next business day.

The new 180-day time period should appear on all applicable notices of decision from OWCP. 20 CFR 10.126 requires OWCP to include information about the claimant’s appeals rights in each notice of decision.

Oral argument before ECAB—Oral argument may be held at the discretion of ECAB, on its own determination or on application by the appellant or the director. The application must specify the issue(s) to be argued and provide a statement supporting the need for oral argument. The request for oral argument must be made no later than 60 days after the filing of the appeal. Previously, either party could request an oral argument and ECAB would schedule the appeal for argument.

Whether by oral argument or by written pleadings, ECAB will consider the position of the claimant and the

position of OWCP, if submitted, and the facts of the case file as of the date of the decision being appealed. No new information will be considered by ECAB. The decisions of ECAB are regulated by 20 CFR Sec. 501.6:

Decisions (a) The decision of the Board shall contain a written opinion setting forth the reasons for the action taken and an appropriate order. The decision may consist of affirmance, reversal, remand for further development of the evidence, or other appropriate action. A copy of the decision shall be sent by the Board to all parties in interest. The case record shall be returned to the Director with a copy of the decision. (b) A decision of not less than two members shall be the decision of the Board. (c) The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board. (d) The decision of the Board shall be final upon the expiration of 30 days from the date of the filing of the order, unless the Board shall in its order fix a different period of time or reconsideration by the Board is granted.

Decisions by ECAB are also final and conclusive. The *FECA Federal Procedure Manual - PT2* states in section 2-1600-2 e:

Finality of Review. Section 5 U.S.C. 8128 provides that the action of the OWCP in allowing or denying a payment under the FECA is:

- (1) Final and conclusive for all purposes and with respect to questions of law and fact; and
- (2) Not subject to review by another official of the United States or by a court of mandamus or otherwise.

Special thanks to Ron Watson, former head of the Compensation Department, for his leadership and training. Ron truly has a heart for letter carriers and he remains a tremendous asset to this union.

The Compensation Department wishes you and your family a very happy and healthy new year! ✉

^{*} The ECAB is an appellant body in the DOL separate and apart from OWCP. ECAB decisions are issued by a three-member panel—each member appointed by the Secretary of Labor. ECAB has jurisdiction over appeals arising under the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8149.