

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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WEDNESDAY
SEPTEMBER 4, 2019

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

MEMBERS

SCIENTIFIC COMMUNITY

JOHN DEMENT
GEORGE FRIEDMAN-JIMENEZ
MAREK MIKULSKI
KENNETH SILVER

MEDICAL COMMUNITY

MANIJEH BERENJI
STEVEN MARKOWITZ, Chair
CARRIE A. REDLICH

CLAIMANT COMMUNITY

KIRK DOMINA
RON MAHS
CALIN TEBAY

DESIGNATED FEDERAL OFFICIAL

DOUG FITZGERALD

Call to order

Mr. Fitzgerald called the meeting to order at 1:11 p.m. Eastern Time. All members of the Board were present with the exception of Member Pope.

Review of Public Comments

Chairman Markowitz reviewed several public comments received by the Board. Ms. Vina Colley submitted comments regarding exposure to neptunium at the Paducah Gaseous Diffusion Plant. Chairman Markowitz requested that DOL acquire any new information on neptunium at Paducah from the Department of Energy, update the SEM if necessary, and advise Ms. Colley to submit any additional information to the SEM.

Mr. Robert Rothe submitted comments about toxins missing from the SEM for Rocky Flats. Although there was some relevant information in the SEM, Chairman Markowitz requested that DOL obtain any new information from DOE or Mr. Rothe, update the SEM if necessary, and inform or remind Mr. Rothe of the standard procedure for submitting information to the SEM.

Mr. Cody Wetir submitted a comment about removal of a presumption from the Procedure Manual. Dr. Markowitz noted that the he Board previously made the same observation and has requested an explanation on the background and impact of this change.

Review and follow-up on Advisory Board Action Items from April 2019 Meeting

- 1. In previous versions of the Procedure Manual, it was assumed that, between 1957 and 1996, certain job titles had significant but low exposure to asbestos and that everyone else at the facility had some exposure during that time period. This section was removed from the most recent version of the Procedure Manual.*

Rachel Leiton, Director, Division of Energy Employees Occupational Illness Compensation (DEEOIC), said a determination was made that an IH would review claims on a case-by-case basis. DOL recognizes the impact of the change and will clarify the issue in the next version of the Procedure Manual.

- 2. The Board would like to be able to refer to DOL specific issues identified in their review of cases.*

Chairman Markowitz has some ideas for a process to make that happen, which he will share later in the meeting.

- 3. Regarding EEOICPA claims that may have been reopened as a result of Board recommendations, can DOL provide a description by specific condition and principal diagnosis instead of using three broad categories?*

The chart previously submitted to the Board has been updated. Originally the three groups were (1) mesothelioma, ovarian cancer, and pleural plaques; (2) hearing loss and bladder cancer; and (3) lung cancer. The Department has provided a list of these cases with specific conditions listed, but the information has not been summarized and includes personally identifiable information (PII) so it could not be posted on the Board's website. The Department will provide the Board with details on the most recent updates.

- 4. The Board requests information on how many cases are referred to an IH.*

Ms. Leiton provided a report showing 26 percent of 2018 cases were referred to an IH but said recent training may drive that number up. Noting that similar percentages of accepted and denied cases had been referred to an IH, Chairman Markowitz said it would be more useful to look only at cases referred to an IH because of exposure or causation questions. Ms. Leiton said it isn't always easy to break cases out that way since there may be multiple decisions for each case.

- 5. The Board would like the IH to be able to speak to the CE or the claimant.*

The Department indicated that discussions between claimants and the IH are possible with CE involvement, and this will be incorporated into the next update of the Procedure Manual. There has never been a prohibition on an IH speaking to a claimant, but the Department has never received such a request. Chairman Markowitz asked if contractor IHs would also be allowed to speak to claimants. The Department will determine to what extent a Federal IH would need to be involved in order to maintain the Department's contractual obligations.

- 6. Dr. Markowitz requests clarification on the new CMC policy that was only given to DEEOIC CMCs and not to private practice specialists, as discussed in public comments from*

Terrie Barrie.

The guidelines were sent to CMCs contracted by the Department to ensure procedural contract compliance. It would not be appropriate to send the same guidelines to claimants' treating physicians as they are not DOL contractors, but the procedures and guidelines sent to CMCs are the same as what is found in the Procedure Manual.

7. The Board would like to have a summary of its previous recommendations.

Member Berenji helped assemble a summary of previous Board recommendations. Mr. Fitzgerald will review and follow up on them. Chairman Markowitz asked if the recommendation status could be posted on the Board's website.

8. The Board requests claims for four lung conditions.

Chairman Markowitz said DOL has provided the Board with those claims, some of which will be reviewed later in the meeting.

9. The Board requests that someone from DOL EEOICP attend all of the Board's meetings.

Chairman Markowitz said that DOL is complying with that request.

Status of replacement of Dr. Cassano/Follow-up on previous Board recommendations

Both of these issues remain pending following the departure of Secretary Acosta and are currently in the Office of the Secretary. The Department would like to give a new incoming Secretary the opportunity to make an appointment and to certify the Board's recommendations.

Review of Claims Data Provided by DOL

Chairman Markowitz discussed various data tables provided by DOL. He requested a replication of some of the tables with only Part E claims. There was discussion around the change from ICD 9 to ICD 10 and the associated text descriptions listed in the table. Ms. Leiton said they should rely on the code ranges, not the text descriptions.

Chairman Markowitz proposed forming a working group to drill down on and request additional data the Board needs. Mr.

Fitzgerald urged the Board to use the established process for submitting requests for data, with specificity and a rationale for each request. Ms. Leiton proposed having preliminary discussions prior to any formal request.

Review of Claims

Chairman Markowitz proposed that either one or two members review each claim before submitting comments to DOL. Board members agreed that a single-member review, keeping the Chair informed, was the best approach. Noting that an appeals process already exists, Ms. Leiton wanted to discuss the process and scope with the DFO. Mr. Fitzgerald said the review should focus on procedures or policies that may have led to concerns or trends with the decisions, not on individual case decisions.

Member Dement reviewed an ILD claim, case number 6115. One issue is that the OHQ should have been used for the worker's first claim. Neither the IH nor the CMC were as thorough as they should have been. Another issue is the lack of recognition of the well-known association between asbestos disease and sheet metal work. Chairman Markowitz thought it remarkable that neither the IH nor the CMC recognized pulmonary fibrosis in a sheet metal worker as possible asbestosis.

Chairman Markowitz reviewed another ILD claim, case number 1504. The CMC relied entirely on the IH's view that the exposures were insignificant and the claim was denied, but the worker's exposures may not have been adequately understood. An IH interview with the claimant might have been very helpful. Member Dement said the IH should state the basis for determinations about exposures and demonstrate an understanding of the work that the individual actually did.

Member Mahs discussed a case involving a mason who worked around asbestos and silica for years. There was discussion of the meaning of the phrase "significant exposure but at low levels," and whether it was relative to current or historical OSHA standards. Low to moderate may be interpreted to mean de minimis, but that interpretation may not always be correct. Member Friedman-Jimenez said low to moderate could describe the duration rather than intensity of the exposure.

Chairman Markowitz reviewed ILD case 0021, with ten years of exposure but only six months of covered employment. Two doctors determined that six months met the contributory standard. After one CMC disagreed, a referee CMC determined that six months

wasn't enough to cause the disease and did not address the issue of contribution. More guidance on the meaning of "contribution" from DOL may be needed.

Member Redlich reviewed another ILD case for someone seeking an impairment rating after a prior RECA claim for pulmonary fibrosis/silicosis was accepted. Pulmonary function tests were on the low end of normal, and the physician said there was no respiratory impairment, but, compared to prior spirometry, there had been a substantial decline in lung function.

Member Mikulski reviewed a sarcoidosis claim, case 3580, involving a Part B and Part E claim for prostate cancer and a Part E sarcoidosis claim. Both claims were denied for prostate cancer based on insufficient probability of causation, but the claims examiner asked the CMC to determine if medical evidence supported the pre-1993 diagnosis of CBD. The CMC said the claimant met two of the three criteria, but a borderline lymphocyte proliferation test was never confirmed by further testing. It's unclear what records were shared with the CMC, but the reviewed files contain evidence of all three pre-1993 criteria.

Member Redlich raised the issue that the SEM does not list any exposures that cause sarcoidosis, but the same is not the case for CBD. Since the two diseases are indistinguishable, the SEM should be queried for CBD instead of sarcoidosis.

Member Berenji discussed a sarcoid case she reviewed. Ten beryllium tests had been done, nine normal and the tenth uninterpretable. The Procedure Manual may need an addendum to deal with these cases as it is unclear what impact the claimant's use of prescription steroids may have had on test results.

Member Redlich discussed a claimant who had worked at Pantex in various administrative positions. The single negative BeLPT was performed only after the claimant had begun steroids. Chairman Markowitz asked whether post-1993 sarcoid cases are to be treated as beryllium cases until proven otherwise. Ms. Leiton said that is the case in certain circumstances, including when there is a positive beryllium test. John Vance, Department of Labor, said the Department has carved out an exception whereby if other criteria have been met, a pulmonary sarcoid claim can be accepted as CBD. Member Redlich noted that the Procedure Manual does recognize the possibility of false negative BeLPT tests following prescription steroid use.

Member Redlich reviewed case 9190, a claim for asthma, COPD, and pulmonary fibrosis with clear asbestos exposure, but according to the SEM there was no exposure that causes pulmonary fibrosis. Member Silver pointed to this case as an example of a claims examiner's overreliance on the SEM.

Member Redlich also noted there were many cases that the board members agreed with.

Consideration of any new issues

Chairman Markowitz proposed forming a subcommittee or working group to continue reviewing cases. While public meetings are generally preferred, members agreed they should form a working group to avoid the delay involved in having to provide advanced notice. The public can be informed about any progress made at the Board's next meeting.

Members Domina, Redlich, and Friedman-Jimenez volunteered for the new work group. The work group needs to schedule a call and solicit categories of issues, and all Board members will write up their concerns on specific cases. Member Redlich said there might be recommendations on complicated cases even if the reviewer ultimately agreed with the final determination.

November Board meeting

The next Board meeting is scheduled for November 20-21. There had been talk of having it in Nevada, but the Board has been going through the sites by descending numbers of claims. Using that method, next up would be Paducah, Kentucky.

Adjournment

The meeting was adjourned at 4:12 p.m. Eastern Time.

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



Steven Markowitz, MD, Dr.Ph.

Chair, Advisory Board on Toxic Substances and Worker Health

Date: 11/22019