



U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs (OWCP)

Division of Energy Employees Occupational Illness Compensation Webinar Series

Cancer Claims under the EEOICPA

Presented by:

**Tony Schwiefert; Supervisor, Staff Education & Mentoring
Unit, DEEOIC**



Lesson Objectives



- Provide an overview of the cancer claims process.
- Explain evidence required to establish a diagnosis of cancer.
- Explain eligibility requirements for cancer under Parts B and E of the EEOICPA.
- Explain Special Exposure Cohort eligibility.
- Discuss NIOSH referral process and Probability of Causation determinations.
- Discuss filing additional claims for cancer.



Medical Evidence of Cancer

- Diagnosis of Cancer must include a medical report from a qualified physician that lists a cancer diagnosis along with the date of diagnosis.
- Evidence may include:
 - Pathology report (most conclusive)
 - Cytology report (less conclusive)
 - Imaging report (least conclusive)
- The Claims Examiner (CE) can make referrals to a Contract Medical Consultant (CMC) to assist in interpreting medical evidence as establishing a diagnosis of cancer.





Medical Evidence of Cancer

- If the employee is deceased or if a living employee is unable to undergo additional diagnostic testing for medical reasons, clinical evidence is needed which shows that a qualified physician has evaluated available medical evidence and has provided a well-rationalized opinion that interprets such evidence as establishing a diagnosis of cancer.
- In the absence of other affirmative medical evidence collected during development, a CE may use a death certificate acknowledged by a physician or recognized by a state medical authority to establish a cancer diagnosis.





Special Exposure Cohort (SEC)

- The EEOICPA established the SEC to compensate eligible members of the Cohort under Part B without the need for a radiation dose reconstruction and determination of the Probability of Causation (PoC).
- An SEC class can be based on a whole facility, limited to specific buildings in a facility, or even specific processes within a facility. In some cases, a SEC class may be limited to specific job titles or duties in a particular facility.
- Work must have been within the time period specified in the SEC.
- Each SEC class will have specific workday requirements that must be met; typically, an employee has to have been employed for a number of workdays aggregating at least 250 workdays at one or more SEC worksites.



Special Exposure Cohort (SEC)

- Members of the Special Exposure Cohort (SEC) who meet the employment criteria and are diagnosed with any of the 22 specified cancers are eligible for benefits under Part B without the need for a dose reconstruction.
- Eligible members of a SEC class have a presumption that the diagnosed specified cancer was caused by radiation exposure during their eligible SEC employment.
- If all SEC criteria are met, the claim is accepted by issuance of a recommended and final decision.



SEC Cancer Claims Process

- Claims Examiner (CE) will review pertinent documents to determine if an employee is a member of an SEC class.
- CE will determine if the employee has been diagnosed with a specified cancer and meets the necessary employment criteria to be included in a designated SEC class.
- If there is a deficiency in the evidence, CE will issue a development letter to the claimant explaining the deficiency and requesting necessary evidence.
- The CE may also request the assistance of the claimant's physician, a Contract Medical Consultant, or other experts to support the diagnosis of a specified cancer.
- If eligibility criteria are met, the CE issues a Recommended Decision to accept the claim.



Non-SEC Cancer Eligibility

- Any claim for cancer that does not meet the SEC class requirement will be treated as a non-SEC claim.
- Under Part B of the EEOICPA, a covered employee seeking compensation for a non-SEC cancer is eligible for compensation if the cancer was "at least as likely as not" (that is, a 50% or greater Probability of Causation) caused by radiation doses incurred in the performance of duty while working at a Department of Energy (DOE) facility and/or an Atomic Weapons Employer (AWE) facility.





Non-SEC Cancers & Dose Reconstruction



- Once the CE has determined that the employee has a diagnosed non-SEC cancer, the CE forwards the claim to the National Institute for Occupational Safety & Health (NIOSH) for dose reconstruction, once a claimed cancer and covered employment are confirmed.
- If the CE identifies more than one primary cancer in the medical records, the CE notes this information in the medical section of the NIOSH referral, including the cancer locations and the diagnosis date. NIOSH will perform dose calculations for each primary cancer site.



Probability of Causation (PoC)

- Once complete, NIOSH will send a Report of Dose Reconstruction under EEOICPA back to the CE.
- The Dose Reconstruction provides the information that the CE needs to perform a Probability of Causation (PoC) calculation, which is necessary to render a decision on the claim.
- NIOSH developed a computer software application called NIOSH-IREP (Interactive RadioEpidemiological Program), which DOL uses to perform the PoC calculation.
- A PoC calculation of 50% or greater is needed to accept a Part B claim for non-SEC cancers.
- If additional cancers are identified/claimed after the dose reconstruction is performed and the PoC was less than 50%, the CE will send a rework request to NIOSH.
 - Additional cancers may result in a higher PoC.



Claims for Cancer under Part E

- Causation standard under part E - ***it is at least as likely as not that exposure to a toxic substance (including biological, chemical or radioactive material) at a DOE facility was a significant factor in aggravating, contributing to, or causing the illness.***
 - Applies NIOSH dose reconstruction and Probability of Causation calculation to decide work relatedness of cancer due to radiation exposure
 - Evaluates potential for exposure to biological or chemical substance to result in diagnosed cancer - including review of claim by medical health science experts (e.g., industrial hygiene and toxicology) and a qualified physician
- For survivor claims under Part E, the evidence must establish work-related cancer was “at least as likely as not” a significant factor in causing, contributing to, or aggravating the death of the employee.



Recommended & Final Decisions

- Recommended Decision (RD) to accept or deny the claim.
 - Written decision from CE regarding eligibility of claimant to receive benefits under the EEOICPA.
 - Claimant may object to all or part of the RD.
- Final Adjudication Branch (FAB) reviews the RD and issues a Final Decision (FD) or Remand Order.
 - Final decision represents a final agency determination on entitlement
 - Remand is a decision that returns a recommendation to the district office because of new information or disagreement with interpretation of evidence
- Claimant may request reconsideration to FD within 30 days of issuance or a reopening at any time.



Medical Benefits and Compensation

- Medical Benefits
- Living employees receive medical benefits awarded for accepted conditions retroactive to the filing date
- Lump Sum - Employee
 - Part B - \$150,000 one-time lump sum payment (\$50,000 if RECA section 5 award).
 - Part E - impairment and/or wage loss compensation for accepted conditions up to \$250,000
- Lump Sum – Qualifying Survivor(s)
 - Part B - \$150,000 under (\$50,000 if RECA section 5 award).
 - Part E - \$125,000 under Part E. If wage loss was incurred by employee prior to death, additional \$25,000 or \$50,000 depending on circumstances.



Claims for Additional Cancers

- Must file a claim for any newly diagnosed primary or secondary cancer(s)
- Presumptive Parts B and E **Letter Decision** acceptance – with new cancer diagnosis:
 - Prior cancer acceptance due to POC 50% or greater; or new “specified” cancer after SEC class inclusion.
 - Same type of primary skin cancer accepted under Part E due to chemical or biological exposure (e.g., non-melanoma vs. melanoma)
 - Secondary (metastatic) cancers connected to a work-related primary cancer approved as a “consequential illness.”
- New cancers that cannot be accepted through a presumptive or consequential connection to previously approved cancer claim under Parts B or E will undergo routine adjudication