

CBD, Beryllium Sensitivity, Sarcoidosis and the (EEOICP) Act

Under PART B -

The legal language from the law that cannot be changed without an Act of Congress is:

(13) The term “established chronic beryllium disease” means chronic beryllium disease as established by the following:

- (A) For diagnoses on or after January 1, 1993, **beryllium sensitivity (as established in accordance with paragraph (8)(A))**, together with lung pathology consistent with chronic beryllium disease, including—
 - (i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;
 - (ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or
 - (iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.
- (B) For diagnoses before January 1, 1993, the presence of—
 - (i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and
 - (ii) any three of the following criteria:
 - (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.
 - (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.
 - (III) Lung pathology consistent with chronic beryllium disease.
 - (IV) Clinical course consistent with a chronic respiratory disorder.
 - (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

The beryllium sensitivity reference (highlighted) cites to this section of the law –

(8) The term “covered beryllium illness” means any of the following:

- (A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.**
- (B) Established chronic beryllium disease.
- (C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

Establishing CBD is different from diagnosing CBD – the law has a disconnect in that it stays you “establish” CBD with two sets of criteria for the condition having been diagnosed (1) before January 1, 1993 or (2) after January 1, 1993. Given the reality of the pre-post 1993 differential – the first step the CE has to take is deciding what temporal standard is going to apply to the claim.

Looking first at the Part B pre-1993 criteria, the statute does not specify how a diagnosis of CBD can exist prior to 1993, if it went unrecognized as such by the physician. Accordingly, the DEEOIC takes a relatively expansive view of other diagnoses that could potentially been CBD by specifying that there needs to be some evidence of a “chronic respiratory disease.” The reference from the EEOICPA Procedure Manual:

PM 2-1000.6 - If the earliest dated document showing that the employee was either treated for or diagnosed with a chronic respiratory disorder is dated prior to January 1, 1993, the pre-1993 CBD criteria should be used. Evidence of a chronic respiratory disorder includes records communicating existence of a long term, prolonged pulmonary disease process. References to acute pulmonary conditions, such as short-term pulmonary distress associated with temporary viral or bacterial infection do not qualify as a chronic respiratory disorder. Pulmonary testing performed in occupational or medical settings, which identify abnormalities, are not appropriate to document a chronic respiratory disorder, unless interpreted as such by a physician. In situations where it is critical that the question of whether historical documentation communicates the existence of a chronic respiratory disorder, the CE is to undertake development to allow for a physician chosen by the claimant to provide clarification, or when the claimant is unable to provide such evidence, seek the input of a CMC.

DEEOIC can treat a diagnosis of pulmonary sarcoidosis as a diagnosis of CBD, under most circumstances, which then enables the program to move to evaluate the claim using the pre-1993 diagnostic criteria for allowing for CBD claim acceptance i.e. any three of the following - (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.(III) Lung pathology consistent with chronic beryllium disease.(IV) Clinical course consistent with a chronic respiratory disorder.(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred). The reference from the EEOICPA Procedure Manual:

PM 2-1000.10- Presumption of CBD, Diagnosis of Sarcoidosis, and History of Beryllium Exposure. Sarcoidosis is a disease that represents as inflammation of cells that form into nodules or granulomas. Sarcoidosis can occur in different organ systems. Under Part B, the DEEOIC recognizes that a diagnosis of pulmonary sarcoidosis, especially in cases with pre-1993 diagnosis dates, could represent a misdiagnosis for CBD. As such, a diagnosis of pulmonary sarcoidosis is not medically appropriate under Part B if there is a documented history of beryllium exposure.

Looking next at the Part B post-1993 criteria - the CE can still treat a pulmonary sarcoidosis claim as CBD, but the statute stipulates the need for a positive BeLPT performed on either the blood or lung lavage cells. In other words, the CE can proceed with the evaluation of a diagnosed pulmonary sarcoidosis claim after 1993, with the absence of any reference to CBD, but a positive LPT still needs to be presented.

For the application of the sarcoidosis presumption in Part E – there is no pre-post 1993 criteria for CBD. As such, the CE is tasked with first determining whether the medical evidence supports a diagnosis of whatever is claimed. Program policy states in establishing CBD as a “covered illness” the medical evidence must first document that a physician has diagnosed either CBD or pulmonary sarcoidosis AND that there is a positive BeLPT/BeLTT. Without the BeLPT/BeLTT there is insufficient evidence to document the condition as CBD – and the CE proceeds to adjudicate the claim as pulmonary sarcoidosis or whatever other pulmonary condition exists. The reference from the EEOICPA Procedure Manual:

PM 2-1000.10 - For a Part E claim, the CE can evaluate a pulmonary sarcoidosis claim as CBD; however, a positive BeLPT or BeLTT is necessary to accept a diagnosis of beryllium sensitivity/CBD under Part E. Without affirmative evidence in the form of a positive beryllium BeLPT or BeLTT, the CE is to proceed with the adjudication of the claim as one for a diagnosis of sarcoidosis.

Moving on to the completely separate matter raised by Dr. Redlich:

“The current manual for Part B - It says **can diagnose CBD if consistent path and NO BeLPT done or Negative BeLPT – even if using post 1993 criteria.** (If negative BeLPT supposed to document steroids).”

Going back to the Part B post-1993 CBD criteria , the law stipulates that a positive LPT derived from blood or lung lavage has to exist for claim acceptance. However, the program allows for the possibility that a normal or borderline LPT should actually not be so IF there is a lung biopsy that confirms the presence of granulomas consistent with CBD. The reference from the EEOICPA Procedure Manual:

PM 2-1000.7a(2) - In claims that contain a normal or borderline LPT, and the lung tissue biopsy confirms the presence of granulomas consistent with CBD, the CE may accept the claim for CBD. The lung biopsy is considered the “gold standard.” However, the following steps must be followed before accepting a claim in this manner.

(a) If the claimant is living, the CE should contact the treating physician and obtain a detailed narrative report detailing the history of the claimant’s LPT results (if possible). Specifically, the physician should address whether the claimant has a history of positive LPTs with recent normal or borderline LPT results. The CE should note that if the claimant has a history of steroid use, this may cause a false negative on the LPT result.

(b) If the claimant is deceased, the CE should try to obtain as much information as possible on past LPT results and possible steroid use. If exhaustive efforts produce little or no results and the claim contains the

normal/borderline LPT results along with a biopsy of the lung tissue showing the presence of granulomas, the CE may accept the claim.

(c) If there is no LPT and the lung tissue biopsy confirms the presence of granulomas consistent with CBD, the CE may accept the claim.