UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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MEETING MINUTES

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APRIL 26-28, 2016

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The Advisory Board met at the Department of Labor, 200 Constitution Ave, NW, Washington, D.C., Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT

MARK GRIFFON

KENNETH Z. SILVER

GEORGE FRIEDMAN-JIMENEZ

LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair

LAURA S. WELCH

ROSEMARY K. SOKAS

CARRIE A. REDLICH

VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

DURONDA M. POPE

KIRK D. DOMINA

GARRY M. WHITLEY

JAMES H. TURNER

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

ANTONIO RIOS

Note: The entire transcript of this meeting can be viewed at:
https://www.dol.gov/owcp/energy/regs/compliance/advboard/advboard_meetings.htm

The PowerPoint presentations that were used at this meeting of the Advisory Board are available on the Board's website:
https://www.dol.gov/owcp/energy/regs/compliance/advboard/advboard_04262016.htm

Tuesday, April 26, 2016

Welcome and Introductions

Mr. Antonio Rios, the DFO (Designated Federal Official) for the board opened the meeting at 8:41 a.m. and the board members introduced themselves.

FACA Review – Joseph Plick, DOL FACA Counsel

Mr. Plick walked the board through the requirements of the Federal Advisory Committee Act. Congress passed the FACA law to shed light on how advisory committees were operating and how much money was being spent on the committees. Committees are supposed to provide relevant advice according to the particular statute that set up the committee. The act requires that FACA committees be chartered. Membership on committees should be balanced according to different points of view. Minutes are required to be kept of all advisory committee meetings. Members of the public can file comments with the committee but there is no requirement that the public be allowed to speak at meetings. The chair must certify the minutes within 90 days. Substantive matters pertaining to the committee should not be discussed outside of the committee. If any members are approached by the media they should alert the DFO and chair.

The DFO approves and calls meetings. He must attend every meeting and approve the agenda. Quorum is 50% plus one. Phone meetings of the board have the same requirements as an in-person meeting.

The agency sets the objectives of the committee. The advice of the committee is supposed to be independent advice. FACA allows subcommittees. Subcommittees are not required to have a Federal Register announcement. All subcommittee work must come back to the full committee. Material provided to the board will be published on the DOL website and publicly available.

In order to close a full committee meeting to the public, OWCP (Office of Workers' Compensation Programs) would have to request it and publish notice 30 days in advance in the Federal Register. There has to be some sort of report out after the meeting.

Welcome and Comments – Deputy Secretary Christopher P. Lu

Mr. Lu welcomed everyone to the board and thanked them for traveling to Washington for the meeting. Nuclear weapons workers have given so much to the country and the country owes them for their sacrifices. The DOL wants to make sure that benefits are awarded whenever possible under the law. Mr. Lu expressed his support on behalf of the Secretary of Labor. Mr. Lu said that the agency relies on outside expertise to provide insights and original ideas to help the agency with its work, and thanks the Board members for their expertise and service. Mr. Lu then handed out certificates to the board members.

Ethics Rules – Robert Sadler, DOL Ethics Counsel and Tom Giblin, Associate Solicitor, DEEOIC

Mr. Sadler said that board members serve on the committee as Special Government Employees (SGEs). An SGE is someone who serves as an employee for less than 130 days in a 365 day period, but it's also the provision that the government uses to bring experts in to help it with its work. All members are subject to financial disclosure which is confidential.

Particular matters vs. policy matters. The committee looks at policy matters. Federal employees cannot work on matters that could affect their personal financial interests, or those of their family.

Appearances and bias. The reasonable person test asks: does it look like you can remain partial if your friend is involved?

Communications with intent to influence a federal official. Members are not to accept improper gifts from people that have interests before the committee. Board members cannot disclose confidential information. Board members may not serve as an expert witness in a legal proceeding if the case involves something that has come before the board. SGEs are subject to the Hatch Act while they are serving as SGEs.

Mr. Giblin said that he is always available to address questions of conflict of interest regarding EEOICPA.

Charge to the Board – Leonard J. Howie III, Director, OWCP

Mr. Howie said that OWCP's focus is examining if workers' health conditions were related to their work at DOE facilities. The charge for the board is very straightforward, the board is to advise the Secretary of Labor with respect to the Site Exposure Matrices, guidance for weighing medical evidence, evidentiary requirements for weighing medical evidence, evidentiary requirements related to lung disease, and how to ensure the quality, objectivity, and consistency of the work of industrial hygienists, staff physicians and consulting physicians. Several things for the board to keep in mind as it makes its determinations are transparency and justice.

Overview of EEOICP– Rachel Leiton, Director, DEEOIC and John Vance, Branch Chief, DEEOIC Policy, Regulations, and Procedures

The Energy Employees Occupational Illness Compensation Program is administered by the DOL, the Act itself was passed in 2000. The Act provides lump sum compensation and medical benefits to current and former workers of DOE, their contractors, and subcontractors who became ill as a result of their work in a DOE facility related to toxic substance exposure including radiation. Part B of the Act covers claims relating to radiation exposure while Part E of the Act relates to toxic exposures. The Act also provides for compensation to survivors of those workers. DOL works closely with other agencies to administer the program. DOE helps DOL with employment verification, providing records related to the Former Worker Program, and exposure information. The Department of Health and Human Services (National Institute for Occupational Safety and Health - NIOSH) does dose reconstructions for Part B cancer claims.

Under Part E, federal employees, Atomic Weapons Employees, or beryllium vendors are not covered.

Those are only Part B. Part E covers DOE contractors, subcontractors, and RECA (Radiation Exposure Compensation Act) workers. Part B is very specific as to what it covers – cancer related to radiation, chronic beryllium disease, and chronic silicosis. Part E covers any condition as long as it can be established that the employee was exposed to a toxic substance related to their condition. Survivorship is covered differently under Parts B and E in the statute. Part E will cover children if they are under the age of 18, under the age of 23 and employed as a full-time student, or medically incapable of self-support at the time of the employee's death. There is a $400,000 cap for compensation for Parts B and E combined.

There are various methods of verifying employment. DOE, corporate verifiers, Oak Ridge Institute for Science and Education (ORISE database), and the Social Security Administration (SSA) can provide place/wage information. DOL also relies on affidavits from claimants.

Under the statute, Part B cancer cases receive a dose reconstruction from NIOSH and a scientific calculation of the likelihood that radiation exposure caused cancer. The Probability of Causation (PoC) must be 50% or greater in order for compensation to be awarded. Other cases fall under Special Exposure Cohorts (SECs) in classes defined by NIOSH. Workers in these classes can be compensated if they have one of 22 specific cancers named in the statute and worked a total of 250 days at the site where the class was defined. DOL administers SEC cases but has no role in designating SECs. In lieu of radiation dose reconstructions, in Part E DOL looks at exposures to toxic substances at DOE facilities. The toxic substance must have been a significant factor in causing, contributing to, or aggravating the claimed illness. DOL relies heavily on the medical experts (treating physicians or contract medical consultants (CMC)) looking at the case to provide the causation analysis.

DEEOIC conducts audits of the CMC reports to look at the consistency issues that may require training. There are quarterly calls with some of the physicians who are CMCs as well as accountability reviews for the CMCs. The agency has access to over 100 physicians available to consult with on a variety of topics. These accountability audits can be provided to the board.

Causation under Part E is more complicated than under Part B. Causation analysis involves interviews, looking at Occupational History Questionnaires (OHQ), looking at the Site Exposure Matrices, Document Acquisition Requests (DAR), Former Worker Medical Screening Program, and affidavits, as well as any other information in the case file. OHQs are conducted both by telephone and in-person by resource center staff. DOL relies on DOE to provide any records that DOE may have. DOL has a secure portal through which it can obtain work records expeditiously from DOE. There needs to be something other than just a statement from a claimant saying, "I worked there," to establish whether or not that person did work at a particular site.

Public outreach has been extensive from 2010-2016. There have been 80 events nationwide. There are four district offices around the country: Jacksonville, Denver, Cleveland, and Seattle. There are also 11 Resource Centers nationwide. There is no estimate of the total number of workers that might be eligible under the program. EEOICPA compensation to date has totaled $12.4 billion. There has been $5.93 billion given out under Part B and $3.70 billion given out under Part E, with $2.75 billion in medical compensation under both. Fees for authorized representatives for claimants are paid by claimants.

DOL has about 400 claims examiners nationwide. Training of claims examiners comes from immersion classes with experienced claims examiners. Experienced final adjudication branch employees went to the district offices and walked claims examiners through cases. DOL is hiring a new training lead to

oversee enhancing the training and focusing on consistency. The board will be provided with a copy of performance evaluations and accountability reviews.

DOL's annual report to Congress has some information about the types of conditions that DEEOIC has accepted. Information requests need to be done on a case-by-case basis with specified parameters. The agency looks at the SEM (Site Exposure Matrices) to form a basis for exposure information, but whether or not a claim is accepted comes down to medical evidence. The industrial hygienists involved with the claims do not actually interview any claimants. They are provided with all of the information provided by claimants. The big struggle for the agency is how to take general site exposure data and apply that data to an individual employee.

The Site Exposure Matrices were developed from DOE records, roundtables with employees, and additional information obtained over time. SEM is a DOL-generated database.

With regard to causation presumptions, the agency is charged with applying science in the creation of a policy document that covers a large group of claimants. This is particularly challenging when the science is conflicting. Most of the time, the relationship between exposure to toxic substances and disease can't be quantified.

Ms. Leiton said that she would get back to the committee on what it costs to administer the entire compensation program.

Parts B and E and what they cover are summarized in detail below:

Part B

Compensation of $150,000 and payment of medical expenses from the date a claim is filed is available to:

Employees of the Department of Energy (DOE), its contractors or subcontractors, and atomic weapons employers with radiation-induced cancer if:
the employee developed cancer after working at a covered facility of the Department of Energy, its contractors and subcontractors; and
the employee's cancer is determined at least as likely as not related to that employment in accordance with guidelines issued by the Department of Health and Human Services, or
the employee is determined to be a member of the Special Exposure Cohort (SEC) (employees who worked at least 250 days before February 1, 1992, for the Department of Energy or its contractors or subcontractors at one or more of the three Gaseous Diffusion Plants located at Oak Ridge, TN, Paducah, KY, or Portsmouth, OH, or who were exposed to radiation related to certain underground nuclear tests at Amchitka, AK, or who qualify as a member of one of the additional SEC classes added by the Secretary of Health and Human Services as provided for under the Act) and developed one of the 22 specified cancers

Employees of the Department of Energy, its contractors and subcontractors, and designated beryllium vendors who worked at covered facilities where they were exposed to beryllium produced or processed for the Department of Energy who developed Chronic Beryllium Disease; and

Employees of the Department of Energy or its contractors and subcontractors who worked at least 250

days during the mining of tunnels at underground nuclear weapons tests sites in Nevada or Alaska and who developed chronic silicosis.

If the employee is no longer living, the compensation is payable to eligible survivors.

Compensation of $50,000 and payment of medical expenses from the date a claim is filed is available to:

Uranium workers (or their survivors) previously awarded benefits by the Department of Justice under Section 5 of the Radiation Exposure Compensation Act.

Employees of the Department of Energy, its contractors and subcontractors who were exposed to beryllium on the job and now have beryllium sensitivity will receive medical monitoring to check for Chronic Beryllium Disease.

Part E

Compensation and payment of medical expenses is available to employees of DOE contractors and subcontractors, or their eligible survivors, who develop an illness due to exposure to toxic substances at certain DOE facilities. Uranium miners, millers, and ore transporters are also eligible for benefits if they develop an illness as a result of toxic exposure and worked at a facility covered under Section 5 of the Radiation Exposure Compensation Act (RECA). Under Part E, a toxic substance is not limited to radiation but includes things such as chemicals, solvents, acids and metals.

Variable compensation up to $250,000 is determined based on wage loss, impairment, and survivorship.

Wage loss is based on the number of years that the employee was unable to work or sustained a reduction in earnings as a result of the illness. Wage loss compensation is payable for years of lost wages that are prior to regular Social Security Retirement age (usually age 65). Wage loss compensation is calculated at:

$10,000 for each year in which wages were 25-50% less than the Average Annual Wage (AAW). The AAW is the average earnings for the 12 quarters (36 months) prior to the first quarter of wage loss.
$15,000 for each year in which wages were less than 50% of the AAW

Impairment is a decrease in the functioning of a body part or organ as it affects the whole body, as a result of the illness. An impairment rating is performed once the claimant has reached Maximum Medical Improvement (i.e. the condition is stabilized and is unlikely to improve with additional medical treatment). Impairment compensation is calculated at:

$2,500 for each one percent of whole body impairment. Impairment is based on the AMA's Guides to the Evaluation of Permanent Impairment, 5th Edition.

Eligible survivors may receive compensation if the employee's death was caused, contributed to or aggravated by the covered illness. Survivor benefits include lump sum compensation of $125,000.

If the deceased employee sustained wage loss as a result of the covered illness, and that wage loss was prior to Social Security Retirement age (usually age 65), additional compensation may be awarded as follows:

$0 — if the employee had less than 10 years of wage loss
$25,000 - if the employee had between 10 and 19 years of wage loss or
$50,000 — if the employee had 20 years or more wage loss

Total survivor compensation is not to exceed $175,000.

Under Part E, eligible survivors include:
A spouse who was married to the employee for at least one year prior to his/her death.
If there is no surviving spouse, then compensation may be awarded to a child if, at the time of the employee's death, the child was:

Under the age of 18
Under the age of 23 years and a full-time student continuously enrolled in an educational institution, or
Incapable of self-support.

Medical expenses are not included in the $250,000 cap.

DOE's Role in EEOICP, Patricia Worthington, Director of the Office of Health and Safety, DOE

The office's mission is threefold: 1) Establish worker safety and health requirements and expectations to ensure protection of workers from hazards associated with DOE operations; 2) Conduct health studies to determine worker and public health effects from exposure to hazardous materials associated with DOE operations; 3) Implement medical surveillance and screening programs for current and former workers and support DOL in the implementation of EEOICPA. The office works on behalf of program claimants to ensure that all available worker and facility records and data are provided to DOL, NIOSH, and the NIOSH Advisory Board. The Secure Electronic Records Transfer (SERT) system has allowed DOE to securely and quickly transfer records from their facilities to NIOSH. Over the years DOE has looked for ways to improve document retrieval. DOE has funded special projects to help sites do document retrieval and records management. DOE could provide information on Legacy-type process, like whether breathing space monitoring was done if it reaches out to particular sites.

DOE has a network of site points of contact (POCs) that assist in coordinating research activities with NIOSH, setting up site visits, work to identify subject matter experts, manage the site's response to individual records requests, and provide onsite EEOICPA information to workers.

The Former Worker Program (FWP) was established to identify and notify former workers at risk for occupational disease and offer them medical screening that can lead to treatment. The program serves all former workers from all DOE sites in locations close to their residences. As of September 30, 2015 a total of 117,449 medical exams have been conducted through the FWP. A listing of exposures and medical examinations offered through the FWP is available in the medical protocol on the FWP website http://energy.gov/ehss/downloads/former-worker-program-medical-protocol

The DOE has not yet received final approval to release the NOPR on 10 CFR 850 (beryllium standard).

Ombudsman's Office – Malcolm Nelson, DOL

The Ombudsman's Office was created in 2004 as part of the amendments to the Act. The complaints that the Ombudsman receives cover all aspects of EEOICPA. The office is independent. The office has three duties: 1) Provide information on the benefits under the program; 2) Make recommendations to the Secretary of Labor regarding the location of resource centers; 3) Carry out other duties as specified by the Secretary of Labor. The office is also required to submit an annual report to Congress. DOL is now required by statute to issue a response to the Ombudsman's Office report. The office also hosts its own outreach events. Claimants and authorized representatives are much more engaged and sophisticated than when the Ombudsman's Office was created. There is a greater understanding of the program and how it operates. Many claimants do not have access to the internet so the Ombudsman's Office helps them to access the appropriate online resources. In general, what the office does is to listen to people and point them in the right direction. Mr. Nelson said that the office has an open door policy.

EEOICP – How it Works, John Vance

Mr. Vance explained the DOL's adjudicatory claims process from start to finish. The primary function of the 11 Resource Centers around the country is claims-intake. The cases filed at the Resource Centers are paper and then are sent to a central mailroom to be scanned. After being uploaded, a case is assigned a case number and is assigned to a particular district office based on the last known covered employment. The claims examiner's (CE) first role in looking at an in-coming case is an initial screen and verification that the claimant worked as alleged. The examiner certifies whether the case is a Part B, E, or both case. While the employment record is being generated, the medical record is being generated as well. In a lot of cases DOL does not have good medical records. In situations where there is no confirmation of a diagnosed condition, that case goes down the path of denial. Claims examiners look at the evidence and make judgements about the direction of where the case needs to go dependent on DOL's policies and procedures.

For Part E, there is no pre-defined set of covered illnesses. Under Part E it is a claimed and diagnosed illness where the exposure occurred on the premises of a covered facility. A claimant could claim virtually any illness under Part E. For example, someone might claim diabetes. The question then becomes, what kind of information does DOL have that suggests that diabetes can be caused by an exposure to a toxic substance in the workplace. The DOL would then say that there is no established health effect for diabetes – the claims examiners would use the SEM to determine if a condition has a relationship to toxic exposure. This is where epidemiology and toxicology questions become important. The claimant is given the opportunity to provide scientific data as well as expert opinions linking their condition to toxic substance exposure to their work. That data is then examined by the agency's experts. If a claim is accepted the DOL can pay for a claimant's expert opinion retroactively. With regard to consequential illnesses, the agency is looking for some assistance in developing a resource for claimants.

After the exposure documentation is ready to go, the next step is looking at the medical exposure component. After receiving the response to the medical exposure component, the benefit calculation stage is next. The claimant receives an explanation from the claims examiner as to why the claim was accepted or denied. If the claimant is dissatisfied with the decision, the claimant can request an oral hearing or can review the written record and submit written objections. The Final Adjudication Branch (FAB) reviews cases and issues a final decision whether or not a claimant files an objection. Sometimes the FAB gets new evidence that causes them to reverse a determination and grant a claim. There is an

online database of FAB decisions that is publicly available.

DOL is constantly changing and updating its procedural manual. The manual provides staff guidance on how to adjudicate cases and the agency will be looking to the board to make recommendations on how to improve the manual.

Radiation Advisory Board – James Melius, Chairman, Advisory Board on Radiation and Worker Health (ABRWH)

Dr. Melius gave an overview of the activities of the ABRWH. The board was set up in 2001 and has held over 100 meetings. The board is administered through CDC and NIOSH. Membership on the board is balanced between medical/scientific/worker perspectives. Full board meetings are held near the DOE sites. The legislation that created the board gave it specific responsibilities: 1) Review the original set of regulations developed by NIOSH; 2) Review the scientific validity and quality of the dose reconstructions done by NIOSH; and 3) Advise on Special Exposure Cohort designations.

The board has work groups that are site or issue specific and two standing subcommittees, one that reviews dose reconstructions and another one that looks at procedures that NIOSH has established to do dose reconstructions. All decisions are made by the full board. All of the board's meetings have transcripts. Most reports are available before meetings for the public to read and digest. Formal petitioners for Special Exposure Cohorts have the right to participate when the board is discussing the Special Exposure Cohort.

The board has reviewed one percent (1%) of the dose reconstructions that have been done. Members do not get to see individual dose reconstructions until they have gone all the way through the adjudication process. NIOSH bases its dose reconstructions on a series of technical documents. All of those documents are available on the NIOSH website.

Finding documentation is a major challenge. Tracking down monitoring records can be difficult. Sometimes there is too much information rather than not enough. The board is often asked to determine if information is complete enough to justify doing individual dose reconstructions. Often records of what a person did on a site are very meager. Dose records were meant at the time to monitor a process and not support a workers compensation claim many years later. Currently the board is looking at ensuring consistency in dose reconstruction judgements. The board is trying to document all of the areas where judgements are being made which are not documented through some sort of procedure.

The board's contractor was absolutely essential in assisting with technical reviews. Dr. Melius said that the NIOSH board would not have been able to do its tasks without the contractor.

Board Meeting Logistics

The board discussed the issue of subcommittee and Federal Register requirements. If the board wants to call a public meeting the regulations require that the board provide notice a minimum of 15 calendar days before the meeting. It takes about a month to put together a Federal Register notice with the general topics of discussion during the meeting. The board thought that having meetings on site at various sites around the country was a good idea.

Public Comment Period

Terrie Barrie – Ms. Barrie is a founding member of the Alliance of Nuclear Worker Advocacy Groups (ANWAG). There are many good things about SEM. It wasn't until SEM was released to the public that claimants were given a glimpse of the toxic substances that were present at the facilities where they worked. Claims are not supposed to be denied based on SEM. Labor categories in SEM do not always accurately reflect the toxic substance a worker was exposed to. DOL will only consider cancer as a result of radiation exposure if NIOSH determines that the Probability of Causation is 50% or greater. What about the worker whose PoC is 49.5%? Under the legislation, wouldn't that causation meet Part E's criteria?

Deb Jerison – Ms. Jerison is the director of the Energy Employees Claim Assistance Project (EECAP). Ms. Jerison says that DOL is violating the regulation that a claimant may authorize any individual to represent him in regards to a claim under EEOICPA unless the individual's service as a representative would violate any applicable provision of the law. DOL is pushing to codify this violation in new proposed rule changes. Many sick workers cannot manage the claims process on their own. DOL has been very outspoken about their dislike of home healthcare providers. DEEOIC needs to manage its fear of home healthcare fraud without damaging the sick workers' right to medical benefits and assuming that everyone connected with the home healthcare industry is tainted.

Stephanie Carroll – Assistance to the claimants is required under the Act. Ms. Carroll talked about beryllium sensitivity. Getting a claimant approved for chronic beryllium disease is very difficult. Ms. Carroll said that she did not see doctors adhering to the established protocol for chronic beryllium disease. That protocol needs to be better explained to the physicians, monitored, and enforced. Sometimes it's hard for workers to understand their recommended decisions. Many claimants feel like their personal physicians are not given enough probative weight as the DOL contracted experts. Ms. Carroll expressed her appreciation that the Toxic Substances Board exists.

Donna Hand – Ms. Hand is a worker advocate, authorized representative, and member of the Beryllium Health and Safety Committee, and a member of DIAB (DEEOIC Interim Advisory Board), and has been involved with the EEOICPA program since 2001. Ms. Hand said that there are mandatory Site Profiles for toxic substances in the Act itself. The criterion, “at least as likely as not” will be more than a mere suspicion and less than a preponderance of evidence. OWCP has stated in its regulations that “significant factor” means any factor. Claimants are confused with the occupational questionnaires. Ms. Hand tells her claimants to put “unknown” on the questionnaires. Ms. Hand just wants fairness, justice, and consistency.

Tee Lea Ong - Mr. Ong presented the board with a flow chart. Mr. Ong works for a home health company called Professional Case Management. The company provides in-home nursing care to former nuclear weapons workers. Mr. Ong says the current rules are very onerous for workers. Mr. Ong said that the proposed rule would make it more difficult to receive home care. The board should take a look at not exacerbating the process.

Vina Colley – Ms. Colley is a sick worker from the Portsmouth Gaseous Diffusion plant in Piketon, Ohio and one of the co-founders of National Nuclear Workers for Justice (NNWJ). NNWJ is asking the board to do a full investigation of the SEM in its current practice and implementation of denying workers for job-related illnesses. The SEM is corrupt. The government has withheld information on what workers were exposed to at Portsmouth. The current process of relying on an inaccurate, incomplete and dishonest system has resulted in denial of earned compensation. Another issue with the

SEM is that it does not address multiple exposures to chemicals along with radiation exposure. Ms. Colley thought that the EEOICPA adjudication process has become corrupted and is improperly executed. Cold War heroes should not have to spend their lives fighting for benefits that cover illnesses obtained from chemical and radiation exposures.

Hugh Stephens – Mr. Stephens is an environmental attorney. Attorneys hire occupational physicians to write reports that make it difficult for a claim to be denied. The idea that the treating physician will always write a good report that will form a basis for a claim is wrong. The industrial hygienists have no contact with the claimants.

The meeting was adjourned at 6:00 p.m.

Wednesday, April 27 2016

Introductions

The meeting came to order at 8:37 a.m.

Area #1: Use of Site Exposure Matrices – John Vance and Rachel Leiton

Mr. Vance gave an overview of the SEM, its history, its functionality, and demonstrated how to use the SEM – a publicly available database. The public version of SEM is not identical to the one that claims examiners use in the district offices. About every six months, the DOE will vet the internal SEM before the material is publicly released. So the SEM is continuously being updated, improved, and vetted. A massive amount of data is incorporated into the SEM, but it does not catalogue everything. It is a collection of information that DOL's contractor (Paragon) has gone to the sites and collected. A search in SEM will always produce data that relates to information on a document that Paragon has obtained. The SEM database is primarily focused on chemical and biological materials at the sites, not radiological information.

Claims examiners are supposed to identify and prioritize exposures that have the greatest likelihood of a positive outcome for the case. Claims examiners are taught to use multiple different filtering techniques to try to identify those toxins that are coming up in different variances or different variables of a search criteria. A building-level search is not very reliable on its own. Not everyone that was in a particular building was necessarily exposed to every toxic substance in that building. DOL has never been able to develop a formulaic way of doing some searches. There are just too many variables involved. There is a work process search that allows the claims examiners to say if there is a worker that was involved in a work process, then the agency can make certain assumptions. The claims examiners examine information in the case file. They have an understanding of terminology and the facilities, but their function is to examine evidence and prioritize exposures.

DEEOIC conducts annual audits of all of its district offices. Independent review teams (teams that come from different district offices) come in and look at Part E case adjudication. GAO recently completed its own audit, and concluded that DEEOIC staff has done a good job of keeping with the polices and procedures of the program.

One of the big problems that industrial hygienists encounter is how much crossover there is among

labor categories. For example, a welder may report that he did solvent cleaning. The SEM may not have that information because there is no primary source information that specifies the use of solvents by that labor category at a particular site. However, the welder could report that exposure in the occupational questionnaire. What DEEOIC finds most often is that claimants don't know what they were exposed to.

The industrial hygienists are given the occupational history questionnaire. They are given whatever information DEEOIC has gathered on a claimant. The industrial hygienists are given discretion to tell the agency that a welder was exposed to these substances given the type of material he was welding. As much detail as possible is included in the statement of accepted facts that goes to the industrial hygienist.

Temporality may be another issue the board wants to consider. Just because a site says that it stopped using lead paint at a certain date doesn't mean that workers at that site weren't exposed to lead paint at a later date. Temporality is not currently in the SEM.

IOM Report – Rosemary Sokas

The IOM formed a committee in response to a request by DOL that met five times in 2012. In 2010 the GAO recommended strengthening the independent review of the claims process and recommended that the Toxic Substances Advisory Board be formed. Haz-Map is the single source of information for health outcomes. Haz-Map was developed by an occupational physician for primary care physicians to deal with patients in their clinical practices. Using Haz-Map as the single metric for health impact is problematic. Some of the responses that were included in the IOM report were some of the critiques of the Haz-Map program for where it missed different things.

The exposure cancer links in Haz-Map are only IARC 1 carcinogens. IARC 1 does not include some of the OSHA standard carcinogens. The three recommendations from the IOM were: 1) Add supplemental sources of information on health effects to supplement Haz-Map; 2) The structure and function of the SEM itself could be easier to navigate. It is not clear that the information in the SEM about exposures is anything more than a purchase inventory; 3) Use an external advisory group for the health information data on the SEM. The IOM documents are always consensus documents. Part of what the IOM report calls for is an injection of a peer review process into Haz-Map as an ongoing process.

The board will be able to get examples of the reports that go from the claims examiners to the treating physicians.

Area #1: Discussion and Formation of Board Committee on SEM

The board discussed issues and asked questions regarding the SEM. Ms. Leiton said that it would get back to the board on whether or not they would get access to the version of SEM that the claims examiners have. DOL created SEM in order to accept more claims, but there was no statutory mandate for DOL to create the SEM. The board thought that it would be nice to see data on at what point in the claims process claims were denied and for what reasons.

The procedure manual is the basis for how the claims examiners do their work. It outlines step-by-step exactly what DOL expects them to do. The manual has a chapter on SEM, chapters on referrals to the industrial hygienists, and chapters on how the claims examiners are going to write their recommended

decision. That said, the guidelines are fairly broad. The training that is conducted by the industrial hygienists with the claims examiners is where the agency gets down into the details. DOL has not had the resources to provide site-specific guidance for claims examiners. If a claimant has detailed information, that information will be forwarded to industrial hygienists. Currently, the agency is using industrial hygienists more than in the past. DOL is currently contracting with additional industrial hygienists to assist with the workload. DOL has a Memorandum of Understanding (MOU) with HHS, and Dr. Jay Brown (Haz-Map) is a contractor with HHS that DOL funds through this MOU.

Different departments have different definitions of what an incident is. There needs to be lower level reporting regarding accidents with chemicals. DOE should have those incident records and the incidents could be reflected in DOL's data in the SEM.

DOL does have presumptions for certain conditions (like chemical hearing loss) that go to claims examiners. The statute does not list any presumptions, but the board is welcome to help the agency to come up with additional presumptions.

Laura Welch, Mark Griffon, Garry Whitley, John Dement, Kirk Domina and Steven Markowitz (who joined later in the day) will comprise the SEM subcommittee. Laura Welch will be the subcommittee Chair. The expectation is that the subcommittees will all meet before the next meeting of the full board. The consensus was to keep the subcommittees open to the public.

Area #2: Weighing Medical Evidence in Claims – Presentation by Rhonda Chappelle, Branch Chief, Outreach and Technical Assistance

There are various sources of medical evidence in claimant case files. The first source of evidence is the file that comes from a claimant's healthcare provider. A second source of information is from the DOE's medical screening programs. DOL also has information from the Oak Ridge Institute for Science and Education (ORISE). ORISE offers testing for chronic beryllium disease. Other sources of medical evidence include contract medical consultants, contracts with physicians who render second opinion evaluations (SECOPs), and referee specialists that resolve conflicts between physicians.

Types of medical evidence include the following: 1) Treatment records; 2) Medical evaluations; 3) Reports produced in response to a DEEOIC referral to a Contract Medical Consultant (CMC), second opinion physician, or referee specialist; 4) Cancer registry records, death certificates, secondary evidence, and factual affidavits.

Contract medical consultants (CMC) conduct a review of case records to render opinions on medical questions. Oftentimes a claimant's treating physician is unable or unwilling to provide the detailed medical opinions on causation required to meet the EEOICPA standards. The CMCs are a way of assisting claimants in meeting their burden of proof. It is the claimant's responsibility to provide all medical evidence in their possession that is relevant to the claim and to respond to DOL's requests for information. The claim's examiner responsibility is to develop the medical evidence by explaining deficiencies, requesting supporting documentation, communicating with physicians, etc. Medical reports should include a description of subjective complaints, objective findings, assessments, and plans for follow up or treatment.

Weighing the medical evidence encompasses several factors: 1) Accurate and complete medical and factual background vs. an opinion based on incomplete, subjective or inaccurate information; 2) An

opinion based on a definitive test and includes the physician's findings vs. an opinion based on incomplete, subjective or inaccurate information; 3) A well rationalized opinion; 4) The opinion of an expert in the field vs. the opinion of a general practitioner; 5) An unequivocal medical opinion over one that is vague or speculative. A lot of the standards that DOL has for weighing medical evidence come from OWCP's years of experience in administering compensation programs.

Areas where the board could assist DEEOIC include: 1) Clarification regarding the assessment of medical opinion regarding the rationalization supporting a particular conclusion; 2) Methodologies for improving physician responsiveness to data requests; 3) Training resources for improving the quality of medical evidence; 4) Application or guidance relating to assessing contribution to or aggravation of toxic substance exposure to disease. Medical evidence causation decisions need to be based on employment, exposure, and diagnosis.

When a claimant files for impairment they need to decide whether they want the impairment rating to be done by a physician of their choosing or whether they want a contract medical consultant trained in the AMA guides. There are tests for each condition that a claimant is claiming. The DOL pays for those tests.

Doctors focus on probabilistic diagnosis and it's not that common to get an unequivocal diagnosis. One would expect diagnoses to be couched in terms like “probably” or “possibly.” But the physician basically needs to say that the claimant's exposure was a substantial factor as opposed to causative. Since the goal of the program is to compensate someone for a toxic exposure, the question of causation is something within the purview of the board. Causation has to be at the heart of what the board does because it is the most difficult and dramatic issue the board has to address. Weight of evidence means different things in different contexts. If there is something unclear in the physician report, the claims examiner will call the physician and ask for clarification.

DOL does not turn down claims because a physician won't give a causation opinion unless there is very little information in the case file. If there is some indication that there might be a causation link anywhere, DOL will go to a CMC.

When a claim is initially filed, a development letter is sent to the claimant and it will talk about the employment evidence that is needed, the medical evidence that is needed, and it will talk about causation. Development letters do have the language “as least as likely as not.” Some of the claimant advocates have been able to cultivate relationships with local physicians near sites to help them understand what type of evidence DOL needs to accept a claim. DOL has done some outreach to educate physicians as well.

CMCs are used more frequently than second opinion physicians. Because there are more things referred to a CMC – like diagnosis, impairment, and clarification on causation. DOL only goes to a second opinion physicians when a physical examination is necessary. DOL goes to a referee only when there is a conflict in the evidence.

The board was concerned that the vast majority of physicians are not trained in any way to make causation judgements. Emphasis on board certification may not be in the claimant's favor because it doesn't ensure that those physicians have the proper knowledge and skills to make causation judgements. The majority of the CMCs are occupational medical doctors but DOL will consult specialists when they have questions unrelated to causation about specific conditions.

The unifying theme is judgement of causation. Subcommittees could be formed around the concept of judgement of causation but one focusing on the claims examiners and one focusing on treating physicians and consultants. The board voted to have two separate committees on judgment of causation (i.e., to form committees using the statutory topic areas).

Faye Vlieger, Les Boden, Ken Silver, Victoria Cassano will form the Weighing Medical Evidence subcommittee. Chair is Victoria Cassano.

Area #3: EEOICPA Subtitle B Evidence, Lung Disease Claims – Curtis Johnson, Unit Chief, DEEOIC Policy, Regulations and Procedures

Mr. Johnson discussed chronic beryllium disease, silicosis, and beryllium sensitivity. Beryllium sensitivity is an allergic reaction of the immune system to the presence of beryllium in the body because of contact with beryllium dust particles or fumes. In order to receive benefits, an employee must have at least one day of verified employment at a DOE facility or beryllium vendor. They must also submit an abnormal beryllium lymphocyte proliferation test (BeLPT), lymphocyte transformation test (BeLTT), or beryllium skin patch testing. The DOL is looking for advice on a proper monitoring protocol with regard to beryllium sensitivity.

The evidence required to establish a claim for chronic beryllium disease (CBD) under Part B of the Act is statutorily set. Evidence must exist to document at least one day of beryllium exposure at a beryllium vendor or DOE facility. The Act then requires a decision as to the date of first evidence of chronic respiratory disorder (pre- or post-1993).

The pre-1993 criteria are: 1) Characteristic chest radiographic (or computed tomography) abnormalities; 2) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect; 3) Lung pathology consistent with CBD; 4) Clinical course consistent with chronic respiratory disorder; 5) Immunologic tests showing beryllium sensitivity. Not all criteria need to be shown in each case.

The post-1993 criteria are: 1) Lung pathology showing granulomas or a lymphocytic process consistent with CBD; 2) Computerized axial tomography (CAT) scan showing changes consistent with CBD; 3) Pulmonary function or exercise testing showing pulmonary deficits consistent with CBD. A physician's rationalized opinion noting that biopsy findings are consistent with CBD will take precedence over diagnostic data. Not all of these criteria need to be shown in each case.

Issues for the board to consider regarding CBD: 1) Clarification of the meaning of "characteristic of CBD" to differentiate between CBD and other lung diseases; 2) Consistent standard for judging medical evidence for the pre- or post-1993 criteria; 3) Requiring lung lavages or lung biopsy on critically ill or elderly patients; 4) Clarity on specific diagnostic markers required for CBD; 5) Clearer guidance on the relationship between sarcoidosis and CBD; 6) Recommendations relating to conditions that are normal and usual consequential illnesses to CBD; 7) Input regarding assessment of negative BeLPT as either false-negative or borderline due to drug interference or other treatment modalities.

Currently, DOL is seeing more pre-1993 cases than post. DOL does not specify or prescribe particular testing facilities for claimants. Different testing facilities may have different standards which they apply to say whether or not a test is normal or abnormal. Single diagnostic tests may not necessarily establish chronic respiratory diseases. Standards are different under this program because it is a

compensation program; a lot of physicians are not familiar with the claimant-friendly standards under the program. CBD can be considered under Part E. The acceptance of a claim cannot go automatically from E to B, but it can from B to E.

Chronic silicosis is a non-malignant disease of the lung caused by prolonged exposure to silica dust. In order to establish a claim under Part B, an employee must have been exposed to silica in the performance of duty for an aggregate of at least 250 work days during the mining of tunnels at a DOE facility located in Nevada or Alaska. Medical requirements are a latency period of 10 years between the date of initial silica exposure and diagnosis date for chronic silicosis and a written medical narrative from a qualified physician that includes a diagnosis of chronic silicosis. Diagnostic evidence includes any of the following: 1) Chest radiography, interpreted by a physician certified by NIOSH as a B-reader classifying the existence of pneumoconiosis of category 1/0 or higher; 2) Results from a computer assisted tomograph or other imaging technique that are consistent with chronic silicosis; 3) Lung biopsy findings consistent with chronic silicosis. The primary issue the agency is looking for guidance on regarding silicosis is the certification requirements for B-readers and how that is documented on B-reader test results. Under Part E, silicosis can apply to any sites. It does not have to meet the same standard as Part B.

The Part B Lung Conditions subcommittee will consist of Carrie Redlich, Laura Welch, and Kirk Domina. Chair is Carrie Redlich.

Proposed Rule Changes Discussion

Chairman Markowitz initiated the discussion on the proposed rule changes. The comment period is open until May 9th. The board used this time to identify issues with the proposed changes. Each sub-group of the board that had met previously to look at the changes provided comments about the proposed changes. The board discussed the changes and wordsmithed draft recommendations concerning the proposed changes. The board settled on the following recommendations for the proposed rule changes:

Changes in Proposed EEOICP Regulations for Consideration by the Toxic Substances and Worker Health Advisory Board:

Recommendations:

1. 30.231 (a) Proof of employment p. 39-40

> The Board finds that the proposed new language is vague and contradictory. The Board notes that the proposed new language contradicts Section 30.111 (c) in a manner that limits the value of affidavits. If the goal is to increase the likelihood that affidavits are valid, then guidelines on what elements need to be included in an affidavit should be issued to clarify the claimants' task of proving an employment history in the absence of other evidence.
>
> The Board recommends that the proposed rule changes not be made.

2. 30.112 (b) Evidence of covered employment p. 27

> The Board proposes the following language for this section:

(3) If the only evidence of covered employment is a written affidavit or declaration subject to penalty of perjury by the employee, survivor or any other person, and DOE or another entity either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP will evaluate the probative value of the affidavit under § 30.111.

3. 30.231 (b) Proof of Exposure to Toxic Substance p. 40

The Board recommends that DOL issue guidelines on how OWCP determines reliability of information under this section.

The Board recommends that the following language be added to this section:

(3) Occupational history or affidavit obtained from the claimant and/or co-workers; or
(4) Occupational history obtained by a health care provider other than those who are part of the DOE Former Worker Program; or
(5) Any other entity or source that is deemed by OWCP to provide reliable information to establish that the employee was exposed to a toxic substance at a DOE facility or RECA section 5 facility.

4. 30.232(a)(1) and (2) Establishing diagnosis of covered illness p. 40-41

The Board believes that sufficient expertise in causation of occupational illness is unlikely to be available in DOE communities and the time commitment of physicians to produce such a documented report makes this requirement unrealistic and places too great a burden on claimants.

The Board recommends that DOL remove the requirement that the claimant must produce written medical evidence wherein the physician describes the "reasoning for his or her opinion regarding causation." The Board recommends that if the claimant submits an opinion of a qualified physician as defined in section 30.230(d) (iii), that provides a rationale for determining that the employee's illness was caused, contributed to, or aggravated by the exposure, then that opinion should be assessed for probative value by OWCP.

In addition the Board is concerned that "Any other evidence OWCP may deem necessary…" is overly broad, unnecessary, and may form the basis for adversarial interactions between OCWP and claimants. The Board is concerned that the change in language from "an illness that may have arisen from exposure to a toxic substance" to "an illness that resulted from an exposure to a toxic substance" places an unnecessary burden on the claimant.

5. 30.230(d)(2)(iii) Physician opinion about contribution or causation p. 39

The Board notes that the phrase: "An opinion of a qualified physician with expertise in treating, diagnosing or researching the illness claimed to be caused or aggravated by the alleged exposure; " differs from d(1) (ii) " … was a significant factor in aggravating, contributing to, or causing the illness" and should be made consistent with language in d(1) (ii).

6. 30.405(b) and (c) Change of physicians p. 55

The Board believes that claimants should be able to change physicians without approval of OWCP. The Board notes that the added language does not clarify what the claimants need to produce and finds it implausible that claimants can provide medical or factual evidence in support of a request to change physicians.

The Board recommends that the proposed changes be eliminated and be replaced by the following: "The claimant may cite personal preference as a valid reason to change physicians." The language of 30.405 (c) should be changed in accordance with this recommendation.

7. 30.206(a) Proof of employment with regards to beryllium use p. 31

The Board is uncertain about the reason for the apparent narrowing of beryllium-using sites and is concerned that the change might unnecessarily limit benefits to beryllium-exposed workers who should be eligible for the program.

This same comment applies to Section 30.5(j). p. 14

8. 30.509(c) Use of AMA Guides p. 64

The Board notes that codifying the 5th edition in a regulation may reduce OWCP's flexibility in using future editions of the AMA Guides. Citation to a specific edition of the AMA Guides in the DEEOIC procedures manual will obviate the need for new regulations to adopt updated Guides.

9. 30.805 and 30.806 Evidence of wage loss p. 96

The Board recommends that wage loss should be compensated if the covered illness contributed to retirement; e.g., a worker was told work was no longer available due to his covered illness and that worker took early retirement.

The Board recommends that the phrases "was caused" and "but for" in Section 30.805 (a) (3) be replaced by the language of the standard of "aggravated, contributed to or caused" that appears in the EEOICP Act. That is, if the covered illness aggravated, contributed to or caused the health problems associated with wage loss in the trigger month, then that wage loss should qualify for benefits.

The Board recommends that the phrase that contains the term "rationalized" in line 1 of 30.806 be changed to "OWCP requires submission of medical evidence based on a physician's fully explained and reasoned decision…". The Board recommends that the phrase "convince the fact finder" be replaced with the phrase "allow the fact finder to determine".

10. 30.5(ee) Definitions – clarifies definition of "physician" p. 17

The Board recommends that "includes" should be restored so the definition reads "Physician

includes surgeons…" in order to be more inclusive of physicians who typically treat patients with work-related illnesses (e.g., family practice physicians, internists, etc.)

11. 30.5(x)(2)(iii) Delivery or removal of goods page 16

The Board recognizes that workers who were exposed to hazardous materials in the course of delivery or removal of goods or materials from a DOE facility should be included in coverage by EEOICP. The Board recommends that the sentence beginning with "The delivery or removal of goods…" be eliminated.

12. The Board notes that the regulations make frequent reference to causation. The Board also notes that the Act refers to aggravation, contribution to, and causation. The Board therefore recommends that the proposed changes in the regulations reflect the language of the Act.

Public Comment

Terrie Barrie – Ms. Barrie reminded the board that Congress enacted the program to take the burden of proof off of the claimants. Claim examiners are not very specific on what types of information they need when contacting claimants. Having a template for personal physicians to follow is going to be very helpful. The template approach is already in use by the home healthcare industry.

Deb Jerison – Ms. Jerison from EECAP was glad that the board will be looking at Final Circular 1505. The average compensation paid to each worker before the circular came out in 2014 was $157,861. The average compensation paid after the circular was $17,743. Seventy-two percent (72%) of the cases before the circular was released were approved and 65% were approved after its release. Ms. Jerison said that her group has already made detailed comments on the rule changes. Ms. Jerison added additional comments regarding beryllium vendors, the Manhattan project, and rationalized medical reports. The Radioactive Daughter Blog has details on EECAP's comments on the proposed rule changes.

Stephanie Carroll – Ms. Carroll said that Congress intended for the program to establish chronic beryllium disease (CBD) and beryllium sensitivity. Currently, a doctor will not say that someone has a diagnosis of beryllium sensitization with one beryllium blood test. The new rules are creating a large change when it comes to beryllium. It is up to the claims examiners to establish CBD through the list of criteria that they have. People have not been getting diagnosed with CBD since 2006. There are 300 people sensitized at Rocky Flats and there has probably been 80 people approved under the program. Now the DOL is asking for well-rationalized letters from physicians explaining how a claimant's CT scan is consistent with CBD. The board should have more time to look at the proposed rule changes.

Jeanne Cisco – Ms. Cisco was from Portsmouth and she worked at a gaseous diffusion plant for over 41 years. She worked with the DOL for over a year to get certain chemicals added to the SEM. DOL responded that it is difficult to add those chemicals to the SEM because the processes are not identified well enough and the DOL does not have the resources to further investigate the sites. Workers were never monitored for chemical exposures at Portsmouth. All of the job classifications worked around the chemicals at Portsmouth. The SEM does not currently capture all of the chemical exposures for all of the job categories. There is a lot of work to do.

Paige Gibson – Ms. Gibson worked at the Mound Plant in Ohio for 13 years. Her father worked there

for 23 years. Ms. Gibson was a decon-B worker, the health and safety rep for the union and taught HAZWOPER. She is currently a nurse and coordinator for the WHPP program. There needs to be user-friendly guidelines on what happens during the claim process. According to DOL, Ms. Gibson's job category does not exist. It is good that DOE is working with DOL to get employee records. The incident records from Mound are no longer in existence. If DOL does not recognize worker affidavits, how does a worker prove an exposure? The 1980 cutoff date is important because there was a boom in the amount of people coming through the DOE complex.

Donna Hand – Ms. Hand asked why the statement of accepted facts can't be sent to the treating physicians. The CMC don't see the patients, they just see the information that DOL has sent to them. Experts can only issue opinions in their own fields. There needs to be more non-invasive tests for CBD. The main thing is the reports. There have been peer review studies on chronic respiratory diseases but DOL will not accept them.

Tim Larew - Mr. Larew is the Chair of Cold War Patriots. The organization's mission is to connect the men and women and families of the nuclear complex to the resources they need if they have suffered a work-related illness. Any nuclear complex worker would gladly forgo compensation if they could simply be restored to good health. The workers ask that the program provide timely and compassionate compensation to injured workers.

Hugh Stephens – The normal causation standard, "the preponderance of the evidence" is applicable in the program for most things. Under Part B and E there needs to be a reduced standard because of the lack of evidence. More and more, as time passes, we are gaining a greater understanding of how radiation contributes to cancer. Mr. Stephens said that he prefer that the threshold be 1% - if you have 1% Probability of Causation you should get paid under Part E.

The meeting was adjourned at 6:01 p.m.

Thursday, April 28 2016

Introductions

The meeting came to order at 8:43 a.m.

Area #4: Evaluation of Role of Industrial Hygiene and Occupational Medicine Expertise in EEOICP, Jeff Kotsch, Senior Health Physicist & Unit Chief, Medical and Health Science

Mr. Kotsch said that to establish that an employee was exposed to a toxic substance, the evidence in the case file must show evidence of potential or plausible exposure to a toxic substance and evidence of covered DOE contractor/subcontractor or uranium employment at a covered DOE/RECA facility during a covered time period.

Mr. Kotsch reviewed information the board had already heard concerning DOL regulatory requirements, industrial hygiene reviews, IH referrals (Mr. Kotsch provided redacted examples of IH referrals for the board – they are currently viewable on the DEEOIC website https://www.dol.gov/owcp/energy/regs/compliance/advboard/advboard_04262016.htm), CMCs, annual accountability reviews. The accountability reviews of CMCs and second opinion physicians found that the process was satisfactory. The board will receive a copy of the QTC contract (the CMC/SECOP

scheduling contractor, a copy of the 2015 audit, and a copy of the accountability review.)

Mr. Kotsch presented an extensive list of items that DEEOIC is seeking advice on to the advisory board. That list is reproduced here:

1) New presumptive criteria to be applied in eliminating the need for medical review

- Diagnosis + toxin + latency (time of exposure) = causation
- Matrix of consequential illnesses that can be accepted once a primary work-related illness is accepted.

2) Clarification/recommendation regarding the assessment of a medical opinion regarding the "rationalization" supporting a particular conclusion.

- Standardized triggers for requiring independent medical reviews by CMC or SECOP.

3) Methodologies for improving physician responsiveness to data requests including review of development letters, outreach efforts, and provider communications.

4) What sources of information exist that describe the synergistic effects of chemical/radiological interactions and the resulting health effects of such interactions?

5) Training resources for improving the quality of medical reviews of medical evidence in weighing conflicting evidence.

6) Recommendations for standardization of IH reviews

- Definition of exposure levels by employee
- --Recommendation regarding improving IH narrative findings of exposure.
- --Proper assessment of employee toxic substance exposures in the absence of occupational safety and health monitoring data.

7) Creation of a resource or recommendation regarding presumptive exposure classifications for certain workers or worker groups, e.g., workers significantly exposed to asbestos, mercury, lead etc.

8) Improvements in data reporting by the CE to an IH or CMC for better scientific outcomes.

9) Generalization of prior IH and CMC findings to pending adjudication actions.

10) Policy guidance review

- Circular 15-05, Occupational Exposure Guidance Relating to Asbestos
- Circular 15-06, Post-1995 Occupational Toxic Exposure Guidance

Discussion:

When a case is referred to an IH, the DOL explains to the IH what they believe the person's potential exposure may have been and asks them to tell DOL what the root/nature of the exposure is. DOL is looking for guidance from the board on how it can get more site-specific information added to the SEM. If the IH looks at a claim and thinks "something" is missing, they usually check back with the CE and add that "something." The reason that the IH is involved is because there is very little specific information from the sites. DOL does not have the resources for industrial hygienists to call every

claimant. About two hours are spent completing the occupational questionnaire with the claimant.

Not every claim goes to a CMC. It depends on the information that the DOL has. DOL will go to a CMC when they have a physician's opinion but the opinion is not very strong or it is clear that the physician does not have the expertise. The board wanted to see more detail when the IH was putting something in writing – like when the physicians outside the DOL are putting something in writing. Since the burden is on the claimants, the board is very concerned about the quality of available data and will be looking at the lack of data issue very closely. The more the questionnaire can get down to focusing on job task the better it will be. The board should look toward helping DOL determine work-relatedness.

All of the DOE Former Worker programs at each DOE site did a Site Profile. DOL will get back to the board on whether or not those Site Profiles have been integrated into the work that DOL is doing. The DOL's newly contracted industrial hygienists have experience with all of the DOE sites.

The Area #4 IH & CMC subcommittee will consistent of Rosemary Sokas, Faye Vlieger, Kirk Domina, Garry Whitley, Mark Griffon, and George Friedman-Jimenez.

Public Comments

Ed Perlmutter - Congressman Perlmutter of the 7th District of Colorado thanked the board for dealing with the serious matter of toxic exposures. Mr. Perlmutter represents the northern and western suburbs of Denver. The Rocky Flats Plant built the plutonium triggers for America's nuclear arsenal. The claims process has not gone smoothly. The advisory board is the result of recommendations from the Government Accountability Offices and the Institute of Medicine. Mr. Perlmutter is looking forward to the board's efforts in improving administration of the compensation program for America's nuclear workers.

Donna Hand – Ms. Hand talked about the difference between the early days of the program and today. Today there seems to be more micromanaging of the program. The labor categories in the nuclear industry are unique. Claimants are not notified when their file is sent to a CMC or an IH. Ms. Hand has been all over the country looking up records to obtain information about worker exposures. There needs to be more consistency in how the DOL evaluates exposures. Simple cases should be granted. Timeliness and consistency are what the claimants deserve. Radiation needs to be addressed under Part E as well.

Stephanie Carroll – Ms. Carroll thought the board should have more time to comment on the proposed changes. The intent of the changes seem to be to make it next to impossible for beryllium workers who meet the previous criteria to get approved under the new criteria. A person does not need to be diagnosed with CBD or diagnosed with beryllium sensitization to meet the criteria that has been established by the Act. Written documentation is required for every employee to prove a beryllium illness. The proposed language is requiring a diagnosis. The proposed changes are not claimant-friendly.

Administrative Matters

The subcommittees agreed to come up with dates for meetings by May 4th. The goal is for the meetings to be from three to four hours. Each subcommittee has three main tasks 1) Define initial issues and

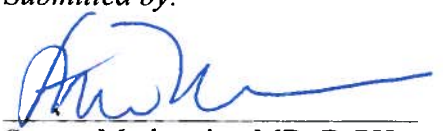
scope; 2) Define data and information needs; 3) Draft initial work plans with a timetable. The board will have to define boundaries as to how open the process will be in terms of board interactions. Under the Act, subcommittees do not need to meet all of the FACA regulations.

The board discussed holding the next meeting in the fall near a DOE facility, like Oak Ridge, Hanford, or Savannah River. It might be beneficial to have the meeting in the same location as the NIOSH Board (ABRWH) around the same time as that board meets.

The board adjourned at 3:02 p.m.

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

Submitted by:



Steven Markowitz, MD, DrPH
Chair, Advisory Board on Toxic Substances and Worker Health
Date: 6/29/2016