

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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WORKING GROUP ON PRESUMPTIONS

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MEETING MINUTES

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TUESDAY,

JANUARY 10, 2017

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The Working Group met telephonically at 1:00 p.m.
Eastern Time, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT

KENNETH Z. SILVER

LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair

LAURA S. WELCH

VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

GARRY M. WHITLEY

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

Introduction and Chair Comments

Ms. Rhoads called the meeting to order at 1:04 p.m. Chair Markowitz said that he wants the Board to be discussing and voting on specific recommendations regarding presumptions. The Agency should be able to make assumptions about exposures for diseases when given sufficient and plausible information.

Discussion Regarding Assumptions and Presumptions

Member Boden began the discussion. Having presumptions can improve the consistency of decisions on claims. Presumptions can make it more likely that claimants with the same exposure and the same medical conditions will have the same compensation outcome. Another advantage of having presumptions is to streamline and expedite the decision-making process on claims. Presumptions can be more or less precisely targeted to accommodate the tension between epidemiological sensitivity and specificity. Presumptions should act as a floor on who gets compensated. Presumptions can also be either positive or negative. For example, you could have a presumption that says, unless a claimant had ten years of exposure or more and above a certain level of exposure, then it's presumed that the exposure did not cause the disease.

There are provisions under the current Act where if the claimant does not meet the presumption, then the next step is to send the claim to an industrial hygienist (IH) or to an occupational medical expert. A presumption can be rebuttable. That means that if you meet the criteria of the presumption, somebody can still argue that you shouldn't be compensated. The alternative is allowing for "irrebuttable" presumptions, where if a claimant meets the criteria, then it's automatic that the claim gets compensated and nobody is supposed to be able to deny the claimant compensation. It's important to keep in mind that presumptions have two parts, the exposure part and the disease part.

For the post-1986 era, the Agency has decided that certain occupations do not have enough exposure to cause disease. One of the issues that is not addressed in the Agency's presumptions is the omission of specific tasks and potential for exposure.

Current Use of Presumptions and Asbestos-Related Issues

Chair Markowitz gave the committee an extensive slide presentation on how the Agency uses presumptions and asbestos-related issues. Chair Markowitz said that the Agency had a rationale for the 1995 circular having to deal with policy changes that DOE set in place. With regard to asbestos regulations, OSHA reduced the PEL to 0.1 in 1994. One of the problems with presumptions is that they may lump different diseases together. Presumptions for asbestos may vary by disease outcome. Presumptions need to be separated out by specific diseases and linked to particular exposures.

Concerning asbestos-related diseases, Chair Markowitz said that so much is known that the committee ought to be able to come up with some reasonable presumptions that would at least cover a certain part of the workforce and a certain subset of asbestos-related diseases. The committee could come up with a list of job titles that could be expected to have had asbestos exposure.

Exposures are characterized by job title, tasks, buildings, and calendar time. There is a tradeoff, however, as the more specific the committee gets, the more the committee limits the utility of the presumption. For example, if a person is a sheet metal worker from 1980 to 1995, that person was probably exposed to asbestos. A presumption should be relatively simple or easy to apply in order to be useful in the claims process. The committee agreed that getting more specific than job titles would not be helpful. Claims that do not meet presumptions may go through the regular process.

With asbestos exposure, the committee thought that it would be difficult to put a time limit on exposure. The Agency should be very generous in making determinations so that people are not precluded from being legitimately compensated.

Conditions like mesothelioma could have their own presumption. Separating out diseases in two or three classes would not be that difficult, assuming the only time-related variables are duration and latency. If someone does not meet the presumption then that person has to show evidence that his or her disease is related to exposure. DOL has already done something like a presumption in the 250-day criteria and 20 years latency. The

presumption on asbestosis should address the three issues of 'caused,' 'contributed,' and 'aggravated.' The committee thought that a post-'86 presumption of a greater number of working days for asbestos exposure might work since asbestos exposure decreased over time.

Asthma-Related Issues

The Agency's 2015 circular on asthma acknowledges that asthma can be caused by a number of different exposures. The Agency seems to accept asthma claims if there is a physician's report linking it to exposure. If the asthma claim is filed after the DOE work has been terminated, then that claim requires some detail from the physician. If a physician writes a report saying that a claimant has occupational asthma, then that claimant doesn't need an exposure assessment. This allows a claims examiner (CE) to accept a claim without sending it to a contract medical consultant (CMC). Member Vlieger said that when a physician determines a claimant's asthma is occupational, the Agency will ask for exposure documents supporting that diagnosis. Chair Markowitz said that the Agency's own bulletin on asthma would seem to circumvent this possibility. Member Boden thought that it would be worthwhile for the committee to clarify what the presumption on asthma actually means in terms of accepting a claim. Chair Markowitz said that looking at some asthma claims that have been filed since the Agency's bulletin has been put into effect will give the committee insight into how it's applied. Member Dement suggested looking at the denied asthma claims that had a negative causation.

COPD-Related Issues

Chair Markowitz said that the procedure manual indicates that if a claimant was a smoker, then the claim needs to go to a CMC. Member Welch said that the building trades sent in comments to the Agency on the COPD presumption and supported putting forth a more up-to-date rationale related to COPD. Another point that Member Welch brought up was the fact that presumptions are something that the Agency can implement right away whereas changing policies and procedures takes much longer. Member Welch said that she would circulate the documents that the building trades put together to the committee.

With regard to COPD, Member Dement said that the committee's thinking was to try to be more consistent with contemporaneous literature on vapors, gas, dust, and fumes (VGDF). The committee felt it should focus on the labor categories associated with VGDF exposures. VGDF can also be added to the occupational health questionnaire (OHQ).

Next Steps

DOL gave the committee 14 priorities for evaluations, 8 of which were cancers. Member Vlieger suggested developing presumptions for peripheral neuropathy in sheet metal workers, pipe fitters, and welders. The DIAB (DEEOIC Interim Advisory Board) also wrote up a list of conditions that have been problematic for claimants getting their claims approved by DOL.

Chair Markowitz said that the committee will have another call in the second half of March prior to the full Board meeting in April.

I hereby certify that, to the best of my knowledge, the foregoing minutes are an accurate summary of the meeting.

Submitted by:



A handwritten signature in black ink, appearing to read 'S. Markowitz', is written over a horizontal line.

Steven Markowitz, MD, Dr. Ph.

Chair, Advisory Board on Toxic Substances and Worker Health

Date: 4/6/17