

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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NOVEMBER 14-15, 2018

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The Advisory Board met in Room S-4215, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C., Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

JOHN DEMENT  
GEORGE FRIEDMAN-JIMENEZ (via telephone)  
MAREK MIKULSKI  
KENNETH SILVER

MEDICAL COMMUNITY

MANIJEH BERENJI  
VICTORIA CASSANO  
STEVEN MARKOWITZ, Chair  
CARRIE A. REDLICH

CLAIMANT COMMUNITY

KIRK DOMINA  
RON MAHS  
DURONDA POPE  
CALIN TEBAY

DESIGNATED FEDERAL OFFICIAL

DOUG FITZGERALD

**WEDNESDAY, NOVEMBER 14, 2018**

**Call to order and introductions:**

Mr. Fitzgerald called the meeting to order at 8:46 a.m. The above-listed board members were in attendance. After a round of introductions, Julia Hearthway, OWCP Director, welcomed the committee and outlined the committee's charge.

**Charge to the board, Julia Hearthway, OWCP Director:**

Ms. Hearthway stressed that the entire program is looking to have a productive relationship with the board. Ms. Hearthway has already met with Chair Markowitz and discussed the issues that DOL is struggling with. DOL is looking forward to the board's help and advice on some very complex issues.

**Energy Statute/Creation of the Board, Tom Giblin, Solicitor's Office:**

Mr. Giblin's division provides legal support for the compensation program. EEOICPA (the Act) was passed in 2000 and was enacted to provide compensation and medical benefits for workers in the nuclear weapons industry. The board is to advise the Secretary of Labor in four areas: 1) Site Exposure Matrices 2) medical guidance for claims examiners (CEs) under Part E of the Act 3) evidentiary requirements for claims under Part B related to lung diseases 4) the work of industrial hygienists and staff physicians and consulting physicians. Another duty of the Board is to coordinate exchange of data and findings with the Advisory Board on Radiation and Worker Health.

Section 5 of RECA (Radiation Exposure Compensation Act) covers uranium miners. The miners are eligible for benefits under Part B and Part E. Whatever conditions have been accepted by DOJ, the DOL also accepts those same conditions under Part B. The miners can also file a separate claim under Part E. Certain named conditions like pneumoconiosis and pulmonary fibrosis are compensated under RECA.

If the Board makes a recommendation outside the statute, the agency can't implement the recommendation, unless Congress amends the statute.

**FACA review, Joe Plick, FACA Counsel:**

Mr. Plick outlined the history of FACA and the basic rules for how federal advisory committees are to operate. In general, committees should be transparent and conduct their deliberations in public. The General Services Administration (GSA) has oversight over FACA. Meeting minutes are required for the meetings of advisory committees (a transcript does not count as meeting minutes). GSA regulations

require that advisory committees stay within their specific charge. Subcommittees tend to be more formal than work groups. Actions by subcommittees are not official until the full committee has discussed them.

**Overview of EEOICPA, Rachel Leiton, DEEOIC Director:**

Ms. Leiton gave a brief overview of the compensation program and the types of information that DOL seeks in evaluating a claim. Each part of the Act has different criteria. For example, under Part B an individual is eligible if they were a DOE contractor or subcontractor, an atomic weapons employee (AWE), a beryllium vendor, or a RECA recipient. Part E covers contractors, subcontractors, and RECA beneficiaries. Part B covers cancers, chronic beryllium disease, silicosis under specific circumstances, and RECA Section 5 awardees. Part E covers any condition as long as it can be determined that it was as least as likely as not caused by, contributed to, or aggravated by exposure to toxic substances in the work place. Eligibility for survivorship is also different under both Parts. Benefits under both Parts are also different.

DOL goes through several steps after getting a claim: verify employment (an affidavit by itself is usually not adequate), determine Probability of Causation (Part B claim), determine if a claimant falls in a Special Exposure Cohort (Part B claim), establishment of a medical condition (Part E), determine what toxic substances a claimant was exposed to (Part E), determine whether the level of exposure to toxic substances was related to the condition being claimed (Part E). DOL has several tools, like the occupational history questionnaire (OHC) and the site exposure matrices (SEM), that help in determining causation. DOL uses contract medical consultants (CMC) and industrial hygienists to evaluate claims.

Claims are first processed through one of the regional resource centers around the country. The Final Adjudication Branch (FAB) in Washington, D.C. makes the final decision on claims. The FAB is composed of DOL employees who are separate and independent from the claims examiners. There is a reconsideration option where a claimant can ask for a decision by a different hearing representative if a claim is denied. Cases can also go to federal district court. New information can re-open a case as well as a claimant's inclusion in an SEC. Ms. Leiton will provide the board with information on how many cases have been reopened. Claimants have the right to an in-person hearing.

Claims examiners are trained in how to be claims examiners - they are trained in the statute. DOL offers training modules, classroom training, online training, mentoring programs, etc. There is a training lead at the national office and there is an ongoing effort to make the training more robust and consistent throughout the

country. The district offices have nurses. There is also a set procedure for forwarding issues to the Medical Director at the national office.

The board expressed a strong interest in meeting the medical director and program toxicologist. The toxicologist is used as a resource to research the link between certain substances and medical conditions. The toxicologist has some epidemiological expertise. Proving causation is the biggest challenge and frustration reported by claimants.

There can be multiple claims in a case. An individual can have two cases, one under Part B and one under Part E. The Board requested information on the number of claims and payouts over the last several years under Part E. DOL is capable of pulling cases that have been denied, like asbestos cases under the Board's recommendation with regard to the presumptions related to asbestos.

**Ethics rules, Zachary Mancher, Ethics counsel:**

Mr. Mancher provided an overview of the ethics rules for special government employees (SGEs): financial conflict of interest rules, bias rules, the Hatch Act (engaging in political activities while serving as an SGE), serving as an expert witness, lobbying, and use of a position on a board to lobby.

The best rule of thumb for Board members is to always contact the ethics counsel if they have any questions. Mr. Mancher outlined the differences between bribes, salary supplementation, and gifts. Members cannot accept a gift that is made because of their official position or from anybody whose interests could be affected by the work of the agency. If a member feels like the optics of accepting a gift might be bad, the member should check with the ethics counsel. Board members may not use their title as a member of the Board to serve them personally. Board members may not use non-public information for their personal benefit. It is notable that members of the Board are not working on individual party matters before the agency. Mr. Mancher said that he will follow-up with board members about questions regarding serving as expert witnesses.

**Statutory Areas for the Board, Rachel Leiton, DEEOIC Director:**

Ms. Leiton discussed the four areas that the statute specifies are within the Board's scope.

*Site Exposure Matrices (SEM)*

The SEM was created in 2005 to help claims examiners research toxic substance data related to employees working at DOE facilities. The

database was designed to help claimants and claims staff to determine the possibilities that exist for exposures. Mr. Vance will provide a more detailed presentation on the SEM. SEM is not used as a decision tool. It does not provide information on the extent of exposure and the amount of exposure. Paragon Technical Services maintains the SEM. There are 16,400 toxic substances used at 128 DOE sites in the SEM and 4,000 additional RECA sites.

HAZMAP is a National Library of Medicine activity linking toxic substance exposures with diseases. HAZMAP is continually updated and incorporated into SEM. A lot of cases are now going to industrial hygienists (IH) for refinement. With regard to the Direct Link Work Process, sometimes DOL can link exposures to a work process instead of a labor category.

#### *Medical guidance for claims examiners*

There are various sources of evidence that come to claims examiners: the claimant's doctor, consulting experts, second opinion physicians, referee consultants, social security disability examinations, and medical records. Oftentimes the opinion of an expert is going to be weighed more heavily than a general practitioner. DOL also reviews DOE's medical monitoring programs. DOL first tries to rely on information submitted by the claimants, then a CMC will examine the file if the diagnosis is unclear or there are other ambiguities.

The statement of accepted facts (SOAF) includes diagnosis information and other relevant medical information. The claims examiner often relies on the treating physician. DOL does have an accountability review process to review the quality of claims examiners' work. The area of causation is looked at specifically, as well as the analyses conducted by claims examiners. The results of the audits are publicly available.

The SEM does not address consequential conditions. The CE relies on physician opinions with regard to consequential conditions.

#### *Evidentiary requirements for claims under Subtitle B related to lung disease*

In order for DOL to accept a beryllium sensitivity case, a person must have one abnormal beryllium lymphocyte proliferation test (BeLPT) or one beryllium lymphocyte transformation test performed on lung or blood lavage cells, which shows abnormal findings. A beryllium patch test can also be used. This is a statutory requirement.

For a pre-1993 chronic beryllium disease (CBD), a person must have any three out of five of the following criteria: 1) characteristic

chest radiography or computer 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 test showing beryllium sensitivity.

The post-1993 criteria are different: 1) establishment of beryllium sensitivity 2) lung pathology consistent with CBD 3) CAT scan showing changes consistent with CBD 4) pulmonary function or exercise testing showing pulmonary deficits consistent with CBD 5) physician's rationalized opinion noting that biopsy findings are consistent with CBD will take precedence over the diagnostic data.

Chronic silicosis: 1) exposed to silica in the performance of duties for an aggregate of at least 250 work days during the mining of tunnels at a DOE facility located in Nevada or Alaska 2) latency of ten years 3) written narrative from a qualified physician that includes a diagnosis of silicosis. With regard to diagnostic evidence any of the following are needed: chest radiography interpreted by a physician certified by NIOSH as a B-reader, classifying the existence of pneumoconiosis of category 1/0 or higher, results from a CAT scan or other imaging technique that is consistent with chronic silicosis, or lung biopsies consistent with chronic silicosis.

An "abnormal" BeLPT test result is required by the statute. It is the interpretation of the legal department at DOL that "borderline" is not abnormal under the statute.

*The work of industrial hygienists, staff physicians, and consulting physicians*

Ms. Leiton described the role of IHs and consulting physicians in detail. DOL adjusts cases where IHs have found problems. DOL is looking to do quarterly audits of the IHs, but that process has not begun yet. The Board is welcome to help the Department in establishing a process for auditing the IH reports. There has never been an exercise in examining consistency among CMCs, i.e., if two CMCs are provided with the same causation criteria, would both CMCs come up with the same answer?

**Procedural Manual (PM) Modifications and other changes, John Vance, DEEOIC Branch Chief, Policy, Regulations, and Procedures:**

The PM is a 600-page document and is available on the DEEOIC website. Mr. Vance said that Chapter 15 on Toxic Exposure Causation Analysis is most relevant to the board. Also Chapter 18 on non-cancerous conditions and Chapters 24-26 describe the basic claims adjudication process. The website has a library of transmittals that describe all of the edits made to all of the versions of the PM. Changes are made

to the PM through feedback from claims staff, policy analyst staff, stakeholders, and the Advisory Board. Litigation can also prompt changes to the PM. A lot of thought and staff resources go into the wording of the PM. Every recommendation that the Board provides undergoes a thorough evaluation. The PM strives for and relies on specificity.

Modifications to the PM:

- asthma language
- adding benzidine to the list of toxins associated with bladder cancer
- adding two new toxins to the hearing loss standard, carbon disulfide and n-hexane
- adding a series of presumptive changes to pulmonary diseases
- changed latency periods for mesothelioma and ovarian cancer
- modified latency for pleural plaques

The standard on asthma is that a physician must offer a rationalized opinion on causation. The CE looks at whether the physician has offered a compelling and convincing argument about the mechanism of exposure that provides a linkage between that exposure and the asthma. A triggering exposure to a toxic substance needs to exist.

DOL did not accept the Board's recommendation on vapors, gas, dust, and fumes (VGDF).

**Program Updates, Last 12 Months, Rachel Leiton, DEEOIC Director:**

Ms. Leiton gave a wide-ranging overview of the program's activities over the last year. Over the last year, DEEOIC has reorganized its national office. One of the major things the program has done is create medical benefits examiners. One of the things that these benefits examiners do is handle claims involving home health care, but they also work on issues with medical bills.

The program has centralized the assignment process for the Final Adjudication Branch (FAB). Staff is in the process of developing guides for hearing representatives regarding specific sites and work facilities around the country. Recent audits of the FAB have gone really well.

DEEOIC has gone around the country doing two to three day workshops with NIOSH in order to reach out to potential claimants. There have been about 19 outreach events over the past year. There is also outreach to medical providers. People are also using the internet more often in terms of uploading their case files and getting them to the claims examiners sooner. DEEOIC is continuing to work on getting claimants easier access to their claim files.

DEEOIC has hired a new training lead to help improve and standardize training. One of that person's big projects is to implement changes in training related to presumptions.

Staff is trying to come up with a way to more easily navigate the Procedure Manual through the website.

**Requests for Board Assistance, John Vance, DEEOIC Branch Chief and Rachel Leiton, DEEOIC Director:**

*Parkinson's disease and association with chemical exposures*

Mr. Vance said that the program has encountered a lot of claims where many problems have presented themselves regarding the interchange between Parkinson's disease, Parkinsonism, manganism, Parkinson's syndrome, and other aliases being used by physicians. The program, in its Exhibit 15-4, has a presumption related to Parkinsonism. The presumption is out of date and in need of revision.

*Redrafting and editing of the Occupational History Questionnaire (OHQ)*

Mr. Vance said that DEEOIC was hoping for a more encapsulated set of recommendations as far as taking the existing draft OHQ and getting specific feedback as far as what changes to that draft the board would recommend. A draft of the revised OHQ will be provided to the board.

*Recommendation with regard to the radiogenic substances that are encountered at DOE facilities*

DEEOIC has little information about non-cancer radiogenic health effects from these substances. There are types of non-cancerous conditions that can be associated with radiogenic sources such as chemical health effects. Uranium acute tubular necrosis is an example of one of these conditions. Some of these claims are denied because there is just not enough information on non-cancerous conditions linked to radiogenic sources.

*Alias fields in the SEM*

Alias names in fields in the SEM identify different terminology communicating the same diagnosis or condition. Chronic beryllium disease and berylliosis is an example. DEEOIC hasn't been able to do cluster studies in terms of the current claimant population. The request to the Board is to review the aliases for accuracy and look for other aliases that the program should apply in certain ways.



There are epidemiologists on staff at Paragon Technical Services, and Dr. Stokes who is on staff with the program is a toxicologist and an epidemiologist.

**Board Meeting Logistics:**

The Board unanimously agreed to make its subcommittee meetings open to the public. Chair Markowitz asked the Board to think about how to effectively track public comments and incorporate those into the Board deliberations.

Ms. Rhoads is keeping a spreadsheet on public comments and actions taken by on the Board relative to those public comment topics.

As far as locations of board meetings, the previous board had met in Washington, D.C., Oak Ridge, Hanford, and Los Alamos. The Board's preference is to continue that practice. The previous meeting locations were decided by the number of claims by location. Tours of the facilities adds another day to the Board meetings.

Chair Markowitz said that finding documents on the DEEOIC website relating to the Board's work is often cumbersome. Consecutive numbering of documents, like recommendations across meetings, could help lessen the confusion. Having a clear link to the Board's recommendations in a conspicuous location on the program website would be helpful for members of the claimant community and Congress in keeping track of the board's activities.

**Public Comments:**

*Michele Jacquez-Ortiz, Senator Tom Udall's Office*

Ms. Jacquez-Ortiz read a prepared statement from Senator Udall into the record. Senator Udall said that the work of the board is vital for the compensation program. The Board is specifically designed to offer DOL a unique mix of perspectives on issues facing the program. Claimants have reached out to the Senator's office to request that DOL withdraw its proposed rule changes for EEOICPA and engage in a negotiated rulemaking process. The spirit of the law was to intend that the program be science-based and compensate legitimate claimants in a timely fashion.

*Terrie Barrie, founder member of the Alliance of Nuclear Advocacy Groups*

Ms. Barrie said that the previous Board made many excellent recommendations to improve the program. Ms. Barrie was concerned about why some of the Board's recommendations were rejected. It sounded more like a bureaucratic issue than an issue rooted in sound

science. Ms. Barrie thought that the recommendations of the Board should outweigh the recommendations of the in-house DOL experts. Ms. Barrie said that DOL should accept all of the Board's recommendations. Ms. Barrie still hears complaints about the industrial hygienists, the toxicologists, and the CMCs. The board should review these complaints. The board should also review the new Office of Medical Benefits Review. The SEM also needs to be reviewed because it isn't comprehensive. Ms. Barrie asked the board to develop a presumption for DOE workers that worked with uranium based on the exposure that is covered under RECA.

*Tee Lea Ong, Professional Case Management*

Mr. Ong commented about the rule changes that were proposed three years ago. The proposed changes require a rethink. The Board should weigh in on the rule changes and see how they can be made more claimant-friendly. The board should start with most relevant changes and go from there.

*Donna Hand*

Ms. Hand said that nobody knows what an abnormal beryllium test is. A borderline test would have to be abnormal. Dr. Armstrong has said that the asthma chart cannot be used with chronic beryllium disease. Ms. Hand also wanted to know what a lymphocyte process consistent with CBD is.

*Vina Colley, Co-founder of National Nuclear Workers for Justice*

Ms. Colley wanted the Board to push for workers at the gaseous diffusion plants to get compensation. Ms. Colley was worried that DOL is not getting accurate medical records of claimants. The board should have a meeting at Portsmouth. Ms. Colley expressed concerns about the bureaucratic nature of the procedure standing in the way of getting claimants compensated.

*Josh Artzer, HAMTC*

Mr. Artzer is the chairman of the beryllium awareness group at Hanford. Mr. Artzer asked if DOL's interpretation on borderline BeLPTs had a medical reasoning. Hanford has a lot of workers that have borderline tests. Mr. Artzer asked where the IHs get their data before providing recommendations and opinions. Workers at Hanford aren't being monitored at certain times, so there is an information gap. Hanford sees a lot of Parkinson's cases. Hopefully the board can come up with a claimant-friendly recommendation on Parkinson's.

**Adjournment:**

Mr. Fitzgerald adjourned the meeting for the day at 5:15 p.m.

**THURSDAY, NOVEMBER 15, 2018**

**Call to order:**

Mr. Fitzgerald called the meeting to order at 8:43 a.m.

**SEM - How it works (with discussion), John Vance, DEEOIC Branch Chief, Policy, Regulations, and Procedures:**

Mr. Vance demonstrated the features of the public online SEM in detail. The database has tens of thousands of substances used at DOE facilities linked to different types of work done at those sites. The SEM also has a search ability for known health effects of toxic substances. Employees were not monitored for chemical exposures, unlike radiation monitoring. There is a public SEM and an internal SEM because the database is constantly being updated with new information which needs to be cleared by DOE before appearing in the public SEM. DOL works with many stakeholders to update the database. Changes to the SEM are frequently made from public submissions. Paragon Technical Services maintains the SEM. New information is vetted by Paragon and DOL staff. Mr. Vance said that he will provide the Board with information on the volume of public submissions and the turnaround time in incorporating those submissions into the SEM. The DOL research team is constantly collecting information about DOE facilities.

The Board was concerned about how the names of toxic substances were not consistent through time and how that could affect a claimant's exposure profile. The SEM has an alias search feature for these chemicals. The SEM can associate toxins with job tasks and diseases. Claims examiners are looking for those links between diseases, job tasks, site-specific information, and a claimant's diagnoses. Job category profiles will vary from site to site. A welder at Rocky Flats will have different exposures than a welder at Savannah River, for example.

Claims examiners try to prioritize a claimant's exposure to the seven toxins that will likely yield the highest chances of a compensable outcome. The number seven was chosen for practical purposes. Claims examiners attempt to create connections based on the case file to what they can search on the SEM. The SEM is not a tool to establish causation, it is just the first stage in the process of evaluating a

claim, and the occupational history questionnaire (OHQ) is another important component of this process. The characterization of the exposure is up to the industrial hygienist. Then the IH's decision moves on to a medical review. DOL is operating on the best information available.

The Board was concerned with the small amount of time that CEs appear to spend on a case. Perhaps the CEs should dig a little deeper. The claimant has the opportunity to provide more information if the program says it doesn't have enough information to accept a claim. There is an internal audit of the claims process. The Board will be provided with a link to the outcomes of that audit process.

Member Cassano wanted an explanation of the interpretation of the statute of what a toxic substance is. The DOL interpretation differs from the NIH definition. Perhaps there needs to be a reinterpretation of the term "toxic substance." Mr. Vance said that the definition of a toxic substance is in the DOL regulations.

With regard to personal protective equipment (PPE) like respirators, the IHs don't comment on the use of respirator; they are only going to be commenting on the characterization of toxins that have been identified for evaluation. Mr. Vance is going to get back to the board on whether there is a search screen in the SEM for personal protective equipment.

**Review of Prior Board's Recommendations, DOL Responses, Julia Hearthway, OWCP Director:**

Ms. Hearthway said that she signed off on all of the DOL responses. All of the recommendations were carefully evaluated. The DOL gathered as much information as it could regarding the recommendations and the process was very meticulous and deliberative. The more support in terms of evidence and rationales that the Board gives for its recommendations, the easier it is for DOL to evaluate those recommendations.

**Review of Prior Board's Recommendations, DOL Responses, Board discussion:**

**Recommendations from October 2017**

*Recommendation 1:* Circular No. 15-06 (issued December 17, 2014), Post 1995 Occupational Toxic Exposure Guidance, be rescinded. DOL agreed with the board and rescinded this circular.

*Recommendation 2:* That DEEOIC ensure that the disease-exposure links identified by the sources listed in Table 3-1 of the Institute of Medicine (IOM) report, Review of the Department of Labor's SEM

(2013), are included in the SEM. DOL said that they did not have the capacity to look at all the sources and asked the Board to narrow the list specifically to those sources that the Board finds most relevant. DOL does keep up with the International Agency for Research on Cancer (IARC) designations. Member Silver said there is a tradition of regulatory agencies of incorporating the work of others by reference. Member Silver also said that the Board needs to educate its colleagues at DOL what is and what is not scientific research. The Board agreed that there was no need for additional scientific analysis of the sources that the Board asked to be incorporated.

Chair Markowitz said that it was reasonable for the program to identify a contractor that can assist them in incorporating a scaled back version of the IOM recommendations. Members Cassano and Berenji agreed to work on a more specific recommendation in this area in terms of what data to include. The Board believed that it would be useful and relevant to include selected data sources and make sure what is available from those data sources is incorporated into the SEM.

*Recommendation 3:* That former workers from DOE facilities be hired to administer the OHQ. DOL responded that former workers within the complex were in fact hired by the organizations that administer the OHQ. DOL gives hiring preference to people who were employed at DOE facilities, but contracting laws prohibited hiring only former DOE workers. The Board believes the program has gone as far as it can with this idea.

*Recommendation 4:* That DEEOIC establish a process whereby the industrial hygienists may interview the claimant directly. DOL responded favorably to the recommendation and asked that the claims examiner be part of the process. The Board requested a status report of where the recommendation stands and how the recommendation will be implemented.

*Recommendation 5:* That DOL review policy teleconference notes, redact confidential information, and post the information in a publicly available database searchable by topic area. DOL did not agree. The teleconferences are works in progress and do not represent a final policy or procedure. The Board understood that DOL's desire to not make the calls public is DOL's prerogative.

*Recommendations 6:* That DOL explore the feasibility of prospectively having new case files made accessible to the claimant through a password-protected electronic portal. DOL accepted the recommendation. It is in progress and will take a few more years to complete. The key challenges is in terms of privacy protection and authenticating users.

*Recommendation 7:* That DOL re-organize its occupational physicians into an office comparable in organizational structure to the Office of the Solicitor of DOL, with physicians organized in groups to support OSHA, MSHA, OWCP, and other units, as well as to provide overall support to DOL. This goes beyond OWCP and into the overall DOL organizational structure.

*Recommendation 8:* That the entire case file be made available to both the industrial hygienists and the contract medical consultants when a referral is made to either, and not be restricted to the information that the claims examiner believes is relevant. The claims examiner should map the file to indicate where relevant information is believed to be. DOL disagreed and thought providing the entire case file would be excessive and overwhelming. DOL also thought that it would undermine the claims examiners as finders of fact. Member Cassano reinforced the notion that this is a critical defect in how the program operates and that access to the entire file is critical. Member Redlich thought that it might be prudent to just ensure access to IHs and CMCs to specific pieces of information that they found helpful. All the exposure information already goes to the IHs.

#### **Recommendations from April 2017**

*Recommendation 1:* Presumptions for asbestos exposure. For the cardinal asbestos diseases, the Board set out how much exposure there needed to be, what time period the exposures were, latency, and what overall job titles should be subject to a presumption. If someone was a pipefitter, a maintenance mechanic, or construction worker with a year's worth of work prior to 1995, then that meant the worker had sufficient exposure to meet the presumption for an asbestos-related disease. DOL accepted much of the recommendation on asbestos-related diseases. The biggest addition was lung cancer. For mesothelioma, a maintenance or construction worker at a DOE site for 30 days or more who were diagnosed 15 years or more after the onset of such work with malignant mesothelioma will be presumed to have had sufficient asbestos exposure that it was at least as likely as not that asbestos exposure was a significant factor in aggravating, contributing to or causing malignant mesothelioma.

DOL asked the board to provide scientific support for adding additional job categories to the presumption outside of the 19 that the DOL already lists. The other issue is the 1986 date that DOL has in the Procedural Manual related to how much exposure members of the 19 categories are assessed exposure to asbestos. Keeping the 1986 date perpetuates a scheme that is no longer needed. The Board is going to work on a response to DOL on this issue.

*Recommendation 2:* Presumptions for work-related asthma. DOL agreed with the terminology used to describe work-related asthma. With

regard to the medical criteria used to diagnose asthma, DOL agreed with the Board's recommendation. The Board recommended using the same criteria for diagnosing work-related asthma whether the claim is made contemporaneous with the period of DOE employment or after the end of employment. DOL modified some of the wording. The Board disagreed, asking physicians to provide the mechanism. The Board will work on a revision to the recommendation.

*Recommendation 3&4:* Presumptions for chronic obstructive pulmonary disease (COPD). The board recommended that DOL accommodate the scientific basis for workers in an industrial environment having exposures to vapors, gas, dust, and fumes (VGDF) as being at risk for COPD. The recommendation was in terms of exposure that a presumption could be based on five or more years of work at a DOE facility if they reported exposure to one of the twelve identified COPD agents. Or, have five years or more work in construction trades if the job title is linked to one or more toxic substances in the SEM. Or, if a worker reported five or more years of exposure to vapor, gas, dust, and fumes, and either their job title or job tasks linked them to classes of toxic substances including solvents, acids, caustics, and metals. DOL's response that the use of the phrase vapors, gas, dust, and fumes is overly broad and not legally permissible. But the program would welcome additional input on toxic substances encompassing VGDF that it should add to the COPD health effects list in the SEM. And five years of exposure is not enough.

Member Dement wanted the board to take a harder look at COPD cases and see how the current criteria are applied. Chair Markowitz noted that he didn't understand that if DOL could apply a VGDF standard to asthma why they couldn't also apply it to COPD. Member Domina agreed that VGDF especially applies to workers in tank farm areas - which occurs across many sites. Member Berenji offered to do some additional research in the area of VGDF and drill down to more specifics in order to get DOL to move toward the Board's position on the issue of VGDF. Member Dement suggested that the Board examine how the SEM is being used in the COPD cases.

*Recommendation 5:* Science and technical capacity in EEOICP. DOL's response was that they have the capacity that they need.

*Recommendation 6:* Interpretation of the Beryllium Lymphocyte Proliferation Test (BeLPT). The board recommended that the finding of two borderline BeLPT tests should be considered the equivalent of one positive BeLPT for the purposes of claims adjudication. DOL did not accept this recommendation, because it contradicts the law.

*Recommendation 7:* Quality Assessment of Contract Medical Consultants. The board requested that DOL provide resources to conduct a quality assessment of a sample of 50 contract medical consultants. DOL's

response was that this is already being done on a quarterly basis. The board did not think that an internal review by a medical director was the same as an external review by the Advisory Board.

### **Recommendations from June 2017**

*Recommendation 1:* Presumption for solvent-related hearing loss. The recommendation was to remove the 1990 date, expand the number of job titles that were eligible for the presumption, increase the number of solvents, and remove the consecutive years of exposure required, replacing it with cumulative years. DOL did not accept the recommendation. Chair Markowitz proposed sending the recommendation to a subset of the Board to consider DOL's lengthy response and decide whether a response from the Board is warranted.

*Recommendation 2:* Definition of chronic respiratory disorder. The Board said that a person that has significant breathing symptoms for three months or more - that that would constitute history of a chronic respiratory disorder. DOL agreed with the recommendation. The Board is going to consider the wording of DOL's response.

### **New Issues:**

#### *Parkinson's Disease*

Member Cassano offered to take the lead on looking into the issues around Parkinson's and related diseases.

#### *Draft OHQ*

DOL asked the board to provide input into the new questionnaire.

#### *Non-cancerous health outcomes associated with radiological materials and the issue of aliases*

The task is to look at the literature and make suggestions about how the literature may fit into the current SEM and how it may affect Procedural Manual modifications. Chair Markowitz suggested that this task be tabled along with looking into aliases and instead focus on items that the Board wants to focus on as a new board. He felt that the Board lacks the resources in terms of person power to tackle these issues. Dr. Markowitz asked for a tally of the numbers of aliases, so that the Board can judge how much work is required to assist DOL in this task.

#### *Other issues*

Member Redlich mentioned review of cases. It would be helpful to review what CBD Part B claims there have been. Member Cassano thought



the Board should look at some presumptions for organic solvents as well as looking at claims that involve those solvents. Chair Markowitz proposed that the Board take an independent look at the CMC and IH quality reports. Importantly, looking at some claims to see how the program works will be helpful. Member Redlich proposed looking at numbers of accepted claims versus reasons for denial with regard to all pulmonary conditions. The Board also wants to look at all cancers under Part E minus those that were successful under Part B.

Member Silver suggested that the Board not give up on the idea of getting an outside contractor to help in reviewing cases.

Mr. Vance said that there is categorization of documentation in the case files, if the file is indexed properly.

The Board is interested in the ability of the CEs to generate an accurate statement of accepted facts. Member Dement expressed interest in looking at some difficult cases in greater detail (for example, presumption cases that were denied).

Chair Markowitz said that the Board will form provisional working groups on the above tasks; they won't be official subcommittees at the moment.

**DEEOIC Ombudsman, Malcolm Nelson:**

Mr. Nelson provided an overview of the tasks and duties of the Ombudsman. Mr. Nelson's office sends a report to Congress every year of the number of complaints against the program and the most common difficulties encountered by claimants. Mr. Nelson said that his office does a lot of outreach around the country to claimants and potential claimants. The only way for a claimant to know whether or not his condition is compensable is to file a claim. Mr. Nelson said that he often encounters first responders like firefighters that have a difficult time finding their exposure potential in the SEM. First responders that could be covered under the DEEOIC program have expressed interest in establishing presumptions for first responders.

**Office of Worker Screening and Compensation Support, DOE, Greg Lewis:**

Mr. Lewis said that what his office does for the compensation program is provide records. These records are provided for individual claims. The office also works with DOL and NIOSH on large-scale site characterization projects. Mr. Lewis explained how his office goes through filling record requests. Records may be distributed across several sites. The turnaround time on record requests is less than 60 days. The average is 34 days. Many times records are discovered and

NIOSH and DOL will go back to look at denied claims and see if there is new information in the records that could reverse a decision on a claim.

**New Issues Discussion Continued:**

*SEM*

Asking DOL how the CEs deal with aggravation and contribution. The board wants a written response from DOL on how the program addresses aggravation and contribution.

*Evidentiary requirements*

DOL responses on the Part B conditions.

*Work of industrial hygienists*

The Board will examine the audits. Dr. Armstrong has been requested to participate in the Board's next face-to-face meeting. Chair Markowitz requested toxicology reports in order to get a sense of what they look like.

*Radiogenic substances*

The Board will hold-off on pursuing this area.

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*Health effect aliases*

The Board will hold-off on pursuing this area, pending further information from DOL on the numbers of aliases.

*Public comments*

The board will contemplate how to integrate public comments into its discussions.

*Next meeting*

The next face-to-face board meeting will be in either March or April. An email will be sent out to board members with potential times and locations for the next meeting.

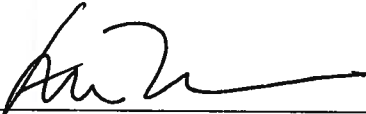
**Adjournment:**

Mr. Fitzgerald adjourned the meeting at 3:48 p.m.

I hereby certify that, to the best of my knowledge, the foregoing

Minutes are an accurate summary of the meeting.

Submitted by:



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Steven Markowitz, MD, DrPH

Chair, Advisory Board on Toxic Substances and Worker Health

Date: February 6, 2019