

I have a couple of key points I would like to relay that may be important in their review of the cases:

- In general, for Part B cases, we do not look at exposure under Part B because it is presumed; however, the definitions under Part B for both CBD and chronic silicosis are very strict.
 - Our biggest struggle with Part B for CBD is the actual definitions themselves using pre-1993 and post-1993 criteria, not whether there was exposure. The definitions under the statute for “established chronic beryllium disease” can be interpreted differently by different physicians, and we need to apply these standards to whether or not we can accept a claim for CBD under Part B (not whether someone has simply been diagnosed with CBD). For example:
 - After 1993, the lung biopsy must show granulomas or a lymphocytic process “consistent with” CBD, the CT scan must show changes “consistent with” CBD, or a PFT must show pulmonary deficits “consistent with” CBD. It is this language “consistent with” that sometimes causes problems;
 - Pre-1993, there must be “characteristic” chest radiographic abnormalities, lung pathology “consistent with” CBD, clinical course “consistent with” CBD. These are 3 of the 5 criteria and we only need to establish 3 to meet the test, but the other 2 are “restrictive or obstructive lung physiology testing or diffusing lung capacity defect, and immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).” Our issues with these definitions are again the terms “consistent with” and “characteristic of.”
 - We rely on medical evidence from physicians to provide us with evidence that meet these criteria, and those opinions can vary; many physicians may not be familiar with what is “consistent with or characteristic of” CBD.
 - In contrast, since there was no mandatory statutory definition provided for CBD under Part E, we are able to accept those cases if there is an abnormal BeLPT (beryllium sensitivity) and a diagnosis of CBD from a physician, so it is much less complicated. So it is possible for a claim to be accepted for CBD under Part E but not under Part B, but if a case is accepted for CBD under Part B, it is automatically accepted for CBD under Part E.
 - Under Part B, chronic silicosis may ONLY be accepted under the following circumstances (per the statute at 7384r) – therefore acceptance for this condition under Part B is very limited:
 - (c) EXPOSURE TO SILICA IN THE PERFORMANCE OF DUTY—A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.
 - (d) COVERED EMPLOYEE WITH CHRONIC SILICOSIS—For purposes of this subchapter, the term “covered employee with chronic silicosis” means a

Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c).

- (e) CHRONIC SILICOSIS—For purposes of this subchapter, the term “chronic silicosis” means a non- malignant lung disease if—
 - (1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and
 - (2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—
 - (A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconiosis of category 1/0 or higher;
 - (B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or
 - (C) lung biopsy findings consistent with silicosis.
- Any claim that is accepted under Part B is automatically accepted under Part E (as long as the Part E employment criteria are met).
- Sarcoidosis, in and of itself, is NOT a covered condition under Part B; however, there have been circumstances in which the physician misdiagnosed sarcoidosis when it should have been CBD. This often occurred before there was much information about CBD. As a result, we realized that perhaps we could accept cases filed for sarcoidosis under Part B as cases for CBD under certain circumstances. So when we accept or deny a claim filed for sarcoidosis under Part B, we are really adjudicating them for CBD. This is the ONLY circumstance in which we need to look toward exposure for a Part B condition. We can look at sarcoidosis separately under Part E. The Procedure Manual at 2-1000.10, outlines the circumstances under which we could accept cases for CBD filed as sarcoidosis:
 - Presumption of CBD, Diagnosis of Sarcoidosis, and History of Beryllium Exposure. Sarcoidosis is a disease that represents as inflammation of cells that form into nodules or granulomas. Sarcoidosis can occur in different organ systems. Under Part B, the DEEOIC recognizes that a diagnosis of pulmonary sarcoidosis, especially in cases with pre-1993 diagnosis dates, could represent a misdiagnosis for CBD. As such, a diagnosis of pulmonary sarcoidosis is not medically appropriate under Part B if there is a documented history of beryllium exposure. In those situations, a diagnosis of sarcoidosis is evaluated as a claim for beryllium sensitivity and/or CBD. Under Part E, if there is a diagnosis of pulmonary sarcoidosis, but no affirmative evidence in the form of a positive BeLPT or BeLTT exists, the CE adjudicates the condition as sarcoidosis, not CBD.

Part B of the EEOICPA specifies diagnostic criteria necessary to qualify for compensation. As such, in the case of a diagnosed pulmonary sarcoidosis being treated as beryllium sensitivity or CBD, it is necessary for the CE to obtain the evidence satisfying pre-1993 or post-1993 CBD criteria enumerated under the Act.

- There was some question about whether we could break out the cases by line item for each condition, showing which condition was denied and for what reason. Unfortunately, we are unable to break out our data that way and that is why we provided the data the way that we did. They discussed looking for cases in which only one condition was claimed and breaking that out, and that should work.
- There was some discussion of the EECAP statistics. We've had several discussions with Ms. Jerison about the data that she puts up on her web site, and as a result, about a year and a half ago, we began sending her monthly data reports. A sample from August is attached. I'm not sure what other EECAP statistics they were looking at, but this is what we provide.

I hope this is helpful in their review.

Thanks,
Rachel