

EEOICPA BULLETIN NO: 16-02

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Subject: Presumptions Available for Accepting Chronic Obstructive Pulmonary Disease (COPD) Under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

Background: Part E of the EEOICPA provides compensation for employees of Department of Energy (DOE) contractors and subcontractors for whom it is found that it is at least as likely as not that exposure to a toxic substance was a significant factor in aggravating, contributing to, or causing an illness; and it is at least as likely as not that the exposure to such toxic substance was related to employment at a covered DOE facility. Uranium miners, millers, and ore transporters are also eligible for benefits if they develop an illness as a result of occupational exposure to a toxic substance at a facility covered under Section 5 of the Radiation Exposure Compensation Act (RECA).

During the adjudicatory history of the Part E program, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has developed different resources to assist in evaluating the relationship between occupational exposure to toxic substances and diseases. As part of this effort, DEEOIC has reviewed scientific literature examining the issue of whether asbestos exposure aggravates or contributes to COPD. [\[1\]](#) As result of this review, DEEOIC has determined that a DEEOIC Claims Examiner (CE) may accept COPD as a Part E covered illness when certain conditions are satisfied:

- The employee worked for an aggregate of 20 years prior to 1980 (inclusive) in any of the labor categories noted in [Attachment 1](#). Alternatively, an Industrial Hygienist has provided a well-rationalized discussion of case-specific evidence opining that an employee (in any labor category) has had 20 years of significant asbestos exposure (any time period); and

- Medical evidence from a qualified physician documents a diagnosis of COPD after evidence of 20 years of significant asbestos exposure.

The judgment by DEEOIC to apply this guidance in the adjudication of Part E claims for COPD originates from the interpretation of scientific evidence by health scientists and physicians working for the program. The consensus of scientific data present in epidemiological studies document that a 20-year significant asbestos exposure threshold is associated with increased incidence of pulmonary dysfunction, including asbestosis. The 1980 reference to the exposure standard derives from the fact that the majority of the referenced studies applied analysis of occupational asbestos exposure occurring prior to this year. The DEEOIC identified the labor categories in [Attachment 1](#) as those with a very high likelihood of significant asbestos exposure.

The function of this Bulletin is to allow DEEOIC to process claims for acceptance due to the existence of reliable scientific evidence documenting reasonably that it is at least as likely as not that an exposure to asbestos was a significant factor in aggravating and contributing to COPD and that it is at least as likely as not that the exposure to asbestos was related to employment at a covered DOE facility. Cases that contain evidence meeting the criteria described in this Bulletin meet this burden and do not require further review to establish causation under Part E. Claims that do not meet the specific criteria listed in this Bulletin continue to require individualized exposure analysis and assessment by a qualified physician to determine compensability. The DEEOIC will review previously denied Part E COPD claims affected by the guidance in this Bulletin, and reopen them to allow for an acceptance, if appropriate.

References: 42 U.S.C. § 7385s; 20 CFR Part 30

Purpose: To provide criteria for expedited acceptance of Part E claims for COPD.

Applicability: All Staff

Actions:

1. When a claimant files a Part E claim for COPD, the CE carefully reviews the evidence received and undertakes

development to obtain the required documentation necessary to decide if the claim is compensable.

2. The CE will accept that a covered DOE contractor or subcontractor employee's exposure to asbestos was a significant factor in aggravating, contributing to or causing COPD when case evidence is present to substantiate the following:

A. The employee worked for an aggregate of 20 years prior to 1980 (inclusive) in any of the labor categories noted in [Attachment 1](#). Alternatively, an Industrial Hygienist has provided a well-rationalized discussion of case-specific evidence opining that an employee (in any labor category) has had 20 years of significant asbestos exposure (any time period); and

B. Medical evidence from a qualified physician documents a diagnosis of COPD subsequent to evidence of 20 years of significant asbestos exposure.

3. For cases not meeting the above criteria, the CE is to undertake development to arrive at the established extent and duration of exposure to asbestos (along with other toxins associated with both the employee's DOE contractor work and scientifically linked to COPD) and obtain a medical opinion on causation, as explained in existing Part E claims adjudication procedures. In those instances where the evidence does not document that an employee with COPD worked in one of the labor categories listed in Attachment 1, but there is evidence of 20 years of employment prior to 1980 in a position with the potential for significant asbestos exposure, the CE is to initiate an IH referral to ascertain the degree of exposure. Such referrals should also assess the nature, extent and duration of other toxins which are also potentially related to the employee's DOE employment and their COPD.

4. The DEEOIC will prepare a list of previously denied COPD claims based on causation. The district office(s) or the Final Adjudication Branch (FAB) will review the claims on the list to determine if the standards enunciated in this Bulletin are now met. Cases denied for reasons other than causation, such as employment or survivorship, do not fall under the guidance issued herein and are unaffected by this guidance. Survivor cases in which maximum benefits have already been paid will also be unaffected by this guidance. The DEEOIC Policy Branch will distribute the comprehensive list to the appropriate district offices and FAB separately.

5. For cases that are reopened, the CE proceeds in the usual manner and prepares a recommended decision.

6. For cases on the comprehensive list at FAB for conditions other than COPD, the designated co-located CE conducts the review of the evidence in the case file. The CE prepares a memorandum to the file and states the findings of the review.

7. If a denied COPD claim is currently before the FAB, and the evidence clearly fits the criteria of this Bulletin, the FAB reverses the denial and accepts the claim, as long as all other Part E criteria are met.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual.

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Distribution List No. 1: Claims Examiners, Supervisory Claims Examiners, Technical Assistants, Customer Service Representatives, Fiscal Officers, FAB District Managers, Operation Chiefs, Hearing Representatives, and District Office Mail & File Section\

[1] Am J Epi 156:738-746, 2002; Am J Respir Crit Care Med 170: 691-715; 2004; JOEM 43(7): 623-629, 2001; Am J Ind Med 53: 224-240, 2010; J Occ Med Tox 5(12); 1-7, 2010.