

OWCP-DEEOIC Advisory Board on Toxic Substances And Worker Health  
Subcommittee on evidentiary requirements for Part B lung conditions

Dear Chair Dr. Redlic and Committee Members,

As an advocate for the workers since 2002, the following are a list of concerns regarding “evidentiary requirements” for silicosis and especially beryllium covered illness, beryllium sensitivity, and chronic beryllium disease.

The law states the following criteria and definitions for beryllium covered illness:

**§ 7384I. Definitions for program administration**

- (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).
- (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).

§ 7384n. Exposure in the performance of duty

(a) BERYLLIUM—**A covered beryllium employee shall, in the absence of substantial evidence to the contrary,** be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

- (1) employed at a Department of Energy facility; **or**
- (2) present at a Department of Energy facility, **or** a facility owned and operated by a beryllium vendor, **because of employment by the United States,** a beryllium vendor, **or a contractor or subcontractor of the Department of Energy;**

during a period when beryllium dust, particles, or vapor **may have been present at such facility.**

Since 2002, the policy of the DEEOIC has been to use the pre-1993 criteria if the evidence shows that the employee was diagnosed with OR treated for OR tested for a **chronic respiratory disorder**, then the pre-1993 criteria may be used.

Whether to use the pre- or post-1993 CBD criteria depends upon the totality of the medical evidence, including when the employee was tested for, diagnosed with, and/or treated for a chronic respiratory disorder.

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.

The DEEOIC has never defined chronic respiratory disorder and just assumes that the upper respiratory infections are from virus or bacteria and not from beryllium. The World Health Organization has defined chronic respiratory disorder as .....

<http://www.who.int/respiratory/other/en/> (World Health Organization )

Chronic respiratory diseases (CRDs) are diseases of the airways and other structures of the lung. Some of the most common are chronic obstructive pulmonary disease (COPD), asthma, occupational lung diseases and pulmonary hypertension. Besides **asthma and chronic obstructive pulmonary disease**, there are many other chronic respiratory diseases. Below is a review of the most common respiratory diseases

Pulmonary hypertension ; Obstructive sleep apnea syndrome ; Allergic rhinitis and sinusitis ; bronchiectasis

ISSUE OF CONCERN.....

1. PLEASE DEFINE CHRONIC RESPIRATORY DISORDER to be used under this administration of the EEOICP Act so that the pre-1993 criteria will be consistent among the DEEOIC, the FAB final decisions, and the claims.
2. Since 2004, the DEEOIC has established by FAB Final decisions that the pre-1993 chest x-rays, pulmonary function tests, diffusion capacity tests, the lung pathology, the clinical course, and the beryllium sensitivity tests evidence may be after 1993.
  - (a) PLEASE give examples of the chest x-rays or CT scans abnormalities “characteristic “ of CBD. ( If the list is long please use “but not limited to”)
  - (b) Please define the pulmonary function tests showing restriction/obstruction
  - (c) Please define diffusion capacity defect
  - (d) Please define the lung pathology consistent with CBD
  - (e) Please define the clinical course consistent with a chronic respiratory disorder
  - (f) Please define the BeLPT test that would show just one abnormality.

NOTE: DEEOIC stated that they will accept the skin patch test but the employee claimants have not found any place to have the test done.

NOTE: Several of the National Jewish BeLPT test results have dashes (-----) where a number should be. If the only toxin that was exposed to the blood was beryllium, and all the lymphocytes proliferated, then is this equal to the “lung pathology” or that the BePLT test is showing one abnormality?

3. The DEEOIC has stated that calcified granulomas will not be accepted as characteristic of CBD, even though prior FAB decisions and District Medical Consultants have stated that calcified granulomas are characteristic of CBD  
Calcification in a granuloma is usually associated with the healing of the granuloma. **A calcified granuloma is not characteristic of CBD.**
  - (a) Please address whether or not a calcified granuloma is characteristic of CBD, especially when the employee has been away for further exposure to beryllium and or beryllium compounds.
4. Beryllium and beryllium compounds have different biological effects on the body. Whether it is soluble or insoluble also effects the body in different ways. From the Blood, 40% goes to the bone within 1,500 days, 16% rest of body within 15 days, and 4% rest of body within 500 days. One half of all the above goes to the upper large intestine then to the lower large intestine then the feces. While the other half goes to the urinary bladder and the is eliminated via urine. ( ICRP SYSTEMIC METABOLIC MODEL Washington State University USTUR) Since it is well known the beryllium affects the liver and the skeleton system, would these systems be a “covered beryllium illness” as defined in the Act? IF they are, would a well rationalized physician letter be required and what would it contain?

5. Since beryllium affects that skin as well, would this also be a “covered beryllium illness”?
  
6. AT the October meeting the Board stated that sarcoidosis is beryllium disease. However the statute requires establishing CBD under certain criteria.
  - (a) So is sarcoidosis x-rays characteristic of CBD?
  - (b) Is the pulmonary function tests or diffusion capacity tests showing defects for sarcoidosis?
  - (c) Is the lung pathology for sarcoidosis characteristic of CBD?

EEOICPA BULLETIN NO.02-26

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Subject: Referrals to Dr. Lee Newman

Background: Section 78841 (8) (A) & (13) requires Claims Examiners (CEs) to adjudicate claims for Chronic Beryllium Disease (CBD) and Beryllium Sensitivity (BeS) based on certain criteria. Prior to January 1, 1993 standard medical terminology for Beryllium tests and diagnoses did not exist. **This has made it difficult for the CEs in the District Offices to review and interpret medical evidence for CBD and BeS prior to January 1, 1993.** Since the diagnosis of CBD is relatively new, ongoing research continues. Therefore, it is also sometimes difficult for CEs to apply the criteria for CBD to diagnoses that were made after 1/1/93.

EEOICPA BULLETIN NO. 03-02

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Expiration Date: June 5, 2004

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**NOTE: This bulletin replaces Bulletin 02-26, Referrals to Dr. Lee Newman.**

Subject: Referring case files to the District Medical Consultants (DMC) for review.

Background: The Division of Energy Employees Occupational Illness Compensation (DEEOIC) has negotiated contracts with several physicians to fulfill the role of District Medical Consultant (DMC) for the district offices (DO).

The DMC's role will be two-fold: 1) evaluating medical evidence and rendering medical opinions and 2) interpreting test results.

There was also a MEMO to Peter Turcic from Dr. Cohen, that explained that other respiratory disorders are characteristic of CBD. This was in the procedure manual to be used as a "rational opinion" for survivor claims under Part B, beryllium disease. It is no longer there, but the survivors still need a well rationalized letter stating that COPD is a chronic respiratory disease that is characteristic of CBD. Please address the issue for obtaining a well rationalized letter for the survivors that will meet the criteria and definition of covered beryllium illness.

Thank you for your time and assistance in helping the nuclear workers.

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