U.S. Department of Labor

Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program

2009 ANNUAL REPORT TO CONGRESS

OFFICE OF THE OMBUDSMAN

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2009
ANNUAL REPORT TO CONGRESS

Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program

United States Department of Labor

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U.S. Department of Labor

Ombudsman
Energy Employees Compensation Program
Washington, D.C. 20210

MAR - 4 2010

The Honorable Joseph R. Biden, Jr.
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to present the 2009 Annual Report of the Ombudsman for the Energy Employees Occupational Illness Compensation Program of the U.S. Department of Labor. This Report is submitted in accordance with 42 U.S.C. § 7385s-15(e).

Sincerely,

Malcolm D. Nelson
Ombudsman for the Energy Employees
Occupational Illness Compensation Program

Enclosure

U.S. Department of Labor

Ombudsman
Energy Employees Compensation Program
Washington, D.C. 20210

MAR - 4 2010

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

I am pleased to present the 2009 Annual Report of the Ombudsman for the Energy Employees Occupational Illness Compensation Program of the U.S. Department of Labor. This Report is submitted in accordance with 42 U.S.C. § 7385s-15(e).

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Enclosure

MESSAGE FROM THE OMBUDSMAN

One of the duties of the Office of the Ombudsman is to issue an annual report to Congress, no later than February 15th of each year, detailing the number and types of complaints, grievances, and requests for assistance received by the Office during that year, and to provide an assessment of the most common difficulties encountered by claimants and potential claimants during the previous year. See 42 U.S.C. § 7385s-15(e).

Our ability to fulfill this duty is directly related to the willingness of claimants, potential claimants, family members and other interested parties to contact our Office to discuss their complaints, grievances, and needs for assistance. For some claimants just finding the time and having the physical strength to call us can be a burden. On the other hand there are claimants who, in order to forward materials to us, had to find a fax machine or copier, as well as others who traveled hours to a town hall meeting, patiently sat through a presentation and then waited in a line for their turn to meet with us. I want to sincerely thank each and every claimant, potential claimant, family member and all others who, during the course of the past year, took the time to share their concerns with the Office of the Ombudsman.

In addition, support from the Department of Labor's Division of Energy Employees Occupational Illness Compensation (DEEOIC) is critical if this Office is to be effective, and while the DEEOIC has worked cooperatively with us since our inception, this year their support was truly commendable. Their willingness to assist us, as well as the promptness with which they responded to our inquiries, continues to be a tremendous help. To the entire staff of the DEEOIC, those in the Washington, D.C. office, as well as the staffs of the district offices and resource centers, I sincerely thank you for all of your support. Moreover, I recognize that this year we pursued a very ambitious outreach schedule, and I realize that this schedule put a strain on the staff of the DEEOIC. Accordingly, I wish to especially thank everyone who helped with these projects - especially those who rushed to meet the demands of these schedules and/or those who participated in these outreach efforts.

One of the highlights of the past year was a concerted effort to improve both the quality and the quantity of the cooperation/coordination between the Department of Energy; the DEEOIC; the National Institute for Occupational Safety and Health (NIOSH); the Ombudsman to NIOSH; the Former Worker Medical Screening Program; the Center for Construction Research and Training (CPWR) and this Office. These efforts facilitated our ability to participate in 20 town hall meetings in 11 different cities. (See Appendix 2 for a listing of these town hall meetings). However, while I am pleased that we hosted and/or participated in so many town hall meetings, I am even more pleased that as a result of the expanded coordination/cooperation between the various agencies, there was an increase in the assistance available to those who attended these meetings. This "one stop service" has been well received and is beneficial to claimants, many of whom are in poor health and/or would otherwise have to travel to different locations to obtain each of these services. Since, I have already thanked DEEOIC, I will now take a moment to acknowledge and thank the other agencies involved in this effort.

I would like to thank the Department of Energy (DOE) for proposing this effort to bring together all of these agencies and for all of the other assistance they provided throughout the past year. As noted above, as a result of these joint efforts, we have made great strides in ensuring that town hall meetings provide a forum where, in addition to voicing their concerns, claimants can also receive immediate assistance with many aspects of their claims. Moreover, as we continue to work with the DOE, we become more aware of the vast array of resources available to this agency, and as a result become more effective in utilizing these resources to assist claimants. I truly appreciate all of the DOE's efforts.

I also would like to thank NIOSH for their prompt response to our many questions; for ensuring that staff members attended many of our town hall meetings, and for the training that they provided to members of this Office. Moreover, I must also thank the Ombudsman to NIOSH for all of her help with and her participation in our town hall meetings and for the invaluable technical assistance that she provides on claims, especially claims involving dose reconstruction and/or Special Exposure Cohorts. It is a pleasure to work with NIOSH and with the Ombudsman to NIOSH and I look forward to another great year.

Allow me to also thank the Former Worker Medical Screening Program for permitting us to participate in their town hall meetings; for participating in our town hall meetings; and for all of the assistance that they provided on individual claims. I also want to thank the Former Worker Medical Screening Program for the wide ranging assistance provided to us when we were planning our meetings. Similarly, I wish to thank the CPWR for their willingness to assist with all of the cases that we referred to them over the course of this year.

Last, but not least, I want to acknowledge the staff of the Office of the Ombudsman. It is a pleasure to work with a group of people who are so committed to assisting claimants. I truly appreciate all of the cooperation and assistance that you provide throughout the year. Thank you very much!

INTRODUCTION

On July 27, 2009, the eighth anniversary of its administration of the EEOICPA, the Department of Labor (DOL) announced that it had paid $5 billion in compensation and medical benefits to more than 52,600 claimants nationwide under the EEOICPA. Even if you simply focus on Part E of EEOICPA, there has been steady progress in the adjudication of cases.

	Mid-December 2005	December 21, 2008	December 31, 2009
Recommended Decisions	2,749	39,938	45,490
Final Decisions (total)	2,380	37,571	43,641
Final Decisions (approved)	1,991	20,049	23,805
Compensation Paid	Over $254 million	Over $1.3 billion	Over $1.8 billion

Chart 1

Note: these statistics reflect Part E claims only. See Appendix 1 for the DEEOIC's 2009 statistics for the EEOICPA.

In addition, the DEEOIC continues to review this program and continues to make improvements. Some of the improvements initiated by the DEEOIC in FY2009 include: (1) providing the resource centers with greatly increased access to the Energy Case Management System so that the staff can better explain to claimants the status of their cases and help identify steps that claimants need to take to support their claims; (2) implementing procedures to simplify and expedite wage-loss and impairment claims; and (3) issuing policy guidance to expedite interactions with the Social Security Administration to obtain employment verification and wage-loss information.

Yet in spite of the impressive amounts of money that have been paid and in spite of the efforts of the DEEOIC to improve this program, claimants, as well as authorized representatives, continue to contact our Office, as well as come to our town hall meetings, to voice concerns and misgivings about this program. While one might expect complaints from those whose claims were denied, the complaints received by this Office do not exclusively come from those whose claims were denied. We are also contacted by claimants with pending claims, as well as some claimants with awards of compensation. When you listen to these complaints it quickly becomes evident that there is more to many of these complaints than a mere disagreement with the outcome of the claim.

Consistent with our mission, this report details the number and types of complaints, grievances, and requests for assistance that this Office received during calendar year 2009. We are also tasked, however, with providing an assessment of the most common complaints, grievances, and requests for assistance received during the year, and in order to do this, we believe that it is necessary to understand the cause/nature of these complaints – i.e., why is it that claimants disagree with a particular statute/regulation/decision. Accordingly, in addition to detailing the number and types of complaints, grievances, and requests for assistance received during 2009, we will provide insights into the cause/nature of the complaints, grievances, and requests for assistance that we received this past year.

SECTION 1.1

HISTORY OF THE EEOICPA

There are a number of activities involved in the development of nuclear weapons. When the U.S. government initiated a program to build a nuclear arsenal, these activities were performed at hundreds of sites located around the country. Some of these sites were owned by DOE or its predecessor agencies and operated by contractors.[1] Other sites were privately owned, but worked under contract with DOE, while others provided DOE and its operations contractors with services and supplies. See *Linking Legacies, Connecting the Cold War Nuclear Weapons Production Processes to Their Environment Consequences*, The U.S. Department of Energy, Office of Environment Management, January 1997.

The activities at these sites often involved working with radioactive materials, as well as toxic substances. In October 2000, concerns for the health and safety of these workers led to enactment of the EEOICPA as Title XXXVI of Public Law 106-398, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Part B of this program, which is administered by the DOL, provides compensation and/or medical benefits/ medical monitoring to certain enumerated employees and their eligible survivors if they suffer from cancer that is at least as likely as not caused by radiation exposure; or if they suffer from chronic beryllium disease; chronic silicosis; or beryllium sensitivity.

Pursuant to Part D, which was administered by the Department of Energy (DOE), Congress directed the DOE to provide claimants with assistance in obtaining state-based workers' compensation. There were, however, obstacles that prevented the efficient administration of Part D. For instance, because of the years that had passed since their exposure to toxic substances, many claimants found it difficult to prove that their illness was caused by exposure to work related toxins.

In 2004 Congress responded by repealing Part D and enacting new Part E as § 3161 of Public Law 108-375, which established Part E as a new federal compensation scheme for DOE contractor and subcontractor employees. Section 3161 of Public Law 108-375 also directed the Secretary of Energy to provide all applicable records, files and other data to the Secretary of Labor, and mandated that DOL prescribe regulations and begin to administer the new Part E program within 210 days of enactment. On May 26, 2005, DOL prescribed interim final regulations, thereby meeting the 210 day deadline imposed by Congress.

[1] **The Manhattan Engineer District was established in 1942 and in 1947 its functions were transferred to the Atomic Energy Commission (AEC). In 1974, the AEC was abolished and the Energy Research & Development Administration (ERDA) was created to replace the AEC. Subsequently, in 1977 the ERDA became the Department of Energy.**

THE OFFICE OF THE OMBUDSMAN

Enacted in 2004, Public Law 108-375 also created an Office of the Ombudsman (the Office) and urged the Secretary of Labor to take appropriate action to ensure that it be an independent Office within the Department of Labor (DOL), including independence from the other officers and employees of the DOL engaged in activities related to the administration of the provision of the EEOICPA. See 42 U.S.C. § 7385s-15(d). The Secretary of Labor appointed an Ombudsman in February 2005, and the Office submitted its first report to Congress covering calendar year 2005 on February 15, 2006. When initially created, the duties of the Office only extended to Part E. On October 28, 2009, Public Law 111-84, the National Defense Authorization Act for Fiscal Year 2010, expanded the authority of the Office to also include Part B of the EEOICPA.

The day to day activities of the Office are driven by two goals; 1) to provide information and assistance to claimants and potential claimants regarding the EEOICPA; (2) to provide opportunities for claimants and potential claimants to express their complaints, grievances, and requests for assistance concerning this program. In achieving these goals, the Office:

- **Engages in outreach** – We sponsor town hall meetings, as well as attend other meetings, forums and workshops where we discuss the EEOICPA and its requirements. This year, with the assistance of the efforts of a task force comprised of many of the agencies involved with the EEOICPA we were able to attend 20 outreach meetings in 11 different cities.[2]
- **Clarifies/explains documents and procedures** – The EEOICPA can be very complicated and decisions are oftentimes based on very technical medical, scientific and/or legal concepts. We are contacted by claimants who find it difficult to comprehend these concepts. In addition, there are a many nuances to this program – for example for many of the "rules" there is at least one exception. Some claimants need assistance "steering the right course" as they proceed with their claim.
- **Receives complaints, grievances and requests for assistance** – Individuals with pending claims; individuals whose claims were denied; as well as some individuals whose claims were awarded, contact the Office or attend our town hall meetings, to voice complaints and grievances with this program. We are also contacted on occasion by claimants who have complimentary comments concerning the program – usually complimenting the services provided by individuals associated with the program.
- **Provides assistance** – It is rare when we are contacted by an individual who simply wants to voice a complaint. Most individuals contact us because they are seeking assistance with their claim. In some instances, we are asked to explain a word or decision. On other occasions, we are asked to provide assistance locating necessary records, or our input is sought on how to proceed with a claim. Inasmuch as many claimants do not have access to computers, we also frequently provide public information such as copies the Site Exposure Matrices; Site Profiles; listing of the 22 cancers covered for purposes of Special Exposure Cohorts, etc. Within the limits of our authority and resources, we assist claimants however we can.

The report that follows is a synthesis of the many e-mails, letters, telephone calls, faxes, and face to face conversations that members of this staff had over the past year.

[2] The Joint Task Force was a project proposed by the Department of Energy that brought together DEEOIC; the National Institute of Occupational Safety and Health (NIOSH); the Ombudsman to NIOSH; the Former Worker's Medical Screening Program; and the Center for Construction Training and Research.

TABLES

The following tables detail the number and types of complaints, grievances, and requests for assistance received by the Office during the past year. Table 1 categorizes the complaints by type and provides the number of complaints for each category. Table 2 expands on the information provided in Table 1 by further delineating some of the specific complaints encompassed in some of the categories and by additionally identifying each complaint as statutory, regulatory or administrative. Table 3 details the number of complaints that we received over the past year according to the facility that employed the worker.

In reviewing these tables, some things to keep in mind are:

- Claimants rarely present their concerns in a manner that is easy to categorize.
- Claimants generally do not contact us with just one complaint or grievance. Rather, most claimants contact us to voice their concerns with an event or experience related to the processing of their EEOICPA claim. Based on claimant's recount of this event or experience, we identify specific complaints, grievances, and requests for assistance.
- Especially at town hall meetings and other outreach events, the pace and volume with which we receive comments usually renders it impossible to accurately count every complainant or to record the nature of every complaint.
- One claimant may have more than one comment/complaint. In such instances, each comment/complaints is counted separately.
- Our conversations with claimants often "touch" on many issues. Nevertheless, in identifying and categorizing complaints, we focus on issues directly related to claimant's current concern. For instance, in addressing a complaint concerning consequential illnesses, we might discuss the cap on the benefits to which a claimant is entitled. However, since claimant did not contact us to discuss the cap on benefits, and to the extent that this claimant is not immediately impacted by this cap, we would not "count" this conversation in our table of complaints. On the other hand, we would certainly take note of any comments offered by the claimant and would refer to these comments when addressing the issue of the cap on benefits.

Table 1: Complaints by nature

COMPLAINT	NUMBER
Covered Employment/Covered Facility	88
Adult Children	50
Compensation is Nullified or Reduced	6
Exposure	30
Dose Reconstruction	57
Special Exposure Cohort	23
Causation	98
Interactions with DEEOIC	99
Must Submit Additional Information	28
Processing of Claim Takes Too Long	42
Needs to File Claim	27
Impairment	37
Wage Loss	17
Offset/Coordination	9
Requests for Assistance	362
Status of Claim	47
Notice of Terminal Illness	6
Reconsideration/Reopening	14
Problems with Medical Card	15
Misc	20
TOTALS	**1075**

Table 2: Complaints by category

(With additional identification as statutory, regulatory, or administrative)

COMPLAINT	#	COMMENTS	Statutory/ Regulatory/ Administrative
Covered Employment / Covered Facility	88	Not covered under EEOICPA…..……12 Difficulty locating evidence/ establishing status as covered employee……..…..……..…..59 Covered Illness……..17	Statutory Statutory/Administrative Statutory
Adult Children	50	Request for update on legislation.….16 Other issues…….....34	Statutory
Compensation is Nullified or Reduced	6	Death nullified or reduced comp…....6	Statutory
Exposure	30		Statutory/Administrative
Dose Reconstruction	57		Statutory/Regulatory/ Administrative
Special Exposure Cohort	23	Problems establishing 250 days……...5 Not one of 22 cancers……....6 Other issues…….....12	Statutory/Regulatory/ Administrative Statutory
Interactions with DEEOIC	99	Change in claims examiner…….....4 Documents are confusing……....44 Concerns with DMC's…….....10 Personnel Rude…….....6 No one answered call…….....17 Misc…….....18	Administrative Administrative Administrative Administrative Administrative Administrative
Concerned when asked to submit additional evidence	27		Administrative
Processing of claim takes too long	42		Administrative
Needs to file claim	27		Administrative
Impairment	37	Consequential illness……....4 Difficulty locating a physician…….....8 Disagrees with impairment rating……25	Regulatory/Administrative Statutory/Regulatory/ Administrative
Wage Loss	17		Regulatory/Administrative

Offset/Coordination	9		Administrative/Regulatory/ Administrative
Requests for assistance	362		Statutory/Regulatory/ Administrative
Status of Claim	47	Status of Part B claim…….....15 Status of Part E claim…….....23 Status of Part B and E claims…….....9	Administrative Administrative Administrative
Notice of Terminal Illness	6		Administrative
Reconsideration/Reopening	14		Administrative
Problems with Medical Card	15		Administrative
Misc	20	Cap on benefits…….....….3 RECA…….....1 Tax Issues…….....3 Power of Attorney…….....3 Other…….....12	Statutory Statutory Statutory/Administrative Administrative

SECTION 2.3

Table 3: Complaints by facility

This table provides the number of known complaints, grievances, and requests for assistance from various facilities. Unfortunately, during the course of the year, we engage in many conversations where the identity of the facility is not collected. Consequently, the actual number of complaints coming from some of these facilities may be higher.

	Facility	Number of Complaints	2009 Town Hall Meeting Held in Vicinity
1	Amchitka Island Nuclear Explosion Site	1	
2	Ames Laboratory	5	X
3	Argonne National Lab – East	2	
4	Berkley National Lab	1	
5	Bendix Aviation	2	
6	Bethlehem Steel	2	
7	Brookhaven National Lab	1	
8	Canoga Avenue Facility	3	
9	Elko	4	
10	Fernald	69	X
11	Fermi National Accelerator Lab	2	
12	General Electric Company	1	
13	General Steel Industries	3	X
14	Granite City Steel	4	X
15	Hanford	31	X
16	Idaho National Engineering Lab	2	
17	Iowa Ordnance Plant	16	X
18	K-25	2	
19	Lackawanna	3	
20	Kansas City Plant	8	
21	Linde Ceramics Plant	3	
22	Los Alamos National Lab	8	
23	Mallinckrodt Chemical Co.	7	X
24	Misc	57	
25	Mound	21	X
26	Nevada Test Site	22	
27	Oak Ridge	25	
28	ORAU	1	
29	Paducah Gaseous Diffusion Plant	31	X
30	Pinellas Plant	34	

31	Portsmouth Gaseous Diffusion Plant	62	X
32	Rocky Flats	3	
33	Sandia National Lab	3	
34	Santa Susana Field Lab	4	
35	Savannah River Site	16	
36	St. Louis Airport Storage Site	1	X
37	Uranium Miners/Millers/Transporters	9	X
38	Weldon Spring Plant	3	
39	Westinghouse Atomic Power Development Plant	1	
40	Y-12	3	
		476	

THE REPORT

In our prior annual reports we categorized the complaints, grievances and requests for assistance received by this Office into three categories: (1) statutory issues; (2) regulatory/policy issues; or (3) administrative and miscellaneous issues. We utilized these categories since they coincided with responsibility for addressing these complaints – some complaints concern the statute and thus must be addressed by Congress; other complaints involve the regulations or policy determinations, and where disagreements arise, the recourse may ultimately lie with the federal courts; while other complaints concern the administration of the program and thus are best directed to the agency responsible for that aspect of the program – i.e., DOL, DOE, and/or NIOSH.

We continue to believe that utilizing these categories is an effective way to present the complaints, grievances and requests for assistance that we receive, and consequently, we include Table 2 (see Section 2.2) where we identify the complaints addressed in this year's report as statutory; regulatory or administrative.

In most instances, claimants do not contact us with just one specific complaint or grievance, rather their complaints and grievances are usually part of a broader concern with an event or decision. Therefore, in order to fully appreciate the issues discussed in this report it is necessary to understand the context within which these complaints and grievances arose. Consequently, this report will endeavor to provide some context to the event(s) and decisions(s) that prompted claimants to contact our Office. In order to accomplish this goal, this report will focus on the requirements/burdens for establishing entitlement to benefits and compensation under Part E, and will utilize these requirements/burdens to categorize the complaints, grievances, and the requests for assistance that we received in 2009. Accordingly, we will categorize each complaint, grievance, and request for assistance into one of the following categories: (1) Covered Employment/Survivor Eligibility; (2) Exposure: (3) Causation; (4) Wage-Loss/Impairment; or (5) Other Administrative Matters. We believe this approach will assist in illustrating the many hurdles that confront claimants when processing an EEOICPA claim, and in turn will explain why in some instances it is not one, but rather a culmination of events that prompts claimants to contact us.[3]

Moreover, in reviewing our contacts over the past year, we recognized many instances where claimants went beyond merely reporting their complaint or grievance – for many claimants it was important that we understood why they were unhappy or why they disagreed with the decision that had been rendered. As Table 1 (see Section 2.1) indicates, there is a wide range in the complaints that we received in 2009 – from complaints concerning dose reconstruction to questions about taxes or long term disability insurance. However, in spite of this wide range in the complaints that we receive, there are four themes that continually underline many of the concerns that we receive. Although these four themes do not fully explain all of the complaints, grievances, and requests for assistance, they do provide a foundation for understanding many of the concerns that are brought to our attention. These four themes are:

1. The program does not meet claimant's expectations;
2. The burdens placed on claimants are not "claimant-friendly" and/or are too high, especially in light of all of the circumstances; and
3. The program is not "fair"
4. Issues of trust that are expressed in two ways, (1) feelings that program does not trust the claimants and (2) misgivings that claimants have concerning the program.

As we will emphasize how these four themes continue to underline and impact many of the complaints, grievances, and requests for assistance that we receive.

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[3] **For most of this calendar year, the authority of this Office only extended to Part E, and as a result, a majority of the complaints, grievances, and requests for assistance addressed in this report concern Part E. Nevertheless, as in previous years, because Part B findings may impact the Part E claim, there are occasions where in order to effectively assist a Part E claimant, it was necessary to consider the Part B issues. Consequently, some issues that more commonly arise with Part B are addressed in this report.**

ISSUES WITH AN OVER-REACHING IMPACT

Many complaints do not fit neatly into any one category, thus there is often overlap – i.e., a complaint addressing the burden of establishing employment may include issues concerning the inability to understand documents that were received. In most instances, we place the complaint in one category and address all of the issues involved with this complaint at that time. However, there are three issues that have such an over-reaching impact that we think it best to address these issues separately. Thus we begin our discussion of the most common complaints, grievances, and requests for assistance received in calendar year 2009 with these three complaints:

1. Claimants are often ill and/or of advanced age when processing an EEOICPA claim;
2. EEOICPA is a complicated program; and
3. Vow of secrecy.

Claimants are often ill and/or of advanced age when processing an EEOICPA claim

Workers are ill and some are of advanced age when they file their EEOICPA claim. A common complaint that we hear is that it is overwhelming to process an EEOICPA claim while trying to cope with an illness and/or when you are of advanced age. An encounter with a claimant in St. Charles, Missouri amply illustrates this problem. This claimant drove a friend to the town hall meeting. During the meeting she did not raise any concerns or have any questions. It was only when the formal presentations were over and the friend engaged a representative from this Office that this claimant finally spoke up. In support of the concerns expressed by her friend, this claimant recounted her own ordeal having to locate former colleagues in order to establish covered employment and having to go from "doctor to doctor" to obtain the relevant medical reports. Then this claimant looked at us and asked, "and can you imagine doing all of this while undergoing chemotherapy for cancer?"

Benefits and compensation under the EEOICPA are premised on the existence of a covered illness. In addition, covered EEOICPA employment could have occurred as early as 1942. Consequently, many of the workers who contact our Office are ill and some are of advanced age when they file their EEOICPA claim. Claimants often find it entirely too demanding to cope with these issues and at, the same time, to process an EEOICPA claim. Many claimants argue that it is not "claimant-friendly" and some suggest that it is "unfair" to have waited so long to create the EEOICPA and then, knowing that the workers are now ill and that some are of advanced age, to create a program in which their active participation is often essential for success.

Some family members raise a similar concern – they note that it is only in response to the declining health of their loved one that they became involved with the EEOICPA claim, and they often assert that it can be overwhelming to process an EEOICPA claim while tending to the health needs of their loved one. The stress of processing an EEOICPA claim while tending to the health needs of a loved one can be even greater when the loved one's illness is terminal. This is precisely the complaint that we received from a claimant who reported that after notifying the DEEOIC of her parent's terminal condition, she quickly became overwhelmed with all of the paperwork that she had to complete. To its credit, and consistent with its policies, when notified of this claimant's terminal condition, the DEEOIC initiated actions to expedite the claim. However, it all became too much for this claimant when she was informed that there was a document that the parent would have to sign. In spite of the offer by the DEEOIC to bring the document to the hospital, this claimant decided that processing an EEOICPA claim was not how she wanted to spend those moments.

In another case, with their loved one in a terminal state, in light of issues that arose with the power of attorney, the family had to scramble to complete the claims process.[4] In recounting their concerns, this family continues

[4] As noted in our 2006 report, DEEOIC undertakes legal review of powers of attorney at the end of the claims process. As the above case illustrates, this approach can lead to instances where the desire to expedite the claim (due to the terminal illness of the claimant) is impacted by the need to perfect the power of attorney. See 2006 Annual Report to Congress, Office of the Ombudsman, February 15, 2007.

to make reference to the fact that while coping with the terminal illness of their loved one, they had to make numerous trips to the hospice (a journey of about 100 miles) and had to "push papers" in front of their loved one, all to no avail.

Many of the claimants whom we met over the course of this year asked us to be sure to stress how the problems that they encountered with their EEOICPA claim were compounded by the fact that they processed these claims while coping with their own illness or with the illness of a loved one, and in some instances, when they were of advanced age.

SECTION 4.2

EEOICPA is a complicated program

Part E grants covered DOE contractor and subcontractor employees, and the qualified survivors, with a federal payment if the employee develops an occupational illness (or dies) as a result of exposure to toxic substances at a covered DOE facility. In many instances, in order to establish each element of entitlement claimants may need to delve into very complex legal, scientific and/or medical concepts.

For instance, in one case, in order to establish that the worker was employed by a DOE contractor, the claimant had to establish that there was a contract for the management and operation, management and integration, or environmental remediation at the facility, or whether the employer provided services including construction and maintenance, and this in turn led to a discussion of the "borrowed servant doctrine."

In another case, while the claimant was able to rely on SEM to link nickel, chromium, beryllium and arsenic to the cancer, the claim was nevertheless denied because the claimant worked with these toxins in solid forms and it was determined that in this form these toxins would not have "caused a health hazard exposure."

Adding to the complexity of the EEOICPA is the many and varied nuances in the law. When processing their claims, many claimants look for "simple" rules. Unfortunately, many of the rules governing the EEOICPA are not "simple," and attempts to explain or understand the EEOICPA are often complicated by the exceptions that exist for many of the rules. Many claimants find it impossible to grasp all of the rules and exceptions.

Further compounding this problem is the fact that there are not a lot of attorneys or other representatives with the expertise and willingness to assist EEOICPA claimants. Moreover, even where such representation exists, many claimants tell us that they are reluctant to retain the services of an attorney or other representative because they fear that the fees charged by these representatives will significantly reduce their compensation. As a result, most claimants who contact us are proceeding without legal or other representation.

Even though they try, many claimants find it impossible to develop a firm understanding of all of the rules and exceptions contained in the EEOICPA statute and regulations. We hear of many instances where claimants become frustrated when they believe that they have met all of the necessary requirements, only to have (what they view as) a new rule/exception placed before them. In fact, a common refrain that we hear is that in light of the complex nature of the EEOICPA, some claimants feel that they are continuously competing against a stable of lawyers, doctors and scientists.

Vow of secrecy

The work performed at these DOE facilities was secret. The workers were ordered not to discuss their employment with anyone, including their families, and most claimants fully complied with this directive. In fact, it is quite common to encounter situations where the worker maintained this vow of secrecy not only while employed at the facility, but even when his/her employment ended (and in some instances, even when these facilities closed and/or were torn down). In previous reports, we discussed how in light of this vow of secrecy many family members have no knowledge concerning the work performed by their loved ones. We continue to hear these complaints. This year, we also encountered a number of instances that seemingly confirm our suspicion that there are workers who, in light of this vow of secrecy, deliberately choose not to reveal everything that they know concerning their employment to those charged with assisting them with their EEOICPA claim. Since these claimants also refuse to discuss this information with our Office, it is impossible to determine if this information is relevant to their EEOICPA claim. Yet, based on the comments that we have heard, we have concerns that some claimants may be withholding information that could be relevant to their claim.

It is our understanding that a process exists whereby EEOICPA claimants can be interviewed by government employees who possesses the appropriate security clearance. In our experience, many claimants are not aware of this process. Moreover, where the claimant is reluctant to reveal all of the details of his/her job, this reluctance usually applies to anyone associated with the DOL – many of these claimants believe that the directive to maintain secrecy came from a source “higher” than the DOL and thus if it is to be rescinded, it must be rescinded by someone “higher” than anyone at the DOL.

In addition, there are suggestions that some claimants will not discuss certain events (specifically certain spills and other mishaps) out of loyalty to their colleagues and a fear that their revelations could get someone into “trouble” – and once again it is suggested that some claimants refuse to talk about these events even though their employment ended years ago.

COVERED EMPLOYMENT/SURVIVOR ISSUES

In order for there to be covered employment under Part E, the worker must be (or have been) a *covered employee* who worked at a *covered DOE facility and worked for a DOE contractor or subcontractor*.[5] Each aspect of this requirement continues to be a source of complaints and grievances. The most common complaints concerning covered employment include:

- Employees not covered by the statute
- The differences in coverage under Part B and Part E
- Locating evidence of employment
- Covered facility
- DOE contractor or subcontractor

SECTION 5.0

In addition, the most common survivor issues address:

- Definition of an eligible child
- Factors that reduce or nullify compensation

SECTION 5.1

Employees not covered by the statute

As referenced in the History of the EEOICPA (see Section 1.1), the nuclear weapon program employed hundreds of thousands of workers. Many of these workers were employed by contractors or subcontractors, some were employed by the federal government, and others were assigned to the military. Only certain of these workers, however, are entitled to benefits/compensation under the EEOICPA. During the course of the past year, we were contacted by members of the military and employees of the federal government (mainly the Department of Defense and the Department of Army) who argue that it is contrary to the intent of this program, as well as unfair, that they are not covered under the EEOICPA. We heard a similar argument from a union business agent who, as part of his duties, spent much of his workweek at a covered DOE facility. This gentleman now suffers from an illness that he believes is causally related to toxic exposure arising from his work at this facility, and like those employed by the federal government or assigned to the military, cannot understand why he is not eligible for benefits under the EEOICPA.

Claimants who worked at these sites but who are not covered under the EEOICPA question why coverage is not extended to them especially since they performed the same jobs and were exposed to the same toxins as those who are covered. In many instances this concern is compounded by the fact that: (1) no one can provide these claimants with a rationale for why they are not covered under the EEOICPA, and (2) no one can direct them to a program that will compensate them for their illnesses arising out of their employment at these facilities. In one instance, compounding the fact that as a former employee of the Department of Defense she is not eligible for EEOICPA benefits, this employee continues to encounter difficulties pursuing a claim under the Federal Employees' Compensation Act.[6]

[5] The exception is that workers at RECA Section 5 facilities are also eligible for Part E benefits.

[6] While some of these claimants may be "eligible" to apply for compensation under other programs such as state workers' compensation programs, in most instances brought to our attention, claimants find it difficult, if not impossible, to successfully process a claim under these programs.

Differences in coverage under Part B and Part E

There are two "Parts" to the EEOICPA, Part B and Part E. While there is some overlap, each "Part" compensates for different illnesses and covers different workers. Chart 2 illustrates the illnesses covered under Part B and E:

Part B	Part E
• Any cancer (at least as likely as not caused by radiation exposure) • Chronic Beryllium Disease (CBD) • Chronic Silicosis (specific sites) • Beryllium Sensitivity	• Any occupational illness at least as likely as not caused, aggravated, or contributed to by exposure to a toxic substance

Chart 3: identifies the workers covered under each "Part" of the EEOICPA:

	DOE Employee	Military Personnel	Employee of Beryllium Vendor	Employee of Atomic Weapons Employer	DOE Contractor or Subcontractor	RECA Section 5 Claimant
Part B	X		X	X	X	X
Part E					X	X

In St. Charles, Missouri we met three former workers of General Steel Industries (General Steel) who worked for this company during a period when it performed work as an Atomic Weapons Employer (AWE). As AWE employees these workers are covered under the EEOICPA if they are eligible under Part B. Unfortunately, while they have illnesses related to their employment with General Steel, these employees do not have cancer, chronic beryllium disease; chronic silicosis, or beryllium sensitivity, and thus do not suffer an illness covered by Part B. Consequently, these three gentlemen are not entitled to benefits/compensation under the EEOICPA – they do not have an illness covered under Part B and are not eligible under Part E. Further, these gentlemen assure us that they have made attempts to find an attorney who will assist them in pursuing a state worker compensation claim, but cannot find one willing to take their case. These gentlemen cannot understand how they can have an illness related to their work and yet not be entitled to benefits or compensation under EEOICPA. It is especially troublesome to these gentlemen to know that if they had cancer (or chronic beryllium disease) they would potentially be covered under Part B, but since they suffer an illness other than cancer (or chronic beryllium disease), they are not covered, even though their illness is related to their work. They similarly question why the designation of their employer (AWE versus DOE contractor/subcontractor) impacts their eligibility.

Over the course of this year, we met a number of claimants who face this same predicament. They are not eligible for benefits or compensation under the EEOICPA because they do not have an illness covered under Part B and did not work for a covered Part E employer. These employees find it troubling that: (1) no one can provide them with a rationale for why the nature of their illness or the identity of their employer should impact their coverage under the EEOICPA; and (2) generally there is no viable alternative program that will compensate them for their illnesses.[7]

[7] Many claimants who worked at these facilities but who are not eligible under the EEOICPA report that they encounter significant difficulties pursuing a claim under other worker compensation programs. The inability to locate their employer is often fatal to their claim. Moreover, while there are limits to the assistance provided by the DEEOIC, most other programs do not offer the level of assistance provided by the DEEOIC, and definitely do not offer the specialized assistance offered by the DEEOIC. For instance, one claimant informed us that his state workers' compensation claim was denied because it failed to meet that state's statute of limitations.

Locating Evidence of Employment

One of the most common complaints concerning "coverage" involves the difficulties encountered by claimants when attempting to establish that they worked for a particular employer (or at a particular facility). When a claim is filed, the DOL collects employment verification or other documentation from the DOE and requests verification through the CPWR, the Social Security Administration, and the Oak Ridge Institute for Science and Education. In some instances, especially where employment records are lost, destroyed, or were never kept, it is impossible for the DOL or any of these other organizations to verify employment, and at that point, documentation is requested from the claimant.

Over the course of this year, we encountered a number of claimants who were asked to produce documents verifying their employment and many of these claimants have the same comments:

- They find it hard to believe that at least some of their employment records are not still in existence. Many employees point out that in order to work at these facilities they had to obtain "Q" clearance and some assure us that in order to gain entry, they "signed in" every day. In light of all of this security, many claimants firmly believe that some of these records still exist – they question whether every effort has been made to locate these records.[8]
- They argue that if the DOL, with all of the resources available to it, cannot verify employment, it is unfair to expect the claimants to locate this evidence, especially since this employment occurred many years ago and it was never the claimant's responsibility to maintain these records.[9]
- Many claimants indicate that when asked to produce evidence to verify employment, the suggestions provided to them as to where to look for documents are not very helpful and/or very realistic. In response to the suggestion that they obtain affidavits from co-workers claimants are adamant that co-workers are either dead, cannot be located, or do not have the mental capacity to complete an affidavit. Similarly, in response to the suggestion that claimants search for tax returns, pay stubs, etc, claimants assure us that if they ever had these records, they were tossed out years ago.
- Many claimants take it very personal when their claim is denied on the ground that they did not establish their status as a "covered employee." Claimants often tell us that they believe that their statements attesting to their employment should be sufficient to verify employment, especially where there is no affirmative evidence to the contrary. While we do our best to assure claimants that a denial of their claim is not a ruling on their credibility (and should not be perceived that way), a number of claimants have told us that they view a denial as a rejection of their "word."

The problems associated with establishing a worker's status as a "covered employee" can be as great, if not greater, for survivors. As previously noted, the work at these facilities was secret and employees were instructed not to discuss their work with anyone, including their families. In many cases, survivors have no idea of the work performed by their loved one, and as a result, have no idea of where to even start a search. One example that highlights this fact concerns a surviving child. The worker was employed with the Feed Material Production Center (Fernald), a facility that converted uranium into uranium metal and fabricated uranium metal into feed stock for fuel and target elements. In talking with this surviving child, she states that while she heard her father mention Feed Material Production Center, she always thought that it was a plant that made food for animals. (Note: Fernald also had a checkerboard water tower).

Many of the complaints concerning the difficulties associated with establishing one's status as a "covered employee" are the same whether it is the worker or the survivor who is faced with this burden. One complaint, however, that is exclusively raised by survivors is the argument that it is unfair for the government to have instructed a parent not to discuss his/her employment with anyone (and for this parent to have honored this

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[8] In 2005 documents from the Mound Plant were buried in a New Mexico landfill for radioactive waste. While it was ultimately determined that these documents had no value for purposes of the EEOICPA, some claimants continue to question this conclusion. More importantly, as the news of this incident spreads, claimants question whether documents from other facilities may have been destroyed as well.

[9] In response to these comments, the DOE indicates that many of the records were destroyed according to existing record schedules. For instance, gate logs were typically destroyed after 5 to 7 years. Nevertheless, the DOE also notes that many records are still in existence, and wherever possible are used as a primary source in verifying employment. In addition, the DOE indicates that it has undertaken projects to find and index such record collections.

directive) and for the government to now place the survivor in the position where his/her claim is denied because the survivor does not possess sufficient knowledge about the parent's employment.

Covered Facility

Another requirement for covered employment under Part E is that the worker must have worked at a covered Department of Energy facility. The statute defines a "Department of Energy facility" as

> *…any building, structure, or premise, including the grounds upon which such buildings, structure, or premise is located –*
>
> *(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and*
> *(B) with regard to which the Department of Energy has or had –*
> *i. a proprietary interest; or*
> *ii. entered into a contract with an entity to provide management and operations, management and integration, environmental remediation services, construction, or maintenance services.*

42 U.S.C. §7384l(12).

Where questions arise concerning the status of a facility, these questions are often problematic for claimants. Here are a few of the complaints that we received this past year concerning the status of a facility:

- Weapons were stored at a number of facilities, including the Medina Base, adjacent to Kelly and Lackland Air Force Bases in Texas; the Killeen Base, adjacent to Gray Air Force Base and Fort Hood in Texas; and the Bossier Base, adjacent to Barksdale Air Force Base in Louisiana. One claimant called to inquire why those who worked at the Medina Base are covered under EEOICPA, but those who worked at the Killeen Base or the Bossier Base are not covered.[10]

  The response by the DEEOIC indicated that while the Medina Base met the definition of a "Department of Energy Facility," the DEEOIC performed a detailed analysis of both the Killeen Base and the Bossier Base and found that neither facility met this definition. In spite of this answer, this claimant still questions why it is that one facility meets the definition of a "Department of Energy Facility" and the others do not when all of these facilities stored weapons.

- At some sites only certain areas are designated as DOE covered facilities. Some workers argue that this designation ignores the fact that workers were frequently directed to work all around these facilities, including at the areas designated as a DOE facility, and in many instances, this movement was never documented. Workers also argue that due to the physical layout of some of these sites, anyone present at these sites would have been exposed to the toxins used at the facility. Accordingly, some claimants believe that since everyone was exposed to these toxins, it is unfair to only cover certain employees. These are the precise arguments raised by former workers at the Santa Susana Field Laboratory. They argue that it is unfair to only cover those listed as working at Area IV since in reality many other workers also performed work at this site, but the work of these other employees was never documented. They also assert that in light of the physical layout of this site, anyone working in proximity to Area IV would have been exposed to the toxins used at Area IV.

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[10] NIOSH may prepare a site profile for those facilities that meet the definition of "Department of Energy facility" as that term is used in the EEOICPA. A site profile is a document that contains information about a facility's general activities and radiation protection practices. The site profile includes the physical appearance and layout of the work site, the work processes used there, the types of materials used, potential sources of radiation, the exposure monitoring practices employed by the site over time, and other details important to that work site.

- A former employee of a plant operated by Babcock & Wilcox in Lynchburg, Virginia is encountering severe delays with her claim. Her claim for cancer was filed almost two years ago and as of yet the dose reconstruction has not been completed. The case was placed on hold pending the creation of a class in the Special Exposure Cohort for at least some undefined subset of workers at this facility, however this led to a question concerning whether there were actually two facilities.[11] In order to resolve this question additional information was sought from the DOE. We understand that the question as to whether there were two facilities has been resolved and presumably this claim can proceed. In the meantime this claimant indicates that in light of the medical bills associated with her illness, she is close to exhausting all of her savings and is frustrated that no one can provide her with an estimate of how much longer it will take to resolve her claim. She also is upset that there is no provision in the EEOICPA for temporary assistance in situations such as hers where there is such an extended delay in the processing of the claim.[12]

SECTION 5.5

DOE Contractor or Subcontractor

This past year, there were a number of instances brought to our attention where the claimant encountered difficulties establishing that his/her employer had a contractual relationship with DOE (or a DOE contractor) - a statutory requirement in order to establish coverage in those cases. As difficult as it can sometimes be for claimants to prove that they worked at these facilities, it is often virtually impossible for claimants to prove the existence of a contractual relationship between their employer and DOE (or a DOE contractor). Claimants assert that they were simply hired and/or directed to work at these sites and never had reason (or a need) to inquire about the existence of a contract. Consequently, where neither DOE and/or the employer can produce evidence of a contractual relationship, claimants indicate that they are at a complete loss as to where to look for these records. Compounding this problem for many claimants is the fact that the evidence that they are able to locate is often deemed insufficient to establish a contractual relationship.

The problems encountered by claimants attempting to establish a contractual relationship are illustrated by a few examples brought to our attention this year.

- A gentleman submits two affidavits signed by co-workers attesting to his employment as a trackman at the Paducah Gaseous Diffusion Plant (PGDP). To further bolster his claim, he submits his USEC badge[13]; his PGDP visitor access card and his "PGDP General Employee Training" access badge. In spite of these submissions, the claim is denied on the ground that "[n]o evidence was submitted to establish that a contract existed between the employee's employer and the DOE as required under the Act."

- Relying on records located by DOL, as well as records that he located, a former employee of one facility was able to establish that during the years in question, he worked for various employers. He also submitted four affidavits attesting that he worked at a DOE facility, as well as a letter from a union indicating that during the years that he worked for one of his employers, this employer performed services at this DOE facility. Unfortunately, because there is no way to verify that any of his employers were a contractor at this DOE facility, this claim was denied.

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[11] **The Special Exposure Cohort (SEC) is a category of employees established under the EEOICPA. An individual member (or eligible survivors of a member) of a class of employees included in the SEC is entitled to compensation if they have one of 22 specified cancers without having to undergo a dose reconstruction performed for his/her case by NIOSH, or to have a decision by the DOL as to whether the cancer was "at least as likely as not" caused by occupational exposure to radiation, as is required for other cancer claims covered by the EEOICPA.**

[12] **While the DEEOIC administers EEOICPA, many other agencies have a role with this program. For instance, NIOSH performs the dose reconstructions and creates the site profiles, while records from the Social Security Administration (SSA) are often needed to verify employment and determine wage loss. Some claimants become frustrated when problems with their claim are attributed to other agencies. Claimants believe that since DEEOIC administers EEOICPA, it ought to do more to ensure that these other agencies timely perform their duties. In response, DEEOIC notes that it does not have authority over these other agencies. [We do note that this year DEEOIC issued policy guidance to allow for more expeditious interaction with SSA to obtain vital employment verification and wage-loss information].**

[13] **The United States Enrichment Corporation (USEC) is a government-owned corporation that assumed has assumed control of PGDP's production activities.**

- Although civilian employees of the federal government generally are not covered under Part E, there is an exception where the federal agency (1) entered into a contract with the DOE for the accomplishment of services that it was not statutorily obligated to perform and (2) the DOE compensated the agency for that service. In a couple of the instances brought to our attention, civilian employees of government agencies, or their survivors, have found it virtually impossible to establish that (1) a contract existed between their agency and the DOE, and (2) that the DOE compensated their agency for their services. In one instance, the claimant is very troubled that she was able locate a contract, yet her claim was still denied on the ground that the contract she located was not a contract as required by Section 7384l(12) – namely a contract to provide management and operations, management and integration, environmental remediation services, construction, or maintenance services. 42 U.S.C. § 7384l(12).

- We were also approached this year by three former cafeteria workers at Line 1 of the Iowa Ordnance Plant. Among the problems encountered by these former workers, they are all finding it difficult to establish that their employer (Aramark) had a contract with the DOE contractor (Mason & Hanger-Silas Mason Co., Inc.). Although some of these former workers submitted affidavits attesting to their employment in the cafeteria, their claims are stymied by the inability to prove the existence of a contract between their employer and a DOE contractor.

Especially where the record contains affidavits or other documents attesting to their presence at these facilities, claimants cannot understand why there is an additional burden on them to establish the contractual relationship between their employer and DOE (or a DOE contractor). Claimants assert that it is unfair and too high of a burden to expect them to produce evidence of a contract that they never knew existed and to which they were never a party. Some claimants assert that it was their employer and DOE (or a DOE contractor) who were privy to these contracts and thus argue that it is the employer and/or DOE who ought to bear responsibility if the contract cannot be located. To further emphasize their difficulties, some claimants note that when they are asked to establish the existence of these contracts, no one is able to provide them with any suggestions on what to do or where to go to obtain this evidence.

Definition of eligible child

Under Part B, if the worker dies, the survivors eligible to receive benefits include: the eligible spouse; any child; parents; grandchildren; or grandparents. Part E, however, is more limiting in terms of the eligible survivors. Under Part E, if the worker dies, the eligible survivors are the eligible spouse or certain children – specifically, children who at the time of the worker's death were either:

1. under age 18;
2. under age 23 and continuously enrolled as a full time student; or
3. any age, but incapable of self-support.

This provision of Part E continues to be the source of many of the complaints and grievances that we receive. Moreover, throughout the past year, we received numerous inquiries asking if this provision had been amended or revised. Similarly, whenever we send out notices announcing an upcoming town hall meeting, we can expect an influx of telephone calls inquiring on the status of this provision.

At all of our town hall meetings we can expect that a number of attendees will express their opinion on this provision of Part E limiting the children who qualify as eligible survivors. In fact, during one of the meetings we attended in Paducah, Kentucky, a group of claimants spoke as a group and specifically requested that I guarantee that in this report I let it be known that they strongly believe that this provision is unfair and they earnestly believe that this provision needs to be revised or changed.

In their complaints concerning this provision, claimants:

- Question why there is a limitation on the children eligible to receive benefits under Part E, when there is no limitation on the children eligible to receive benefits under Part B.
- Argue that it is unfair to have waited until many of the workers were deceased before establishing this program, and then to place such severe limits on the eligibility of the surviving children.
- Note that while they did not do it for the money, in many instances it was the older siblings who took time off from work and made other sacrifices to care for the ill parent and thus it is unsettling that it is often these older siblings who are not eligible under Part E.

During this past year, a number of claimants informed us that this provision was the cause of family disharmony. We are also aware of instances where the application of this provision resulted in certain family members feeling excluded. In one instance, a claimant who we encountered earlier in the year specifically contacted us in the months before this report was due in order to re-emphasize his concerns with this provision. This claimant concedes that he understands why, if a parent were to die "today," you would only compensate the "minor" children. However, his problem involves those situations where the parent passed away years ago. Under those circumstances, he cannot understand the rationale for compensating those siblings who were "minors" when the parent died, but not compensating the other siblings, especially since all of the children are now adults.[14]

This year we were approached by claimants who encountered difficulties with that portion of the statute that provides that a child is an eligible survivor if at the time of the worker's death the child was under the age of 23 and continuously enrolled as a full time student. In one instance, the child was a full time student until they chose to attend school part time in order to take care of her ailing parent. This child strongly believes that denying her claim because she was not a full time student penalizes her for her decision to care for her parent.

In another instance, the child admits that for most semesters, he did not carry a full case load. This child asserts that this decision was prompted by his need to work and his desire to maintain his grade point average. He argues that to hold that he was not a full time student ignores the fact that he went to school every summer and thus graduated with his class (and graduated with a commendable grade point average). Although his

[14] This claimant strongly believes that in drafting this provision, no one realized the number of potential claimants who would be impacted.

claim was initially denied, he was able to subsequently obtain a document from his school that attempts to support his argument that he was a full time student.

Factors that reduce or nullify compensation

- Pursuant to Section 7385s-1(2), if the DOE contractor employee dies prior to the payment of compensation, then compensation on that claim shall not be paid. Instead, the eligible survivors of that employee must file a claim for survivor benefits. See 42 U.S.C. §7385s-1(2).[15] The potential impact of this provision lies in the fact that while the maximum compensation under Part E for an accepted claim filed by the contractor employee is $250,000, the compensation for an accepted claim filed by an eligible survivor ranges between $125,000 and $175,000. Moreover, under Part E a survivor's claim can only be pursued by qualified survivors. Thus, the death of a worker prior to the payment of compensation may reduce or negate the amount of benefits ultimately paid to the qualifying survivors. The awareness that this possibility exists often adds to the stress felt by many claimants as they process a Part E claim. Most claimants are already anxious to have their claims promptly resolved. This anxiety can transform into a sense of urgency when claimants realize that, in the event of the worker's death, no family member will qualify as an eligible survivor under Part E. Throughout the course of this past year workers shared with us their fear that not only would they never "see" any compensation, but that no one in their family would "see" any compensation as well.

  This same concern often weighs heavily in instances where family members are involved in the processing of the claim. In many of the instances brought to our attention, family members only became involved in the processing of a claim in response to the deteriorating health of the worker. As discussed in Section 4.1, many family members find it very stressful to process an EEOICPA claim while trying to assist an ill family member. The knowledge that the payment of compensation could be impacted by the death of the worker (prior to the payment of compensation) oftentimes just adds to this stress.

  Whether it is a worker worried that he/she may pass away prior to the payment of compensation, or a family trying to complete the claims process prior to the death of the worker, the knowledge that the death of the worker prior to the payment of compensation could impact the amount of compensation that is eventually paid helps explain why many claimants react so strongly to perceived delays in the processing of their claim. Moreover, many workers, as well as their families, believe that workers "earned" this compensation by working at these facilities and by being exposed to the toxins present at the facilities. Since they believe that this compensation was "earned," these claimants question why this compensation is reduced or negated if the worker dies prior to its payment.[16]

  As with other aspects of this program, claimants contend that it is unfair and contrary to the "claimant friendly" nature of this program to have waited so long to establish the EEOICPA program and to then condition the amount of compensation on whether the worker is living when payment is made – especially in a program where it can take years to complete the claims process.

[15] The exception to this rule involves the situation where the employee applied for compensation but died before compensation was paid and the employee's death occurred solely from a cause other than the covered illness of the employee. Under this circumstance, the eligible survivor of that employee may elect to receive, in lieu of survivor compensation, the amount of compensation that contractor employee would have received if the employee's death had not occurred before compensation was paid.

[16] We again note that DEEOIC has a process whereby if informed of the terminal illness of a claimant, it will expedite the claim. Unfortunately, many claimants are not aware of this process. In addition, there have been instances where, even in spite of efforts to expedite the claim, the worker dies prior to the payment of compensation.

Note: Part E claims filed by living workers often involve two decisions – first it must be determined that the worker is an eligible employee with an eligible illness. If this is determined, the worker is entitled to medical benefits for the covered illness. If the worker is found to be an eligible employee with an eligible illness, the worker can then potentially file for compensation for wage loss and/or impairment based on the covered illness.

Each determination – that the worker is an eligible employee with an eligible illness and entitlement to wage loss and/or impairment compensation – involves two decisions, a recommended decision issued by the claims examiner and a final decision issued by the Final Adjudicatory Branch. While we only see a fraction of the decisions issued by DEEOIC, based on the recent decisions that we reviewed, it appears many cases now have decisions issued in less than one year. In fact, we are aware of cases where the time from the filing of the claim to the decision on wage loss and/or impairment was approximately one year. However, many of the cases that we encounter involve claims that have been pending for some length of time. Some of the factors that extend the time for processing a claim include: the need for a dose reconstruction (currently this can add a year to the processing of the claim) and the need to locate additional evidence or to further develop certain issues. In addition, we encounter cases where the claimant only prevails after seeking reconsideration or upon the filing of their second claim.

- Another problem that we encounter involves 42 U.S.C. §7385j that provides that with the exception of individuals who receive, or have received, $100,000 under Section 5 of the Radiation Exposure Compensation Act (RECA) (42 U.S.C. §2210), an individual may not receive compensation or benefits under the EEOICPA for cancer and also for compensation under the RECA. This is another example where some claimants are unable to grasp the many rules and exceptions – while the Department of Justice assures us that they advise claimants that the acceptance of RECA benefits may impact eligibility for EEOICPA, we encounter claimants who are surprised when informed that because of their acceptance of RECA benefits, they are not entitled to benefits or compensation under the EEOICPA. In one instance, the claimant admits that she was aware that acceptance of RECA benefits would negate her eligibility for EEOICPA benefits, but notes that when she accepted the RECA benefits, her EEOICPA claim appeared to be “going nowhere” and she needed the money. Because an award under Part E could potentially yield more compensation than that received under the RECA, this claimant indicates that it would be acceptable to her if she were allowed to pursue a Part E claim and if any Part E award were reduced by the amount that she previously received under the RECA.

EXPOSURE

Under Part E, claimants must establish that in the course of his/her employment, the worker came into contact with toxins (exposure). Unfortunately, many claimants were never told the identity of the toxins to which they were exposed and in some instance, were not even aware that they were exposed to certain toxins. In light of this lack of knowledge, some claimants question the assistance provided to them in identifying these toxins.

Do not know the name of toxins

The main complaint that we hear concerning the requirement to prove exposure is that many workers cannot identify all of the toxins to which they were exposed. Many claimants argue that requiring them to establish the toxins to which they were exposed displays a lack of understanding of how these facilities operated. Claimants repeatedly remind us that these facilities operated on a "need to know" basis and thus while they may know the names of some of the toxins to which they were exposed, no one told them, and they never dared to ask, the names of many of the other toxins to which they came into contact. Claimants also note that while SEM identifies substances by their formal chemical name, in many instances, the employees only knew these substances by their trade name, or by the name given to these substances by the other workers. The story of one worker's first day on the job at Paducah clearly illustrates this fact. This gentleman recalls how on his first day, one of the more experienced workers pointed to a big pipe and told him that if he ever saw anything come out of that pipe, he should run "upwind." That gentleman recalls that later that day, a brown mist started to come out of the pipe and as instructed, he ran "upwind." This gentleman assures us that these "releases" happened on a somewhat frequent basis, yet he has no idea what the brown mist was – all he knows is that when this mist came out, everyone ran "upwind."

SECTION 6.0

SECTION 6.1

Since they often do not know all of the toxins to which they were exposed, many claimants believe that more should be done to assist them in identifying the toxins that were used at these facilities. As we discuss in more detail in Section 6.2 (below), in order to assist claimants, the DOL established the Site Exposure Matrices (SEM), which provides a listing of the toxic substances verified as having been onsite and used at particular DOE sites. Claimants find that the information on SEM is not presented in the most helpful manner.

NIOSH also develops Site Profiles on specific work sites. A Site Profile includes the physical appearance and layout of the work site, the work processes used at the site, the types of materials used, potential sources of radiation, and other details important at that work site. As with SEM, claimants question the accuracy of Site Profiles. Many of the complaints that we receive allege that the listings of the materials used and the potential sources of radiation are incomplete. In addition, we are occasionally contacted by claimants who question the information concerning the physical appearance and layout of some of these work sites. We have heard arguments suggesting that certain Site Profiles do not take into consideration the duct work or ventilation systems that claimants believe helped spread toxins around these work sites.

SEM

In order to assist claimants, DOL created the Site Exposure Matrices (SEM), a repository of information on toxic substances present at DOE and Radiation Exposure Compensation Act (RECA) sites covered under Part E. Utilizing SEM, one can assess a list of the toxic substances verified as having been onsite and used at particular DOE sites. In addition, SEM provides a listing of the toxic substances with a known causal link to approximately 130 occupational illnesses. Parts of SEM are available to the public and there are claimants who find that SEM is a useful tool. We also encounter claimants, however, who tell us that the assistance provided by SEM is inadequate. Some of the complaints received this year concerning SEM suggest that:

- **Some claimants cannot access SEM.** SEM is a website. Where claimants do not have access to the internet and/or are not computer savvy, they are often unable to access SEM. It is not unusual for our Office to be asked to mail a copy of the relevant pages of SEM to claimants.

- **SEM is not always very helpful**. In some instances there are over 500 toxins verified as having been onsite and used at a particular facility. For example SEM lists 680 toxins as having been onsite and used at Fernald; for Paducah there is a listing of 823 toxins; and the Iowa Ordnance Plant has a listing of 571 toxins. Many claimants find these listings much too long to be useful. Some claimants contend that it is asking too much to expect them to research every toxin on these long lists to determine if any of these toxins may be causally linked to their illness. Similarly, claimants report that many doctors are unwilling to review such long lists.

  Many claimants assert that it would be more helpful if SEM identified toxins according to the years that these toxins were onsite and/or by the specific location where these toxins were used. To date, requests that SEM identify toxins according to the year and location have been denied citing to national security concerns. In light of recent news articles suggesting that the government has efforts underway to declassify more information, there are claimants who question why more is not done to make the entire SEM available to them. A recent response by the DEEOIC indicates that it continues to work with the DOE to address the concerns regarding public availability of the entire SEM. In the meantime, the DEEOIC assures claimants that the entire SEM is reviewed when processing their claims.[17] Many claimants, however, would prefer to review the entire SEM for themselves (or have their own experts review the entire SEM).

  Another concern that we continue to hear involves instances where claims were denied prior to the time SEM was available to the public. In response to these concerns, the DOL asserts that even though the information was not available to the public, it was available to the DOL and assures that this information was reviewed by the DOL in determining these claims. Claimants continue to question why if this information was available, it was not made available to the public and as a result these claimants express little confidence in the decisions rendered before this information was available to the public.

  In addition, while SEM contains a listing of occupational illnesses and identifies the toxic substances with a known causal link to these illnesses, this listing is currently limited to approximately 130 illnesses. In many instances, especially where the illness is not one of those 130 listed on SEM, claimants find it very difficult to locate evidence linking their illness to a work related toxin.

- **Claimants question the accuracy of SEM.** A number of claimants contacted us to complain that SEM either does not contain all of the toxins to which they were exposed or does not identify all of the toxins with a potential causal link to their illness. There is a process whereby claimants can submit additional information for inclusion on SEM. However, some claimants find this process intimidating and there are other claimants who do not have internet access. More importantly, establishing that a toxin was onsite and used at a particular site requires very specific evidence. Unfortunately, many claimants do not possess, and

[17] We are aware of instances where the decision issued by the DEEOIC listed all of the toxins that a person in a particular labor category could have been exposed. Some claimants find it troubling that in reaching a decision, the DOL relies upon information that is not in the record and thus is information that is hard to verify.

are unable to locate the quality of information needed to verify that a toxin was onsite and used at a specific location. Consequently, many claimants complain that the additional evidence that they offer for inclusion on SEM is not accepted (or never included on SEM).

Dose Reconstruction

Pursuant to the act, dose reconstructions are performed for all covered employees with cancer who are not members of a SEC. Responsibility for conducting dose reconstructions has been given to NIOSH's Office of Compensation Analysis and Support (OCAS).[18] According to the OCAS, a dose reconstruction characterizes the occupational radiation environment to which workers were exposed using available worker and/or workplace monitoring information. If radiation exposure in the workplace environment cannot be fully characterized based on available data, default values based on reasonable scientific assumptions are used as substitutes.

Entitlement to compensation in cases where a dose reconstruction is performed is based on the probability that the worker's cancer was "at least as likely as not" related to his/her exposure to ionizing radiation during employment at a covered facility. With respect to dose reconstructions, the DOL has interpreted "at least as likely as not" as requiring a probability of 50% or more.

To date, the vast majority of the complaints that we receive concerning Part B of the EEOICPA relate to the dose reconstruction. Here are the most common complaints that we received this past year:

- **Length of time that it takes to perform a dose reconstruction:** We receive a number of complaints concerning the amount of time that it takes to perform a dose reconstruction. While we only see a fraction of the cases submitted for dose reconstruction, it is our experience that on average a dose reconstruction takes approximately one year to perform. There are occasions, often involving situations where additional exposure information is required or there are questions concerning the methodology where the dose reconstruction can take much longer than one year.

  Claimants strongly believe that more needs to be done to expedite dose reconstruction process. The one year that it takes on average to perform dose reconstructions causes a fair amount of frustration – when the process takes longer, frustrations grow.

NIOSH recognizes that there are concerns with the amount of time that it takes to perform a dose reconstruction and indicates that it is working to ensure that within one year there is no claim where the dose reconstruction is pending for more than one year.

- We also receive numerous complaints questioning the accuracy of the information used by NIOSH to perform dose reconstructions. Many claimants contend that in performing their dose reconstruction NIOSH did not have (or did not use) an accurate accounting of their exposure to radiation. Many workers assure us that they did not spend their entire workday at one location, but rather moved around the facility. Consequently, these claimants believe that in measuring their exposure to radiation it is not accurate to only rely upon job descriptions and job titles, nor is it reasonable to simply focus on their assigned job site. We frequently hear accounts such as the one provided by a former employee at the Portsmouth facility who noted that it was not unusual for his supervisor to send the majority of his crew to work on jobs unrelated to their assigned jobs and to leave a "skeleton" crew to handle any matters that arose – yet these "detours" were never reflected in official records, and because they occurred routinely, the employees never thought to keep their own records of these events.

[18] The one cancer that has been excluded is chronic lymphocytic leukemia (CLL). The statute specifically excludes CLL from consideration as a cancer for SEC purposes, and NIOSH regulations exclude CLL with respect to dose reconstructed cancer claims.

During the dose reconstruction process claimants have the opportunity to present additional evidence concerning their exposure to radiation. Some claimants argue that in spite of the additional information that they provide, NIOSH still does not accurately determine their exposure to radiation (or fails to give full credence to the evidence that they submit). In the end many claimants find it hard to believe that in spite of their many years of exposure to radiation (and sometimes the many spills and releases to which they were exposed) their dose reconstruction is "so low."

- The OCAS describes dose reconstruction as "the scientific process of estimating a worker's past exposure to radiation. It uses exposure monitoring and other information to determine what levels of radiation the workers were exposed to while they worked at a facility." Some claimants argue that it is not appropriate to deny their claim on the basis of estimates. These claimants argue that if their exposure to radiation cannot be accurately calculated, then they ought to be awarded compensation.

- Another complaint involves instances where claimants who receive a dose reconstruction for one cancer are discovered to have a second cancer and thus must undergo a second dose reconstruction. A number of the claimants who have undergone this experience are dumbfounded that the second dose reconstruction (for multiple cancers) yielded a probability of causation that was lower than the probability of causation for the one cancer.[19] OCAS explains that this phenomenon is the result of "overestimating" certain dose reconstructions – i.e., where the most likely result in a probability of causation would be well below 50%, in an effort to expedite the process, the dose reconstruction was overestimated.[20] The problem with overestimates arises when claimants develop an additional cancer, and a second dose reconstruction is required. The OCAS then gathers additional evidence and uses more precise calculations to determine the dose reconstruction for these multiple cancers. In some instances, the (second) dose reconstruction for the multiple cancers yielded a probability of causation lower than probability of causation for the (first) over estimated dose reconstruction for the one cancer. In light of the confusion caused by overestimates, the OCAS states that it now routinely inserts language in overestimated dose reconstructions to notify the claimant that if the facts surrounding his/her dose reconstruction change, the dose reconstruction for the organ site could be different than that reported using the efficiency process. Nevertheless, claimants who experienced this phenomenon with over estimates have assured us that as a result of this experience, they have little, if any, confidence in the accuracy of dose reconstructions and/or the EEOICPA.

- Section 30.318(b) of the regulations promulgated by the DOL provides that one cannot challenge the methodology of dose reconstructions (you can challenge the application of the methodology). Many claimants question this provision and argue that it shields the dose reconstruction process from the scrutiny that it needs.

[19] Dose reconstructions use exposure monitoring and other information to determine what levels of radiation the worker was exposed to while working at a facility. The information from the dose reconstruction is used by the DOL to determine the probability that the worker's cancer was "at least as likely as not" due to the employee's occupational exposure to radiation during employment at a covered facility (probability of causation).

[20] According to NIOSH, because dose reconstructions can be time consuming, where the most likely result in a probability of causation will be well below 50%, NIOSH significantly overestimated the exposure based on the highest levels of exposure observed or possible for the facility. The reasoning was that if the claim was not compensable using these significantly overestimated exposure estimates no further refinement to the dose reconstruction was required. While the desire to expedite the dose exposure process was laudable, these overestimated results often misled claimants into believing that since their dose reconstruction was close to 50%, additional exposure would certainly result in a dose reconstruction higher than 50%. Unfortunately, in many instances the submission of additional evidence and/or the discovery of an additional cancer actually resulted in a lower dose reconstruction.

CAUSATION

Under Part E it must also be established that it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness or death. 42 U.S.C. §7385s-4(c)(1)(A).

The difficulties encountered trying to establish causation can vary depending on the illness and the toxins to which the employee was exposed. In some cases, there is an abundance of medical literature linking the illness to certain toxins, and in these instances establishing a causal link is often possible. In other instances, there are claimants who suffer from illnesses for which there is little (or no) medical literature linking the illness to any toxins (or to any toxin to which the worker was exposed). In these latter instances establishing causation can be difficult. For instance, if a claimant has asbestosis, leukemia and mesothelioma and if certain specific criteria are met, then pursuant to Bulletin 06-08 the claims examiner can accept that exposure to the listed toxic substance is at least at likely as not a significant factor in aggravating, contributing to or causing the illness. On the other hand, many claimants who suffer from prostate or breast cancer find it extremely difficult to establish a causal link to any work related toxin, even where the worker has many years of exposure to toxins.

- One of the biggest problems with the causation requirement stems from the fact that many claimants do not see the need for a causation requirement. Some claimants believe that they ought to be entitled to compensation if they worked at a covered DOE facility; were exposed to toxins; and now have an illness. An argument that we frequently hear is that unless someone can show that these toxins did not have any impact on their illness, claimants ought to be compensated.

  We also encounter instances where claimants are convinced that they have fully satisfied their requirement to establish a causal link once they locate medical literature linking their illness to toxins to which they were exposed (or where SEM links their illness to toxins known to have been present at their work site). These claimants often are unable to understand why more is required. When advised of the need to establish that it is at least as likely as not that exposure to one or more of these toxic substances was a significant factor in aggravating, contributing to, or causing the worker's illness, many of these claimants immediately respond noting that it will be extremely difficult to locate a doctor who will provide such an opinion.

- Another issue that arises with respect to causation concerns the quantity and quality of evidence needed to establish this causal link. Many claimants become frustrated when their medical evidence is rejected or returned for further development. It is often argued that it would be more efficient if in advance claimants knew both the "type" of evidence that they needed to obtain, as well as the manner in which this evidence needed to be presented. Many claimants indicate that it would be helpful if they could see samples of some of the medical opinions that the DOL found acceptable. Claimants also note that since it takes so long to schedule an appointment, it simply adds to the delay in processing a claim when they are forced to return to physicians, sometimes on multiple occasions, for further development of evidence. Claimants tend to agree that physicians bristle when reports are returned to them for further development and there is a fear among some claimants, that as a result of this process, physicians are (or will become) less inclined to work with them.

- We receive a lot of questions that involve situations where two people worked side by side, exposed to the same toxins, and while both suffer from illnesses (sometimes the same illness), one is compensated and the other is not. The difference in outcomes is partly explained by the fact that from a medical/scientific standpoint exposure is just one of many factors that impacts causation. Some of the other factors relevant in determining causation include: family history; race; sex; and age. Moreover, in considering causation, there are a number of factors related to exposure that are relevant such as: the date of the diagnosis; the duration of the exposure; the intensity of the exposure; as well as the latency period. While most claimants appreciate that these other factors can be relevant, we encounter many claimants who nevertheless believe that exposure is determinative of causation, especially where an individual had long term direct (and often continuous) exposure to harmful toxins.[21]

[21] These factors are another reason that it is impossible to meet the demand by claimants for a formal listing of all of the illnesses "presumed" to be caused by toxic substances.

- Claimants also question whether the DOL is using the correct standard in measuring whether a claimant has met their burden. Recognizing that "at least as likely as not" as used in Part B for cancers is interpreted as 50% or more, see 42 U.S.C. § 7384n(b), many claimants argue that "at least as likely as not…a significant factor" as used in 42 U.S.C. § 7385s-4(c) ought to be less than 50%. These claimants argue that the inclusion of the phrase "a significant factor" in Section 7385s-4, a phrase that is not contained in Section 7384n(b), indicates that these two provisions should not be interpreted in the same manner. Claimants assert that by its terms "at least as likely as not…a significant factor" (underlining added) is a lower standard than "at least as likely as not," and thus argue that when you interpret these two provisions in the same manner, you ignore Congress' specific inclusion of the phrase "a significant factor" in Section 7385s-4.

- Causation continues to pose specific problem for survivors. In Part E survivor claims, the issue is whether exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the death of the worker. Some survivors note that where the worker died prior to the passage of the EEOICPA, there was never any reason (until now) to inquire whether toxins were a factor in the death of their loved one. In fact, some survivors note that prior to the passage of the EEOICPA, they knew very little concerning the toxins to which their loved ones were exposed, and thus, even if they had wanted, it would have been impossible to provide these physicians with sufficient evidence to form a reasoned conclusion. Claimants also tell us of instances where the doctor simply provided a vague description of the cause of death – i.e., heart failure, because the physician pronouncing the death (who often was not the treating physician) saw no need for a full discussion of the complex circumstances that actually led to the worker's death (and at that time the family saw no reason to ask of a full discussion). In light of this, we continue to encounter survivors who bemoan the fact that they did not have an autopsy performed or did not follow up on those passing remarks made by doctors suggesting that the death of their loved one was related to the toxins to which he/she had been exposed.

Lastly, many survivors argue that if the medical evidence developed while the worker was alive (or around the time of death) does not mention exposure to toxins and/or does not address a causal link between work related toxins and the death of the worker, then years later it will be virtually impossible to find a doctor willing to offer an opinion addressing this link.

Special Exposure Cohorts

When the EEOICPA was initially established, Congress created four Special Exposure Cohorts (SEC). 42 U.S.C. § 7384l(14). Section 7384q authorizes the Department of Health & Human Services (HHS) to create additional SEC's when HHS determines that:

- "it is not feasible to estimate with sufficient accuracy the radiation dose that the class received" and
- "there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class."

SEC members with certain specified cancers do not require dose reconstructions to qualify for compensation. Here are the most common complaints that we received this past year concerning SEC's:

- We receive questions inquiring why certain facilities are designated SEC's while others have not received this designation. Some claimants question the fairness of the process utilized for selecting SEC's.

- To be included in the SEC class, the worker must have 250 days of employment at a SEC work site. While it may sound minimal, we are contacted by claimants who find it difficult to meet this 250 day requirement. In many instances, the lack of evidence surrounding a SEC includes a lack of employment evidence and this in turn impacts the ability of some claimants to establish the requisite 250 days of employment. Compounding this problem is the fact that for purposes of SEC's, the 250 days must be at the SEC work site and in many instances, the SEC work site does not include the entire facility. We are aware of instances where claimants were able to establish many years of employment at the facility, but could not establish 250 days at the SEC work site.

- Some claimants believe that a blanket rule requiring 250 days of exposure ignores the fact that there are circumstances where radiation exposure can have a debilitating effect even though the worker has less than 250 days of exposure. One claimant has obtained medical evidence suggesting that even one day of his particular exposure could have significantly impacted the probability that his illness was related to his exposure and this claimant does not understand why this information is not taken into consideration in determining whether he qualifies for inclusion in the SEC class.

- Claimants also contend that the 250 day requirement sometimes fails to recognize that their exposure to radiation at the SEC work site could have combined with other non-SEC work site exposure to cause their illness.

- In one situation brought to our attention, a gentleman was employed at a non-SEC work site but worked with samples taken from a SEC work site. This gentleman strongly believes that it is unfair that he is not included in the SEC for facility where the samples originated. In the opinion of this gentleman, his employment at a non-SEC work site does not diminish the fact that he worked with samples taken from a SEC work site, and thus he had the same exposures as someone who was physically onsite at this SEC work site.

- If a facility (or portion of a facility) is designated a SEC, then claimants who meet the requirements for inclusion in the SEC class do not require a dose reconstruction for compensation if they suffer one of 22 identified cancers. A number of claimants have contacted us to complain that they suffer a cancer that is not one of the 22 identified cancers. Claimants question why certain cancers are included on this list of 22 while others are not.

- We continue to receive inquiries concerning chronic lymphocytic leukemia (CLL). Currently, CLL is statutorily excluded from SEC inclusion, see 42 U.S.C. § 7384l(17) and is excluded from dose reconstructions by regulations issued by NIOSH. Claimants have uncovered and have submitted evidence challenging the premise that CLL is not related to radiation exposure. Although these claimants have been assured that NIOSH is reviewing this information, as well as the status of CLL, in the opinion of these claimants, this review is taking a long time. In the meantime, for purposes of SEC's, CLL is not one of the 22 cancers, and claims for CLL are not forwarded to NIOSH for dose reconstruction.

- While the establishment of SEC's is generally viewed as favorable to claimants, some claimants can be disadvantaged by this designation. A SEC class is designated because some data is unusable in dose reconstruction. Therefore, where a SEC class is designated, but the claimant does not meet the criteria for compensation under the SEC (i.e., the claimant does not have one of the 22 qualifying cancers listed for the SEC and/or does not meet the employment criteria of the SEC class) NIOSH can only reconstruct a portion of the dose. While a partial dose reconstruction is considered "complete" and is the best estimate given that all reliable data available was used, claimants nevertheless question the propriety of denying their claims where it is readily conceded that evidence is unusable and only a partial dose reconstruction was performed.

The Synergistic Effects

Part B compensates for specific illness, including cancers caused by radiation exposure. Part E, on the other hand, compensates for any illness (or death) where it is at least as likely as not that exposure to a toxic substance (including radiation) was a significant factor in aggravating, contributing to, or causing the illness or death. In some instances where the Part B claim is denied because the dose reconstruction is less than 50% and the Part E claim is denied because it is not as least as likely as not that the illness was caused, aggravated by or contributed to by exposure to toxins, some claimants respond by questioning whether their illness could be the result of the combination of ionizing radiation and chemical exposure. Some claimants have voiced concerns that SEM in particular and DOL in general, does not address the combination of ionizing radiation and chemical exposures.

DOL acknowledges that SEM does not address synergy but asserts that this is because currently there is not sufficient peer reviewed medical literature to support such information. The DEEOIC notes that their Health Physicists evaluate all cases where synergy is alleged. From a practical standpoint, this means that the claimant must come forward with evidence to support a claim of synergy. Claimants do not consider it fair to have the burden placed on them to come forward with evidence of synergy. Claimants argue that the time and expense needed to develop this information should be borne by those who exposed them to these dangers. In addition, some claimants complain that their search for evidence of synergy is impeded by a lack of guidance. Claimants find the guidance provided by the DEEOIC to be vague – claimants tell us of situations where they submit evidence only to become frustrated when informed that this evidence is insufficient. To the extent that the burden is on them to submit evidence of synergy, claimants would like greater guidance in developing evidence to address this rather complicated issue.

IMPAIRMENT/WAGE LOSS

In Part E claims filed by living workers, if the worker establishes that he/she was a DOE contractor or subcontractor employee who contracted a covered illness through exposure to a toxic substance at a covered DOE facility, a decision will issue finding this worker eligible for benefits. If found eligible, the worker also receives a medical benefits card that they can use to pay medical bill for the covered illness.[22] This determination of eligibility for benefits does not, however, result in the payment of compensation. Rather under Part E, entitlement to compensation in claims filed by living workers is based on the level of impairment and/or the wage loss due to the covered illness. Moreover, a written request to the DOL is necessary in order to trigger a determination of entitlement to compensation for impairment and/or wage loss.

This is a source of frustration for many workers. Some workers are under the impression that compensation is paid once they are determined to be eligible for benefits. Consequently, when they are determined to be eligible for benefits, these workers are surprised to discover that additional steps must be undertaken in order to receive compensation. Some claimants indicate that after investing so much time and energy to establish employment, exposure and causation, it is frustrating to be asked to submit additional evidence in order to establish impairment and/or wage loss.

A few years ago, we encountered a number of claimants who were found eligible for benefits, yet did not realize that they needed to make a written request to the DEEOIC for compensation for impairment and/or wage loss. Since then the DEEOIC worked with its Resource Centers to initiate an effort to notify claimants who were potentially eligible for wage loss and/or impairment, but who never applied. Consequently, there has been a decrease in the number of eligible claimants who are not at least aware of the option of filing for compensation for wage loss and/or impairment – although we still encounter some claimants who are surprised when informed that they can file for impairment and/or wage loss.

Impairment

An impairment award is monetary compensation for the permanent loss of function of a body part or organ, specific to the accepted illness/condition and is determined by a qualified physician using the American Medical Association's (AMA) Guide to the Evaluation of Permanent Impairment, 5th Edition (the Guide).

- Pursuant to 42 U.S.C. § 7385s-2(b), impairment ratings for purposes of Part E are determined in accordance with the 5th Edition of the Guide. Nevertheless, by the time an EEOICPA claim focuses on impairment, there are usually a host of medical reports in the record, and many of these medical reports will rate the worker's medical condition. Some claimants would prefer that the impairment rating be determined using one of the other ratings contained in the record, especially since these other ratings are often higher. Similarly, some claimants cannot understand why the impairment rating that is determined by using the Guide is so low when other doctors provided a higher rating for this same condition.[23]

- In recent years, the number of claimants who contact us because they cannot locate a physician qualified and willing to perform the impairment rating, or who do not understand that they have this option, has decreased. Nevertheless, we still encounter instances where claimants cannot locate a physician in their vicinity who is both qualified and willing to perform an impairment rating.[24]

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[22] This is the process for Part E claims filed by the DOE contractor or subcontractor employee. In Part E claims filed by survivors, a finding that the worker was a covered employee who died as a result of exposure to a toxic substance at a covered DOE facility entitles the survivor to a lump sum award of benefits. The base sum for survivor claims is $125,000 although the award can increase to $150,000 or $175,000 depending upon wage loss.

[23] For purposes of the EEOICPA, while an impairment rating compensates for the permanent loss of function of a body part or organ that is due to a covered illness, the percentage of impairment is based on loss of function of the whole person. Thus in some instances, the ratings provided by these other doctors were not based on the loss of function of the whole person and/or did not follow the 5th edition of the Guide.

[24] With respect to the impairment rating, claimants have the option of utilizing their own physician who is qualified and trained, or the DOL will gather the appropriate tests and have a qualified physician complete the impairment evaluation based on those tests.

While claimants have the option of utilizing a qualified physician of their choosing to perform the impairment rating, there have been instances where claimants were unable to exercise this option because their physician had not signed up for (or did not accept) the DOL medical benefits card. Claimants are advised to contact the DEEOIC if their physician does not accept the card – the DEEOIC indicates that it will contact the physician to explain the process to him/her. There were instances this year where we advised claimants to notify the DEEOIC that a physician did not accept the medical card. In most instances, we do not know if claimant followed up by contacting the DEEOIC, and if so, whether the DEEOIC's approach to the provider was successful. In the one instance that we are aware of, claimant advised us that even after speaking with the DEEOIC, the physician still refused to accept the medical card.

Wage Loss

The most common complaint that we hear concerning wage loss involves the inability to accurately document wage loss. Two situations arise. One situation involves workers who continue to work in spite of a covered illness. Claimants argue that it is unfair to deny Part E compensation since these workers continued to work (and maintained their wages) only as a result of extraordinary efforts. Unfortunately, the statute only compensates for actual loss of wages. There is no provision in the EEOICPA that provides for compensation to a claimant who, in spite of their illness, chose to continue working.

The other situation involves workers who terminated their employment or sought early retirement as a result of a covered illness, but never obtained medical evidence documenting this decision. Some claimants assure us that the decision to terminate their employment or to seek early retirement was based upon the advice of their physician, but note that the EEOICPA did not exist when they reached this decision. Consequently, these claimants argue that there was no way that they could have conceived that years later this documentation would become important. This is another instance where many claimants bemoan the fact that at the time, they did not seek to get "something in writing."

OTHER ADMINISTRATIVE MATTERS

Interactions with the DEEOIC

Throughout the claims process, claimants interact with the DEEOIC. This interaction usually begins when a claimant files their claim with a Resource Center.[25] Once the Resource Center completes its initial development, the claim is forwarded to one of the four District Offices. Based on our observations, as well as the comments that we receive, many claimants prefer to talk to someone directly (as opposed to talking to someone on the telephone or via e-mails) and want to establish some level of rapport with the person who is assisting them with their claim.

There are claimants, including some who have general complaints, who contact us to compliment the staff of the DEEOIC and/or the Resource Centers. Nevertheless, a majority of comments that we receive involve problems that arise when communicating with the DEEOIC. Here is a summary of the most common complaints that we received this past year concerning interactions with the DEEOIC:

- **Documents difficult to understand:** A large number of the complaints involving interactions with the DEEOIC are prompted by the complexity of the EEOICPA. A common complaint that we hear is that documents provided by DEEOIC are hard to understand and/or that instructions are confusing to follow. Claimants often tell us that they wish that someone would just speak to them using "plain language."

- **Cannot obtain answers to all of their questions:** Some claimants are concerned that they cannot receive an answer to their EEOICPA related questions. This year, we heard from claimants who were upset that no one would answer their question as to whether their EEOICPA benefits are subject to federal taxes. These claimants noted that while they were aware of the statutory provision in the EEOICPA addressing the taxability of these benefits, this provision was hard to comprehend. These claimants found it troublesome that in response to their inquiries, the DEEOIC simply referred them back to the statutory provision that they could not understand. We hear similar complaints with other aspects of the EEOICPA. Claimants often contend that in response to their questions, they are referred to statutory or regulatory provisions that are difficult to understand.

- **Documents not provided:** Many claimants find it troubling that some of the information relied upon in determining their claims is not publically available, or that they have to make a specific request in order to receive a copy of this information. We previously discussed SEM and how many claimants would prefer to have access to the entire SEM. Reports issued by District Medical Consultants (DMC's) raise a somewhat similar concern. The DEEOIC will provide claimants with a copy of the report prepared by the DMC if the claimant requests a copy. Unfortunately, many claimants are not aware that they can request a copy of the DMC's report and as a result claimants are sometimes perplexed by questions that would be answered if they had the opportunity to review the DMC report. Other claimants question why a copy of the DMC's report is not simply provided to them – they do not understand why they have to request a copy.

- **Time to respond is too short:** During the claims process, there are instances where claimants are requested to submit, within a specified time frame, additional evidence or further develop existing evidence. Many claimants believe that these time frames are too short. Where the further development requires input from a physician, many claimants argue that it often takes longer than the time allotted just to see the physician. A frequent complaint that we hear suggests that it is unfair that claimants are given short deadlines within which to develop or respond to evidence, yet when the DOL (or another government agency) has to respond to or develop evidence, there is no deadline – or if there is a deadline, claimants are not aware of this deadline, and any such deadline is clearly not in line with the deadlines imposed on claimants.

SECTION 9.0
SECTION 9.1

[25] A claim may be filed directly with the DEEOIC

SECTION 9.3

- **Change in claims examiners:** Claimants continue to voice concerns with the practice of changing claims examiners while the claim is pending. Claimants argue that these changes not only undermines the rapport they established with the previous claims examiner, but also causes additional delay as it often requires revisiting information that they had already resolved with the previous claims examiner. While we continue to hear these complaints, there has been a decrease in the instances brought to our attention where a pending claim was assigned to a different claims examiner.[26]

- **Rude/uncaring comments:** We continue to receive complaints alleging rude and/or uncaring comments. In most instances, these allegations involve situations where claimants have his/her version of the events and the DEEOIC offers a somewhat different version. We reviewed the allegations that we received over the past year looking for trends such as whether the allegations involve the same claims examiners or arise more often with particular offices. To date we have not discerned any noticeable trends.

  Our review of these allegations do suggest that when they contact DEEOIC, many claimants are very anxious and are confused – in fact in many instances it is a communication from the DEEOIC, a communication that the claimant does not understand, that prompts the claimant to contact the DEEOIC. By and large in spite of their workloads, the DEEOIC personnel fully appreciate the pressures that claimants are under, and go to great lengths to assist claimants. Nevertheless, there are opportunities for misunderstandings.

We encourage claimants to continue to bring their allegations of rude and/or uncaring conduct to our attention so that we can, in turn, bring these matters to the attention of the DEEOIC. The DEEOIC continues to affirm its commitment to provide claimants and potential claimants with professional and courteous service.

Processing of Claims Takes Too Long

SECTION 9.2

The length of time that it takes to process a claim is not only a major complaint, but also continues to compound many of the other complaints that we receive. While we only see a fraction of the cases issued by the DEEOIC, we are aware of cases where claimant received a recommended decision within approximately 5 months of the filing of their claim and we are aware of instances where both the recommended and final decisions issued within approximately one year of the filing of the claim. Thus, there are claims that are processed in an expeditious manner. Unfortunately, we also encounter instances where claims do not proceed expeditiously. We have already discussed two reasons that contribute to delay, i.e., dose reconstructions (see the discussion at Section 6.3) and the need to develop further evidence (see discussion at Section 7.0).

Another factor that impacts the amount of the time that it takes to process a claim is the length of time it sometimes takes the DOL to develop (or respond to) evidence. A common problem that we hear involves situations where claimants tell us that their claims have been “sent to Washington” or forwarded for further medical development, or that their case is awaiting review by an “attorney.” In some instances, claimants report that they wait long periods of time for a response to these actions.

Claimants believe that the lack of guidance provided to them is another reason that the processing of claims can take so long. As we noted in our discussion at Section 9.1, many claimants argue that it is only when they submit their medical reports that they are advised of the information that should have been included in these reports. Similarly many claimants remark that it is only when they receive the decision denying their claim that they become aware of the specific evidence needed to prevail. Claimants contend that the claims process could be expedited if more guidance was provided in advance.

[26] There are instances, such as when a claims examiner accepts a new job, where the assignment to a new claims examiner is unavoidable.

Medical Benefits Card

There were a number of claimants who reported that they encountered difficulties receiving reimbursement for medical bills that they had paid or that their physician had contacted them to report that payment had not been received. Many claimants who contacted us believe that their problems can be traced back to the company utilized by the DOL for processing medical bills. On numerous occasions, claimants stated that "London, Kentucky" was the reason for their difficulties.

Claimants often fear that if their medical bills are not promptly paid, their doctors will refuse to treat them, or will discontinue accepting the DOL medical benefits card. In addition some claimants are concerned that the non-payment of these medical bills will impact their credit, and other claimants simply do not want to receive the telephone calls (and other contacts) inquiring about the lack of payment.

In addition, there were a number of inquiries during the past year asking if there was any provision whereby they could receive an advance on medical payments. Most of these inquiries were associated with impairment ratings. If a claimant chooses to use a physician of their choosing, the DOL will reimburse the claimant for the reasonable expenses associated with this examination, including reasonable travel. A couple of claimants who did not have the money to pay for the travel required for the impairment rating, argued that since the DOL was committed to reimbursing them for their reasonable expenses, the DOL ought to be able to advance this payment. As an alternative, these employees suggested a procedure by which the expenses related to the impairment rating could be directly billed to the DOL. The DOL notes that there are a number of administrative problems with advancing payments. Instead, the DOL has a procedure in which it expedites reimbursement for these expenses.

Legal and lay representatives

This year, we received a couple of questions inquiring into the circumstances in which a representative could charge a fee in excess of that outlined in the statute – these claimants indicated that they were simply making inquiries, there was no indication that anyone had been charged a fee in excess of that provided in the statute. Section 7385s-9 specifically outlines the fee that can be charged for services relating to an EEOICPA Part E claim.

Taxability of EEOICPA Benefits

As discussed in Section 9.1, we are contacted by claimants who are troubled that no one was willing to answer their questions concerning the taxability of EEOICPA benefits. These claimants find it "interesting" that they are trying to do the right thing (and pay their taxes), yet no one will give them a direct answer to their questions. They further point out that while they are aware of the statutory provision addressing the taxability of EEOICPA benefits, this provision is written in such a manner that they do not understand what it says.

SECTION 9.3
SECTION 9.4
SECTION 9.5

ASSESSMENT OF THE MOST COMMON COMPLAINTS, GRIEVANCES, AND REQUESTS FOR ASSISTANCE

Our assessment of the most common complaints, grievances, and requests for assistance that we received during the past year must start with the recognition that in spite of the impressive amounts of compensation and benefits that have been paid to date, and in spite of the many efforts by the DEEOIC to improve this program, claimants, potential claimants, authorized representatives, family members, and other interested parties still contact our Office with their issues and concerns. The complaints, grievances, and requests for assistance that we received this year addressed a wide range of issues and came from workers and former workers of at least 40 different facilities. More importantly, while every claimant believes that his/her claim ought to be paid, we were not simply contacted by those whose claim had been denied, we were also contacted by individuals with pending, as well as accepted claims.

Consequently, a denial of the claim does not explain all of the complaints, grievances, and requests for assistance received by our Office. Instead, when you review the complaints and grievances that we received, not only in 2009 but over the course of the last few years, there are four themes that continue to surface.

To summarize these four themes:

1. The EEOICPA does not fully meet the expectations of some claimants. In the opinion of some claimants, the EEOICPA does not cover all of the workers; does not cover all of the facilities (or does not cover all of the areas encompassed by certain facilities); and/or does not cover all of the illnesses that they expected. In addition, especially in terms of the burdens of proof, many claimants believe that this program does not measure up to what they expected from a "claimant- friendly" program.
2. A number of the complaints and grievances that we receive are premised on the belief that the burdens of proof that claimants must satisfy are too high, especially when you consider that: (1) most claims are based on employment/exposures that occurred many years ago and (2) generally claimants were not responsible for maintaining the evidence that they must now produce in order to satisfy these burdens.
3. We hear a number of complaints suggesting that this program is "unfair." Most of these arguments focus on the difficulty encountered locating employment and exposure records. Claimants contend that since it was either their employer or the government who was responsible for maintaining employment and exposure records, it is unfair to deny their claims when these records cannot be located. However, assertions of unfairness also arise with the general administration of this program. Some claimants believe that in pursuing their claim, they are held to a higher (or at least a different) standard than that applied to the government.
4. Lastly, especially in instances where there is no evidence to the contrary, some claimants see it as a lack of trust when their affidavits and testimony are not deemed sufficient to establish entitlement. On the other hand, many claimants find it hard to believe that the government is unable to locate any of their records and/or question whether the government has released all of the evidence that could assist their claims.

In this report we have endeavored to illustrate how these themes underline and impact many of the complaints, grievances, and requests for assistance that we received in 2009.

Ultimately, some of the complaints, grievances, and requests for assistance that we received during the past year directly addressed the statute as it is currently written. This is especially true of the arguments suggesting that this program does not meet the expectations of claimants. These, however, are issues for Congress – neither the DEEOIC or this Office has the authority to amend or revise the statute.

Other complaints and grievances involve regulatory or policy issues. Claimants contact us to complain that certain regulations/policies issued by the DEEOIC (or other agencies) are not in accord with the statute and/or the intent of Congress. In many of the instances that we encountered, these disagreements are based on differing interpretations of the law, and consequently, resolution of these disagreements may lie with the federal courts. Unfortunately, most claimants do not have the expertise or the resources to pursue a court challenge (and believe that a court challenge would take too long) and therefore would prefer some other means of resolving these disagreements. Until these disagreements are resolved, these issues will linger.

Still other complaints and grievances that we received addressed the administration of the program. Many of these complaints involve the fact that the EEOICPA is a very complicated program and, specifically address the assistance provided to claimants. As we discussed, many claimants find it impossible to grasp all of the nuances of the EEOICPA, and are overwhelmed by the technical, scientific and/or legal concepts upon which this program is premised.

The DEEOIC, as well as the other agencies involved with the EEOICPA, are to be commended for all of their efforts to date to provide assistance to claimants. Yet, based on the comments that we received during the past year, more needs to be done. Here are a few suggestions that arise from the concerns and problems that we are aware of:

1. Claimants want to review the information that is relied upon in determining their claims, and they want decisions that are reasoned and understandable. To this end, strides have been made to improve the reasoning provided in decisions issued by the DEEOIC and we hope that these efforts continue. Nevertheless, one problem that we still encounter concerns reports by District Medical Consultants (DMC). Many claimants are not aware that they can request a copy of this report. Therefore, we continue to encounter situations where issues are clarified for claimants only when these claimants finally realize that they can request a copy of the DMC report. Providing all claimants with the DMC report, as well as the other documents relied upon in determining their claims will go a long way in ensuring that claimants have a full understanding of the decisions reached in their claims and in combating the belief that cases are decided in an arbitrary fashion.

2. On this same note, some recommended decisions rely upon SEM to identify the toxins that employee's in a particular labor category could potentially have been exposed to while working at the covered site. If it is not already done, this information should be provided to all claimants (where the issue of exposure is relevant) and should be provided to claimants at the earliest possible stage of the claims process.

3. The DEEOIC's web-site contains copies of certain significant EEOICPA decisions. At the present time, there are limited cases on this web-site. Greater use of this web-site could significantly enhance the guidance/examples available to claimants.

4. Certain provisions of the statute, as well as certain regulatory provisions are not written in a manner that all claimants can easily comprehend. In addition, it must be recognized that most claimants pursue EEOICPA claims without the assistance of legal and or other representatives. More needs to be done to assist claimants who have difficulties understanding these statutes and regulations.

5. If the DEEOIC is not the agency to address certain questions relating to the EEOICPA, such as the taxability of EEOICPA benefits or the impact of the receipt of EEOICPA benefits on Social Security benefits, then more guidance needs to be provided as to where claimants can obtain answers to these questions.

6. Many claimants are not aware of all of the information/assistance available on the DEEOIC's website. The DEEOIC needs to ensure that its web-site prominently highlights the information that is available and ensure that claimants can easily find this information.

7. To emphasize its commitment to providing professional and courteous service, the DEEOIC ought to institute procedures for reporting incidents of rude and unprofessional behavior.

CONCLUSION

Whenever a claimant contacts us, whether by telephone, fax; e-mail, letter, or at a town hall meeting, we ensure them that we are there to listen to them and that we will address their concerns in our annual report. Nevertheless, while it is impossible to specifically discuss each and every complaint that we received during the past year, we have endeavored to address, in a general sense, the concerns and problems that claimants, potential claimants, authorized representatives, family members, and other interested parties brought to our attention over the course of the past year. In fact, it was our goal to do more than merely detail the numbers and types of complaints, grievances, and requests for assistance that we received in calendar year 2009 – our goal in this report was to shed some light on the causes and reasons behind these complaints, grievances, and requests for assistance.

In the upcoming year, the Office of the Ombudsman looks forward to continuing to work cooperatively with the DEEOIC and the other agencies involved with the EEOICPA, within the bounds of the independence of this Office, to improve the delivery of EEOICPA compensation and benefits to eligible recipients, in the timely and uniform manner envisioned by Congress and expected by claimants.

EEOICPA STATISTICS AS OF DECEMBER 31, 2009

Data as of 12/31/2009.
[Compensation payment totals updated Friday. Medical bill payment totals updated Monday.]

COMBINED PART B AND E SUMMARY

		CLAIMS	CASES
Applications Filed		187,211	128,755*
Covered Applications Filed		141,270	103,399
Total Compensation Paid	**Payments**	56,174	41,824
	Total Dollars		$4,970,126,263
Total Medical Bills Paid	**Total Dollars**		$419,283,912
Total Compensation + Medical Bills Paid			**$5,389,410,175**

*A total of 75,546 unique individual workers are represented by the 128,755 cases reported.

PART B

			CLAIMS	CASES
Applications Filed			102,397	68,722
Non Covered Applications	**(show details)**		17,656	14,471
Non Covered Employment			6,606	4,886
Condition Not Covered			11,050	9,585
Covered Applications Filed			84,741	54,251
Recommended Decisions*[1]				
		Approved	41,773	27,438
		Denied	31,336	21,519
		Total	**73,109**	**48,957**
Final Decisions*[1]				
		Approved	41,002	27,118
	(show details)	**Denied**	29,650	20,571
Survivor Not Eligible			2,631	605
Cancer Not Work Related*[2]			19,387	14,464
Medical Info Insufficient to Support Claim			7,632	5,502
		Total	**70,652**	**47,689**
Compensation Paid				
		Payments	38,862	25,395
		Total Dollars	**$3,149,773,451**	

*[1] With regard to covered applications only.

*[2] Probability of Causation is less than 50 percent.

PART E

		CLAIMS	CASES
Applications Filed		84,814	60,033
Non Covered Applications	**(show details)**	28,285	10,885
Non Covered Employment		4,075	3,406
Survivor Not Covered*5		24,210	7,479
Covered Applications Filed		56,529	49,148
Recommended Decisions*3			
	Approved	24,603	23,010
	Denied	20,887	19,667
	Total	45,490	42,677
Final Decisions*3			
	Approved	23,805	22,446
(show details)	**Denied**	19,836	18,804
Cancer Not Work Related*4		5,918	5,723
		13,918	13,081
Medical Info Insufficient to Support Claim			
	Total	43,641	41,250
Compensation Paid			
	Payments	17,312	16,429
	Total Dollars	$1,820,352,812	

*3 With regard to covered applications only.

*4 Probability of Causation is less than 50 percent.

*5 Per EEOICPA amendments of 2004, adult children are not covered under Part E.

PART B CANCER CASES - NIOSH AND SEC STATISTICS

Part B - Status and Location of NIOSH Referrals

Cases Referred to NIOSH for Dose Reconstruction (DR)		31,058
Cases Returned by NIOSH that are Currently at DOL		
With Dose Reconstruction (DR)		22,909
Without Dose Reconstruction (DR)*[6]		3,298
	Total	26,207
Cases that are Currently at NIOSH		
Initial Referral to NIOSH		2,966
Reworks or Returns to NIOSH		1,885
	Total	4,851

*[6] Most cases without a DR are cases withdrawn from NIOSH for DOL review and approval based on a new SEC designation. Other reasons for withdrawal include administrative closure, death of claimant.

Part B - Cases with Dose Reconstruction (DR) and Final Decision		
Final Decision to Accept and Probability of Causation (POC) 50% or Greater		7,000
Final Decision to Deny and POC Less Than 50%		13,865
	Total	20,865

PART B CANCER CASES WITH FINAL DECISION TO ACCEPT

Accepted DR Cases	
Cases Approved	6,679
Cases Paid	6,642
Individuals (Claimants) Paid	9,501
Amount Paid	$991,794,308
Accepted SEC Cases	
Cases Approved	10,049
Cases Paid	9,987
Individuals (Claimants) Paid	16,314
Amount Paid	$1,490,389,718
Cases Accepted Based on SEC Status and POC 50% or Greater*[7]	
Cases Approved	321
Cases Paid	320
Individuals (Claimants) Paid	400
Amount Paid	$48,000,000

*[7] For these cases at least one specified cancer was approved based on SEC employment and at least one other cancer was approved based on the DR process resulting in a POC of 50% or greater.

TOTALS: All Accepted SEC and DR Cases	
Cases Approved	17,049
Cases Paid	16,949
Individuals (Claimants) Paid	26,215
Amount Paid	

LIST OF TOWN HALL MEETINGS FOR CALENDAR YEAR 2009

(Meetings sponsored by the Office, as well as meetings sponsored by other agencies)

SITE	# OF MEETINGS	# OF ATTENDEES (approximate)
St. Charles, Missouri	2 Meetings	150
Fairfield, Ohio	2 Meetings	175
Miamisburg, Ohio	2 Meetings	100
Portsmouth, Ohio	2 Meetings	200
Chillicothe, Ohio	2 Meetings	100
Paducah, Kentucky	3 Meetings	400
Burlington, Iowa	2 Meetings	175
Ames, Iowa	2 Meetings	40
Tuba City, Arizona	1 Meeting	40
Shiprock, New Mexico	1 Meeting	250
Hanford	1 Meeting	100
TOTALS	**20 Meetings**	**1750**

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