

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER  
HEALTH

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WORKING GROUP ON PRESUMPTIONS

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MEETING MINUTES

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TUESDAY,  
MARCH 14, 2017

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

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT  
KENNETH Z. SILVER  
LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair  
LAURA S. WELCH

CLAIMANT COMMUNITY:

GARRY M. WHITLEY  
FAYE VLIENER

DESIGNATED FEDERAL OFFICIAL:

CARRIE RHOADS

## **Call to order**

Ms. Rhoads called the meeting to order at 1:07 p.m. and Chair Markowitz welcomed everyone to the teleconference.

## **Presumptions, Part B, EEOICPA**

Chair Markowitz prepared a slide presentation with proposed remedies for alternative modifications to the current DOL policies regarding presumptions. The goal for the working group is to bring recommendations regarding modifications to the current policies to the full committee meeting in April. For most federal compensation programs, the eligibility criteria are quite broad. In the original Act, if a person worked for one year, was a member of a Special Exposure Cohort, and developed one of 22 cancers, they were eligible for compensation. Congress also established presumptions regarding silica. In general, factors considered in evaluating worker exposures involve four areas: duration, job title (proxy for intensity and frequency), calendar years, and latency.

Asbestos is important because it was present at all of the sites and caused more occupational diseases in general than any other occupational toxin. It is addressed in several different locations in the Procedure manual. The asbestos-related diseases identified by DOL are asbestosis, asbestos-related pleural disease, ovarian cancer, laryngeal cancer, COPD, and lung cancer. DEEOIC accepts that asbestos was a common toxic substance that existed throughout all DOE facilities. While asbestos did exist at DOE facilities, the nature of an employee's exposure would have varied based on different factors such as the period that the employee worked, the type of work performed, and the location of employment. Job tasks with a very high likelihood of asbestos exposure are mostly maintenance and construction related. Chair Markowitz identified DOL exposure presumptions for asbestosis. DOL addresses some asbestos claims under presumption criteria, such as ovarian cancer, asbestosis, and COPD. The current presumption for COPD is 20 years of exposure to asbestos. Chair Markowitz could not identify any rationale for the DOL durations of exposure in the exposure criteria in any DOL documents. Member Welch said she asked for rationales from DOL but never received anything that made sense to her.

Per DOL policies, at present, for a CE (claims examiner) to accept a level of exposure above low level, there must be definitive and compelling evidence to show that post-1986 DOE work had consistent, unprotected contact with asbestos or ACM. Evidence includes: IH (industrial hygienist) monitoring, incident reports, documented abatement breaches, testimony or affidavits, or position descriptions. Any findings of exposure, including infrequent, incidental exposure, require review of a physician to opine on the

possibility of causation. This is necessary as even minimal exposure to some toxins may have a significant aggravating or contributing relationship to the diagnosed illness. DOL does not say anything about pre-1986 exposures. Possible remedies for ARDs (asbestos-related diseases) include: (1) Expand List A; (2) Rescind presumption of low exposure post-1986; (3) Pick calendar year as a cutoff that has a safety margin; (4) Consider including minimum exposure duration and latency in presumptions for all ARDs; and (5) For all claims that do not meet presumption criteria, have IH or CMC (contract medical consultant) review and decide on significance of exposure.

Member Welch said that she thought there was a quantitative change in the number of exposures after 1986. Member Dement agreed that exposure levels have decreased over time. Perhaps as a presumption, it would make sense to require longer than 250 days. Member Vlieger said that workers were still working in areas with asbestos through the 70s, 80s, and 90s. Factoring in non-DOE exposures is not on the table. A claimant does not need to have a diagnosis to file a claim for asbestosis. Some workers go to the Former Worker Screening Program or get a diagnosis from a pulmonologist. The CE should be able to accept a claim based on a presumption. The CE could look at the recommended presumptions and make a decision or send the case on for expert review. Member Whitley said that most people that file a claim for asbestosis have a diagnosis from a doctor.

### **Job titles and work areas**

With regard to job titles, Member Vlieger said that many people at job sites were not protected. As a production planner, she was able to go into areas while work was going on without being required to wear respiratory protection. Expeditors and planers were not classified as production or maintenance, they are "exempt employees." Member Welch said that, since there are so many job titles at DOE complexes, some claimants have been denied due to an incorrect job title. Maybe the Department could look at the actual work an employee performed rather than their job title. A person could have multiple job titles over the course of their career.

The Former Worker Program at Queens College/USW has divided job titles into six occupational categories. One approach could be to have the CEs place workers into one of the occupational categories and presume asbestos exposure in a given timeframe. Member Dement thought the list of presumed jobs could be expanded. The SEM does map out job titles with similar tasks; for example, a master painter and a painter would both be included. Member Whitley thought having broader categories would help claimants.

Member Dement said that a hard date for asbestos exposure would not be useful. While exposures likely decreased over time, whether or not

they decreased to be more than guidelines on a routine basis is questionable. Any presumption should have surrogates of exposure. Chair Markowitz noted that presumptions are also used when there is not enough information available to make a determination.

### **Asthma**

Chair Markowitz said that a problem arises when former workers make a claim for asthma years after they have stopped their employment. DOL has the treating physician or CMC develop a rationale. Member Vlieger said that the acceptance of occupational asthma to this point has been varied, even if the physician said that it's occupational. A lot of administrative workers who get diagnosed with occupational asthma are turned down because of their job title. Perhaps the board needs to look at some asthma claims to make sure the process is being followed. Member Silver said that if there was an opportunity for a continuing education program, he would emphasize asthma.

### **COPD and presumptions**

The SEM committee is handling the issue of COPD and presumptions. Chair Markowitz said the procedure manual contains very little on this issue. Member Welch said that when someone who is a smoker files a claim for COPD, the DOL wants a CMC to look at the claim. There should not be a calendar year on smokers when it comes to COPD presumptions. Workers exposed to noxious fumes over an extended period of time can develop COPD. Member Dement said that COPD is largely underdiagnosed. A lot of people with COPD do not go to a pulmonologist and get diagnosed until later in life. Member Welch said that she would not put in calendar years in the presumption for COPD. For example, for some tasks silica exposure is still very high.

Member Vlieger and Chair Markowitz thought that it would be a good idea to request the DOL policy memos related to COPD.

### **Solvents and Hearing loss**

Chair Markowitz reviewed the current DOL exposure criteria for solvent-related hearing loss. The December 23, 2016 memo from Dr. Stokes to Mr. Vance provided an overview three areas: (1) A review of published studies on hearing loss and solvent exposures; (2) Individual studies that show that less than eight years of solvent exposure does not lead to hearing loss; (3) Hearing loss occurred after an average of 12.3 years of solvent exposure in one study, with the mechanism of hearing loss assumed to be the same for all seven solvents.

Member Whitley and Member Vlieger agreed that the current continuous exposure criteria leads to many claims being denied. The 22 job

titles also serves to exclude people from being compensated who otherwise would have been compensated. Member Boden said that it should be made clear that any presumption related to solvents and hearing loss should be a floor not a ceiling. Chair Markowitz asked if it would be worth broadening the current category of solvents to include solvents that are in the same chemical class. The SEM could include a universe of 30 solvents and have an expanded list of solvents to use as a presumption. Also, expanding the job classifications of solvent-exposed workers could help with developing presumptions. The work group agreed that these approaches make sense. Member Dement said that the SEM committee was looking at recommending that claimants provide a list of tasks for the IH to look at as a way of opening the door to the compensation process. Member Whitley suggested adding "equivalent job titles" to the current list of 22.

Member Vlieger said that she didn't think that the calendar years applied to hearing loss. The calendar year criterion is not based on an analysis of the specifics at hand, it's just based on the assumption that things got better over time.

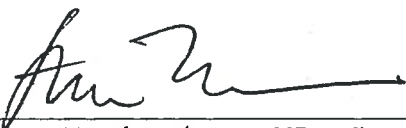
Member Silver said that roofers, welders, and industrial hygiene technicians should be on the list.

#### **Closing comments**

Member Welch said that the work group should make a few recommendations on solvents and COPD and see if DOL is willing to change the presumptions. The other members of the work group agreed. Chair Markowitz said that the group should present recommended language on presumptions at the full board meeting in April.

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

Submitted by:



Steven Markowitz, MD, Dr.PH.

Chair, Working Group on Presumptions

Advisory Board on Toxic Substances and Worker Health

Date: 4/14/17