

The Department of Labor has received action items from the Advisory Board on Toxic Substances and Worker Health (ABTSWH), stemming from its October 17-19 meeting. We appreciate the Board's work and provide the following responses:

Day 1 (October 17):

- DOL should provide a written explanation of what went on with NCI and SOL, related to the use of NCI experts.
 - The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) regulations at 20 C.F.R. § 30.5(ff)(1) through (5) list the specified cancers that are compensable for members of the Special Exposure Cohort (SEC). Section 30.5(ff)(6) of the regulations also provides the following:

The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

Based on its initial reading of § 30.5(ff)(6), the Division of Energy Employees Occupational Illness Compensation (DEEOIC) asked the National Cancer Institute (NCI) whether cancers diagnosed at five locations within the body that are not specifically named in the regulations could be considered to be specified cancers. The requests asked whether:

- Chondrosarcoma of the cricoid cartilage of the larynx could be considered to be bone cancer;
- Cancers of the ureter and urethra could be grouped with urinary bladder cancer;
- Cancer of the larynx could be grouped with cancer of the pharynx; and
- Cancer of the fallopian tubes could be grouped with ovarian cancer.

After it received positive responses from NCI to all of its inquiries, DEEOIC issued either a Bulletin or a Circular advising agency personnel that the cancers noted above were considered to be specified cancers.

However, DEEOIC has since received legal guidance from the Solicitor's Office that called into question the above-noted consultations with NCI and the resulting determinations that the five cancers at issue here are specified cancers. After considering this legal guidance, DEEOIC agrees that these consultations with NCI went beyond the scope of § 30.5(ff)(6), which only provides that it may consult with NCI when it needs to know if a medical condition diagnosed at a specific location within the body listed in § 30.5(ff)(1) through (5) is a "cancer."

Except for certain lymphomas and multiple myeloma, which are cancers of particular types of cells, a cancer is only a "specified" cancer if the diagnosis is within an anatomic structure included in the list in the EEOICPA regulations, and conforms to the pertinent latency period, if any. The regulations do not authorize DEEOIC to ask NCI whether a correctly diagnosed cancer appearing at an anatomic location that is not one of the listed locations in the regulations' definition of a specified cancer should be considered as being within one of those anatomic locations. To do so would violate the designation of certain cancers as "specified" cancers made by Congress. Therefore, DEEOIC has

reversed its prior determinations that certain cancers should be considered to be specified cancers.

From this point forward, DEEOIC will consult with NCI only on issues pertaining to the name or nomenclature of a disease diagnosed at an anatomic location for the purpose of determining whether it constitutes a cancer. DEEOIC will not consult with NCI pertaining to whether a cancer can be considered a specified cancer. However, if there is a medical question concerning the type of cancer an individual claimant may have had, the DEEOIC will ask the treating physician, as appropriate.

- Can we find a way to notify the Advisory Board of new Circulars, Bulletins, etc., on an ongoing basis? (*DOL provided a handout listing the updates with website links for updates since April 2016*)
 - DEEOIC is exploring the feasibility of creating an email distribution list for updates on for policies and procedures. Until that happens, we can make sure that updates are listed in the program highlights section of the DEEOIC web page.

Day 2 (October 18):

- When will the OHQ be updated?
 - DEEOIC delivered a revised version of the current OHQ to the Advisory Board on December 14, 2016. This document was on the 4th disc. We are requesting any specific recommendation(s) that the Board can make to the revised version that will facilitate improvement to the collection of relevant employee exposure information.
- What does “medical information insufficient” encompass? That there is no medical submitted, or not enough to show claimed condition(s), or another option?
 - Within ECS, this is listed as the denial reason when a specific medical condition (including consequential) has been claimed, but after development there is not enough medical evidence to support the employee’s diagnosis with that condition. This is also used when no specific illness was ever claimed or when denying a symptom/procedure (i.e. “cough” or “heart surgery”) that was claimed and evidence of an underlying condition(s) was not submitted (regardless of whether or not there is medical evidence of the symptom/procedure).
- DOL should please clarify the current policy re: BeLPT requirements pre- and post-1993
 - DEEOIC considers the information provided in the Federal (EEOICPA) Procedure Manual, regarding the use of the BeLPT, to be sufficiently descriptive of the BeLPT requirements. If the Board is still unclear about these requirements, please provide us with the specific areas of concern. The DEEOIC has asked the Board to review the sections of the Act that require tests to be “characteristic” of CBD to assist DEEOIC staff with training internally and to assist with outreach to the medical community.
- For DOE: is the CAIRS database searched with the other employment records? (*this question was for Greg and DOE, and he promised to get back to the Board*)
 - Per Greg Lewis at DOE: The Computerized Accident Incident Reporting System (CAIRS) database is a reporting system that contains limited personal information on those who were involved in the incidents. Thus, DOE sites do not typically search the CAIRS

database when responding to EEOICPA inquiries. Each DOE site has its own method/system for logging and tracking incidents and accidents. The site's tracking system is more detailed, especially with respect to identifying information of the people involved; so a DOE site would check its own tracking system when responding to an EEOICPA request. In addition, the CAIRS system contains data that only go back to the 1980's while most of the DOE sites' accident/incident records go back much further than the 1980s.

Day 3 (October 19):

- DOL should provide the Memo defining “cause-contribute-aggravate” definitions and details
 - DEEOIC has previously provided the board with the old DMC handbook. This handbook provides some insight on the topic in addition to what is in the Procedure Manual.
- Need more information on the issue of DOE facilities in Terrie Barrie's correspondence of June 3
 - Regarding the issue of proprietary interest, DEEOIC must respectfully advise that this recommendation is outside the scope of the Board's statutory authority.
- DOL should provide their rationale for the hearing loss presumption terms
 - Please see Attachment 1 – Hearing Loss for a discussion on presumption terms.
- DOL should describe the process for creating new Bulletins, Circulars, etc., how are they developed and implemented, what does the expiration date mean (*John spoke about this at the meeting so the Board may have enough on this*)
 - The process for creating new Bulletins, Circulars, etc., is described in the OWCP procedure manual.
 - Bulletins. Bulletins are directives that require one-time or temporary action. They typically involve two or more district offices or OWCP divisions and are effective only until the required action is completed or the described procedures are incorporated in the manual via a permanent directive. All Bulletins have an expiration date, and are discarded when they expire or when the required action is completed
 - Circulars. Circulars are directives that transmit information to program staff. Circulars may be discarded after staff is aware of their contents.
- DOL should provide a status of the asthma and COPD Bulletins
 - DEEOIC has published EEOICPA Bulletin No. 16-01, Criteria for Establishing Causation for Asthma Claims Under Part E of the EEOICPA, as well as Bulletin No. 16-02, Presumptions Available for Accepting Chronic Obstructive Pulmonary Disease (COPD) Under Part E of the EEOICPA. Both Bulletins are available on the OWCP/DEEOIC public website.