

INCONSISTENT POLICIES

One of the first policy issues this board got involved in concerned, stated DEEOIC policy in Circular 15-06, regarding the presumption that occupational exposures after 1995 were consistent existing safety guidelines. After this board expressed strong concern regarding that policy, the DEEOIC rescinded that policy. However, there are several other policies that are related to presumptions regarding exposures after certain years. For example, the Procedure Manual set out criteria for acceptance of claim for hearing loss. One of those criteria is that the employee must have 10 years of uninterrupted employment in certain job categories prior to 1990. There is no rational basis for the cutoff of these claims being 1990. It could just as easily be any other year, as the exposures would all be the same regardless of the designated year. DEEOIC policy for designating the cutoff year being 1990 was apparently the same the rationale for Circular 15-06. Since that rationale is no longer valid, then the DEEOIC policy for hearing loss being limited to pre-1990 is similarly irrational.

Another policy tied into exposures after a certain date is the policy (EEOICPA Bulletin 16-02), which permits a claim to be accepted for COPD if an employee in certain labor categories had exposure to asbestos for at least 20 years prior to 1980. I understand that in a teleconference call, the DEEOIC agreed to extend it to 20 years prior to 1986. However, the original EEOICPA Bulletin has not been amended to reflect this change in policy. My concern is that the year chosen by the DEEOIC as the cutoff year is based on the same rationale as Circular 15-06. Since the rationale in that Circular has been disavowed, the rationale for Bulletin 16-02 should also be changed.

Another DEEOIC policy that this Board has tried to address is policy teleconference calls. This board recommended that the DEEOIC release these policy teleconference calls to the public. As of this date, the DEEOIC continues to hide these policy determinations from public view. DEEOIC argues that these policy calls relate to its internal thought processes and only relate to one claim and are thus not official determination relating to policy. However, that argument does not withstand critical review. I have received numerous recommended decisions and final decisions which quote these teleconference determinations. Additionally, I have attached a teleconference call note (see attached I) wherein the DEEOIC admitted that these policy teleconference notes are program policy from national office.

Another policy relates to the training received by claims examiners. The on-line training materials on the agency website contain several instructions regarding claims which conflict with the EEOICPA. Specifically, the training materials indicate in 2 different sections that the employee must be specifically diagnosed with chronic beryllium disease in order to received benefits. This is directly contrary to the statutory language of the EEOICPA. The EEOIPA set out diagnostic criteria for "established chronic beryllium disease." The EEOICPA does not require that a medical doctor diagnose an employee with chronic beryllium disease in order to receive benefits. The training materials regarding this issue are dangerously wrong and they provide incorrect information to claims examiners. I see claims every day, which are denied by claims examiners because the employee's doctor did not diagnose the employee with chronic beryllium disease. This has been an ongoing problem for many years, but the wrong training materials are still being published by DEEOIC policy,

claims examiners continue to be poorly trained and claims of employees with terrible respiratory conditions are being wrongfully denied. This problem seems so obvious and easily correctable but the culture of the DEEOIC continues to foster ignorance and hostility to claimants.

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