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File Number:

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Occupational Illness Compensation Program

Thank you once again for allowing me the opportunity to respond to the Ombudsman's 2012 Annual Report to Congress. The DEEOIC continues to appreciate your efforts in assisting our EEOICPA claimants and welcomes any suggestions that you have for administrative improvements. After reviewing the content of your report, I would like to respond to some of the issues identified.

1. Most claimants were either not aware of or had limited knowledge of the program.

During the FY 2012, the DEEOIC sponsored eight town hall meetings and traveling resource centers. During these town hall meetings and traveling resource centers, the DEEOIC staff presented details about new SEC classes at Sandia National Laboratories (two meetings were held at this site), General Electric Company (Ohio), Y-12 Plant, Pantex Plant, Savannah River Site, Linde Ceramics Plant, and the Feed Materials Production Center. The DEEOIC participated in the joint outreach task group (JOTG) to provide information and clarification regarding the EEOICPA to former nuclear weapons workers and their families. In addition to these outreach efforts, the DEEOIC issued press releases informing individuals in New Jersey and California of the benefits available under the EEOICPA. These press releases included notification to claimants that worked at 52 facilities. The DEEOIC continues to conduct outreach events to notify potential claimants about the EEOICPA, and holds monthly meetings with the JOTG to identify new ways to reach out to the public about the program.

2. Claimants suggest that the DEEOIC's policy of holding compensation in abeyance until a determination is made on the eligibility of other survivors unwittingly gives too much leverage to individuals who, in the end, may not be eligible for EEOICPA compensation.

The EEOICPA regulations at 20 C.F.R. § 30.505(c) state that "No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits." The DEEOIC develops for all potential survivors on a case. Where evidence suggests that a potential survivor exists, but who has not filed a claim, the program must delay payment until it is possible to ascertain his

or her eligibility to receive compensation. Permitting the allocation of payable compensation before resolving the eligibility of all survivors could result in the program overpaying claimants. If that occurs, the program would then be required to initiate collection efforts for each claimant who received compensation in excess of his or her entitlement.

3. A frequent complaint suggests that in weighing evidence of employment, the DEEOIC sets the bar too high.

The DEEOIC does not set an unusually high standard for establishing covered employment. Program procedure specifically makes note of the fact that the statute does allow latitude in the assessment of employment evidence, and that claims staff must merely judge the evidence as to show a reasoned basis to conclude that the employment occurred as alleged. This ensures that the claimant receives favorable treatment during the evaluation of claimed employment. Moreover, the program applies numerous resources to assist claimants in obtaining the necessary documentation to support the claimed employment at DOE contractors and atomic weapon facilities. Claims staff is trained in the appropriate assessment of evidence, including where discretion is permitted, to allow for positive outcomes.

4. Some of the most vocal comments that we receive concern the need to verify that a contract existed between the contractor/subcontractor and a covered facility. The claimants contend that attempting to verify that a contract existed is another instance where the DEEOIC sets the bar too high.

Pursuant to 42 U.S.C. § 7384l(11), the DEEOIC is required to verify that a contractual relationship existed between a contractor/subcontractor and a DOE covered facility. In many cases, the DEEOIC is able to obtain contractor or subcontractor information directly from the Department of Energy or through the review of available facility documentation. Program resources are also available to the CE to access contractor or subcontractor information relating to facilities where atomic weapons work occurred. However, in the absence of any valid evidence that an employer contracted to perform services at a covered facility, it is necessary for a claimant to provide the affirmative evidence to show that he or she worked at a covered facility for a company contracted to be at the site to perform a service. As is the case for other employment situations, the DEEOIC has to consider the totality of all evidence presented with regard to contracted employment.

5. A frequent complaint suggests that the expanded SEM does not accurately identify all of the areas where particular toxins were used and/or does not identify all of the toxins to which certain categories of employees were

exposed. And, we received complaints alleging that information submitted to update/correct SEM is ignored or never acted upon.

SEM is a database that provides information about toxic substances at DOE facilities and links these to labor categories, job processes and buildings. However, the DEEOIC has never represented that SEM is "complete." The DEEOIC is constantly updating and improving SEM. In 2012/2013, the DEEOIC funded a committee at the Institute of Medicine (IOM) of the National Academies of Science (NAS) to review SEM and provide the DEEOIC with recommendations. The DEEOIC also evaluates all claimant and public submissions sent directly to the SEM team regarding health effect and toxic substance data. In situations where publically submitted documentation is found scientifically valid, or demonstrates new knowledge on the actual use of a toxin at a facility, it is incorporated into SEM. During CY 2012, a total of 2,345 chemicals were added to SEM, and to date contains information on more than 16,000 toxic substances used at the DOE. Additional updates to SEM based on public comment include the addition of Boilermaker to the labor category and the related toxic substances to the Oak Ridge National Laboratory SEM profile. Additionally, the Dayton Project was designated as a DOE facility and added to SEM based on documentation provided by a claimant advocate. The documentation established that the MED owned the premises of the Dayton Project.

6. Some claimants argue that where a decision suggests that a claim was denied solely based on a review of SEM, someone needs to determine whether the denial was in fact based solely on a review of SEM.

Claims Examiners are responsible for writing decisions that address the uniqueness of each claim. SEM is merely one resource used to assist in the adjudication of the claim, and is not intended to be the exclusive decision-making tool for deciding claims. For example, our CEs utilize the expertise of Contract Medical Consultants for opinions on causation, Document Acquisition Requests for records from the DOE, affidavits from co-workers, and reviews by Industrial Hygienists to evaluate the potential toxic exposure at various covered facilities, to assist in claims adjudication. If a claimant does not agree with a decision outcome, or is unsatisfied with the explanation provided, he or she may object to the decision. As part of an objection to a recommended decision, or a request to reopen a final decision, a claimant is permitted to submit any new evidence that he or she feels demonstrates an error in the adjudication of the claim. It is also noteworthy that the DEEOIC conducts an Accountability Review of case files on an annual basis. During the review, the use and application of the SEM information is examined to ensure that SEM has been thoroughly and accurately researched, the findings properly evaluated, and the results appropriately applied to the final outcome of the claim.

7. We still receive complaints from claimants asserting that decisions are not well written and/or that clear reasoning is not provided for conclusions. Our experience indicates that the DEEOIC has invested time and energy addressing these concerns. We hope that these efforts continue.

We remain committed to improving the decision process by refining our guidance to further simplify written correspondence, while ensuring that claimants receive a thorough explanation for the basis of the decision. The DEEOIC continues to conduct annual Accountability Reviews of case files. During the FY 2012, the DEEOIC conducted an Accountability Review of files from the Denver and Jacksonville District Offices. This included a review of the final decision process conducted by the Denver and Jacksonville Final Adjudication Branches.

8. The DEEOIC website contains copies of certain significant EEOICPA decisions. Unfortunately, at the present time there are only limited cases available on the website. Greater use of this website to post decisions could significantly enhance a person's appreciation of the laws, regulations, and rules governing the EEOICPA.

The decisions on the DEEOIC's website consist primarily of precedent setting final decisions and noteworthy non-final orders that contain statements with wide programmatic implications regarding EEOICPA benefits. At this time, there are 202 final decision in the database that address one or more of 24 major topics, and each of the 24 major topics is further broken down into related areas of interest. The database is updated regularly to include subsequent significant final decisions and non-final orders as they become available. In the past few weeks, we recently added eight new decisions to the database.

9. Claimants contact us asking for assistance locating physicians, especially physicians who will accept the EEOICPA medical benefits card. Using the DEEOIC's website, there is such a list, but the availability of this list is not clearly noted. It would be a tremendous help to claimants if the availability of this resource were clearly noted on the DEEOIC's website.

The DEEOIC website does provide a link to the listing of those physicians that are enrolled through ACS (Affiliated Computer Services), the contractor who processes medical bills for the DEEOIC. The resource is listed under "Get Help with My Medical Bills," which directs the user to the ACS web portal.

10. The DEEOIC should consider making policy determinations available to the public.

All published policy determinations are available to the public via the DEEOIC website. Policy directives such as updates to the procedure manual, circulars and bulletins can be found under the heading of "Procedure Manual and Bulletins."

11. As a way of emphasizing its commitment to providing professional and courteous service, the DEEOIC ought to institute procedures for reporting rude and unprofessional behavior.

The DEEOIC is committed to providing professional and courteous customer service. The management teams both at the National Office and the district offices constantly strive to work with staff and our claimants to resolve difficult customer service situations. Any instances of inappropriate customer service should be reported to the DEEOIC immediately. On July 2, 2012, the OWCP implemented an improved customer satisfaction survey which can be found at <http://www.dol.gov/owcp/OWCPSurveyLetter.pdf>. In addition to this, the DEEOIC will be adding a new customer service survey to our phone system in the near future.

I 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 planning ways to implement changes in light of your recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Steinberg", with a large, sweeping flourish extending to the right.

Gary A. Steinberg  
Acting Director