UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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APRIL 22-23, 2021

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The Advisory Board met via teleconference, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

AARON BOWMAN
MARK CATLIN
KENNETH SILVER
MIKE VAN DYKE

MEDICAL COMMUNITY

GEORGE FRIEDMAN-JIMENEZ
ROSE GOLDMAN
STEVEN MARKOWITZ, Chair
MAREK MIKULSKI

CLAIMANT COMMUNITY

JIM KEY
DURONDA POPE
CALIN TEBAY
DIANE WHITTEN

DESIGNATED FEDERAL OFFICIAL

MICHAEL CHANCE

THURSDAY, APRIL 22, 2021

Welcome and Introductions:

Mr. Chance called the meeting to order at 1:07 p.m. He began by announcing that Christopher Godfrey, the new Director of the Office of Workers' Compensation Programs (OWCP), will be addressing the Board this morning to introduce himself. Mr. Chance noted that Board is continuing to convene its meetings via teleconference as a result of the COVID-19 pandemic. He thanked Board members for making themselves available for this virtual format, and particularly thanked those members who have been working to fight the pandemic in their professional roles. Mr. Chance reviewed the logistics of the virtual meeting and reminded Board members that some of the materials and information that they have received in their capacity as special government employees, including private contracts personally identifiable information, should not be shared or discussed publicly.

Chair Markowitz welcomed Board members, DOL staff, and the public to this meeting of the Advisory Board on Toxic Substances and Worker Health. He led the Board members in a round of brief introduction for those in attendance.

Re-Chartering and Response to the Advisory Board's Request for Resources:

a. Re-Chartering

For the benefit of new Board members, Mr. Chance reviewed the Board charter renewal process, which is governed by the Federal Advisory Committee Act, also known as FACA. Under this Act, the Board charter must be approved every two years by the Secretary of Labor. The Board's charter expires in June and staff is working with DOL leadership on the approval process. DOL staff does not anticipate any changes to the charter for this cycle. Chair Markowitz said he was happy with the current charter but asked that staff inform the Board of any proposed changes if they arise.

b. Request for Resources

Noting that the Board and DOL staff have been discussing the Board's desire for a Board work support and consulting contract, Mr. Chance was pleased to announce that will be releasing a Request for Information (RFI) in the coming weeks. The final RFI

language will incorporate changes made in response to comments from the Board on the draft RFI. Once the RFI is released, DOL will review any responses from vendors in order to assess the technical expertise of the bidders and the level of resources needed to move forward. Chair Markowitz asked Mr. Chance to inform the Board of the date the RFI will be released and provide a link to the official announcement once those items are finalized.

Chair Markowitz recalled that once aspect of the Board's request was assistance in reviewing claims and the related need to establish a recordkeeping system or some other solution. He asked DOL staff for an update on that process. Staff said they would get back to the Board on that question after the meeting. Chair Markowitz said he was aware that creating a new database could be cost-prohibitive but recalled discussions about possibly modifying existing systems to fit the Board's needs. Rachel Pond, Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC), confirmed Dr. Markowitz's recollection, adding that the thought had been to develop spreadsheets based on extant data rather than creating a new database out of whole cloth. She added that this component may not be specified in the RFI but would be taken up by the parties post-facto in order to speed up the process. Dr. Rose Goldman asked whether the contractor will help assist review of claims where information has been scattered across disparate sources and has caused certain claims to be difficult to review in the past. Staff responded that the contractor's activities will largely be governed by the final contract language that will be determined at a later date. Chair Markowitz said he anticipates the contractor being able to assist in the type of situation described by Dr. Goldman.

Message to the Board:

Christopher Godfrey, OWCP Director

Mr. Godfrey was hired on as Director of OWCP and he is working with staff to learn all the nuances of the programs under the office's purview. Ms. Pond, Mr. Chance, and other staff members have been invaluable resources during this process. Prior to joining OWCP, Mr. Godfrey served as administrative law judge in DOL's Federal Employees' Compensation Act (FECA) program where he reviewed final appeal decisions. Prior to joining DOL, he served as Iowa Workers' Compensation Commissioner. In that role, he acquired experience working with an advisory board, which gave him insight into the important role such boards can play in

assisting federal and state programs. Throughout his career he has been committed to supporting and protecting social insurance programs. The Advisory Board on Toxic Substances and Worker Health provides highly valuable technical assistance and Mr. Godfrey looks forward to working closely with the Board going forward.

Review of Agenda:

Chair Markowitz briefly outlined the day's agenda. Topics include DEEOIC's response to Board action items, COVID-19 as a compensable illness, and the six-minute walking test to measure respiratory impairment, among others.

DEEOIC Updates:

Ms. Pond provided a general update of recent activities in the program. First, she discussed DEEOIC's operational plan goals, which include approximately 30 different timeliness goals that run the gamut of stages in the compensation process. Over the past fiscal year, the program has exceeded nearly all of those timeliness goals. The program is simultaneously working to upgrade its quality review process, which will be an ongoing activity throughout the year and will replace the annual accountability reviews. One aspect of the new quality process that Ms. Pond highlighted is that supervisors have increased the number of claims they are reviewing each month. Supervisors are now providing feedback every month on the quality of the work to every claims examiner and Final Adjudication Branch reviewer in the country.

Ms. Pond next updated the Board on the impact of the ongoing COVID-19 pandemic on the program's work. As mentioned at previous Board meetings, the program issued a bulletin that allowed for the use of telemedicine for routine medical appointments. This allowance has been extended through September 2021, and discussions are ongoing about potentially making telemedicine visits permanent for certain types of appointments. The program has also decided, given the heightened vulnerability of its population, to completely cover the cost of COVID-19 vaccination for all previously compensated workers. As far as compensation for workers who contract COVID-19, the program currently compensates for conditions that result from previously accepted conditions. This is how the program will treat these cases until COVID-19 itself becomes a presumptive condition, which the Board will be discussing in greater detail later in this meeting. As far as administrative impacts of the pandemic,

the program has seen delays in obtaining records from the Federal Records Center, the Social Security Administration, and the Department of Energy, as well as delays in medical appointments for impairment evaluation. This, unfortunately, has led to delays in claims processing, and some of the program's timeliness goals have taken a hit as a result. Ms. Pond anticipates these setbacks to resolve themselves as more people get vaccinated and more employees return to their offices. On the DOL side, staff has been able to do nearly all its work successfully via telework thanks to previous digitization efforts. One challenge has been that DOL was forced to close its resource centers to the public and move all interactions to the phone.

Ms. Pond next updated the Board on the program's new case assignment process. Cases had previously assigned to regional offices based on the location of the employee's employment. However, the program found that this policy led to disparities in workload across the regional office. Going forward, cases will be assigned to the regional offices at random. The hope is this will afford the program more flexibility as far as oversight and hiring and will lead to more consistent claims process outcomes nationwide. To facilitate this transition, the program has been cross-training regional claims staff in order to bring them up to speed on sites that traditionally would have been outside of their purview.

Ms. Pond announced the release of Version 5.0 of the Procedure Manual, which includes the Board-recommended presumptive language for asthma and Parkinsonism, as well as clarification regarding the SEC dates for Oak Ridge/K-25, among other updates. The program is also working to construct a means through which claimants, authorized representatives, and, eventually, survivors can access their case file digitally. Ms. Pond hopes to have this project completed by the close of the fiscal year.

Ms. Pond also updated the Board on recent outreach efforts conducted by the program. The program, in partnership with its sister agencies, has been holding monthly virtual outreach meetings covering topics such as benefits and survivorship, the adjudication process, and policy updates. Despite the pandemic, these events have been very well attended. Other outreach mechanisms include email newsletters and legacy media advertising. Finally, Ms. Pond discussed the program's training activities. DEEOIC hired a contractor to update the program's claims examiner training and brought on a training specialist to oversee continuing education among staff.

Member Silver asked Ms. Pond if any of OWCP's sister agencies with regional offices have used random case assignment. Ms. Pond said she believes FECA does something similar but she would have to confirm. Mr. Chance said the Black Lung Program switched to random assignment for similar reasons in 2017 and the transition went well after the cross-training Ms. Pond mentioned. Member Silver asked DEEOIC to keep a close eye on the claimant community during the transition. Many claimants and their families develop relationships with regional staff, and regional staff have become trusted experts on certain sites, and these individuals may find this transition disruptive. Ms. Pond said those staff members with subject matter expertise will be identified to serve as points of contact for when issues on certain sites arise or if other examiners need assistance on specific issues. Chair Markowitz discussed with Ms. Pond some other causes for delays in claims, such as claimants waiting to see a specific doctor of their choice and decrease in medical visits because of the pandemic, as well as the details of the quality review process.

John Vance, Policy Branch Chief, presented DEEOIC's responses to the Board's follow-up items from its last meeting. The first item asked for an update on the program's quality assurance (QA) effort. Ms. Pond discussed this previously at a broad level, and Mr. Vance added some additional details about the QA process. For FY 2020, staff reviewed we reviewed 1,248 cases and 416 decisions. The goal is to assess both quality and accuracy. Ultimately, the idea is to improve the overall quality of decisional outcomes and to identify areas for improvement and training.

In the second item the Board asked what proportion of new non-impairment claims get referred to industrial hygienists (IH). DEEOIC said the program does not maintain data that breaks down claims as new versus old. Overall, for the period of October 1, 2020 through March 31, 2021, there were 1,180 contractor IH reviews and 76 internal IH reviews.

The Board asked if DOL is considering standing up a research office of evaluate claims data. Mr. Vance said the program's position is that its legislative mandate is case adjudication activities, and the program does not have the authority to conduct activities outside that specific purview.

For the fourth item, the Board noted that EEOICP has started implementing the new Occupational History Questionnaire (OHQ)

and that the program would be asking the Resource Centers for feedback on this process. The Board asked for an update on this feedback. DEEOIC conducted an informal canvassing of the Resource Centers and related staff and compiled the feedback in a table that Mr. Vance provided to the Board. The Resource Centers have conducted over 1,900 OHQ interviews. Overall, the reception has been positive. Respondents said the new OHQ captures more relevant information. One recurring criticism was about the text size and formatting, which will be corrected in a future version.

The fifth question from the Board asked DEEOIC to discuss how the Medical Director is engaged in claims evaluation and their role in general. Mr. Vance referred the Board to the Procedure Manual for a detailed description of the Medical Director's responsibilities. In general, their role is to provide expert analysis and consultation on various aspects of the adjudication process, such as diagnosis, credentialing, causation, and so on. The Medical Director also supports OCWP's medical billing and coding activities.

The final question from the Board asked DEEOIC to comment on how it handles potential bystander exposures, which may not be included in the SEM. Mr. Vance said program examiners and physicians consider all information at their disposal, including the input of IH experts and the worker's history and contact with particular toxins, and if there is indication that the worker was incidentally exposed then that can be included in the Part D compensability analysis. The OHQ plays crucial role in collecting all relevant information for the program to consider.

Chair Markowitz said it might be useful to get the input of contract and federal IHs on how helpful the new OHQ has been. Mr. Vance said the federal IHs he has spoken with are finding it useful, particularly the added detail and context that the new version allows for. Chair Markowitz suggested checking with the contract IHs, too. He also asked whether the OHQ includes questions about bystander exposure. Ms. Rhoads said she would send the OHQ to the Board members for them to review at their leisure. Chair Markowitz asked how the Medical Director becomes involved in individual claims. Mr. Vance said that is determined by the claims examiner working with their management on whether the Medical Director needs to be consulted on a particular issue. That process is conducted by the Policy Branch, who determines whether the issue is most appropriately referred to the Medical Director, a Contract Medical Consultant (CMC), or back to the treating physician. If the issue is referred to the

Medical Director, the response is in writing and subsequently included in the case file.

Update on Prior Recommendations:

The first Board recommendation had to do with site-wide jobs. The Board recommended that “the Department develop and implement exposure presumptions indicating that job categories at DOE sites whose workers likely worked throughout their individual sites had potential exposure to all listed toxic substances at those facilities.” Chair Markowitz highlighted a key sentence of the Department’s response in which they indicate that “it is inappropriate to assign such a broad classification of exposure to specific labor categories in the absence of any underlying documentary support.” Chair Markowitz opened the discussion by noting that historically there has been varying degrees of documentation of hazards for specific job titles at DOE sites, both across points in time and from site to site. Chair Markowitz asserted that it is as problematic to tolerate variation in consideration of claims as it is to tolerate the lack of documentary support, reaffirming his support for the original Board recommendation. Member Key agreed and noted that the EEOICPA was created, in part, because of lack of documentation and monitoring at the sites. Member Friedman-Jimenez said one option would be to create an exposure database that would gather exposure data from specific job titles and that would collectively provide the documentation needed to assess job-specific exposures. He noted that such a database would have more limited utility in comparing eras, however. Board members discussed steps forward given the Department’s opposition to the recommendation. Member Goldman suggested the possibility of using the support contract to develop something like Dr. Friedman-Jimenez’s database idea to track job-specific OHQ data going forward. Chair Markowitz expressed the concern that would delay acting on bystander exposure. He also worried the OHQ would not capture the right information because the workers themselves would not know enough to report such exposures. Member Silver said he saw significant distinctions between certain bystander job titles, particularly firefighters, due to the nature of their work. He also suggested looking to the epidemiology literature for toxins that have documented associations with bystander exposure. Chair Markowitz suggested that this recommendation return to the Working Group for further consideration of next steps.

The next recommendation was that the Department develop an ongoing system to evaluate the objectivity, quality, and

consistency of individual claim reports and IH and physician audits. The Department should also periodically audit the IH reports and IH review process. The results of these analyses should be reported to the Board on a regular basis. The Department agreed to implement changes to its quality control framework. The Department provided further response detailing the actions it proposes to take in this regard. Chair Markowitz asked program staff for an update on these activities. Mr. Vance said much of the actions were discussed earlier in the meeting. The work began last year and the program is looking at qualitative and policy application accuracy throughout its entire decisional process. The program is also overhauling its CMC review process to include more objectivity. A lot of these efforts are still being developed, particularly on the IH side where it would be difficult to find third-party IHs to conduct audits given contractual and resource limitations. Chair Markowitz suggested that the Department consider whether the Board has a role to play in assisting in the development and redesign of the auditing process. Mr. Chance reminded the Board that any action it takes in these regard has to be valid under FACA.

IARC/NTP Carcinogens – Report and Recommendation:

Member Goldman presented the Working Group on Probable Human Carcinogens' report and proposed recommendation. The other Board members on the Working Group were Aaron Bowman, Duronda Pope, and George Friedman-Jimenez. The task was to look at International Agency for Research on Cancer (IARC) Group 2A agents, which are those considered probably carcinogenic to humans, and to consider whether they should be added to the SEM and/or linked to specific cancers. The Working Group started by reviewing the 22 agents added to Group 2A since 2016, of which 18 were toxic substances. In order to decide whether these 18 should be added to the SEM, the Working Group looked at which substances have evidence of being linked to cancer in humans. The Working Group tried to avoid duplicating the substantial epidemiological and literature review that was already conducted by IARC. By being in Group 2A, these substances at most have limited evidence of human carcinogenicity but may have sufficient evidence in animal models or mechanistic relationship to other known human carcinogens. Based on the Working Group's review, of the 18 toxic substances, 11 had limited evidence of carcinogenicity in humans. Of these 11, all were found in the SEM, but none are currently linked to cancers in specific organs.

The Working Group had three recommendations for the Department:

1) Toxic substances that are found to be probable human carcinogens (IARC Group 2A) and that have limited human epidemiological evidence for specific human cancer sites, as identified in Table 1, should be linked to those cancer sites in SEM.
2) The SEM should specify that IARC and National Toxicology Program (NTP) evaluations have been used in addition to Haz-Map for the purpose of asserting linkages between toxic substances and human cancer sites.
3) Future IARC Group 2A substance-cancer linkages identified by IARC or NTP should be incorporated in the SEM. Data from IARC and NTP should be used in addition to Haz-Map for health effects and linkages of toxic substances to cancers.

Chair Markowitz commended the Work Group for their excellent work and briefly discussing the history of this particular effort. Member Bowman moved that the Board accept the recommendations, which was seconded by Member Key.

Member Silver asked whether DOL keeps an eye out for newly identified toxic substances, or known substances that have been newly found to have toxic properties. Ms. Pond says the SEM is constantly being updated based on the state of the literature. Member Friedman-Jimenez discussed with program staff the details of how the SEM is updated and what factors and inputs are considered, including Board advice, active surveillance of the literature, and public input, among others. Member Goldman said one way to simplify the process would be to merely follow IARC, and when they add substances, automatically add them to the SEM.

Following discussion on regular updates and ensuring that the SEM follows IARC in both adding and removing substances, the Board amended the third recommendation to read: “Data from IARC and NTP should be used in addition to Haz-Map for health effects and linkages of toxic substances to cancers. At least on a yearly basis going forward, future IARC Group 2A (as well as Group 1) substance-human cancer site linkages identified by IARC and NTP should be updated in the SEM.”

The Board voted unanimously to approve the recommendations.

DOL Query on COVID:

Chair Markowitz reviewed the Department’s query to the Board on COVID-19 disease. The Department asked where it is reasonable,

under certain circumstances, to presume that a certain type of accepted work-related illness will increase the severity of a positive COVID-19 diagnosis. Under such a scenario, the program would be able to accept COVID-19 as a compensable consequential illness without further action. Otherwise, DEEOIC would have to seek the opinion of a physician to establish such a relationship on a case by case basis.

Chair Markowitz presented his draft recommendation for the Board's consideration. It reads: "The Board recommends that any chronic health condition that is listed by the CDC as being associated with severe COVID-19 disease by meta-analysis, systematic reviews, cohort studies, case control studies, cross-sectional studies, case cases/series or mixed evidence be considered to be presumed to lead to COVID-19 disease. That is, the diagnosis of COVID-19 disease is a consequence of those chronic health conditions."

Member Goldman said she felt that the last sentence makes it sounds like chronic health conditions make people more susceptible to contracting the virus and she was not sure the evidence supports that. Members Bowman and Friedman-Jimenez said there is evidence that having those conditions leads to more severe COVID-19 disease. Ms. Pond said the severity was ultimately irrelevant as far as compensability. Chair Markowitz raised the issue of so-called long-haul COVID-19 disease, where symptoms may arise well after initial infection and may occur even in people who originally had a mild bout of the disease. In light of these concerns, Board members discussed whether to specify "symptomatic" or "severe" COVID-19 in the recommendation. Member Bowman said he preferred "severe" because it was consistent with the CDC language.

The Board postponed further discussion on this topic until Day 2 of the meeting in order to take public comment.

Public Comment Period:

Terrie Barrie, Alliance of Nuclear Worker Advocacy Groups

Ms. Barrie discussed how the Radiation Exposure Compensation Act (RECA) provides for compensation of workers exposed to uranium radiation and listed the diseases covered under the Act. Uranium has both radiological and toxicological properties. SEC classes should be applied to workers who may have suffered toxic effects exposure to toxic radionuclides. The Board should consider whether a presumption should be recommended for non-cancerous

diseases covered under RECA.

Ms. Barrie also raised concerns about Final Adjudication Branch (FAB) claims examiners cherry-picking evidence. She pointed to a noteworthy case from South Carolina in which litigation ultimately led to DEEOIC overturning FAB's final decision. Ms. Barrie stressed that all the evidence DEEOIC used to overturn this decision was previously extant in the case file. She asked the Board, perhaps via its new contractor, to audit FAB final decisions and reconsideration denials to determine if there are other cases where FAB ignored evidence in the case files.

D'Lanie Blaze, CORE Advocacy

Ms. Blaze focused her comments on her work on behalf of former workers at the Santa Susana, Canoga Avenue, and De Soto facilities. As a result of the program's decision to remove claims from their region of origin, the claimants Ms. Blaze represents have repeatedly reported dealing with examiners and hearing representatives with shockingly little familiarity with their work sites. This results in important information being overlooked and inconsistent and contradictory decisions, which in turn has led to more requests for reconsideration and delays in decisions. These sites are highly complex and the related data demand a great deal of familiarity and expertise to be properly understood. Ms. Blaze also reported ongoing problems related to claims examiners proving unwilling to examine the entirety of the case file. There have also been incidents in which unfamiliar claims reviewers are not accepting previously established corporate successorship documents related to the Canoga Avenue facility. This could be resolved by the three sites being reclassified into a single site. In the meantime, BTComp should be updated to reflect the proper corporate data so that unfamiliar claims examiners do not inappropriately reject these claims. Ms. Blaze also asked the adjudicatory jurisdiction be returned to the originating regional office with the institutional knowledge and expertise to properly adjudicate claims at these complex sites.

Faye Vlieger

Ms. Vlieger applauded the Department for their efforts to stay in operation throughout the pandemic. However, she has experienced a number of problems with the claims adjudication process in the past year, including claims examiners not consulting the SEM for all possible exposures. In addition, the SEM is not properly linked to labor categories and labor

categories consistently have no toxins associated with them. She also discussed cases in which she felt the Medical Director was improperly consulted and given erroneous statements of facts. This consultation is also being used as an end-run around the refereed CMC opinion. Despite these issues, the program has seen many improvements over the years, and Ms. Vlieger thanked staff for their ongoing efforts to continue this improvement effort.

Jean Cisco, Portsmouth Site

Ms. Cisco described ongoing issues with workers being improperly classified based on inadequate job descriptions. The Portsmouth collective bargaining agreement has more complete job descriptions but Ms. Cisco has been unable to get the program to accept these descriptions despite repeated attempts. She also expressed displeasure at removing claims from their regional office origin. She suggested rotating examiners through the different regions to gain expertise before rotating the claims. She was glad to hear the Board will be recommending a COVID-19 presumption and she suggested using the “symptomatic” language rather than “severe” because a mild case of COVID-19 could significantly aggravate the preexisting condition.

Gary Vander Boegh, Paducah Gaseous Diffusion Plant

Mr. Vander Boegh described his difficulties getting workers’ plutonium and beryllium exposures at Paducah and elsewhere recognized by the Department.

End of Day One:

Chair Markowitz adjourned the meeting for the day at 4:57 p.m.

FRIDAY, APRIL 23, 2021

Call to Order:

Chair Markowitz called the meeting to order at 1:06 p.m. Following Board member introductions, the Chair listed potential work group topic areas for the Board to consider during the day’s discussion. His proposal was to establish one work group focused on reviewing the Department’s efforts to improve claim quality, objectivity, and consistency, and another work group to explore and follow up on public comments.

DOL Query on COVID (Continued):

The Board resumed the conversation on its draft COVID-19 presumption recommendation that it had begun on the first day of the meeting. Board members continued to debate and fine-tune the language around symptomatic versus severe COVID-19 disease. Member Goldman it was important to be clear that the recommendation would cover individuals who develop a symptom of COVID-19 per the CDC definition. Member Bowman felt it was important for the Board to be evidence-based in its language, and the current literature connects chronic health conditions to increase risk of severe COVID-19 disease. Chair Markowitz agreed that the language should refer to CDC definitions, but noted that mild disease has not been a research priority. He agreed that the recommendation should be worded to cover the spectrum from mild to severe symptomatic cases. Dr. Friedman-Jimenez pointed out that the literature on COVID-19 disease continues to evolve, particularly with the emergence of what has been dubbed long COVID. As time goes on, long COVID may become a more dominant concern. While he agreed that the current recommendation should remain more narrowly tailored to acute COVID-19 given the state of the literature, Dr. Friedman-Jimenez suggested including a mechanism for updating the recommendation if the literature evolves. Chair Markowitz argued that the language “diagnosis of symptomatic COVID-19 disease” would cover long COVID,but agreed with Dr. Friedman-Jimenez’s suggestion. Member Goldman concurred and suggested using similar language as the carcinogen recommendation from Day 1. The Board was in consensus that the recommendation should be claimant-friendly in its construction; given the lack of hard data on certain aspects of the disease, the Department should err on the side of inclusivity.

After further discussion on precise language, the Board settled on the following recommendation: “The Board recommends that any chronic health condition that is listed by the CDC as being associated with severe COVID-19 disease by meta-analysis, systematic reviews, cohort studies, case control studies, cross-sectional studies, cases series or mixed evidence be considered to be presumed to lead to COVID-19 disease. That is, the diagnosis of symptomatic COVID-19 disease is a consequence of those chronic health conditions when it follows or coincides with the onset of those conditions. The Board recognizes the need to periodically review (at a minimum, annually) and update this recommendation based on the evolving scientific and medical knowledge on this topic.”

Member Goldman moved to accept the proposed recommendation, with Member Pope seconding. The Board voted unanimously to approve the recommendation.

Asbestos – Report and Recommendation:

Chair Markowitz updated the Board on the Asbestos Work Group's recent activity. Members Catlin, Van Dyke, and Whitten join Chair Markowitz in comprising the Work Group. In January, the Work Group presented three draft additional recommendations:

1) We recommend that Paragon Technical Services (PTS) reevaluate the job titles of chemical engineers, industrial, health, and safety engineers, mechanical engineers, and that these titles be added to the list of occupations presumptively exposed to asbestos under EEOICP.

2) We request access to the Generic Profiles, including the Asbestos Generic Profile, as cited in the PTS report.

3) We recommend that the DOL clarify how DOE jobs that correspond to the job title "maintenance and repair, general helper" are classified within the SEM and whether they are linked to asbestos exposure.

These recommendations built off previous Board discussions on whether the Department's list of presumptively exposed job titles should be expanded. The Board reviewed data contained in the National Occupational Mortality Surveillance (NOMS), particularly data related to malignant mesothelioma, the most prominent asbestos-related cancer, and produced a table listing job titles with the highest proportionate mortality ratio (PMR). This data was forwarded to the Department last year as part of the Board's prior recommendation. PTS provided DOL's response in which they accepted some of the job titles, including HVAC mechanics, firefighters, and stationary engineers, but not all the trades the Board had recommended. PTS offered several explanations for why certain titles were rejected: if the SEM does not connect asbestos to the occupation, if the occupation has uncertain relevance to work performed DOE sites, or because the job title was rare at DOE sites, among other reasons. Chair Markowitz acknowledged that these arguments are compelling for a number of occupations listed in the NOMS data. However, the Asbestos Work Group believes these arguments are unpersuasive for occupations with high PMR in the NOMS data, with a significant number of related mesothelioma cases, and that exist with a reasonably high frequency within the DOE complex. The

Work Group identified three occupations that meet these criteria: chemical engineers, mechanical engineers, and industrial, health, and safety engineers. As such, the Work Group recommends that these three job titles be added to the Department's presumptive exposure list.

The Work Group's draft recommendation related to the Generic Profiles arose from a section in PTS' report in which they list 22 work processes associated with asbestos exposure in the Generic Profile. Chair Markowitz pointed out that several work processes in this list (janitorial activities, laundry, and power/communication line maintenance) are not included in the program's asbestos presumption list.

Finally, the Work Group is asking for more information on the maintenance repair, general helper job classification as it shows increased mesothelioma risk in the NOMS data and it is now clear how that job title is treated within the DOE complex.

Member Goldman asked if the purpose of adding these titles to the presumptively exposed list was solely in relation to mesothelioma or whether it would have applicability to other asbestos-related illnesses. Chair Markowitz said it would apply to all asbestos-related diseases.

Member Friedman-Jimenez moved to accept the recommendations, seconded by Member Catlin. During discussion, Member Silver said the Department and the Board should consider how sites may distinguish engineer versus technician titles by level of education in order to ensure the data is comprehensive and does not exclude certain workers because of semantical differences.

The Board voted unanimously to approve the recommendations.

Six-Minute Walking Test – Report and Recommendation:

Chair Markowitz invited Member Friedman-Jimenez to deliver the report prepared in response to the Department's query regarding impairment assessments for lung diseases that are attributable to occupational causes and compensated by the EEOICPA program. Member Friedman-Jimenez described how American Medical Association (AMA) Guides are used to assign levels of impairment based on each individual claimant. In this particular case, the Board was asked for its opinion on the permissible testing methodologies that can be used to assign VO_2 max per the Guides. The Board believes that there are two permissible methodologies: 1) direct measurement of VO_2 max or VO_2 peak in a pulmonary

function laboratory that is experienced in performing Cardiopulmonary Exercise Tests (CPET) using a treadmill or cycle ergometer; and 2) the 6 Minute Walk Test (6MWT) along with a regression equation to estimate VO_2 peak. Dr. Friedman-Jimenez discussed how the Work Group came to this conclusion based on an assessment of the AMA Guide impairment classifications and a review of the literature. The cardiopulmonary exercise test is considered the gold standard for estimating the VO_2 max by the American Thoracic Society and the European Respiratory Society. One disadvantage is that exercise testing requires a qualified and experienced pulmonary function lab, which may not be easily accessible to all claimants around the U.S. The 6MWT been studied extensively for a variety of patients, primarily those with cardiac disorders, but also on patients with lung disorders, COPD, and asbestos-related lung disease. In these studies, it has been shown to more repeatable than the CPET, and overall has been found to be a valid and reliable means of measuring functional exercise capacity in adults with chronic respiratory disease. A systematic review also concluded that the relationship between the six-minute walk distance and VO2 peak was moderate to strong and consistent across patient groups with COPD and interstitial lung disease. Additionally, the 6MWT is a widely available field test that does not require specialized equipment and can be safely performed in typical medical office settings. Because the 6MWT measures V02 peak, some mathematical conversion is needed for application in the AMA Impairment Guide. Member Friedman-Jimenez described the best available equation for this conversion, which was published by Ross et al. in 2020.

Dr. Friedman-Jimenez presented the Working Group's draft recommendation, which reads: "The Board advises that the 6MWT is entirely acceptable to measure VO_2 max for the purposes of impairment assessment. The best valid and available method to estimate a value of VO_2 max from the six-minute walk distance (6MWD) for application in Table 5-12 of the AMA Impairment Guide is to use the equation derived by Ross et al. (2010)."

During discussion of the recommendation, Dr. Friedman-Jimenez asked that the word "mean" be removed from the Ross et al. equation. Member Mikulski moved to accept the recommendation, seconded by Member Whitten. The Board voted unanimously to approve the recommendation.

Board Comments on DOL Impairment:

Chair Markowitz led the Board in an open discussion on topics

related to impairment assessments under the EEOICP program. A Working Group was convened to discuss these matters, with Members Catlin, Tebay, Pope, and Markowitz as members. Chair Markowitz began by reviewing the Medical Director's annual audits of CMC reviews. These audits look at causation determinations, impairment assessments, outside opinions, and other less common review types. These audits determined that impairment assessments had the most reviews classified as "needs improvement," with 32% falling under this category across the two audit years of 2018 and 2019. Ms. Pond confirmed that the 2020 audit has not been conducted yet because the Medical Director has been focused on COVID-19 matters; it has also been delayed because of the program's internal efforts to improve quality assurance. Mr. Vance added that the 6MWT has been one source of confusion in the impairment assessment process, which he hopes the Board's recommendation will help address. Member Friedman-Jimenez asked for clarification on what types of errors caused assessments to be classified as needs improvement. Mr. Vance said it was a wide range of issues, from inconsistent technical application of the AMA Guides to incorrect ratings and other methodological errors.

The Work Group posed several questions about the Medical Director for Board discussion and for the Department to consider. How many impairment ratings were performed in the last two years? How many of those impairment ratings have been flagged for review by the Medical Director? How many of the impairment ratings that the Medical Director has flagged have been challenged in one way or the other? Are there specific impairment physicians with more challenged impairment ratings than others? What actions has the CMC contractor taken to improve impairment ratings?

Chair Markowitz said he reviewed the role of the Medical Director as defined in the Procedure Manual and did not find any language about Medical Director being responsible for providing input on individual claims when requested. He asked program staff for the statutory basis for that responsibility. Ms. Pond said that function is viewed as part of the Medical Director's audit oversight of the CMCs. Mr. Vance added that the claims examiners primarily utilize the Medical Director as a subject matter expert to consult in questions of a medical nature. Chair Markowitz argued that the CMCs should be able to fulfill this role, but the results of the audit suggest that the CMCs may not be as reliable as one would hope. Ms. Pond said these are all factors that will be reviewed as part of the program's quality assurance overhaul. Ms. Pope expressed the concern that

examiners appear to be using the Medical Director in lieu of formal second opinion requests. Ms. Pond said while the Medical Director opinion may confirm the conclusion of treating physician, it frequently does lead to second opinions, as well. Chair Markowitz again volunteered the Board to assist the program in its QA improvement efforts through its chartered task to evaluate the quality, consistency, and objectivity of the industrial hygiene and medical input into the claims evaluation process. Mr. Vance thanked the Board for their assistance on the Six Minute Walking Test matter and he anticipates the program will bring other issues of a similar nature to the Board as they arise going forward.

The Board discussed whether it should make a data request on this topic or formally submit its questions to the Department. Chair Markowitz recommended that the Working Group refine the questions based on the discussion today in anticipation of formally presenting them to the Department at a later date.

New Business:

There was no new business.

Board Process and Next Board Meeting:

Chair Markowitz indicated that the next Board meeting is likely to be at least partly virtual in nature, although he expressed the desire for an in-person meeting, if feasible. When full in-person meetings do return, the next DOE site in line to host the Board would be the Nevada Test Site.

As he mentioned at the beginning of the day, Chair Markowitz recommended the establishment of work groups focused on reviewing the Department’s efforts to improve quality, objectivity, and consistency of IH and medical evaluations, and for evaluating public comments for potential action items. The Board discussed whether subcommittees or work groups would be the preferred vehicle for these bodies under the FACA regulations. Work groups do not have to be publically noticed and can move more quickly, while subcommittees are more transparent and allow for public access. Member Silver asked whether Board members would be able to contact public commenters under the work group structure. Mr. Chance said that could be problematic but he would have to consult the regulations for confirmation on what is allowed in that regard. Member Goldman argued that work groups would be the better mechanism given the technical nature of the discussion and the need for the Board to

fine-tune its conclusions before sharing them at-large. Chair Markowitz agreed. He reminded members of the public that the Board welcomes input at any time, not only during formal public comment periods at Board meetings.

Chair Markowitz asked for volunteers to serve on the two work groups. Members Whitten, Pope, Key, Silver, and Mikulski volunteered for the public comment work group. Members Whitten, Pope, Van Dyke, Catlin, Silver, and Markowitz signed up for the IH quality work group.

Chair Markowitz raised the topic of consulting other sources beyond IARC and NTP when it comes to assessing potential carcinogens for inclusion in the SEM. Ms. Pond said the program consults as many sources as it can, given time and resource limitations. Member Goldman said her group decided to start with IARC because of the depth of data and research it brings; she acknowledged that there are other sources, but the Board, too, has limited time and resources. One practical next step would be to look at IARC substances beyond the 22 the Work Group chose for its initial assessment. Member Friedman-Jimenez said it will be important to see how well the 11 new additions to the SEM are integrated, assuming they are accepted by the program. The Department should consider how an update to the SEM could help make it more user-friendly. The Board also discussed how to work with Haz-Map in integrating their findings into that database. Ms. Pond said she would look into how that process might take place.

Close of Meeting:

Mr. Chance adjourned the meeting at 4:19 p.m.