

## TOXIC CULTURE

The bureaucratic culture within the DEEOIC is overly hostile to claimants. I don't want to paint everyone who works at the DEEOIC with a broad brush, because there are some very dedicated employees within the DEEOIC trying to do the right thing, however there are also many employees who don't seem to care about the mission of the program or deliberately try to deny claims for EEOICPA benefits. From talking to multiple claims examiners in multiple offices, I see a program where the claims examiners are very demoralized, inadequately trained and several employees who seem to believe that their mission is to deny claims.

I represented an employee who worked at the Portsmouth Gaseous Diffusion Plant for over 30 years. He had been approved for beryllium sensitivity but his claim for chronic beryllium disease was ignored and denied by the Cleveland District Office for many years. When I obtained his claim file, I found out that the Cleveland District Office had never obtained all of his records from his employment. When I presented his claim to the claims examiner, we had records from 3 treating doctors as well as a Contract Medical Consultant confirming that he met the statutory criteria for chronic beryllium disease. The claim examiner refused to consider any of that evidence and denied the claim. We requested FAB reverse the decision and accept the claim, but the FAB hearing representative was too afraid to take that action, but she did remand the claim. When the claim was returned to the Cleveland DO, the claims examiners ignored the information in the remand order and in the file and he sent me a letter (Attachment #E) showing that he was still ignoring the clear medical evidence and was continuing to try to deny claims. I had to contract the DEEOIC Director to

get this claim properly reviewed approved. I appreciate her efforts to solve this problem, however that claims examiner remains with the DEEOIC and continues to try to deny all the claim that he can. Unfortunately, is typical of many claims examiners within DEEOIC who are overtly hostile to claimants. This behavior shows a pervasive toxic culture within the DEEOIC.

I recently represented a 92-year old widow of an employee who worked at the Rocky Flats Plant, over 30 years. The Denver District Office had been denying her claim for survivor benefits for 15 years. When I began representing her, I obtained his employment records and those employment records and medical records met the statutory criteria for chronic beryllium disease. A Denver claims examiner sent the employee's records to a contract medical consultant, but advised the CMC that in order for the employee to be approved he must have had 2 abnormal lymphocyte proliferations test (see attachment #F). Neither the EEOICPA or the EEOICPA regulations require 2 such tests. The claims examiner had no basis for making that statement. The CMC returned his report wherein he said that the claim did not meet the criteria for chronic beryllium disease, but of course the CMC report was based on the wrong criteria. Another claims examiner took over the claim and sent my client a long convoluted letter (see attachment #F), wherein she told my client that the CMC report was "well-rationalized" and appeared to continue to deny this claim. She was trying to discourage my client from pursuing her claim. We were finally able to get the Denver DO to accept the claim but only after I got a manager's attention. This is just another example of a culture of claim denial within the program. It seems to be the fallback position of many claims examiner to try to deny claims.

In another claim I represented another employee from Rocky Flats Plant. In that case, a claims examiner wrote to my client's doctor questioning his medical expertise of the treating doctor, questioned the basis for his medical determination and implied to the doctor that I forged his signature on his report (see attached #G). This claims examiner is well known to be very anti-claimant among the advocate community. She has no medical expertise but in her recommended decision denying the claim, she denied the claim based on her own assessment of the medical evidence. I again had to get assistance from the DEEOIC Director and FAB reversed the recommended decision and approved my client's claim (see attachment #H).

I have represented other claimants, wherein the claims examiner refuses to accept a B-reader report because it was not signed. I met with John Howard, the head of NIOSH and he advised that NIOSH B-reader reports do not have to be signed. NIOSH created the B-reader form and issues certifications to doctors who meet their medical standards to be a B-reader. Mr. Howard advised that there is no place on the form for such a signature. This information was conveyed to the DEEOIC Director and the Deputy Director of OWCP. However, to this day, I get claims examiners trying to deny claims, because the B-reader form is not signed.

In other claims, claims examiners will frequently request that I provide the physical x-rays to them so they can have them reviewed. This request is so frequent, that I know, they must have been instructed by their supervisor or manager to make such a request. I don't have a problem complying with the request, except that it needlessly delays the claim process, but I don't believe it is really necessary. Actually, I believe it is outrageous, as these claims examiners are questioning the medical expertise and medical judgment of board certified medical doctors who are treating my

clients. I discussed this problem with the Head of Policy for DEEOIC and he advised that these requests would stop. I will concede that they are not as frequent, but I continue to receive those requests.

I have had other claims, where the District Office sent letters to my client's doctors that were so demeaning and harassing, that the doctors told me they are sorry they ever tried to help their patients with providing a medical report to support their claim.

The Denver District Office banned me from discussing my client's claims with claims examiners in that office for almost 2 years, because the claims examiners did not like having to explain their actions. The claims examiners complaints were based on lies from claims examiners that did not like me or my clients and were without merit. There was no hearing on this action taken by the Denver District Office and I was provided no way to appeal this behavior. This action directly threatened my ability to adequately represent my clients. I discuss this with the DEEOIC ombudsman and he advised that the DO action was not legal. Finally, after several years of complaining and discussing this matter with the Denver Director, and the DEEOIC Director, I was finally permitted to discuss my client's claims with Denver claims examiners.

This anti-claimant behavior is not limited to claims examiners. I have heard from 2 other advocates that the FAB manager has voiced his opinion that he believes that surviving children of nuclear workers are lying about their claims. When a senior leader of the DEEOIC expresses that opinion, is it any wonder, that claim examiners and hearing representative believe that management wants them to deny claims.

I could provide many other instances which demonstrate unacceptable behavior by DEEOIC employees and show an entrenched culture which is trying to deny claims.

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