

Energy Employees Claimant Assistance Project

PO Box 553
Yellow Springs, Ohio 45387

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Advisory Board on Toxic Substances and Worker Health

Dear Dr. Markowitz and Members of the Board:

I have been alerted to a problem that I hope the Board can help with. As you know, DOL followed your recommendation and rescinded Final Circular 15-06 in their Final Circular 17-04. FC17-04 DEEOIC states, "Accordingly, the potential for toxic substance exposure in all claims must be evaluated based upon established program procedure and the evidence presented in support of a claim." It appears that DEEOIC is still following 15-06 rather than 17-02.

I have recently reviewed claims for several claimants where the wording of recommended decisions seems to imply that while DEEOIC rescinded the wording in 15-06 the policy is still in effect. I have seen the problematic wording in Recommended Decisions, Industrial Hygienist reports, and a Contract Medical Consultant report.

As you know, EEOICPA was created because DOE and predecessor agencies lied the workers about their exposures and because documentation of exposures did not exist. The wording DEEOIC used ignores this and denies claims because the claimant cannot supply non-existent records of exposures. One quote from a recommended decision reads, "After the mid-1990s, the IH opined that any exposures to lead would not have exceeded existing regulatory standards. For the exposures to cadmium, mercury, lead, and thallium, the IH opined that there is no evidence to suggest that exposures to any of these agents would have exceeded existing regulatory standards. although you would have had the potential for significant exposures in this capacity."

This is not an issue that an average claimant would have the knowledge to understand. I'm especially concerned because I don't get a chance to see that many claims. Who knows how many other claims have been impacted by DEEOIC staff and contractors following this rescinded policy? An additional issue is that DEEOIC seems to be denying these claims based on the post-1995 years while ignoring the exposures in the earlier years of employment.

I've redacted the documents I have and am enclosing them with this letter. The documents are included with the claimants' permissions.

If you are interested, I wrote a blog on this problem which you can find at:
http://www.eecap.org/EECAP_blog.htm

Thank you so much for all the good work you do. Please know that the advocates and claimants around the country very much appreciate it.

Sincerely,

Deb Jerison