

UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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MEETING MINUTES

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OCTOBER 17-19, 2016

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The Advisory Board met at the Comfort Inn Oak Ridge-Knoxville, 433 S. Rutgers Avenue, Oak Ridge, Tennessee, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMENT

MARK GRIFFON\*

KENNETH Z. SILVER

GEORGE FRIEDMAN-JIMENEZ

LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair

LAURA S. WELCH

ROSEMARY K SOKAS

CARRIE A. REDLICH

VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

DURONDA M. POPE

KIRK D. DOMINA

GARRY M. WHITLEY

JAMES H. TURNER

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

ANTONIO RIOS

\*Participating by telephone

**Monday, October 17, 2016**

## **Welcome and Introductions**

Mr. Antonio Rios, the Designated Federal Official (DFO), opened the meeting at 3:12 p.m. and the Board Members introduced themselves.

## **Review of Agenda**

Chair Steven Markowitz reviewed the agenda for the meeting and described the tasks of the Advisory Board on Toxic Substances and Worker Health (the Advisory Board or Board), which are (1) to find ways to improve the Site Exposure Matrices (SEM) used in the claims process, (2) to look at medical issues, in particular around Part B lung disease issues, (3) to look at the consistency and quality of the industrial hygienist (IH) and physician input in the claims process, and (4) to look at how claims examiners (CEs) use medical information/medical evidence to make the decisions and how that might be improved.

## **Advisory Board Issues**

Since the full Board meeting in April, the Board has learned much about the complicated Part E compensation program for Department of Energy (DOE) employees. Gaps in the members' knowledge still remain, and they look for feedback on factual matters from Department of Labor (DOL) staff. Four subcommittees were created to address each of the four tasks and seven subcommittee meetings have been held telephonically. The meeting transcripts and the minutes from the meetings are all publicly accessible. Chair Markowitz briefly met with Secretary Perez, who expressed deep support for the Board. The Board submitted its comments on proposed Energy Employees Occupational Illness Compensation Program Act (EEOICPA) rule changes, which are being considered as part of the rulemaking process. This process is governed by the Administrative Procedures Act, which dictates that DOL not to provide feedback on the recommendations they received. The Advisory Board has made several requests for information to DOL (such as copies of reports, manuals, procedures, data, etc.). The Board's Associate Designated Federal Official, Carrie Rhoads, prepared a 24-page list of requests with DOL's responses and statuses. The majority of the requests were granted, and the information was provided.

The Advisory Board has been asked to make recommendations to the Secretary of Labor on ways to enhance EEOICP. The Board can either make recommendations at each Board meeting as they are developed, or wait until several recommendations are prepared and present them as a group. DOL has requested a succinct written rationale for each recommendation. The Board needs to deliberate and vote on each recommendation in a publicly accessible forum. Publicly accessible and advertised teleconferences of the full Board might be used to carry out a vote in the interval between in-person meetings. Written rationales can be provided to DOL after a recommendation has been voted on by the Board, though some elements of the rationale should be agreed to at the Board meeting.

Dr. Boden asked about electronic voting. Mr. Rios said that electronic voting may stifle conversation between Board members but he would get back to the Board on the issue. Member Sokas asked if it would be useful for the subcommittees' draft recommendations to be available to display during their presentations to the full Board. Chair Markowitz endorsed this idea.

The Board requested that DOL alert them to any changes to the Procedures Manual, circulars, memos, or bulletins. John Vance, Branch Chief, DEEOIC Policy, Regulations and Procedures, discussed other DOL transmittals, including several circulars involving newly established Special Exposure Cohort (SEC) Classes and multiple updates to the Procedure Manual. When changes are made to the Procedure Manual, a transmittal is issued that identifies the subject matter being updated. All of the Procedure Manual changes, circulars, and bulletins are listed on the DOL website.

### **SEM Subcommittee**

Laura Welch, Subcommittee Chair, discussed the subcommittee's ideas about helping DOL to improve the Site Exposure Matrix. The Institute of Medicine (IOM) had previously reviewed the SEM and published a report with specific recommendations. The SEM subcommittee requested and reviewed DOL's response to that report.

The subcommittee has held two public meetings via conference calls with the first focused on establishing its mission. The SEM has two primary roles: establishing exposures and establishing exposure-disease relationships. OWCP has used a database called Haz-Map that is maintained on the National Library of Medicine's website as the basis for the exposure-disease relationships. The subcommittee discussed whether to expand their discussion to cover exposure assessment broadly. The group agreed that they need to look at all potential inputs into the determination of disease causation/contribution/aggravation, including an expanded view of exposure assessment. In order to ensure that the OWCP has the best information on worker exposure, the subcommittee agreed to address the Occupational History Questionnaire (OHQ) and how, generally, to improve other exposure assessments. The other main focus of the conversation was in relation to OWCP's response to the IOM report and how the Board could assist with implementation. The subcommittee discussed its data needs and requested information from DOL. Other items identified to be addressed by the subcommittee include the presumptions used for adjudicating claims and learning more about the 1995 memo. The subcommittee learned about the complexities of getting reports on claims from the EEOICPA database and has not been able to review reports or specific cases to date (other than those requested by the Part B subcommittee). The subcommittee agreed on the Chair's recommendations for a way forward with the IOM recommendations, a process for enhancing the OHQ, and a process for expanding exposure assessment for individual claimants.

Member Vlieger said that the subcommittee should look into whether DOL has added information on tasks to the OHQ as their response had indicated. Member Boden asked if there is a process in place for the Board to work together with DOL and not in parallel. Chair Markowitz said that when they have asked to speak with DOL personnel their requests have always been complied with, though there is no established process. Member Vlieger also noted that, in their response, DOL stated that they have discontinued their relationship with Haz-Map since the MOU has expired. Mr. Vance clarified that DOL still utilizes Haz-Map as the basis for health effect data in the SEM. Rachel Leiton, Director, DEEOIC, said the MOU has expired and DOL does not have a formal relationship with them anymore, though Haz-Map is still used. Member Silver suggested taking a close look at how claimant responses to questions regarding personal protective equipment (PPE) are used in the claims process. People may feel that it is necessary to say that they utilized PPE in order to have their claim approved. Member Domina said that the interviewer needs to have knowledge of what is being discussed because a lot is being lost in the details. Member Sokas said that these questions are typically used as a marker that the place or task was bad enough that PPE was provided, but it is not reasonable to expect that people used PPE adequately. She also stated that in most occupational medicine practices family history is no longer obtained, and that it should probably be deleted from the beginning of the form. Member

Cassano agreed with Member Sokas and suggested stating that PPE use is irrelevant in determining whether an exposure occurred. Member Welch said that the subcommittee is going to request cases that were denied because the exposure was inadequate and find out if all of the information was recorded properly. They will focus on a few specific diseases and look at the ones that were denied due to causation. Member Domina noted that sites with SECs that do not have a SEM will also need to be addressed. The Board discussed whether the question regarding use of PPE should be deleted and noted some of the complexities of answering it. Member Welch said that the Board will not instruct DOL on what information it collects or how it is used, but should recommend phrasing the question in a way that makes it clear the interviewee is being asked as part of an assessment of the hazards. Chair Markowitz added that he believes there is a lot of room for misinterpretation by the interviewers, and he is not convinced that misinterpretation can be completely prevented.

IOM recommended that OWCP use other data sources, beyond Haz-Map, to include exposure-disease relationships not currently in SEM, and to assure those links are current, comprehensive, and transparent. They also recommended adding nature and extent of exposure to the SEM and improving its functionality. The subcommittee agrees and proposed recommending that DOL create a committee to develop a list of other sources that could be incorporated into Haz-Map, including databases from the Environmental Protection Agency (EPA), the International Agency for Research on Cancer (IARC), and the National Toxicology Program (NTP). Member Sokas proposed recommending the use of a contractor to assemble the data sources. Chair Markowitz said that his interpretation of the IOM report was that they were deeply critical of Haz-Map's database and procedures. The IOM recommendations present a very large task for DOL. He felt that, at a minimum, authoritative reports on causality should be incorporated into Haz-Map and the SEM. Member Welch said the subcommittee agreed that if the relied upon sources have not determined a causal link, then it is not necessary for OWCP to do a detailed review of those chemicals independently, as other agencies at some point will convene committees on suspected causal links and produce a decision. The way IOM wrote their recommendation, it could imply that DOL should do detailed reviews themselves, but given the nature of the program and its resources it makes more sense to rely on other high-quality federal and international agencies to do those reviews.

Member Cassano suggested the Board whittle the list authoritative sources down to the most valuable sources and provide DOL with information on monographs written for specific agents, such as National Research Council's monograph on trichloroethylene (TCE). Chair Markowitz disagreed with narrowing the list, because only two or three chemicals are evaluated each year at most by each source, so that using all of the sources is not an overwhelming task. He asked how DOL might monitor the literature for other consensus statements beyond the primary agencies. Member Vlieger said that, in her experience, anytime you stray from anything specifically referenced in Haz-Map, CEs won't accept it without an outside toxicologist's approval. Member Silver said being able to cite reputable sources gives advocates and representatives some traction with CEs. Chair Markowitz said if DOL embarked on an expeditious process to take expert consensus statements and fold them into the SEM, CEs could reliably find it there and not rely on looking at additional authoritative sources. Member Cassano said that if a CE cannot parse a document it should immediately go to an IH and/or the Contract Medical Consultant (CMC) to evaluate. Member Welch said there isn't much new information coming out so it wouldn't be that difficult to annually implement what is being suggested. Chair Markowitz said that the IOM report specified that criteria for causation should be described in the program. Dr. Welch said that causation is currently determined by Haz-Map. Member Friedman-Jimenez said that determining between IARC's probable versus possible human carcinogens is outside of the realm of a CE; it requires having a broad skill set and no conflicts of interest. There needs to be a mechanism by which difficult cases are evaluated at an appropriate level by disinterested experts.

Member Sokas posed a question to DOL concerning an issue with the Solicitor of Labor refusing to allow National Cancer Institute (NCI) information to be considered. DOL will provide a written response to the question.

The meeting was adjourned at 5:01 p.m.

**Tuesday, October 18, 2016**

**SEM Subcommittee (continued)**

The meeting came to order at 8:40 a.m.

Member Welch presented the subcommittee's other issues and recommendations. The IOM recommended adding nature and extent of exposure to the SEM. The subcommittee agreed with DEEOIC staff that that would be very difficult. The subcommittee proposed recommending that DOL establish a process whereby the IH interviews the claimant directly when necessary for adjudicating the claim.

Member Boden said that the Former Worker Program (FWP) did a lot of work getting information about exposures and other matters. He asked if that information is used, and if so, how. Member Dement said that getting nature and extent of information through worker interviews would be pretty difficult, so they focused instead on location and task, at least for construction trades. For example, they ask about frequency of doing the task. Through this analysis they were able to develop an algorithm to separate individuals into high, medium, and low types of exposures, which has proven to work reasonably well. Member Welch added that FWP site assessments are based on existing records that were available to the contractor that created the SEM, but she did not know if those exist in the SEM. Member Dement said that the OHQ in conjunction with the SEM would be advantageous to the program in trying to get the nature and extent of exposure. Member Boden said this should be kept in mind when the Board is making recommendations for updating the OHQ to make it as relevant as it can be to nature and extent of exposure. Member Dement said he would like to know from DOL when they would plan to have an updated OHQ because the Board needs that in order to make intelligent decisions about the exposure assessment process. Chair Markowitz noted that DOL has invited the Advisory Board to provide input on the OHQ. He also said that OHQs do not go into the depth that is needed for decision making around claims. Member Sokas said the IH & CMC subcommittee found that the CE often determines what information goes to the IH. Member Boden said input on the role of the CE and guidance to the CE in the decision making process will be essential to the Board in fulfilling its mission. Member Redlich said that, in some cases they reviewed, such as those related to COPD, including the SEM complicated the process and would have been better had it been left out. Member Welch said that the SEM, OHQ, and IH interview will overlap but each approaches the information in a different way; each are useful tools but none should be considered the ultimate answer. The subcommittee has decided that it is more important to put an effort into broadening the range of assessments rather than trying to make SEM do things that it may not be able to do. Member Vlieger said that the EE3 form could be improved and additional context from it added to a claimant's documents. Also, by contract, the unions change their jobs at the sites and that information should be captured.

The subcommittee's final proposed recommendation was to have former workers be trained to administer the OHQ rather than staff with limited experience at the site or specific training on

administering the OHQ. The Building Trades Medical Screening Program would be willing to work with DOL to implement the development and quality assurance process they've been using to ensure the questionnaire captures as much as it can. The Board was in general agreement about the recommendation, and Chair Markowitz said it has been a very valuable approach in the FWP.

## **Part B Lung Disease Subcommittee**

Carrie Redlich, Subcommittee Chair, reported. The subcommittee held two teleconference meetings since the previous Board meeting. The first focused on clarifying the subcommittee's charge and defining their data and information needs. During the second teleconference meeting, they reviewed initial data analysis and planned to review cases they had requested. DOL sent several questions concerning Part B conditions under five general areas: (1) beryllium sensitization, beryllium lymphocyte proliferation test (BeLPT), and medical monitoring; (2) diagnostic criteria for chronic beryllium disease (CBD); (3) overlap of sarcoidosis and CBD; (4) silicosis; and (5) complications of disease and treatment. The subcommittee felt they needed more information on the Part B claims process and cases they could review. They requested any other relevant surveillance or data from the sites that might be useful as well as input from patients or providers. DOL was very responsive to the requests. Member Dement reviewed the data the subcommittee received. For many individuals with multiple conditions filed, the way the data is structured can be misleading. There are several issues with displaying the information in a graph. There has been a downward trend in approval rates for CBD but the reasons for that can't be determined from the data received. Member Domina commented that, based on the claimant's demographics, this may not be the best program for them. Member Dement said that 60% of Part B denials for CBD were attributed to insufficient medical information, which is a primary driver for most conditions under Part B. Under Part E, the primary reason for denial was a negative causation result; the Board needs more information on why the negative causation results were decided. Member Dement said that, in his review of the cases so far, he thinks the information represents a good ballpark look at the major reasons for acceptance or denial. Board members discussed the differences between claimants with multiple claims versus a single claim and how representative the data is. Member Pope wondered if not having an advocate was a contributing factor to the insufficient medical information denials. An area for further inquiry may be what the likelihood is for some of these cases being approved if additional information was provided. Member Vlieger said it may lead to a recommendation on CE guidance for weighing medical evidence because an unassisted claimant would have no recourse to their denial. Chair Markowitz pointed out that the extent to which these claims stop at the CE is not known. Also, DOL has requested assistance in interpreting "consistent with" from the EEOICPA and the extent to which medical evidence is insufficient is really about that interpretation.

The cases selected for review include 20 beryllium sensitivity, 19 CBD, 10 chronic silicosis, 15 sarcoidosis, and 20 pneumoconiosis, with about half accepted and half denied. On the issue of sarcoidosis and CBD overlap, at least from the cases reviewed, there has been some confusion about how to interpret and implement the presumption related in part to whether it is pre- or post-1993. The subcommittee recommended presuming CBD in any worker with sarcoidosis and beryllium exposure. BeLPT should not be an absolute requirement for diagnosis whether pre- or post-1993 due to the limitations of the test. The subcommittee feels it has answers to a majority of the other specific DOL questions they were asked. From the subcommittee's initial review of cases, which is still in progress, they frequently agree with the conclusions. The issues so far involve non-CBD cases, such as interstitial lung disease (ILD) and chronic obstructive pulmonary disease (COPD). Other concerns include disparate readings and the limitations of the Radiation Exposure Compensation Act eligibility. Chair Markowitz asked how this differs policy-wise from the way DOL currently addresses sarcoidosis.

Member Redlich said that her understanding is that it is a fairly confusing one-page presumption document. Member Dement said it might be helpful to establish the pulmonary component of a primarily non-pulmonary sarcoid. Members discussed the sensitivity and specificity for the BeLPT and other limitations of the test. Member Vlieger requested that the Board consider drafting recommended clarifications for the pre- and post-1993 criteria in the Procedure Manual, as well as instructions for CMCs regarding acceptance of CBD claims. Member Cassano said that the easiest way to resolve the confusion is probably to take away the pre- and post-1993 differentiation by not requiring a BeLPT if there is a diagnosis of sarcoidosis. Members discussed the difference in medical benefit coverage between Parts B and E. Member Redlich added the issue of complications of treatment of disease, which does not currently have a presumption. Member Vlieger complimented DOL on their recent work in this area, but believes the Board's input could provide additional value.

### **Pre- and Post-1995 Exposures – Steven Markowitz**

Chair Markowitz read the DOL circular from December 2014 concerning post-1995 occupational toxic exposure guidance and a memo clarifying the Department's rationale. Member Vlieger said that a number of advocacy groups questioned DOE's lack of input into the circulars when they were drafted. Union members protested the circulars and pointed to several inspections and oversight documents that proved the toxic exposure regulations were not being followed. She also noted that the regulations were not issued until September of 1995 but are being applied to the full year. Member Cassano said that, from a medical position, she felt the presupposition to be wrongheaded for two reasons: (1) simply because regulations are in place does not mean that everybody is following them; and (2) regulations are not necessarily protective of a particular medical outcome. Other members agreed and discussed some possible consequences of the current guidance. Member Welch said the rule is misleading in many ways to medical providers who may not have much exposure to the nuances of exposure-disease relationships. This is why the SEM subcommittee wanted to allow individual assessment of individual cases. Member Friedman-Jimenez said that the inspections being done are not representative of the levels seen every day in the work process. This is a non-evidence-based ruling and the Board should make a strong statement that it does not match the level of science available. Member Dement said that, from the exposure perspective, many exposures occur during non-routine operations. He also argued that a presumption of exposure within the guidelines based on use of PPE would not be appropriate. Member Vlieger said that DOE has stated that they do not have individual exposure records for workers. Member Redlich said that, in addition to the Board's recommendation on the statement, the review process it went through should be examined. Chair Markowitz will formulate a recommendation for the Board's review.

### **EEOICP Memo/Policy re: solvents and hearing loss – Laura Welch**

This memo discusses one of a limited number of presumptions that have been developed to help CEs adjudicate cases and determine in which cases organic solvent exposure can be a contributory cause to hearing loss. Member Welch walked the Board through the steps of developing a presumption. DOL's criteria for solvent-related hearing loss states that an employee must have a diagnosis of sensorineural hearing loss in both ears, must have been exposed to one of the listed chemical solvents before the year 1990, and must have worked in one of the listed labor categories for the required concurrent and unbroken 10-year period. She presented the list of accepted solvents and job categories that qualify for compensation. An item should be added to the disease causation list if it is in Haz-Map as well as EPA, NTP, and other sources listed in the IOM report. The relationship between organic solvents and hearing loss has been accepted by several of those agencies, and therefore meets the criteria for adding the exposure-disease relationship. She reviewed the findings of the Rabinowitz, et al., human

epidemiological study, which is useful when considering the presumptions set by OWCP. Systematic reviews concluded that both animal and human studies clearly establish the effect of solvents on hearing. A review of compound-specific data has clear limitations since most workers are exposed to multiple solvents. Reviews of mixed exposure data are more limited. Consensus statements are available from NIOSH and EPA. The presumption as set by OWCP is unnecessarily stringent.

The SEM subcommittee may be able to help DOL establish additional presumptions, particularly for diseases that are being reviewed. There needs to be a transparent process for establishing presumptions with clearly stated assumptions about the factors, particularly the required dose. Member Sokas said that there are some chemical-disease associations that have been established but it is not clear whether or not these types of exposures could or have occurred in DOE sites and at what doses. Member Boden said that a threshold that might apply appropriately to a presumption for a solvent alone might be higher than a threshold for a solvent in combination with noise-induced hearing loss. Member Whitley said that CEs are holding strictly to the list despite its well-known holes and denying claims to workers that fall just outside of one aspect of the criteria. Member Cassano responded that, in the VA, if a claimant doesn't meet the presumption, everyone has the right to present additional evidence for consideration by a Medical Examiner. At DOL, it should go to the IH first then the CMC. She also said that she feels these presumptions need to be subjected to the entire rulemaking process so that they are set in statute. Member Vlieger asked that language about the synergistic effect of a product's components or mixtures be added to the guidance. Chair Markowitz commented that it would be very problematic for a CE to not have a list of presumptions. An additional list would be helpful to facilitate the process. He asked if there is enough scientific knowledge available to enable the Board to provide a rationale for an alternative formulation of presumptions. Member Sokas said yes, but in order to provide the OWCP with something rigorous that they can point to and use there needs to be some further subcontracted work done. She thought the Board could propose which issues could benefit from more thorough analysis and offer to review the results. Member Vlieger asked DOL for a briefing on how these recommendations will be maintained in the Department. Mr. Rios said the process is that the Board submits its recommendations, DOL determines where the Board's recommendations fall in terms of their existing priorities, and generally after about four or five months a report can be requested on how they are being processed.

## **IH & CMC Subcommittee**

Rosemary Sokas, Subcommittee Chair, reported on the subcommittee's work to-date, which included one teleconference meeting, and shared some of the information and clarifications they requested from DOL. OWCP is looking for assistance from the Board on a number of issues relating to toxic substances. The subcommittee chose six to focus on and is preparing reports on each.

Member Vlieger discussed her review of cases and information provided by DEEOIC. The reviewers found that the information sent to the subcommittee was incomplete for following the logic pattern of what was going on in the claim. One claim started and repeated through no less than four recommended decisions because of inadequate instructions to the claimant. The claim went through multiple reviews by CMCs, multiple decisions, and multiple remand orders because the evidence was not properly considered. Member Sokas said her review made it clear that there are enormous communication issues occurring routinely. DEEOIC policy teleconference information was extremely useful and may be a very valuable source of information especially around interpretation and understanding how things are being done. Reviewers discussed specifics of issues related to their cases. Member Boden asked if it seems that one would need to request all the information with respect to a person rather than with respect to a claim. Member Vlieger said in her experience you have to request the entire claim file to

see what was taken from where and whether the assumptions were correct.

Member Friedman-Jimenez walked through the process by which he does literature searches. It typically takes him between one and six hours to do a thorough review. He reviewed searches on the relationships between cadmium and arsenic and prostate cancer as well as occupational exposures and Parkinson's disease. Doing these reviews can be very tricky; a CE doing a similar level of evaluation and critical reading of the literature is not going to happen in most cases. There needs to be a system to have difficult questions triaged to a group of reviewers with the necessary skill set. Member Sokas said that TCE and prostate cancer are probably not high on the list, but the other relationships might move forward, based on preliminary Board member evaluation, to go on to a subcontractor whose results would be reviewed by the Board. She briefly touched on the issue of diabetes related to occupational toxic exposure, which involves an enormous epidemiologic challenge. Member Redlich said that the questions DOL raised may not be the most important questions to answer. Member Sokas agreed and said that the claims for the conditions are what the Board should be paying attention to. Chair Markowitz said the Board is responding to specific requests from DOL for assistance on selected issues. To broaden that would become an enormous task that would involve perfecting the Haz-Map system, which the Board does not have the resources or the charge to do. Member Redlich suggested recommending implementing a structure to deal with these issues on an ongoing basis. Member Cassano said that when something is patently obvious, or when there is an exposure of concern at DOE facilities and a presumption has been established by another agency, the Board should at least list that as a possible presumption to be evaluated further.

Given the number of questions about terminology and language, Member Sokas said there is an enormous need for personnel in the program to have a translator-physician within the program. There has been someone hired in this capacity and hopefully the Board will have an opportunity to interact with him. It would be very helpful if all of these issues had engaged medical expertise, in particular if the memos had some level of input and oversight at the program level.

Member Vlieger briefly discussed additional items, including the vetting of CMCs for actual experience in the field they are opining on, such as clinical hours required; consistent queries to CMCs for claimed medical conditions by CEs; use of current standardized library of medical references by CEs and CMCs for occupational illness causation; and the review of any cases already completed by the new IH contractor. Member Sokas presented the subcommittee's proposed recommendations to be refined and voted on the following day.

### **Providing DOE Records for EEOICP – Gregory Lewis, DOE**

Mr. Lewis discussed the process DOE conducts to provide DOL with records and presented some related statistics. His office at DOE exclusively works with FWPs working on behalf of program claimants to ensure that all available worker and facility records and data are provided to DOL, NIOSH, and the NIOSH Advisory Board on Radiation and Worker Health. They use the Secure Electronic Records Transfer (SERT) system to ease the transition of records to DOL and NIOSH, as well as to protect the records. His office provides support to large-scale records projects, such as the SEM and NIOSH's Special Exposure Cohort research projects. They also conduct research into facility coverage, primarily for smaller Atomic Weapons Employers. For individual claims, they respond to three types of record requests: employment verification, dose records, and the document acquisition request (DAR), which includes everything else on file for an individual. DOE has EEOICPA site POCs who are extremely important for helping coordinate activities and research at the sites for DOL and NIOSH, as well as providing onsite EEOICPA information to workers. He walked the Board through

the steps of the records search process for individual claims. Employment verifications typically average about 14 pages, NIOSH dose record requests are about 50 pages, and the average length of a DAR is about 150 pages, though there is wide variation for each of these. Member Vlieger asked where IH records are kept and why they aren't appearing. Mr. Lewis said in many cases there are no IH records but they can't tell if the record is incomplete. All they can do is go to the source and conduct as exhaustive a search as possible. In FY 2016, DOE responded to 18,621 records requests to DOL and NIOSH from over 25 different DOE locations, many with sub-sites. Their responses were under the 60 day goal for 95% of the requests, with many sites having near perfect timeliness. DOE also supports work on the SEM, the FWP, and participates in all Joint Outreach Task Group meetings.

Chair Markowitz asked about the amount of resources required to retrieve records. Mr. Lewis said that it is site and claim-specific. The Office of Legacy Management has developed a search tool for all of the closure sites, which expedites the process. For recent records, many exist in electronic format which can easily be uploaded to SERT. A lot of records from the '90s and earlier have not been scanned in and it will take five or six people using 15 to 20 search tools on the front end effort which leads to physical searches at Local or Federal Records Centers, followed by a labor-intensive scanning process. Member Cassano asked in what format the claims file is sent to DOL. Mr. Lewis said the only thing that gets synthesized is the employment verification, everything else is sent as is for DOL to do the interpretation. Member Vlieger asked if DOE has a database with names associated to incident/accident reports. Mr. Lewis said some sites have search tools that include that information, but in many cases if there is no mention in an employee's file about a specific incident/accident there may be no way to search the records. Member Vlieger also asked if the Computerized Accident/Incident Reporting System (CAIRS) is used in these searches. Mr. Lewis said he didn't think CAIRS is checked because the sites submit the information to CAIRS and so it should be in the sites' own database. If there are omission issues, DOE will certainly look into it and adjust their process as needed. Member Silver asked if DOE and DOL have a mechanism for exchanging feedback on the value of the information provided. Mr. Lewis said there is not a formal feedback mechanism; they simply send in what is found. He discussed the case of the Los Alamos County Warehouse.

### **Weighing Medical Evidence Subcommittee**

Victoria Cassano, Subcommittee Chair, discussed the subcommittee's work looking at how CEs develop claims, determine what medical evidence is relevant, and decide a claim based on the medical evidence they receive. The subcommittee reviews and evaluates issues pertaining to training materials available on specific toxicants outside of the SEM and makes recommendations. The subcommittee has reviewed the CE Procedure Manual and found that, in general, the manual does not provide guidance on how to perform duties. In cases going to the CMC, all submitted medical evidence should go to the CMC, not just that which the CE determines to be valid. CEs need some type of document that parses publications and consensus documents with better information on causation and outcome. A CE may not be aware of the medical information needed to adequately adjudicate a claim, and thus require affirmative assistance. The subcommittee also found issues with restrictive reasons in the Procedure Manual for sending a case to an IH or CMC.

The subcommittee sent questions and a request for information to DOL and reviewed their responses at its second meeting. DOL stated that only medical evidence that the CE determines to be relevant goes to the CMC, but the subcommittee did not feel that the CE had the expertise to determine what was relevant. The subcommittee also felt that the treating physician cannot determine deficient evidence regarding wage loss. They found that most of a CE's training is on-the-job, usually by a more senior CE, with no evident standardization. The subcommittee requested forming a focus group of CEs they

could meet with to discuss the development of a claim. The subcommittee requested CE training materials besides the Procedure Manual and some Part E claims to review specifically from the 14 priority areas. The claims folders received were incomplete for evaluation but many times they felt that the denials were not necessarily appropriate.

In the near future, the subcommittee wants to conduct a more complete review of Part E claims and draft recommendations for improving CE training materials. The subcommittee will also be investigating how to operationalize causation/contribution/aggravation. Member Cassano presented a draft version of the subcommittee's proposed recommendations to be refined and voted on the final day of the meeting. Chair Markowitz said they are going to formulate a new request and discuss it with DOL to be sure the Board is communicating what it is they want so it can understand what DOL is able to deliver.

Member Cassano presented a VA guidance document on asbestos exposure that is disseminated to CEs. It isn't perfect, she argued, but it is better than what DOL uses now. Similar documents that are developed by good medical personnel are necessary. The training documents include references that the CE is free to use, making it a more inclusive process rather than a restrictive one. Chair Markowitz asked what the role of the physician reviewing the information is if the person meets the exposure criteria and has the linked disease. Member Cassano said that the VA does not rely on CE's expertise to parse the claim. If a CE cannot rule on a claim based on a presumption it is supposed to go to a Medical Examiner to get a decision. Member Boden asked if the Board should start assigning members the task of beginning to draft presumptions that could be further developed outside of the Board. Member Welch said the SEM committee felt a better understanding of the major diseases being claimed would be a good start; some presumptions may be easier to write but there may not be that many claims available. Some kind of combination of Board oversight and subcontractor work would be needed to develop presumptions. Member Redlich said that before they decide who does what, they should develop a better system for addressing the issues and figure out what kind of resources would be needed. Chair Markowitz said it would be useful to look at how DOL uses presumptions.

Member Cassano presented the disabilities benefits questionnaire for multiple sclerosis that discusses required criteria for meeting service connection for certain disabilities. This also is not perfect in its specifics, but the concept could be utilized to tease out appropriate information. Member Boden said that specific presumptions could be useful in ensuring that physicians conduct the tests that are called for. Member Silver asked about the potential flaws in VA's use of flexible presumptions. Member Cassano said that the VA has in the past dragged its feet until they are forced to do something, then deliver overly-generous presumptions because they didn't do all of the appropriate scientific analysis early enough to incorporate good epidemiology or toxicology. Much of the data is instead extrapolated from sources that may not align well. Member Silver asked about the program administration costs if MDs were more involved in each claim.

### **Discussion of Causation/Contribution/Aggravation**

Chair Markowitz led a discussion around the issue of causation. He read the EEOICPA causal standard language that is used to link exposures with illnesses: "At least as likely as not that exposure to a toxic substance (at a DOE facility) was a significant factor in aggravating, contributing to or causing an illness." Numbers aren't used in the Act, only qualitative language: "at least as likely as not" is a very generous standard; "significant factor" is subjective but is generally understood to be a nontrivial factor; it includes not only causing, but contributing or aggravating, which are usually less rigorous than causation alone. Chair Markowitz discussed the timeline of disease development for a worker and

how toxins affect the course of illness. Many contributing causes probably contribute less than 50% of the causation. He drew a distinction between the level of certainty that a toxin is a cause of a disease and the degree to which a toxin contributes to an illness. He discussed the example of second-hand smoke and lung cancer to better understand causation/contribution/aggravation and rejected the two-fold increased risk threshold. EEOICPA does not specify a level of contribution and for most multifactorial diseases it is not even possible to quantify the contribution of each risk factor.

Member Welch said determining whether exposure was a “significant factor” is a different process than determining causation. Member Redlich commented on the difficulty in parsing many potential causes and the importance of considering synergy between two causes. Member Boden said that the most difficult thing to communicate to CEs is going to be significance and it would be worth the Board’s time to provide assistance in determining whether or not something is significant. Chair Markowitz said questions of significance should not be determined by CEs, but should go to the IH. Member Boden said that should be clearly stated in the Procedures Manual. Member Friedman-Jimenez said the terminology of “at least as likely as not” is problematic mathematically and asked if there is a possibility of changing the causal standard to give physicians more leeway. Chair Markowitz said the wording of the Act is unlikely to change; the legislators were not concerned with mathematics, they were trying to be as claimant-favorable as possible in the decisionmaking process. Member Vlieger said that removing this decisionmaking piece from the CE will streamline the process enormously. CEs want numbers and definitions that they can write into a decision. Member Boden said it may be an education issue that the Board could help the DOL with.

### **Public Comment Session**

Deb Jerison – Ms. Jerison is the director of the Energy Employees Claim Assistance Project (EECAP). Ms. Jerison said that DEEOIC reversed 14 years of approving claims under Special Exposure Cohorts (SEC) for people with uterine cancer, fallopian tube cancer, and chondrosarcoma of the cricoid cartilage of the larynx by rescinding final bulletins and circulars from 2002 to 2012. It is inequitable and unfair that people with these cancers in the SEC before last week will be paid while those from now on will not. Changes like this need to go through the rulemaking process. She also discussed medical reimbursement issues. EECAP has developed a survey on medical benefits and has gotten 1,700 respondents in just a month; the survey will be open until the end of October. She presented the report of the survey’s findings to the Board.

Terrie Barrie – Ms. Barrie is a founding member of the Alliance of Nuclear Worker Advocacy Groups (ANWAG). Ms. Barrie submitted written comments and spoke to the statutory requirement for causation under Part E. DOL does have a definition of the legal standard for causation under Part E: “more than reasonably suspicious but less than the preponderance of the evidence.” OWCP’s regulations from 2006 defines “significant factor” as any factor.

Paige Gibson – Ms. Gibson is a Former Worker Protection Employee that worked at the Mound Plant in Ohio. Transmittal 1609 hits the FWP very deeply, as its founder, Sam Ray, would not be compensated for his illness under the current guidelines. Former workers should be administering OHQs. She commented that claimants have been denied on the basis of not being in the same job for at least ten years consecutively, even though their job did not change, only the job titles. She discussed post-1995 SEM Incident Reports and the fact that none include a job title or the names of individuals involved.

Glenn Bridges – Mr. Bridges is an employee at Y-12 National Security Complex. He commented on the

tasks in the SEM. People do a lot of different tasks under the same job classification and that's not being taken into account. He agreed that current and former workers should be working with the Resource Centers to determine what these tasks were for workers in different areas. Employee Advocates and CEs need more training and should not be responsible for decision making. He said disability and impairment go hand-in-hand in a nuclear weapons plant, which needs to be taken into consideration. The concepts around causation presented earlier need to be considered in the context of prostate cancer, hearing loss, and other issues where a disease-exposure link cannot be directly determined.

Tim Lerew – Mr. Lerew is the chair of Cold War Patriots. On behalf of the Cold War Patriots, he thanked the Board for their work since the last meeting and for holding this meeting in Oak Ridge. He encouraged the Board to hold future meetings near nuclear weapons facilities in order to hear directly from the worker community. He pointed the Board to the U.S. Federal District Court's decision findings in the *Lucero v. DOL* case that DOL's interpretation of "compensation" in EEOICPA was arbitrary and capricious. This is just one instance of a DOL rule or policy potentially changing the intent of EEOICPA in practice. It was not intended to impose unnecessary legal and administrative burdens on those already struggling with sickness. Most claimants or their survivors lack the resources or the time to appeal to the courts to clarify DOL's rules, procedures, and administrative practices that adversely affect their claims, and, by precedent, the claims of many others. The Board has the charter to respond to DOL's own requests to provide clarity and appropriate processes for when CEs are challenged to fairly decide and administer a claim. He asked the Board to support Cold War Patriots' request that the Department formally withdraw its 50-plus rule changes proposed in the fall of 2015 and instead engage in a negotiated rulemaking process with stakeholders consistent with prior Executive Orders.

Tee Lea Ong – Mr. Ong, from Professional Case Management, commented on the issue of medical second opinions (MSOs). These are often required of claimants on short notice. The Procedure Manual calls for a travel distance of 25 miles or less in order to get an MSO from a DOL-appointed CMC. Recently, there has been an increase in the distances sick workers are being asked to travel, and the contract solicitation DOL issued had CMCs bidding on a 200-mile radius service area. This creates serious difficulties for sick workers. He asked the Board to consider whether it is necessary to require a sick person to travel that far in order to get an MSO in comparison to what's in the Procedure Manual. He also asked DOL to communicate these kinds of changes to the former worker community.

Walt Schuman – Mr. Schuman worked at Y-12 for over 42 years. He commented on behalf of assembly persons (machinists and chemical operators) that were left off of the Worker's Compensation category for hearing loss. He described some of the tasks associated with this group. It is critical to include in the SEM what was done in the facilities and not just which chemicals were present

Claude Martin – Mr. Martin worked at K-25 and Y-12 after his military service. He described some of his symptoms, including multiple tumors. His claims have been denied and he would like to know why.

Louise Presley – Ms. Presley worked in administrative capacities at Y-12 for over 36 years. Her late husband, Robert W. Presley, worked at Y-12 for over 44 years and served on NIOSH's Advisory Board on Radiation and Worker Health until his death in 2011. She read into the record a letter from one of his coworkers describing aspects of his employment history working in contaminated areas without PPE and described their experiences with the claim process. She has also been diagnosed with breast cancer and has had multiple skin cancer lesions, but her own claim was denied despite working with key punch cards that circulated through contaminated areas and using carcinogenic solvents to clean her

typewriter. These claims are not handouts; they are medical insurance payouts for those who survive after treatment or life insurance payouts to the families of those employees who did not survive.

Jan Lovelace – Ms. Lovelace is a widow of a fireman that worked at ORNL for 26 years. The SEM did not include firemen for ORNL, but it did for Y-12 and K-25. She was able to get in some classifications that were given by the current Commander. The job titles of truck driver and dispatcher do not tell you that a fireman went into nuclear waste burial grounds on an hourly basis every day he worked. Radioactive material has been found above ground where her husband worked, but his claims have been repeatedly denied. The SEM needs to be updated to include more detailed information.

Leisha Tremmel – Ms. Tremmel’s father worked at Y-12 as a construction laborer in 1953. His claims were denied despite the IH report finding several exposures. Her uncle also worked for Union Carbide and was exposed, but his claims were also denied.

Hershell Moore – Mr. Moore described his duties as a roofer in a radiological area and his experiences as a carcinoma survivor.

Larry Lane – Mr. Lane worked as an instrument technician for 39 years at X-10 and he filed a claim for hearing loss based on chemical exposure. The CE reviewing his case recommended acceptance but it was ultimately denied because his work classification was not in the SEM. The SEM has since been modified but it is still incomplete because it does not list him as having been exposed to any solvents. Y-12 and K-25’s SEMs are complete and include the link. Affidavits have been submitted to the CE but Mr. Lane was concerned that someone in Washington would not be able to accurately determine his exposure.

Tim Badie – Mr. Badie was a production machinist at Y-12 for over nine years. He said some of the chemicals he was working with did not have names, or even code names, that he can tell his doctor. The chemicals he was exposed to have caused his chronic encephalopathy and hearing loss. His claim was denied because he was only employed at Y-12 for nine years.

The meeting was adjourned at 6:03 p.m.

**Wednesday, October 19, 2016**

### **Defining EEOICPA’s Standard for Work-Relatedness**

The meeting came to order at 8:39 a.m. Chair Markowitz thanked members of the public for participating by phone or in person. The Board will discuss what the appropriate length of the public comment session should be as well as where on the agenda it would be most appropriate for future meetings.

### **Discussion of Causation/Contribution/Aggravation (continued)**

Chair Markowitz asked Member Vlieger for details on the OWCP definitions she cited the previous day. Member Vlieger said that a training document needs to discuss in statistical language what “as likely as not” and “significant” convey, rather than the common definition, which is additive. Chair Markowitz said that, when both occupational and non-occupational risk factors are relevant, there are very few non-occupational risk factors that are so overwhelmingly important to causation as to dwarf occupational risk factors from toxins. Member Sokas said that may not be true when it comes to common illnesses with many contributing factors, such as diabetes. Ms. Leiton said that CEs are

instructed not to consider smoking as a factor when evaluating asbestos. Member Vlieger said that it may not be a factor, but, because smoking does appear on the OHQ, the referrals to CMCs often cite that. This portion of the training has not been explained to everyone and the Board should consider it when formulating OHQ recommendations. Ms. Leiton said they are very close to sharing a new draft version of the OHQ with the Board. Member Friedman-Jimenez discussed the difference between multiplicative interaction and additive interaction. He concluded that the Board is at a loss to work this out in a rigorous way and will likely never be able to have a calculable Probability of Causation. Instead, it comes down to who the doctors are that are making the determinations and how were they trained. Ms. Leiton said DOL lawyers do take “at least as likely as not” to be 50% or more for causation, but there is aggravation and contribution to be considered. She thought Chair Markowitz’ explanation of causation/contribution could be a great help to the Department in interpreting the Act. Member Boden said there is clearly an ambiguity in the language and the Board might consider conveying its thoughts to the lawyers. If the “at least as likely as not” refers to the word “significant,” then the Board should recommend instructions or examples for the CMCs in order to ensure standardization of interpretation. Member Cassano said they do not want to do a statistical evaluation of this issue and that the “contributed/aggravated” drops the contribution of the occupational exposure below the 50% threshold of causation.

Chair Markowitz said that, by way of example, he felt IARC’s “possible” level of certainty rating (IARC 2B) does not meet the standard under the Act. Member Friedman-Jimenez said one difficulty is that neither IARC nor NTP typically rate carcinogens for specific cancers. Member Cassano agreed, in terms of determining a presumption, but some IARC monographs are pretty old – it might be listed in a training document that the CMC has to conduct some research to see if there is no new research that would bring a possible to the level of probable. Also, IARC just looks at cancer and there is no equivalent stratification for agents that are not carcinogenic. Chair Markowitz said that if you want consistent decisions, you need information that’s used consistently throughout the program. Member Boden said it is important to remember that a presumption is a floor, not a ceiling. Member Friedman-Jimenez suggested looking at asthma because there is a more clear distinction between aggravation and causation.

## **Subcommittee Recommendations**

### **Weighing Medical Evidence Subcommittee**

- **Recommendation:** The entire case file should be made available to both the IH and CMC when a referral is made to either, and not just that information that the CE believes to be relevant. The CE should map the file to indicate where relevant information is believed to be.

**Rationale:** Limiting the information that the IH or CMC have access to based on the determination of someone with limited expertise in either field denies the claimant a comprehensive evaluation of their claim. The professionals asked to provide an opinion on these cases may therefore be drawn into a faulty conclusion because pertinent information was not made available to them.

The Board voted unanimously to approve the recommendation and rationale. The Subcommittee’s second recommendation was withdrawn to be reworked and presented at a later time.

### **SEM Subcommittee**

- Recommendation 1: We recommend that DEEOIC ensure that the disease-exposure links identified by the sources listed in Table 3.1 of the IOM Report are included in the SEM.

The Board voted unanimously to approve the recommendation.

- Recommendation 2: We recommend that DEEOIC establish a process whereby the IH may interview the claimant directly.

The Board voted unanimously to approve the recommendation.

- Recommendation 3: We recommend that former workers from DOE facilities be hired to administer the OHQ.

The Board voted unanimously to approve the recommendation. The subcommittee will draft and endorse a rationale for each of the three recommendations through a publicly accessible teleconference.

#### IH & CMC Subcommittee

- Recommendation 1: We recommend DOL review the policy teleconference notes, redact confidential information, and enter the information into a publicly available database searchable by topic area.

Rationale: The notes contain extremely useful information about case determination and available guidance that would be of use to claimants. While it is important to maintain the free exchange of information, this internal mechanism allows thoughtful redaction to exclude claimants' personally identifiable information as well as material not broadly applicable and will allow the program to post useful guidance and improve transparency.

The Board voted unanimously to approve the recommendation and rationale.

- Recommendation 2: We recommend DOL explore the feasibility of having new case files be made accessible to the claimant in read-only format through a password-protected electronic portal.

Rationale: Claimants already have the right to access their records, although the current system only allows this after the fact. Access in real-time would promote transparency, help decrease misunderstandings, and allow claimants to offer additional information at an earlier stage where needed.

The Board voted unanimously to approve the recommendation and rationale.

- Recommendation 3: We recommend DOL reorganize its occupational positions into an office comparable to the organizational structure of the Office of the Solicitor of Labor, with positions organized in groups to support OSHA, MSHA, OWCP, and other units, as well as to provide overarching support to DOL.

Rationale: The gap between the current program and the medical community reflects serious communication issues that require in-house expertise. However, physicians and other healthcare

professionals, as well as attorneys, face challenges when working in isolation. The Office of Occupational Medicine in OSHA is an example of how professionalism and quality can be maintained, but it would be more efficient for DOL to develop an office directly reporting to the Secretary which can offer the same quality service across the Department, including for smaller units. Such an arrangement would allow cross-coverage and avoid the gaps that have been problematic with this program.

The Board voted unanimously to approve the recommendation and rationale.

#### Part B Lung Disease Subcommittee

- Recommendation: We recommend a presumption of CBD in situations with a diagnosis of sarcoidosis in an individual who meets the definition of a “covered beryllium employee” under Part E or Part B. A positive BeLPT is not required to make a diagnosis of CBD in this situation whether pre-1993 or post-1993 CBD criteria are used.

Rationale: The blood BeLPT can be falsely negative, especially in a patient with CBD on immunosuppressive treatment. A lung lavage lymphocyte proliferation test is an invasive procedure that can be too risky to perform in a patient with chronic lung disease. The blood BeLPT test is not a routine blood test. It is difficult to obtain on a patient who is not currently in a beryllium surveillance program. The prevalence of CBD in beryllium exposed workers is higher than the prevalence of sarcoidosis in the general population.

The Board voted unanimously to approve the recommendation and rationale.

#### Circular 1506: Post-1995 Exposures

- Recommendation: We recommend that Circular 1506: Post-1995 Exposures be rescinded.

Rationale: The issuance of plans and guidelines does not constitute evidence that exposures were kept below those guidelines. Exposures below standards may still lead to health effects.

The Board voted unanimously to approve the recommendation and rationale.

#### **Letters to the Board from ANWAG**

The June 3, 2016 letter addresses the issue of certain facilities not being considered DOE facilities because they don't meet the DOL standard of DOE having a proprietary interest in the facility. ANWAG has requested from DOL a definition for what “proprietary interest” is. Member Boden felt this is a question of legal interpretation which would be outside the bound of the Board's charge. Member Domina said that DOE needs to take responsibility for protecting its employees. Member Vlieger said that this is an area of deficiency, similar to gaps in the SEM, and thus it would be part of the Board's charter. Member Cassano felt the question was outside the Board's scope, but suggested sending the letter along to DOL and asking that the appropriate parties address the issue. Member Boden made a motion to table the question until the board has more background information. The motion was seconded and approved unanimously.

The September 9, 2016 letter raised issues relating to inaccuracies within the SEM. The letter stresses that people who have not had traditionally recognized hazardous occupations may also have had the

opportunity for toxic exposures within the complex, and asked how the SEM addresses this issue. Member Welch will take this into her subcommittee to figure out an approach.

### **Current and Future Use of Presumptions**

Chair Markowitz had prepared a number of circulars that use presumptions on asbestos, asthma, TCE and kidney cancer, and others, but could not go through them due to time constraints. The Board needs to identify a process going forward where it can deliberate on them. Member Sokas suggested listing the Board's requests to DOL in writing and ask them for a response to the presentation on their hearing loss presumptions (specifically on the ten years of continuous service) and the public comments received on the issue. Member Cassano said that, the simpler presumptions are, the less confusing they are to people. Member Boden proposed forming a working group that could bring to the Board suggestions on how to proceed. It was agreed to form a working group that cuts across the subcommittees to review current presumptions, tease out DOL's reasoning, and also to look for issues within those presumptions. The work group will develop advice on future presumptions as well as a broader discussion of use and limitations of presumptions.

### **Advisory Board Process: Discussion**

Next Meetings: Chair Markowitz said that holding a meeting in the field was extremely useful for hearing directly from the people affected and also allows for the opportunity of touring the facilities. There may be some advantage to having a meeting in Washington, D.C., in order to meet with members of the new administration. Member Domina said the Board should hold the April meeting near a facility west of the Mississippi. Member Boden noted that holding the meeting out west wouldn't preclude anyone on the Board from meeting with new administration staff. Denver and Las Vegas were proposed as possible locations.

Board administrative issues: Chair Markowitz asked for suggestions on how to improve the advisory board process. Member Sokas said that the Board should be informed of changes to the Procedure Manual, circulars, bulletins, etc. Member Vlieger suggested setting a regular schedule for subcommittee meetings. Member Cassano said it would be helpful to have a teleconference of subcommittee chairs to coordinate efforts. Chair Markowitz suggested some committees have a non-physician co-chair in order to enhance their input.

### **Comments from DOL**

Ms. Leiton apologized for not being present at the meeting due to an illness and thanked Mr. Vance for filling in. She takes the work of the Board very seriously and believes the Board can help with some of the most difficult challenges the program faces. She assured the Board that their recommendations are given great attention, that DOL is very happy to have the Board's input, and will do their best to be responsive to the Board's requests despite not having dedicated resources for handling it. Dr. Armstrong is the new Medical Director and will attend meetings once he has a better understanding of the program. The Department will make itself available to the Board wherever they hold their meetings regardless of a change in administration.

### **Public Comment Session**

Paige Gibson – Ms. Gibson spoke on behalf of Jeannie Cisco, who worked at Portsmouth Gaseous Diffusion Plant for 30 years. A group at her work turned in over 200 chemicals with MSDS sheets and

letters from the company explaining which buildings these chemicals were in. They were added to the SEM and then removed without explanation. She would like to know why. She also asked the Board to evaluate DOL's statement regarding people with beryllium sensitivity flying all over the country to receive treatment. Ms. Gibson stressed that job classifications and tasks are different for each site and the SEM does not address this. She noted that OHQs are being done telephonically so it shouldn't matter where the former worker lives.

Terrie Barrie – Ms. Barrie suggested the Board look to the Radiation Exposure Compensation Act for presumptions rather than the VA benefits. She reminded Board Members that workers worked daily in an environment with multiple toxic exposures.

Vina Colley – Ms. Colley is a former worker from the Portsmouth Plant and co-chair of the National Nuclear Workers for Justice. She encouraged the Board to hold a meeting in Portsmouth, Ohio. DOE failed to protect workers there with adequate monitoring and protection and never told workers that they were working with plutonium. There has been plutonium at the plant since 1953. DOL is withholding sick workers' benefits because failed to recognize the relevant causation which has been affirmed by the claim's experts and the treating physician. She objected to the demands that sick workers are being forced to go through and the conflicts of interest concerning EEOICPA. She discussed her experiences as a claimant.

Tim Lerew – Mr. Lerew acknowledged the work of Janine Anderson in getting the National Day of Remembrance started. He invited everyone to attend this year's National Day of Remembrance at ten sites around the country. One of Cold War Patriots' missions is to keep alive the memory of the 700,000 people that worked in the nuclear weapons complex. He expressed their appreciation for the work of the Board on behalf of the worker community.

Tee Lea Ong – Mr. Ong urged the Board and Subcommittees to clarify the scope and medical practices of Nurse Consultants, especially as it relates to the MSO. Any changes to this position should be communicated in a timely fashion to the Board and stakeholders.

Janet Mitchell – Ms. Mitchell worked at K-25 and has been working on these issues since 1995, as her health has allowed. In 1996, she worked at the barrier plant where nickel was processed. After having her claim denied twice, she requested her complete file. She felt SEM that was used to evaluate her claim was pathetic. She discussed other exposures at K-25. She said she sees two choke points in the EEOICPA process: one is unhelpful CEs and the other is whether DOL will accept and implement the recommendations of the Board.

Donna Hand – Ms. Hand is a worker advocate, authorized representative, and member of the Beryllium Health and Safety Committee, and a member of DIAB (DEEOIC Interim Advisory Board), and has been involved with the EEOICPA program since 2001. She discussed OWCP's mandate and the fact that the CE's Procedure Manual only requires plausible or potential exposure. She discussed various interpretations of causation and said that it does not require a high standard, medical certainty, or statistics. She asked that the committee on CBD define chronic respiratory disorder and also address the characteristics of X-ray abnormalities.

Etter Pegues – Ms. Pegues is the widow of Eldred Pegues who worked at Y-12 for 32 years. She described his struggles with cancer and some of his occupational exposures. She is glad the Board is looking at workers' exposures now rather than just the diseases.

Dorothy Colquitt – Ms. Colquitt worked in packing at Y-12 for over 19 years. She has had nine borderline and abnormal BeLPT results from beryllium exposure. Her physician told her the person at Oak Ridge handling her case had the wrong information about her, which led to DOL denying her claim multiple times.

Susan Adkisson – Ms. Adkisson shared a case she worked on for a fireman that worked at K-25 and Y-12 and developed mantle cell lymphoma. No IH or CMC reviewed the case. During his claims process, the SEM was updated to remove gasoline and diesel exhaust fumes. As a result, his claim was denied and remains so.

Sherry Oren – Ms. Oren worked at K-25 and ORNL for ten years. She believes her issues were caused by inhalation from the TSCA incinerator and is glad to hear the Board discussing respiratory illnesses. Her claims have been denied, as have her requests for reconsideration. She read the responses into the record and contradicted several of the statements therein. EEOICPA was meant to help workers, but claimants have seen the administrative costs increase, the number of approvals decrease, and people in the former worker community are dying before they get approved.

Shirley Watkins – Ms. Watkins worked at Y-12 from 1969 until 1973 and was diagnosed with Parkinson's disease in 2012. She was found to have elevated levels of mercury, which was common in the Beta building she worked in. She described her struggles with Parkinson's and said she would like to see secretarial positions added to the SEM.

J.B. Hill – Mr. Hill was a beryllium worker at the Y-12 plant since 1970. He said he was glad the Board was there because the doctors in Oak Ridge are not in the favor of workers. He was diagnosed as borderline and wanted clarification on what that means and what can be done about it. His claim has been denied and he intends to apply again and asked what his next steps should be.

Carl Richardson – Mr. Richardson worked at multiple Oak Ridge facilities over the past 50 years. Initially he was acknowledged to have received significant radiation exposure but then his dose reconstruction was lowered and he was denied. One of the questions asked of applicants is what chemicals they have been exposed to, but back in the '60s and '70s no one told workers what chemicals they were being exposed to. That information is now available and claimants should be told what chemicals were present in the areas in which they worked.

Hugh Newsom – Mr. Newsom has precancerous skin growths that could turn into melanoma. His file contains multiple inaccuracies including when and where he worked. He has noted these discrepancies and had his former employers write letters concerning his time of employment. He has not received any acknowledgment of the corrections and wondered how much of his denial was based upon faulty information.

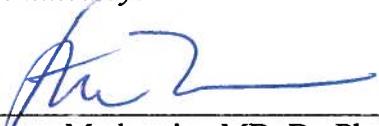
Dan and Nona Morgan – Mr. Morgan worked at Y-12 for 31 years and has had numerous cancers. His records are missing and they believe others' are as well.

Member Vlieger told members of the public that they might address any inadequacies or difficulties with the program to Malcolm Nelson, the DEEOIC Ombudsman, who was present.

The Board meeting was adjourned at 2:24 p.m.

*I hereby certify that, to the best of my knowledge, the foregoing minutes are an accurate summary of the meeting.*

Submitted by:

A handwritten signature in blue ink, appearing to read 'S. Markowitz', written over a horizontal line.

Steven Markowitz, MD, Dr. Ph.

Chair, Advisory Board on Toxic Substances and Worker Health

Date: 1/26/17