U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, D.C. 20210

File Number:

APR 20 2011

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

Thank you for the opportunity to respond to the final version of the Ombudsman's 2010 Annual Report to Congress. DEEOIC appreciates the Ombudsman's efforts in assisting EEOICPA claimants and welcomes any suggestions to improve the operation of the program. We look forward to a continued relationship with the Ombudsman's Office to identify areas of improvement and specific changes to better serve our claimant population. To this end, DEEOIC has analyzed specific comments contained in the report and would like to respond.

Comment:
1. As noted in this report, many claimants become disappointed when they discover the limits of some of the information contained in SEM. We recognize that it will take another coordinated effort, but it would assist claimants if the articles, medical opinions, and other medical documents underlying SEM were publicly available.

Response:
The medical information utilized as the basis for SEM can be located in the National Institute for Medicine's HAZ-MAP database. Interested claimants can find citations to scholarly articles and studies appearing in scientific journals listed on the HAZ-MAP site. Additionally, source documents regarding covered facilities are maintained by the Department of Energy.

Comment:
2. We have heard from federal employees, who are not covered under the EEOICPA, suggesting that little, if any, guidance is available to assist them in filing claims under FECA for illnesses related to work at these DOE facilities. The DOL should consider providing guidance or assistance to these federal workers.

Response:
DEEOIC routinely refers ineligible claimants to other programs that might better meet their needs. Examples of such programs to which ineligible claimants are directed include the Division of Federal Employees Compensation (DFEC) and

the Veterans Administration. Also, for ineligible claimants that are neither Department of Energy employees or contractors, nor federal employees or military, DEEOIC will attempt to provide guidance on pursuing benefits through State Workers' Compensation programs or the Social Security Administration. DEEOIC does not have the resources or the mandate to assist claimants with seeking assistance separate from the EEOICPA, but where appropriate, will provide advice to persons falling outside of the statute's coverage.

Comment:
3. During the course of this year, we were provided with a very insightful response explaining why in most cases, even if the SEM shows a link between an illness and a toxin to which the employee was exposed, the employee still needs to submit medical evidence addressing causation. In our experience, there are claimants, representatives, as well as others who are not aware of this fact. It would be helpful if a decision or general guidance explaining this aspect of SEM were available on DEEOIC's website and/or discussed in a brochure that was available for distribution.

Response:
Procedural guidance governing DEEOIC's implementation of SEM is available on the program website and DEEOIC personnel go to great lengths to explain all evidentiary requirements to claimants throughout the claim process. Moreover, DEEOIC is compelled to obtain medical evidence establishing causation to meet the statutory burden of proof.

In addition, DEEOIC has dedicated significant efforts to educating claimants and providing outreach on the details of this complicated statute. It is vital that we remain vigilant to identify areas of confusion for claimants, and work to alleviate these hurdles. To this end, DEEOIC continues to investigate ways to better provide guidance in this area. The DEEOIC Procedure Manual and Policy Bulletins are available on the DEEOIC website for claimants and interested parties to review.

Comment:
4. Similarly, this Office continues to believe that a better understanding of the law and the applicable procedures will help to alleviate many of the concerns that we receive. Unfortunately, as noted in this report, the laws and procedures that govern the EEOICPA are dispersed among the statute, the regulations, the EEOICP Final Bulletins, the EEOICP Final Circulars, and the EEOICP Procedural Manual. Some claimants, representatives and attorneys have told us that it is very difficult to locate and reconcile rules dispersed among so many different documents. More needs to be done to provide simple and concise guidance – in a manner that is easily accessible to the public.

Response:
DEEOIC agrees that the various legal and procedural guidance can be complicated. To that end, DEEOIC has completed publication of a new Procedure Manual, uniting Part B and Part E guidance into one easily accessible Internet-based document. We also have included links to NIOSH and Department of Energy sites that may contain information relevant to claimants. Due to the complexity of the law and the difficulties inherent in administering the program, DEEOIC has needed to promulgate guidance as situations arise. However, DEEOIC has committed to updating and improving access to program brochures for claimants and potential claimants. These documents have been revised to include more plain-language explanations of program policies and procedures. The brochures have been placed on the program website and distributed to Resource Centers and other locations accessible by claimants.

Comment:
5. Whenever a new claims examiner is assigned to a case, claimant should be provided with immediate notice.

Response:
The complexities involved in case management and the volume of cases that claims examiners are responsible for, make implementation of this policy difficult. However, DEEOIC agrees with the suggestion that claimants should be informed when a new claims examiner has been assigned to the case, and we will evaluate ways for possible implementation of this suggestion.

Comment:
6. We commend the efforts to ensure that decisions are well written and the reasoning is clear. We hope that these efforts continue.

Response:
DEEOIC appreciates the recognition of efforts to create decisions that are more easily accessible to our claimant population. We will continue to refine guidance in order to further simplify written correspondence, while ensuring that claimants receive a thorough explanation for the basis of the decision. In fact, in the coming year DEEOIC will implement new procedures for drafting recommended decisions that will serve to simplify the format, rendering the decisions more readable and easier to understand.

We appreciate the Ombudsman's analysis of the program and your work with our claimants throughout this last year. We are always looking to improve the program and will be evaluating ways to implement changes in light of your recommendations.

Sincerely,

Gary A. Steinberg
Acting Director