

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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APRIL 24-25, 2019

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The Advisory Board met in the Lamar Ballroom at the Augusta Marriott at the Convention Center located at 2 Tenth Street, Augusta, Georgia, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

JOHN M. DEMENT
GEORGE FRIEDMAN-JIMENEZ
MAREK MIKULSKI
KENNETH Z. SILVER

MEDICAL COMMUNITY

MANIJEH BERENJI
STEVEN MARKOWITZ, Chair
CARRIE A. REDLICH

CLAIMANT COMMUNITY

KIRK D. DOMINA
RON MAHS
DURONDA M. POPE
CALIN TEBAY

DESIGNATED FEDERAL OFFICIAL

DOUGLAS C. FITZGERALD

WEDNESDAY, APRIL 24, 2019

Call to order and introductions:

Mr. Fitzgerald called the meeting to order at 8:42 a.m. The above-listed board members were in attendance. Mr. Fitzgerald gave some brief housekeeping remarks and expressed his gratitude to the members and to the Department of Labor staff for their work in preparation for this meeting. He then gave a brief overview of his role in relation to the Department of Labor and to the Advisory Board. He also gave some guidelines around the purpose and structure of the public comment period and added that it is not meant for questions and answers but just listening to comments. He also requested that members refrain from discussing personally identifiable information that may have been contained in documents given to the Board by the Department of Labor.

Chair Markowitz thanked Members and DOL staff for their hard work and assistance in this process. The board members introduced themselves, as did staff from the Departments of Labor and Energy, various other stakeholders, and members of the public present at the meeting.

Review of Agenda:

Chair Markowitz went over the agenda for the meeting, noting that times on the agenda are approximate.

Update and Remarks:

Chair Markowitz introduced Rachel Leiton, Director, Division of Energy Employees Occupational Illness Compensation (DEEOIC). Ms. Leiton began by reviewing the changes made to the Procedure Manual (PM), Version 3.0. EEOICPA Transmittal 19-01 details these changes, many of which relate to new terminology. DEEOIC has also changed its organizational structure. They consolidated divisions that handled medical bills and home healthcare pre-authorizations to create a new medical benefits office. She also informed members that Version 3.1 of the PM will be released soon.

In particular, Ms. Leiton noted that Representative Conflict of Interest Guidance in Chapter 12 has been clarified. In Chapter 15.3, language has been added relating to evaluating an opinion of a treating physician. Treating physicians must provide epidemiological or health science data in support of their opinion that a toxic substance is causally related to an illness before that opinion can be accepted in support of a Part E claim.

Chair Markowitz asked whether the requirement for the physician to submit data in support of their opinion was new. Ms. Leiton replied

that the language itself might be new but that requesting this data had been a longstanding component of the process in practice. She explained that this is a part of a greater effort to utilize the treating physician instead of going to a Contracted Medical Consultant (CMC). Chair Markowitz added that his concern is that the treating physician's report might be regarded as insufficient due to his or her unfamiliarity with epidemiology. He suggested that the word "must" be changed accordingly. He also asked about the clause beginning, "Moreover, the CE must corroborate..." in Ch. 15.3c(1). He expressed his opinion that the sources of information listed in this sentence should be encouraged but not required additions. Ms. Leiton reiterated her earlier comment that the intention behind this language was to encourage examiners to return to the treating physician first for more information. With regards to Chair Markowitz's point about additional information, Member Dement shared his view that it is important that cases not rely so heavily on site records, which can often be incomplete.

Next, Ms. Leiton discussed changes in Ch. 15.13b that are also oriented towards encouraging claims examiners to return to the treating physician. The section discussing asbestos exposure between 1986 and 1995 has been deleted in favor of a case-by-case assessment by an industrial hygienist. Criteria for a Part E claim related to hearing loss were also enumerated. She highlighted particular language about actions available to CEs when a worker claims that a job he or she retained is synonymous with one of the jobs listed. She also noted additional language instructing CEs on how to identify potential exposure to solvents related to hearing loss using the SEM.

Chair Markowitz praised the DEEOIC's efforts to expand the category of jobs potentially eligible for claims. He took issue with the continued presence of the language mandating a 10-year continuous solvent exposure prior to 1990, saying that it was unparalleled in other DEEOIC policies and too stringent. He proposed that "consecutive" be changed by "cumulative" to better reflect the current state of knowledge in occupational medicine knowledge. Ms. Leiton responded the industrial hygienists who devised this standard saw it as rather generous, based on the literature they reviewed.

Ms. Leiton then went over changes to Ch. 18.5c, concerning beryllium sensitivity. Essentially, the section has been revised to read that DEEOIC will accept a doctor's opinion that a result on a beryllium lymphocyte proliferation test is a false negative if there is evidence of steroid use. The criteria relating to biopsies have been moved to Ch. 18.6. Ms. Leiton explained that established chronic beryllium disorder (CBD) requires a stricter standard and that's why biopsies were relocated to this section. Member Redlich recommended that a future revision read "steroids or other immunosuppressive medications," as these other medications are common in treating

chronic fibrotic lung conditions. She also commented that peripheral blood tests may also result in false negatives.

Ms. Leiton then covered revisions to Exhibit 21-4. DEEOIC added more information as to what constitutes activities of daily living (ADLs) in order to provide more precise descriptors for the treating physician to include in his or her report to the CMC. Following that, Ms. Leiton went over formatting changes made to Ch. 24. There have been changes made to the cover letter requirements as well as allowances for a digital signature in some cases. Letter decisions will also be accepted for claims related to skin cancers. In Ch. 26, references to CE2s have been removed. Ch. 26.3a covers changes made to the cover letter in the "Notice of Final Decision." A typographical error was corrected in Ch. 27. In Ch. 29, the language related to billing for hearing aids was clarified. For Ch. 30, the conflict of interest section was deleted because it was redundant with another section.

Ms. Leiton opened the floor for questions. Chair Markowitz asked for clarification on what exactly was being deleted in Exhibit 15-4, Section 3b. He shared his opinion that it was important to retain from version 2.3 of the PM the reference to the fact that insulators, painters, pipefitters, among others from the designated list, were presumed to have had asbestos exposure from 1986 to 1995. He also expressed concern about deleting Part 1 so that painters, millwrights, and insulators will no longer be presumed to have had significant exposure to asbestos. Chair Markowitz asked DEEOIC to explain its thinking about this change as well as what the practical implication of deleting this section would be. Ms. Leiton replied that she will get back to the Board with that information.

Member Redlich commented that some tables in PM version 3.0 have not been changed to reflect the Board's suggestions. She requested that a further revision look at making these changes, especially because they are largely factual corrections rather than recommendations. Member Redlich also asked how the changes recommended by the Board are communicated to CEs and CMCs. Ms. Leiton responded that there has been some delay in that process as DEEOIC replaces its training lead, but that the training lead will be responsible for that task. Member Redlich replied that the Board would be happy to review the relevant training materials.

Ms. Leiton mentioned the December 10, 2018 data and claims request, saying that it would be more appropriate to follow up after Mr. Fitzgerald's remarks on the subject. She then went over the recommendation regarding asbestos-related disease, asthma, and occupational history questionnaires (OHQ). DEEOIC is still in the process of reviewing these and they hope to have a draft shortly. She also shared a follow-up related to the Board's response to the

November 2018 request for information. DEEOIC has a report on the Board's recommended changes to Bulletin 19-03.

Staff have found 170 cases that are eligible to be reopened out of 1900 cases that have been reviewed so far. Lung cancer was the most common condition among these eligible claims. Ms. Leiton noted that the process going forward takes into account the new presumptions. Member Redlich asked about the process for proceeding with regards to instances where the board disagrees with final adjudication after reviewing cases. Ms. Leiton responded that DEEOIC will take the board's input, through the Chair and the DFO, and reopen cases as necessary. Mr. Fitzgerald echoed this comment, saying that issues raised to the agency's attention will be given due consideration. Given that the data Ms. Leiton presented were grouped into three segments, Chair Markowitz requested that the board be given individual data for the principal diagnosis in each case. Ms. Leiton replied that the groupings were an artifact of the process DEEOIC was using to review these cases.

Ms. Leiton has only recently received the report analyzing the cases. The report focused on three groups: 1) accepted cases, 2) denied cases, and 3) accepted then denied cases. Ms. Leiton informed the board that she would share the full report with members after she had had an opportunity to double-check it.

Ms. Leiton asked Chair Markowitz for clarification about the discussion item related to Dr. Jay Brown and Haz-Map. Chair Markowitz explained that the board learned that Dr. Brown does not have a contract to work on the SEM even though his services are utilized by DEEOIC. Ms. Leiton clarified that DEEOIC provides Dr. Brown with information that he can then use in the Haz-Map. DEEOIC can then use his Haz-Map updates to add to the SEM, even in the absence of a contract.

Ms. Leiton provided the Board with a report on the updates to all prior board recommendations from 2016 to present on which new actions have been taken. Given that the Board's February 16, 2018 document reviewed the '16 and the '17 recommendations, Ms. Leiton reviewed DOL's responses to it for the board. There were nine comments and nine responses in an August 2018 document. To the first comment, DEEOIC currently uses International Agency for Research on Cancer (IARC) Group 1 (carcinogenic to human) data. As for the inclusion of data from the Integrated Risk Information System (IRIS) and the National Toxicology Program (NTP), DEEOIC requested additional guidance from the board as to how to incorporate those sources into the SEM. She also informed the board that resources constrain DEEOIC's ability to undertake a comprehensive review of the data sources used in the SEM. This is partly because DEEOIC and the Office of Workers' Compensation Programs (OWCP) were not setup to support

research but to evaluate claims.

Member Friedman-Jimenez disputed Ms. Leiton's characterization, saying that sometimes an extensive review of the data is a part of the clinical practice of occupational medicine. In response, Ms. Leiton stated that the program is not in the business of practicing occupational medicine and drew a distinction between the literature review that DEEOIC conducts for individual cases and a more general review of its methods. DEEOIC does not have a group of experts that it can turn to in order to conduct a more general literature review. Chair Markowitz commented that the intent of the recommendation was to identify that DEEOIC needs a deeper capacity for identifying existing knowledge to ensure that the program is up to date. In relation to this point, Ms. Leiton noted that DEEOIC will respond to the board's most recent set of more detailed recommendations shortly.

Ms. Leiton went over the second response from the August 2018 document, relating to the hiring of former Department of Energy (DOE) workers at its Resource Centers. DEEOIC is limited by the contract in what it can mandate in terms of hiring, though it does encourage hiring of former DOE workers, and cannot ensure that all hires administering the occupational health questionnaire (OHQ) are former DOE workers.

In response to the third comment related to claimant information, Ms. Leiton informed the board that there is no re-adjudication of segments. Differing conditions require different levels of evidence and DEEOIC supplies the appropriate amount of medical evidence whenever possible. Ms. Leiton stated that the information the CMCs receive depends on the type of referral and that she was unsure whether the OHQ was included in every instance. DEEOIC does convey its assessment of exposure when it refers cases to CMCs.

Member Dement expressed concern that exposure information is not developed as fully as it could be when it's conveyed to CMCs and IHS. For this reason, the previous Boards have recommended that industrial hygienists be allowed to have access to claimants. Ms. Leiton responded that legal requirements dictate that CEs must be the ones making factual determinations and industrial hygienists should be returning to CEs for additional information if necessary. She clarified that the OHQ along with a report on how the results compare with others in the SEM are sent to industrial hygienists. Once certain exposure facts are confirmed, that information is then sent to the CMC instead of the OHQ, but the original OHQ is available upon request.

Member Mahs asked whether the industrial hygienists in these referral cases are remote or onsite relative to the claimant's DOE worksite. Ms. Leiton replied that they are not onsite at a DOE facility. Member

Redlich asked for more information about cases that include a hearing or contain a transcript. Ms. Leiton replied that claimants have an opportunity to request a hearing upon appealing their initial adjudication. The final adjudication board will then affirm the initial decision, reverse it, or remand it to the examiner, based on the information presented at the hearing. Claimants have the right to an authorized representative, who may or may not be an attorney.

Member Mikulski noted that referrals to CMCs and industrial hygienists lack consistency. He asked at what level the decision is made to refer cases. Ms. Leiton outlined the stages that lead to referral, including 1) the presence of a diagnosis, 2) determination whether the employment was covered, and 3) determination of exposure. Referral to a CMC is not a requirement and sometimes these determinations can be made in conjunction with the treating physician. Member Pope expressed confusion about some of the cases she reviewed where there seemed to be a discrepancy between the initial diagnosis and the ultimate determination. Ms. Leiton said that she would have to see the individual case to comment, given how much cases can vary.

Member Tebay shared a concern arising from his experience with CMCs and IHs at the Hanford Workforce Engagement Center (HVEC). He has observed that CMCs and IHs were producing determinations based on assumptions that are not in the file. It appears at times that IHs are presuming certain degrees of exposure or non-exposure. Member Dement echoed Member Tebay's sentiment, commenting that IHs should be required to state the source of their evidence when they make determinations against the claimant. Member Friedman-Jimenez pointed out that exposure sampling can be random or infrequent and is therefore not always a reliable indication of actual exposure. He argued that use of the word "evidence" was inappropriate in this context and should rather be termed a "presumption."

Chair Markowitz added that Circular 15-06, which stated that exposures after 1995 were generally within regulatory limits, was rescinded, but that the language used in some cases resembles the language from this rescinded Circular. Ms. Leiton responded that that Circular instructed CEs not to go to an industrial hygienist for cases after 1995, so now CEs will utilize IHs. Furthermore, she informed the board that IHs will make presumptions using the evidence available to them. The more information DEEOIC has, such as the HVEC information Member Tebay discussed, the better it can be in examining claims. IHs are meant to supplement the initial factual record where evidence is lacking. Ms. Leiton reported that DEEOIC addressed the Circular 15-06 issue in its response to the ombudsman's report. She clarified that rescinding this Circular allowed CEs the flexibility to refer cases to an IH instead of making a presumption. Ms. Leiton said that she would have to verify what language is used by the IHs,

but that this is always open to modification.

Member Dement reiterated his objection to the portrayal by the industrial hygienist that there is evidence when there isn't evidence. He would prefer that industrial hygienists state more clearly that, due to a lack of evidence, they are relying on their experience or other general guidelines to make their determination. Ms. Leiton said that she would have to verify what language is used, but that this is always open to modification. Member Tebay emphasized the importance of precision in this language so that it doesn't create additional burdens for claimants. Member Redlich added, from the physician's perspective, that physicians rely on qualitative information from industrial hygienists familiar with the claimant's line of work to determine whether or not the condition in question is work-related. In her experience with these cases, actual quantitative data on exposures are very rare.

Member Silver asked whether exposure information in claims is made available for others and whether relevant claims that have been denied can be reopened. Ms. Leiton explained that the only way this information could benefit others is if a global presumption was discovered and added to the SEM. Cases could be reopened if this occurred. New information is added to the SEM from case files as appropriate.

Ms. Leiton moved on to the response to recommendation four, related to presumptions for asbestos-related diseases. DEEOIC has made some of the changes and has been reopening cases. She noted that the board's recent recommendations related to asbestos will be considered separately. DEEOIC adopted the board's recommendation for asbestosis and it will add a presumption per the board's recommendation for lung cancer. DEEOIC will reduce the latency period for the mesothelioma presumption and it will adopt the board's recommendations for asbestos-related pleural disease, ovarian cancer, and laryngeal cancer. Ms. Leiton will postpone discussion of labor categories related to this recommendation until DEEOIC has evaluated the board's latest recommendations.

In response to comment five, related to presumptions for work-related asthma, DEEOIC has adopted some of the board's recommendations but it will be addressing this issue further in its responses to the board's latest recommendations. Member Friedman-Jimenez asked what prevented DEEOIC from adopting NIH's definition of toxic substance. Ms. Leiton answered that statutory phrasing limits DEEOIC's ability to look to other agencies for guidance. In response to comment six, related to presumptions for chronic obstructive pulmonary disease (COPD), DEEOIC believes that the term "vapors, gases, dust and fumes" is overly broad and has caused disagreement within the department. Ms. Leiton skipped the response to comments seven and eight. In response to

comment nine, related to improving CMC auditing, Ms. Leiton noted that there are already mechanisms in place within DEEOIC which the department believes are sufficient. There were no further questions for Ms. Leiton from the board.

Board Operation Update:

Renewal of Charter

Mr. Fitzgerald gave the update. The board's charter needs to be renewed every two years and July 2019 is when the current charter ends. The Federal Advisory Committee Act (FACA) process has begun within DOL and Mr. Fitzgerald doesn't anticipate any changes or issues. He expects a new charter will be in place by July.

Replacement of Dr. Cassano

Mr. Fitzgerald informed the board that likely next week (the week of April 28, 2019) a Federal Register notice will be issued for Dr. Victoria Cassano's replacement. The new member will be either a scientific or a medical person. The nomination period will be open for 30 days, after which internal processes will review and vet nominees. Mr. Fitzgerald hopes a new member will be in place this summer.

Review of Proposed DOL Data Request Form

There have been several iterations in the board's process for requesting data from the program. The DOL believes that it would be helpful to establish a regular protocol for the board to request data in order to make the process more efficient but also to protect personally identifiable information (PII). A form has been developed that Chair Markowitz will submit to the program for data, particularly claims data.

Chair Markowitz asked Mr. Fitzgerald if the board should fill out the new form for the claims data request the board made in December 2018. Mr. Fitzgerald said yes, that that would be helpful. Chair Markowitz asked for more specific feedback from the program regarding how the board's communications could be improved. Though he voiced support for the data request form, he noted that sometimes an exchange between the department and the board is necessary and solicited guidance on the best way to facilitate such an exchange. Mr. Fitzgerald opined that the form will help clarify the issues and therefore will facilitate communication. Ms. Leiton contributed that knowing the purposes of the board's data requests through the form will assist the department in fulfilling them. Chair Markowitz reiterated his frustration that the December 2018 data and claims

requests haven't yet been fulfilled. He and Mr. Fitzgerald then gave an overview of the elements of the proposed form.

Ombudsman Report:

Chair Markowitz introduced Malcolm Nelson, who gave the report, and informed members that they should have received DOL's comments on the ombudsman report last night. Malcolm Nelson is the current ombudsman for the Energy Employees Occupational Illness Compensation Program (EEOICP). The Alliance of Nuclear Workers Advocacy Groups (ANWAG) asked Mr. Malcolm's office to outline certain issues, including 1) examples surrounding use of the SEM, 2) issues involving use of language similar to language from Circular 15-06, and 3) issues surrounding claims for bilateral sensorineural hearing loss.

Mr. Malcolm limited his comments to these three issues as well as two others. First, EEOICP is not sufficiently known among potential claimants. He commended the board for their efforts in disseminating information. Second, claimants struggle to understand the complexity of the EEOICP. Claimants often need extensive guidance to successfully navigate the elements of the program such as the SEM and the claims adjudication process. Claimants have particular trouble with the SEM. They do not understand how to refine the search, they question the accuracy of the data, and their actual jobs don't conform to the labor categories listed. This dovetails with OHQ issues where claimants don't discuss prior positions in sufficient detail. Claimants want to discuss their cases with every specialist involved in adjudicating their claim in order to maximize the information that's provided.

Unable to locate physical records, claimants often rely on self-reported evidence which they generally feel is not taken seriously by claims examiners. When CEs do not mention the claimant-reported evidence in their final recommendations, claimants are confused about what to do next and whether additional information is necessary. Claimants often feel that CEs and industrial hygienists don't sufficiently understand how their jobs were done decades ago and the pressures they were under to get the day-to-day job done at any cost. Claimants also feel that there is a discrepancy between the Department's stated position that smoking history is not taken into account and actual results where smoking history is cited as a reason for denying claims.

Regarding the language from Circular 15-06, the claimants don't understand how to square the fact that exposures were within regulatory limits with the program's mandate that exposures that contributed to conditions are eligible for compensation. Mr. Nelson added a comment about presumptions, saying that presuming that someone was not exposed needs to be supported by evidence.

Sensorineural hearing loss continues to be an issue. Claimants desire a process for appealing denials when they feel that the listed toxins did indeed contribute to their hearing loss. This especially occurs in cases where the claim is denied solely on the basis of the job category. Mr. Nelson noted that the current version of the Procedure Manual outlines a process for CEs when claimants affirm that their job was synonymous with one of the qualifying labor categories. Claimants also question the medical necessity of the requirement for ten consecutive years. In general, claimants desire an ability to rebut the presumptions that are often used to deny their claims and feel that the current burdens placed on them are too burdensome.

Member Silver asked Mr. Nelson whether he had seen any boilerplate language in claims' decisions being used inappropriately. Mr. Nelson responded that his office often doesn't see information from the case file but that he does hear from claimants regarding what they perceive as misinterpretations of their smoking history.

Member Pope argued for the importance of having an advocate for the claimant who is familiar with the claimant's working conditions present during the claims process. Mr. Nelson agreed, saying that claimants are often unsure about what aspects of their jobs they should prioritize. This is why claimants want to work directly with specialists so that they can provide information as necessary.

Chair Markowitz asked whether one of the intended purposes of authorized representatives was to translate the complex adjudications for claimants. Mr. Nelson commented that the authorized representatives his office encounters often do not understand the adjudications and only assists the claimant with specific issues. Many claimants can't afford an authorized representative in the first place. Many claimants also see a negative stigma around enlisting an authorized representative.

Chair Markowitz also asked Ms. Leiton to explain whether DOL advises CMCs not to address smoking history, though he admitted that many doctors would likely ignore that advice. Member Friedman-Jimenez opined that it's appropriate to mention smoking history when discussing contribution to a disease but that it's also necessary to include other, relevant exposures as well. Member Silver added that it is necessary to distinguish between different levels of smoking.

Review Board Nov. 2018 and Feb. 2019 Action Items and Responses:

Chair Markowitz stated that the board has covered these items already in the day's meeting.

Update, Presumption for COPD:

The board does not have a revised recommendation for COPD. Chair Markowitz recommended looking at the COPD claims the board has on hand to examine how its work so far on this issue compares with what's actually happening in claims' decisions.

Claims Review, COPD Claims:

Chair Markowitz opened the floor for discussion on the best way to approach this discussion. Because this is an ongoing conversation, Chair Markowitz recommended that the board's observations be considered provisional. Member Dement asked that members note major observations from this meeting to be shared at a later date with the rest of the board. Member Silver encouraged members to ask whether the final adjudication of the claims under review would be different if the board's recommendation been accepted by DOL.

Chair Markowitz reminded the board of its tasks for claims review: 1) review use of site exposure matrices, 2) review medical guidance for claims examiners, especially what they provide CMCs and industrial hygienists, and 3) evaluate the work of staff physicians and industrial hygienists for quality, consistency, and objectivity. He also reminded the board not to mention personally identifiable information but noted that the site name was okay.

The board began with COPD denials. The first claim was from March 2019. Chair Markowitz gave an overview of the relevant details, including the site name, employment history, and which chemicals/substances he or she was exposed to. The case was referred to an industrial hygienist who concluded that the person had significant exposure to endotoxin, asbestos, and silica but that those exposures after the 1990s would have been within regulatory limits. The industrial hygienist also stated that there is no evidence of exposures above the regulatory thresholds after the 1990s. The case was then referred to a CMC, who determined that the long term exposure to tobacco smoke was responsible of COPD. The CMC noted that there were no indications of interstitial lung disease or pleural thickening, which was the final basis for ruling out occupation-related COPD. In summary, Chair Markowitz noted that even though the industrial hygienist determined that there was significant exposure, the CMC uses unorthodox methods to deny the claim.

Member Domina noted that slide 19 needs to be redacted further. He also noted that the claimant was barred from the carbon graphite shop for respiratory irritation in 1987. Chair Markowitz remarked that the main error in decision-making in this claim resulted from the CMC's judgment, but that it was difficult to understand what the IH and the CMC actually reviewed. In response to Member Redlich's question about identifying the CMC, Mr. Fitzgerald asked that members raise issues

they identify with particular individuals to the program outside of the meeting.

Member Berenji noted that it is important to identify how CMCs are contacted, given the breadth of their experiences as physicians. She also remarked on the importance of consulting with the claimant in person to make these assessments. Ms. Leiton said that while there is a second review process where physicians meet claimants face-to-face, resources limit the possibility of this happening in every case. Member Domina asked about the process for vetting CMCs. Ms. Leiton said that there is a process in the contract for vetting and re-verifying CMCs. Moreover, DEEOIC has quarterly conference calls to check in with CMCs and to advise them on issues, including the smoking history question.

Member Berenji asked if there had been any talk of convening an industrial hygienist panel within DOL to review the SEM and the OHQ. She suggested that convening industrial hygienists might provide a reference point against which the DOL's industrial hygienists could be judged. Chair Markowitz noted that DOL quoted the CMC's opinion regarding smoking. Ms. Leiton explained that DEEOIC cannot simply ignore the CMC's conclusions. Member Silver commented on a prior meeting where he was told that CEs were instructed to limit the number of substances considered to seven, noting that that rule seemed to be applied in this case. Member Dement also took issue with the narrow focus on specific substances rather than to generalized exposure to vapors, gas, dust, and fumes.

Member Friedman-Jimenez discussed a case where the CT scan was not in the record even though it had been conducted, and the CMC denied the case for lack of a CT. He asked if there was a process for ordering that these tests be performed or obtained as necessary. DEEOIC cannot order tests for cases it has not accepted because it cannot guarantee that it will pay for those tests. Mr. Fitzgerald said that that was standard practice generally in workers' compensation. Member Redlich proposed allowing the CMC to insert relevant evidence for other work-related conditions in addition to the primary condition. She also shared some of the research she had done on the plant where the woman worked, suggesting that the claimant likely experienced exposures beyond the asbestos that the SEM indicated. Member Redlich said that more information from the claimant was necessary.

Member Tebay questioned why this claim was denied rather than postponed until the claimant could get a CT scan. He argued that postponement is necessary because appeals move faster than claimants can gather evidence.

Member Dement discussed another COPD claim that was denied where the SEM established diesel exposure but the industrial hygienist

determined it did not approach regulatory limits. Member Dement pointed out that the process did not allow the claimant to elaborate on other exposures that might have arisen through his work. He believed the case could have been developed better. Chair Markowitz commented that it sounds like a case where the job title was relatively useless for determining exposure.

Member Mahs raised a case that was initially denied but then approved the case based on a finding of CMC error. Member Pope brought up a similar case of a security guard whose claim was denied and then reversed. Member Pope believes that the reversal came about because the authorized representative pointed out that the treating physician had not been consulted. Member Redlich added that this case did not need to be transferred to a CMC. Ms. Leiton reminded the board that DEEOIC has changed its guidance in a way that addresses the issues in this claim. Member Redlich added that the transcript gave a more accurate rendering of the claimant's work than did the OHQ.

Chair Markowitz asked Ms. Leiton to provide an update about the board's recommendation that industrial hygienists have access to claimants. She also noted that industrial hygienists are able to contact claimants as long as the CE is involved. She added that the current definition of "toxic substance" used by DOL is meant to maintain parallelism with the definition used by DOE. Member Friedman-Jimenez asked that the program consider using the NIH definition of "toxic substance." Member Dement said that the issue was linking the job to the toxic substances currently in the SEM. Member Redlich asked if there was any way to ensure that claims are decided properly more efficiently. Ms. Leiton said that DEEOIC has an audit process as well as quality control checks. Member Berenji recommended that the program disseminate best practices for different conditions to CEs to ensure uniformity and efficiency.

Chair Markowitz brought up another COPD denial claim of an instrument mechanic at building at X-10 in Oak Ridge. The SEM identified asbestos as the primary toxin but Chair Markowitz's SEM research discovered cadmium as another potential exposure related to COPD. The claimant had 20 years of asbestos exposure prior to 1986. The industrial hygienist confirmed this exposure but the CMC opined otherwise, resulting in a denial. Chair Markowitz argued that the CE erred in sending the case to the CMC and also that the CMC erred, as the claim should have been approved under the Procedure Manual guidelines.

Member Friedman-Jimenez emphasized another case in which the industrial hygienist denied, citing the "there is no available evidence" language that members have taken strong issue with throughout the meeting and, explaining that this statement overstates the evidence available. Member Dement added that the industrial

hygienist is presuming what the measurements would have been, seemingly on the job title or category alone. Member Friedman-Jimenez made a second point that these industrial hygienists seem to be relying on a single agent causation theory, rather than a more modern multi-agent theory. He argued that the use of this language is pervasive and inappropriate.

Chair Markowitz outlined the conflict industrial hygienists are facing with cases that span the time before and after DOE Order 440.1. As a solution, he argued that industrial hygienists should simply acknowledge that they lack data for pre-1995 cases. Member Dement agreed, saying lack of data does not mean there's no exposure. Member Pope pointed out that acknowledging no data will likely result in more denials because there's no basis for approval. Chair Markowitz agreed, saying that CMCs were likely to deny based on a lack of evidence. Member Berenji proposed for a guidance document to ensure some uniformity of approach.

Member Berenji discussed an approved COPD claim for an individual installing telephone lines. Praising the systematic collection of information, Member Berenji felt that the OHQ was detailed, the SEM adequately comprehensive, and that the CMC exercised good judgment regarding the individual's smoking. She emphasized the telephone interview conducted with the claimant as being especially valuable. She confirmed for Member Dement that there was an X-ray. Member Dement brought up a similar approval for an individual from Fernald where the approval relied on chest X-rays demonstrating asbestos exposure. In response to his question about the NIOSH dose reconstruction in Member Berenji's case, Ms. Leiton informed the board that NIOSH only does this for radiation/cancer cases. Chair Markowitz raised another COPD approval for consideration for a long term machinist at Rocky Flats. The CE appropriately relied on the personal physician's opinion and a Former Worker Program letter instead of sending it to a CMC.

Report from Parkinson's Working Group:

Member Mikulski gave a summary of the working group's activities looking at Parkinsonism and Parkinson's disease. He began by clarifying terminology and defining terms. Parkinsonism is a general term referring to clinical slowness of movement, shaking in upper limbs, and stiffness. Parkinson's disease is the most common variant of Parkinsonism. Many exposures, agents and disease can result in symptoms of Parkinsonism, including occupational exposure. Pathologically, Parkinsonism is a diverse set of disorders tied together by the loss of dopaminergic neurons in the substantia nigra. This is believed to be caused by an abnormal accumulation of certain proteins.

Parkinsonism and Parkinson's disease receive the same medical diagnosis code under the most recent classifications. Any differences in classification are related to known secondary causes of Parkinsonism. The Parkinson's Disease Society brain bank diagnosis criteria have been adopted by both the clinical and research communities, especially in epidemiological studies. The latest diagnostic system was introduced by the International Parkinson and Movement Disorder Society, which relies on the Unified Parkinson's Disease Rating Scale. This new test introduces two levels of certainty which allows for a distinction between likely and confirmed cases of the disease.

The risk factors for Parkinson's disease are poorly understood. Most research focuses on genetic factors and on exposures. PCB exposure has caused a decrease in dopamine levels in experiments. Furthermore, a population study showed a threefold increase in Parkinson's in female workers exposed to PCBs at three electrical plants. This was confirmed in a pathology series that showed an increase of PCBs in brain tissue of female subjects.

Solvents are widely used in the DOE complex, including carbon disulfide which has been identified as a potential risk factor for Parkinson's disease in the Procedure Manual. There's a lack of population-based studies looking at specific solvent exposures but there's anecdotal evidence of small clusters of Parkinson's following chronic trichloroethylene (TCE) exposure. TCE causes dopaminergic neuron loss in animals and a study showed that a consistent exposure of TCE lead to an increased risk of Parkinson's. This latter study by the National Academy of Sciences adjusted for different genetic makeups.

Metal fumes and dust are another common exposure at DOE facilities. Manganese in particular has been looked at as a risk factor for Parkinson's disease. Additionally, iron and copper have been linked to a reduction in dopamine in animals and a two studies found an increased risk of Parkinson's in workers with significant exposure to copper and iron-copper alloys.

Pesticides are another exposure that may increase the risk of Parkinson's. DOE workers may be exposed to pesticides from nearby farms. Several different insecticides, herbicides, and fungicides have been linked to decreased dopamine levels. Furthermore, higher concentrations of a certain insecticide have been found in brain tissue of patients with Parkinson's as compared to controls. Similarly, a pooled analysis found an increased risk in those exposed to insecticides and pesticides as compared to those who had never been exposed.

Chair Markowitz highlighted the fact that, because Parkinson's can only be diagnosed clinically, reasonable physicians can disagree about a diagnosis early in the course of the disease. He then asked if primary care physicians were able to accurately diagnose Parkinson's. Member Mikulski replied that the accuracy of diagnosis is highest when made by specialists in movement disorders. Chair Markowitz then asked Ms. Leiton if one of the problems with these claims is that claims examiners are unsure about the diagnosis. Ms. Leiton confirmed that that was the case, explaining that Parkinsonian symptoms have been called different things historically. She then asked Member Mikulski to specify who qualifies as a movement specialist. Member Mikulski clarified that the specialist would be a neurologist with training in movement disorders.

Member Redlich offered her knowledge of Parkinson's, saying that it's a spectrum of diseases and therefore challenging to diagnose. Member Silver asked whether an individual who manifested symptoms but didn't respond to drug therapy might be more likely to have another cause of his or her symptoms. Member Mikulski said possibly and that could be characterized as secondary Parkinsonism. Member Friedman-Jimenez asked how strong the evidence for PCB linkage is. Member Mikulski answered that they were very small studies. Member Berenji asked about the use of PET imaging to diagnose Parkinson's. Member Mikulski said he hadn't come across any such data.

Member Friedman-Jimenez asked if he had more information about brain abnormalities revealed in MRIs of individuals with manganism. Member Mikulski said that he has not looked at the effects of manganese specifically. Chair Markowitz added that the DOL approach is to treat all variants of Parkinsonism as equivalent, including manganism. He then shared his opinion that a CMC would likely defer to a personal physician in these cases because seeing the patient is essential for a diagnosis. Member Mikulski said that it depends on the level of expertise of the CMC and that he would caution against using a CMC's opinion as a final diagnosis. Both agreed that Parkinson's diagnosis was sometimes complicated, and Member Mikulski expressed some potential criticism of the Unified Parkinson's Disease Rating Scale.

Claims Review, Parkinson's:

Chair Markowitz opened the floor for claims review. Member Mahs brought up a denied claim from a laborer at the Savannah River Site. He noted that the final decision does not reference the claimant's testimony and that the claimant was exposed to substances linked to Parkinson's. The industrial hygienist opined that it was highly unlikely that the claimant was exposed to carbon monoxide or metal fumes to a significant extent. Chair Markowitz asked whether the exposure or the diagnosis was the sticking point for the examiners. Member Mahs clarified that it was exposure.

Chair Markowitz raised an accepted claim of a chemist who was exposed to manganese and potassium permanganate. The industrial hygienist concluded it was more likely than not that exposure caused the disorder and the CMC concurred. The diagnosis was not questioned and the exposures were recognized by both the industrial hygienist and the CMC. Member Domina noted that he had claimed that he had lost his sense of smell since 1995. Ms. Leiton commented that and similar aspects of diagnosing Parkinson's are very helpful to DEEOIC. Member Domina also expressed concern around the claimant's denials for neuropathy and kidney disease because his file was missing records from 1955 to 1965.

Member Mikulski flagged a case of a worker who worked for 20 non-consecutive years at the Portsmouth GDP. His initial claim was denied based on lack of medical evidence and then ultimately denied for lack of causation. Member Mikulski noted that the CE did not take into account the OHQ, which listed exposures. Ms. Leiton suggested that the claimant could have been denied for missing exposures to the specific substances flagged in the Procedure Manual for linkages to Parkinson's. Chair Markowitz then noted that a lack of evidence of exposure to carbon monoxide, manganese, certain alloys, welding fumes, and steel materials means that a claim doesn't meet the standards set forth in the Procedure Manual. Member Redlich suggested that this case raises the question of whether additional categories of exposure need to be added for Parkinson's. Chair Markowitz remarked that it's not clear yet, but that the conversation is helping refine the issues.

Member Dement brought up a denial of a pipe-fitter/welder at Oak Ridge. The diagnosis was accepted. The industrial hygienist concurred that there had been exposure to substances linked to Parkinson's but repeated the same phrase about evidence and regulatory limits that members have noted previously. The case was denied on the CMC's opinion that Parkinson's is only linked to high, sustained exposures to manganese, in particular. Member Dement opined that, even though the claimant only spent seven years at a DOE site, it's likely that his time there contributed to his Parkinson's. Member Berenji shared that it's a common occurrence in her practice to see individuals who only reveal their work history in person. Both members agreed that the claimant would have likely benefited from more details about his day-to-day jobs. Member Pope questioned why the chemist's case was accepted but the welder's was not, noting that several other welders in her cases were also denied. Member Dement suggested that it had to do with the number of years the workers spent at the job sites.

Chair Markowitz raised another accepted claim for a janitor and machinist. The industrial hygienist identified several metals, including manganese and copper exposures and the CMC agreed that

those exposures were enough to justify the claim. Member Pope asked if there were differences among individuals in the length of time it takes Parkinson's to develop. Chair Markowitz said that the board needs to take a further look at the literature on welders and Parkinson's.

Member Mahs brought up a denied claim of a project engineer at Portsmouth GDP. The claimant did not provide sufficient evidence of exposure while at a DOE facility and Member Mahs agreed with the determination in the case. Member Berenji discussed a case of a cafeteria worker and maintenance mechanic at Oak Ridge. Member Berenji felt that there was a discrepancy between the OHQ and the SEM for this case. From a clinical perspective, she also felt that the two neurologists and the authorized representative ensured that the case was well documented. She highlighted the work of the second neurologist in terms of clinical documentation. She noted that the claimant is filing for ALS now and discussed some of her own research into linkages between Parkinson's and ALS.

Public Comments:

Terrie Barrie, Alliance of Nuclear Workers Advocacy Groups (ANWAG)

Ms. Barrie opened her comments with a criticism of DOL's support for the board, saying that the Department hasn't responded to requests in a timely fashion. She pointed out that DOL has not provided the requested contractors to assist the board in reviewing the SEM. She also criticized DOL for not providing adequate evidence in its refutation of the board's recommendations, unlike the NIOSH Advisory Board on Radiation and Worker Health. She expressed disappointment that the DOL had not attended a recent teleconference. She called on DOL to justify not reappointing the board's members every two years. ANWAG will file a Freedom of Information Act request for the citations and evidence the DOL used to rebut the board's recommendations. She also offered correspondence between ANWAG and Secretary of Labor Alexander Acosta for the record.

Faye Vlieger, Worker Advocate under EEOICPA and former Advisory Board Member

Ms. Vlieger expressed consternation about the lack of consideration given to the prior board's recommendations. She requested that the board vote to re-submit the recommendations at tomorrow's meeting. She also discussed what she characterized as the DOL's non-adherence to the rescission of Circular 15-06. She commented that, while she was a board member, evidence was presented demonstrating that the Circular was not based in scientific fact. Claims examiners continue to use the Circular 15-06 language in denials of claims. She asked that the board put an active question to the DOL requesting evidence

used to deny claims using the language from Circular 15-06. She expressed particular concern about a specific contractor, Paragon, and its perceived conflict of interest.

*Vina Colley, National Nuclear Workers for Justice and
Portsmouth/Piketon Residents for Environmental Safety and Security*

Ms. Colley requested that the board hold a meeting in Portsmouth, Ohio, to learn more about the site and facilities there. Information on plutonium and transuranics on site was just recently released at a public forum there and the Health Department is holding a meeting about neptunium in local schools. She requested records about what workers at Piketon were exposed to. She read a worker's statement who believed that CMCs had deliberately been given incorrect or false information with the intention of denying claims. She said that there had been a fire in one of the buildings on the DOE site that wasn't reported to the public for a week and a half. Workers on site claimed that they were exposed to significant amounts of PCBs, radiation, and TCE because they worked for long times without adequate protection. Ms. Colley argued that the records for the Portsmouth/Piketon facilities must be released to facilitate adequate processing of the claims. She discussed in greater detail the information on plutonium and transuranics that was released. She closed with a reiteration of her invitation to come to Portsmouth to investigate in person.

*D'Lanie Blaze, Worker Advocate for Santa Susana Field Laboratory and
the Canoga and DeSoto Facilities*

Ms. Blaze expressed concern that CMCs are neglecting a proper accounting of industrial hygienists' reports, substituting their own evidence or experience. She referenced a claim from a worker at Santa Susana where the industrial hygienist concluded that exposure was highly unlikely even though he or she had spent the body of the report discussing the claimant's significant exposure to agents that caused kidney disease. The CMC's report then identifies only limited exposure, again despite the numerous accounts of exposure in the record. When Ms. Blaze contacted the IH in question, the IH responded that she was instructed to use that language in the conclusion. Ms. Blaze argued that the CMC's failure to adequately read the report resulted in unnecessary costs for DOL and delays for the claimant. She recommended removing summaries and tables from IH reports, to force CMCs to do a more thorough job of reading the report.

Angel Little

Ms. Little shared the story of her father, Earl A. Brown, Jr., who worked at Oak Ridge National Laboratory and now suffers from berylliosis. His claim for berylliosis was approved, but his claim for kidney failure, which was likely caused by his berylliosis, was

denied. She criticized his case manager for not providing adequate care for her father. She then continued to share the story of her father and what Ms. Little perceives as his inadequate care. She gave her contact information and encouraged board members to contact her to get her father's full story.

Stephanie Carroll

Ms. Carroll, as an authorized representative who specializes in beryllium-related conditions, discussed extensive beryllium exposure at the Portsmouth site. She commented that there was a stark discrepancy between what the SEM reported for that site and the documentation that should be included in the SEM.

Rick Reavis

Mr. Reavis echoed Ms. Barrie's comments that Congress needs to investigate and correct issues with this program. He cited a history of corruption and issues with the program. He discussed the history of Texas City Chemical (TCC), which he argued was given privileges that other facilities were denied. He also expressed criticisms of DOL for not being transparent with information about TCC. He also gave his cell phone number and asked to be contacted by board members.

Donna Hand

Ms. Hand discussed DOL's rebuttal of the phrase "vapors, gases, dust and fumes" as being overly broad, saying that the intention of Part E claims was to be broad. She said that this definition of toxic substances dovetails with the definition used by the Occupational Safety and Health Administration (OSHA). She argued that the DEEOIC's own standard that medical knowledge be as current as possible conflicts with their refusal to accept this phrase. She cited from other internal DOL standards that supported her argument that the aforementioned phrase should be adopted. She discussed standards for approving and denying claims, pointing out that contribution and aggravation are not being used in CMC decisions as legitimate standards for approving claims. She argued that the level of exposure was a subjective statement and should not be a consideration if exposure had been confirmed. She stated that the biokinetics of chronic beryllium disease was linked to issues beyond kidney disease, including liver and skeletal issues. She closed with a discussion of a case where a claimant asked for an IH review and was denied.

Adjournment:

Chair Markowitz adjourned the meeting for the day at 5:41 p.m.

THURSDAY, APRIL 25, 2019

Call to order:

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

Parkinson's and COPD Claims Review, continued:

Member Silver discussed a claim for a machinist in building Y-12 who was diagnosed with Parkinson's by his primary care physician. The physician said that he or she feels that the condition is work-related and also noted that the claimant's wife needs help providing assistance. Two industrial hygiene reviews were completed, only one of which correctly identified exposure to stainless steel and carbon steel. Both ignored the manganese that the claimant might have been exposed to. Irrelevancies in the CMC's report suggested that portions were copied and pasted blindly. As an aside, Member Silver shared that Dr. Robert Feldman from Boston University argued that positron emission topography was useful in distinguishing idiopathic Parkinson's disease. The physician acknowledged that L-DOPA was working for the claimant, suggesting that a toxic agent might not be the source of the condition. Though he disagreed with the IHS and the CMC, he ultimately agreed with the denial for that reason.

Member Friedman-Jimenez asked whether information about the percent of manganese in the steels used in DOE sites was available. Member Silver commented that he would have checked reference sources, some of which were written by DOE engineers. Member Friedman-Jimenez also commented that he wasn't sure that probing the globus pallidus was a viable way of determining whether Parkinson's was idiopathic as opposed to manganism. Member Mikulski agreed that manganism is not clinically distinguishable with confidence from Parkinson's. Mr. Malcolm Nelson commented that the Procedure Manual treats Parkinsonism and its aliases as effectively similar. Member Redlich commented on Member Silver's case, supporting his argument by saying that Parkinson's incidence increases with age. Members Silver and Friedman-Jimenez wondered about the latency period for manganese-induced Parkinsonian symptoms.

Member Dement raised a claim from a metallurgist from Sandia who developed Parkinsonian symptoms. On appeal, the claimant submitted his publications proving that he worked with manganese and the claims examiner accepted the claim.

Member Silver brought up a COPD denial claim for a worker at the Nevada Test Site where the main exposures were silica, asbestos, lead, and diesel exhaust and other fumes. Her primary care physician diagnosed her with COPD and cited her six years of heavy asbestos

exposure. Member Silver noted that the CMC seemed to include smoking history boilerplate, without referencing her history. Member Silver shared that, along the board's recommendation, he disagreed with the decision because the claimant had at least five years of exposure to vapors, gas, dust and fumes. Chair Markowitz said that, from his perspective, the overlap of the laborer category at the Nevada Test Site and exposures linked to COPD was sufficient. He also noted that there are contradictory statements in the IH's report. Member Pope concurred, saying she's noticed a trend of similar statements in IH reports.

Member Domina pointed out that the "below regulatory limits" language that keeps reappearing fails to specify which regulations the writer is referring to. He also advocated for DOL to consider cases differently where a special exposure cohort (SEC) has been implemented instead of putting the onus on the worker. Member Mahs commented that four out of six cases he reviewed had that same contradictory statement that Member Pope and Chair Markowitz identified. John Vance, Chief of the Branch of Policy, Regulations & Procedures (BPRP) clarified for the board that some of these cases may still be open.

Member Silver concurred with Member Domina's proposal to apply different standards to sites with an SEC. Chair Markowitz asked if there was any evidence for pre-1995 claims that the industrial hygienist used monitoring data in his or her report. In response, Member Berenji discussed an approved claim from Rocky Flats. The claimant had a fragmented work history, so it's hard to determine whether other positions may have impacted his health. She commented that there were sampling reports from the industrial hygienist at the plant, in addition to the SEM. She noted, however, a discrepancy between the SEM exposures and the industrial hygiene report and expressed a belief that industrial hygienists overly rely on the SEM.

Member Tebay commented that, at the HWEC, the IH data in the file is often only what the claimant submits. He also shared that this point of contention - that IHs do not have evidence for their presumption that exposures did not broach regulatory limits - has been an ongoing conflict between HWEC and the DOL. Chair Markowitz said that, if CMCs weren't relying on boiler plate language, then he would expect to see more variation of responses to exposures characterized as both low and frequent.

He then asked Mr. Vance how the board should make comments to the program that might be beneficial in the review of claims. Mr. Vance said that that would have to be a conversation between the board, the DFO, and the program. Mr. Fitzgerald cautioned against making a decision on the fly about this topic and also suggested that the board focus on more general, programmatic issues. Member Friedman-

Jimenez proposed that the board aggregate its findings and then transmit that to the DOL. Seguing into how the board should move forward with claims review, he reminded the program that the board has an outstanding request for 80 claims. Member Dement said that the board should make synopses for each category of claims that then might be distilled into comments on the broader program.

Member Silver asked about the status of the board's request for an outside contractor to assist with review. Chair Markowitz said that this board would have to re-submit that request for it to be active. Member Friedman-Jimenez concurred with the proposals of both Member Dement and Member Silver. He also said that the board should look at cancers. Member Redlich said that it would be helpful to know what the most common types of claims are. Chair Markowitz said that that information was a part of the board's December 10, 2018 request. Member Berenji concurred and advocated for a systematic approach to claims review. Chair Markowitz agreed that there needs to be a systematic approach.

Member Friedman-Jimenez asked about injuries, such as chemical-induced injuries, as well as impairment. Chair Markowitz asked if it was in the board's charter to look at those issues, but that it seems to fall under the board's purview, per task number four. Member Dement said that the board needs assistance in conducting in-depth review of claims if it's going to serve its function to the program. Member Redlich said that the general workers' compensation program should handle acute or traumatic events.

Mr. Fitzgerald informed the board that it's currently unclear whether resources for contractors will be available. He encouraged the board to look at an approach that accounts for limited programmatic resources as well as the limited personal time of the members. In response, Chair Markowitz summarized the board's general position on what's needed to accomplish its task. Mr. Fitzgerald replied that the federal procurement process is lengthy and that the board still has to accomplish its task in the meantime. In light of that comment, Chair Markowitz proposed that the board request additional resources but also formulate a systematic approach.

Member Pope asked if DOL could clarify which of the board's recommendations have been approved and accepted. Member Berenji agreed and suggested a kind of dashboard that the board could use to keep DOL accountable. Member Domina wondered if the board's work would be duplicated by the Version 3.1 of the Procedure Manual. Member Berenji replied that the dashboard would address that concern because it would map DOL's data. In response to Member Domina's comment, Chair Markowitz said that it's the DOL's position that it's not the board's position to review proposed policy changes. He acknowledged that that arrangement can be frustrating.

The board discussed a recommendation to request resources from DOL. Member Berenji advocated for the board to be as specific as possible. Member Silver clarified that the board wants an external contractor, such as the one that the NIOSH radiation board utilizes. Mr. Fitzgerald opined that the recommendation the board crafted will serve as a placeholder while it has further discussions. Member Silver proposed naming the Association of Occupational and Environmental Clinics as the desired contractor. Chair Markowitz disagreed, saying that the board is not clear at this point whether that Association even wants to do the work. Member Redlich said the recommendation should be as general as possible and Mr. Fitzgerald said that the availability of internal resources would likely be limited.

Member Berenji moved to accept the recommendation, seconded by Member Redlich to request resources, such as an IT contractor, to provide personnel and IT support as required for the Board to conduct a systemic evaluation of an appropriate number and variety of claims to assess and ensure the objectivity, quality, and consistency of the industrial hygiene and medical evaluation that are part of the claims process. The board voted unanimously in favor of the motion.

Chair Markowitz revived members' earlier suggestion that the board aggregate its findings from its current round of claims review and that it hold a teleconference to discuss them in two to three months. Member Berenji proposed categories to organize the board's thoughts on the most common issues.

Chair Markowitz also asked if the board wanted to re-submit its request for the 80 additional claims. Member Friedman-Jimenez proposed writing up a summary of what the board has already reviewed and then deciding which, if any, claims it would like to request. Chair Markowitz pointed out that there's a time delay and the request should be made sooner rather than later. Member Redlich added that the request was intended to give the board a chance to compare how the claims review process for certain disorders has changed over time. Member Friedman-Jimenez proposed that the board request a random sampling of cohorts and also request more cases for specific conditions of interest. Board members discussed how many of each condition should be requested. Members Friedman-Jimenez and Berenji advocated for the board to look at accepted claims in addition to denied claims. Dr. Dement concurred, saying that looking at both was the only way to assess consistency.

Member Berenji echoed Member Friedman-Jimenez's proposal for a random sampling of cases. Member Friedman-Jimenez replied that his idea was intended merely to get at the relative frequency of conditions, but that it might represent too much work for the board to examine a true

randomly sampled array of cases. Member Dement commented that the board doesn't have current numbers about the relative frequency handy. Chair Markowitz recounted how that information had been requested in December 2018. Mr. Vance said that he doesn't have a status update at this time.

Member Redlich reminded the board that the December 2018 request already accounted for some trends the board had already noticed in its claims reviews. She went over some of the data the board already had around claims and relative frequencies and why that resulted in oversampling for lung disorder claims. Chair Markowitz pointed out that this data reveal that requests for claims for certain disorders cannot be filled because the disorders are not common enough. Member Redlich continued to go over the data that Member Dement had aggregated earlier. She reiterated her point that the December 2018 data request was intended to see if there had been any changes from this data. Member Berenji praised the methodology that Members Dement and Redlich had developed and said she thought it could be applied to other physical systems. Member Dement volunteered to take this approach and apply it across the board to other disorders.

After a brief break, members continued to discuss how many claims and which kinds should be requested from DOL. Member Redlich echoed earlier members' comments that both accepted and denied should be reviewed, proposing specifically 5 accepted and 15 denied. Chair Markowitz noted that the decision-making path for conditions like sarcoidosis and chronic beryllium disorder is much clearer because it's set forth in the regulations. He also recounted the original request, which was for 120 claims. The board has received 40, with 80 claims related to lung disorders still outstanding. Chair Markowitz expressed the board's desire to take advantage of any work DOL has done so far. Member Mahs suggested tacking on a request for an additional 5 claims, increasing the number of 25. Chair Markowitz replied that, because of the work involved, he's reluctant to request claims that will not ultimately be reviewed. Member Redlich reiterated her earlier proposal. Mr. Fitzgerald explained that the board should use the request form discussed yesterday to submit these kinds of requests to DOL.

Member Tebay asked that the board make a recommendation around the ongoing question related to the industrial hygienists' continued use of boilerplate language stating that there was no evidence that exposures broached regulatory limits. Chair Markowitz commented that this relates to task four of the board and noted that it relates to the rescission of Circular 15-06. The Board observed, based on a review of a limited number of recent claims, that recent industrial hygienist assessments frequently use stereotypic language to cite the absence of monitoring data above the established regulatory levels in the mid-1990s. Member Tebay moved and Member Mahs seconded that the

board recommend that this language be omitted from the industrial hygienist's report. The basis for a negative exposure determination should be provided by the industrial hygienist in the report. Either the absence of monitoring data post-1995, or data showing exposure levels below regulatory limits should not be interpreted as representing an absence of significant exposure or risk. The Board voted unanimously in favor. Member Dement said that he wanted to ensure that IHs still felt free to use their professional judgment as necessary.

Member Friedman-Jimenez said that the fact that the reports don't already better reflect the IHs experience and judgment is part of the current issue. He said that they should rely on their judgment and the literature. Chair Markowitz added that the IH's could talk to the claimants for additional information. Member Friedman-Jimenez agreed that the OHQ and the claimant's recollections was the best place to start. Member Tebay echoed these comments and questioned why IHs weren't being forced to reach out to current DOE project IHs. Member Friedman-Jimenez pointed out that there may be a conflict of interest for the project industrial hygienists, insofar as they are expected to maintain health and safety for their work site but also potentially to report on the quality of health and safety at that same site. Member Pope commented that the core issue was the fact that IHs didn't have evidence to back up their assessments.

Chair Markowitz asked Mr. Vance if reaching out to the project IHs had been discussed within DOL previously. Mr. Vance answered that he wasn't aware of any effort to reach out to IHs at the sites and that they rely on DOE to transfer any relevant records. Member Mahs shared that, in his experience as a general foreman at some of these plants, he rarely encountered an IH on site paying attention to exposures other than asbestos. He said that onsite safety people often responded to other exposure issues.

Member Redlich noted that the board's issue with this IH language arises out of the fact that CMC's tend to defer to the IH report in denying many of these claims. Chair Markowitz made another suggestion for the language in light of these comments. Member Silver asked if the recommendation should mention Circular 15-06. Chair Markowitz noted that the board raised this issue with Ms. Leiton yesterday and that she said that DOL's position is that this does not contradict the rescission of 15-06. Member Dement reminded the board of the exact wording of the phrase from the IH reports. Member Redlich proposed requesting that IHs be clear about the source of their assumptions while also warning them that lack of data should not be construed as a lack of risk. Member Tebay reminded the board of the role that regulatory limits plays in this language. In response to Mr. Vance's comment, Member Domina commented that DOE didn't have a moratorium on destroying records until well after 1995.

Member Redlich asked for the board's opinion on what would count as sufficient evidence for these kinds of conclusions in IH reports. Member Dement supplied a list, including scientific literature, professional judgment, and personal experience. He said that, from the reference lists the board went over yesterday, IHs are not currently providing these kinds of references in their reports. He also said that the board shouldn't be too specific in order to allow IHs to exercise professional judgment.

Member Tebay asked Mr. Vance how these recommendations get distributed, because it impacts different tiers of the review process in different ways. Mr. Vance opined that the board and DOL will always struggle with the issue of interpreting the absence of information. He recounted how the ability to make these kinds of determinations was transferred from the CE to the IH. Member Silver commented that this will always be a discussion between the board and the IH, but that it can't be an informed discussion unless the IH discloses her or his rationale for the conclusion in the report. He also said that this dovetails with the board's longstanding request that IHs have greater contact with claimants. Member Friedman-Jimenez echoed this comment, saying that contact with the claimant is necessary due to the absence of hard data. The board workshopped the language further. Member Tebay moved to accept the recommendation, seconded by Member Mahs. The board voted unanimously to adopt the recommendation.

Non-Cancer Outcomes of Radiogenic Substances:

DOL asked the board to examine the issue of non-cancer outcomes from radiogenic substances. The previous board has developed some language and is discussing it to ensure that it's what DOL is requesting. Member Silver went over the language the board had drafted so far. Member Silver suggested that the board reach out to the NIOSH radiation board if DOL wants further work done.

Review of Public Comments:

The board has received several written and spoken public comments and Chair Markowitz asked members to go over some of the larger themes. He said that the board would review a peripheral neuropathy claim where a public commenter charged that relevant exposure data that was missing from an IH report. Another comment suggested that the 2017 Ombudsman report contained information relevant to the board's mission. A third comment requested more information on the board's position regarding impairment ratings for pulmonary disease. In response to this comment, Chair Markowitz suggested that the board request clarification from DOL. He reminded the board that he had requested that DOL attend all of the board's meetings, either in

person or telephonically. Mr. Fitzgerald and Chair Markowitz agreed that the board did not need to reaffirm the prior board's recommendations. Chair Markowitz proposed taking up the issue of the apparent seven toxin limit in the IH reports in a future meeting. He also said that the board would need to examine at a future meeting the preponderance of evidence issue that was raised yesterday to see if it was relevant to the board's charter.

Update, Presumption for Solvent-Induced Hearing Loss:

The board has not yet prepared a response to DOL's effective rejection of the board's recommendation.

Review of Board Tasks, Structure and Work Agenda

Chair Markowitz noted that the current board has not formed committees, as the prior board did, and has only one working group on Parkinson's. Member Dement added that there was another working group on the OHQ and he opined that the working group was a reasonable replacement for the standing committee. The downside to working groups is that the public doesn't have as much access. Member Dement argued that, unless there was pushback from the public, things should remain as they are. Chair Markowitz agreed that the working groups should continue, but encouraged the board to think further about the public's access to them.

Member Silver asked that the board remain scrupulous about redacting personally identifiable information from documents they submit to the record.

Member Friedman-Jimenez requested that the medical profiles that are submitted to the board be submitted as searchable PDFs. Member Dement commented that some the documents are not legible and therefore searchable PDFs may not be entirely possible. He also said that optical character reading programs can be unreliable. He proposed indexing as a viable alternative and Member Friedman-Jimenez agreed. Chair Markowitz asked DOL if communications addressed to him are disseminated. Mr. Fitzgerald confirmed that DOL makes a determination as to relevancy and then publishes comments it receives on behalf of Chair Markowitz. Member Redlich asked Mr. Fitzgerald if he knows when the board's requests for additional information will be fulfilled. Mr. Fitzgerald responded that that was why the DOL created the request form.

The board will have a telephone meeting in about three months and another in person meeting in about six months. Chair Markowitz shared a list of board activities for the next three months that included developing synopses of the claims that have been reviewed in order to identify a common set of concerns that appear across claims. The OHQ

working group is waiting for responses from DOL. The Parkinson's working group can make additional progress on the DOL's request. Chair Markowitz will join the working group and said that membership will remain open for other members. The board will receive information about approved recommendations for the creation of a dashboard. Member Pope raised the issue of Dr. Cassano's replacement which will likely be in place by the end of the summer.

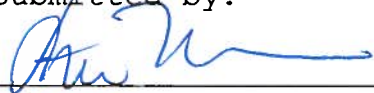
Mr. Fitzgerald thanked the board, DOL staff, and the public for their hard work over the past two days. Chair Markowitz echoed those comments. Nevada Test Site will likely be the next locale for the in-person meeting. Member Tebay requested to add to the agenda revisiting the borderline test results for beryllium sensitization. Chair Markowitz agreed.

Adjournment:

Chair Markowitz adjourned the meeting at 12:13 p.m.

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: 8/20/2019