

Advisory Board on Toxic Substances and Worker Health

December 1, 2020

Mr. Eugene Scalia
Secretary, U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave.
Washington, DC

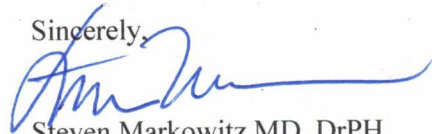
Dear Mr. Scalia:

I am pleased to transmit two recommendations of the Department of Labor Advisory Board on Toxic Substances and Worker Health in relation to the Board's advisory capacity to the Energy Employees' Occupational Illness Compensation Program (EEOICP). These were adopted unanimously **at our November 5-6, 2020 meeting. They include:**

- 1) Revised Recommendation: Jobs Presumed to have pre-1995 Asbestos Exposure**
- 2) Recommendation on Parkinson Disorders in the Energy Employees' Occupational Illness Compensation Program**

The Board hopes that our input is useful to EEOICP. It remains an honor for the Board to be consulted on important issues that face the Program. I would be pleased to answer any questions.

Sincerely,



Steven Markowitz MD, DrPH
Chair
Advisory Board on Toxic Substances
and Worker Health

Advisory Board on Toxic Substances and Worker Health, Department of Labor

Recommendation on Presumptions for Job Categories with Site-Wide Exposures to all Toxic Substances

Adopted November 5, 2020

Recommendation

The Board recommends that the Department develop and implement exposure presumptions indicating that job categories at DOE sites whose workers likely worked throughout their individual sites had potential exposure to all listed toxic substances at those facilities.

Rationale

There are a limited number of job categories at many, if not most, Department of Energy sites whose job duties routinely involve work for variable periods of time at many buildings and locations within the site where people with these job categories work. Examples of such job categories include, but are not limited to, firefighters, security guards, health physics technicians, and safety personnel. Examination of the potential exposures for some of these categories in the Site Exposures Matrices (SEM) of the Department of Labor demonstrates substantial variation in the number and type of potential exposures associated with these job titles. An easily understand example is that of security guards at the three gaseous diffusion plants in Paducah, Portsmouth and Oak Ridge. These plants were very similar, performing a singular operation (gaseous diffusion) from the 1950's to the 1980's and beyond. Yet the number and type of potential exposures for security guards at these plants vary greatly in the SEM: 10 at Oak Ridge, 29 at Paducah, and 61 at Portsmouth. Exposures of health physics technicians show similar variation.

A highly plausible explanation for this occurrence, for the particular example cited above as well as for another few job titles, is a significant level of variation in the amount and detail of documentation of exposure that has been gathered across the DOE sites over the past 75 years. This is no surprise, as the DOE sites were operated by different contractors over the decades, who frequently changed, and who were likely not provided with uniform and specific instructions on documenting exposures at the plants. The SEM is based on such documentation, which represents a principal strength. But the utility of the SEM is vulnerable to known gaps in exposure documentation, which, by virtue of the absence of information, is not obvious to users of the SEM, such as claims examiners.

Compounding this limitation, it is just plain difficult to identify a specific list of potential exposures of highly mobile workers who roam throughout the site's facilities, as needed, to do their jobs. Security guards would not have kept exposure diaries, worn air monitoring pumps, or even tracked which buildings they visited over time, much less described what occurred in those buildings or which chemicals were present. The same can be said for fire fighters, health physics or industrial hygiene technicians (and their aliases), and others.

An appropriate solution to this deficiency in information is to implement an exposure presumption for these job categories that indicates that they very likely had exposure to a very broad set of chemical agents that were used at the sites where they worked. The SEM could then be used, if at all, to identify the universe of toxic agents and diseases that are applicable to the relevant site to determine a first order applicability to the health condition that forms the basis of the claim. Alternatively, the SEM could be bypassed in favor of an industrial hygiene evaluation of the exposure information provided by the claimant and knowledge of the job category and the DOE site in question. The exact procedure would be determined by the Department, though the Board would appreciate the opportunity to provide additional input. The desired end result will reflect the recognition that, for a limited set of job categories and their aliases, there was potential for exposure to a great number of toxic substances used at the relevant site with their attendant risks of disease.

Recommendation on Evaluation of Industrial Hygiene and Medical Reports in Energy Employees Occupational Illness and Compensation Claims Evaluations

Adopted November 6, 2020

Recommendation

The Board recommends that the Department develop an ongoing independent third party-based system of reasonably frequent periodic evaluation of the objectivity, quality and consistency of both the individual claim reports and the aggregate audits of program industrial hygienists and physicians. The Board also recommends that the Department implement a periodic audit of the industrial hygiene reports and the industrial hygiene review process. The results of these evaluations and analyses should be reported to the Board in a timely and systematic fashion.

Rationale

Medical reports

The EEOICP currently assesses aspects of the quality and objectivity of the contractor medical reports through a quarterly review of approximately 50 claims by the Medical Director of the Energy Employees Occupational Illness and Compensation Program (EEOICP). This is a praiseworthy effort. The findings of the Medical Director’s Audits, 2018-2019 are summarized in the table below.

Results of EEOICP Medical Director Audits of Contract Medical Consultant Reports, 2018-2019

Type of Review	2018		2019		Combined 2018-2019	
	Total No.	No. that "need improvement" (%)	Total No.	No. that "need improvement" (%)	Grand Total	No. that "need improvement" (%)
Causation	67	1 (1%)	79	0 (0%)	146	1 (0.68%)
Impairment	67	25 (37%)	71	19 (27%)	138	44 (32%)
Other*	63	12 (19%)	47	3 (6%)	110	15 (14%)
Total	197	38 (19%)	197	22 (11%)	394	60 (15%)

*Supplemental, clarification, second opinion and others

There are two notable findings in this summary of the Medical Director's Audits: 1) the near absence of errors in causation reviews, and 2) the high frequency of errors in other types of claims reviewed. Less than 1% of causation reviews but one-third of impairment reviews were found to need improvement. Based on the ABTSWH's review of a substantial number of different types of claims over the past 3 years, the paucity of errors discovered in the Medical Director's review of causation evaluations is implausible. While the Board reviewed many excellent causation analyses by contract medical consultants, it also found that more than 1% of the claims review had significant errors in the causation evaluation and decision-making. The second finding, that 32% of impairment evaluations and 14% of other claims reviews contained errors is also concerning, since the medical contractor has been performing such evaluations for numerous years and should be expected to produce reports with less than a 5% to 10% error rate. The results of claims reviews also suggest, assuming the claims audited by the Medical Director are reasonably representative, that there are likely to be a large number of claims that contain errors that go undetected. Both findings raise important questions about the validity of aspects of the claims evaluation process and support the implementation of an augmented evaluation process to ensure the quality and consistency of claims evaluations.

Industrial Hygiene Reports and Review

At present, the contractor industrial hygiene reports are reviewed on an individual basis by Federal industrial hygienists at the time that reports are submitted during the claims evaluation process. There is no periodic audit or analysis of a sample of industrial hygiene reports, such as the EEOICP Medical Director completes for contractor medical reports in his audits, to evaluate the consistency of findings or to detect any patterns of errors across industrial hygiene reports. Hence, the EEOICP has no aggregate view of the quality, consistency and objectivity of the reports provided by the industrial contractor. In addition, there does not appear to be a broad and substantive review of the decision-making entailed in the individual industrial hygiene evaluations or of industrial hygiene review process. The latter would include the following: the quality and completeness of the overall exposure information reviewed and used by the contract industrial hygienist; the quality of the exposure information in the Statements of Accepted Facts; the appropriateness of the questions directed to the industrial hygienist; and the usefulness of the industrial hygiene report in the case review by the contract medical consultant and the claims examiner. Addressing these two components of the industrial hygiene input into claims evaluation – a periodic audit and a process review – would improve confidence that this critical function in claims review reflects an appropriate level of quality, consistency, and objectivity.