

SEM ISSUES

One of the purposes of the advisory board was to address the problems with SEM and I know you have heard a great deal about that issue. As you are aware, the DEEOIC relies on the opinion of Dr. Brown as the controlling authority regarding whether scientific knowledge shows a causal link between a specific toxic substance and an illness. This is problematic on several levels. It seems absolutely irrational to limit causation analysis to the opinion of one person. Dr. Brown is not the only expert in this field. There is no way for claimants to subpoena Dr. Brown to a Part E hearing and therefore they cannot submit his causation opinion to cross-examination or to critical review. The inability of claimants to question Dr. Brown's causation opinions is a clear violation of fundamental due process. Additionally, and just as important, is that Dr. Brown never issued his opinion for the purpose utilized by DEEOIC. Dr. Brown has never even suggested that he was considering aggravation or contribution. Congress when it enacted the EEOICPA directed the DEEOIC to consider aggravation and contribution, as well as causation.

SEM has utility in assisting claims examiners developing claim. However, the way SEM is set up is confusing and in several instances wrong.

Thousands of people worked in uranium mines in the southwest United States from 1942 to 1971. These mining operations were dirty, dangerous, occurred prior to the creation of OSHA or fundamental safety protocols. Many of these miners suffer very debilitating respiratory conditions, including pneumoconiosis. Pneumoconiosis is caused by the accumulation of particulate material, such as dust, fumes, gases, and fibers in an employee's lung. SEM confirms that crystalline silicon dioxide is

in most uranium mines. SEM indicates that crystalline silicon dioxide is associated with chronic silicosis. However, SEM does not show that crystalline silicon dioxide is associated with the development of pneumoconiosis. Many of these miners have been diagnosed with pneumoconiosis, however their doctors may not have diagnosed them with silicosis.

Claims examiners when they are developing claims for benefits will usually stop development on a claim if the SEM does not show a link to the claimed condition. These miners who file a claim for pneumoconiosis are having their claim prematurely denied, because the district office is not considering the miners exposure to crystalline silicon dioxide.

SEM is also poorly designed. If the claims examiner is conducting a search to see if a particular employer operated a specific mine, if the employer's name is misspelled, the SEM fails. For example, SEM shows that Kerr-McGee operated a number of uranium mines and mills. Earnings records from the Social Security Administration might show that an employee worked for Kerr McGee, however if the claims examiner runs a search for Kerr McGee, that name will not show up in SEM search. The SEM is not user friendly and seems designed to idea potentially covered employment.

DEEOIC official policy is that the SEM cannot be used to deny a claim, however because of the way SEM is set up, it encourages a hostile claim culture and thwarts the mission of the agency.

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