

## **Weighing Medical Evidence and Claims**

### **Sources of Medical Evidence**

1. Claimant's health care provider (first source of information)
  - Attending physician
  - Consulting experts
  - Medical facilities
2. Department of Energy's Medical Monitoring Programs
  - Medical screening to former workers
3. ORISE (Oak Ridge Institute for Science and Education)
  - Offer beryllium-related testing
4. Contract Medical Consultants (CMC)
  - Furnish medical opinions, guidance and advice based upon review of case file
5. Second Opinion (SECOP) Physicians
  - Contracted by DEEOIC to provide narrative report describing findings from a physical exam & review of diagnostic testing or other medical records
6. Referee Specialists
  - Contracted by DEEOIC to furnish a rationalized medical opinion to resolve conflict between employee's physician and CMC, SECOP, or other specialist
  - Appropriate specialty chosen randomly
  - Examines employee or a case file

## **Types of Medical Evidence**

1. Treatment records (records made during the evaluation, diagnosis and treatment of a patient by his or her health care provider).
  - Attending physician records (e.g., chart notes, reports, etc.) which include records from medical consultants assisting the attending physician.
  - Records of physicians consulted
  - Evidence of diagnostic testing
  - Treatment records from hospitals, hospices, in-home health or residential health care facilities.
2. Medical evaluations (other than to further diagnose or treat the patient)
  - Evidence from DOE's Medical Monitoring Programs (e.g., former worker screening records, pre-employment physicals, termination physicals, etc.)
  - Examinations required under state or federal compensation programs (e.g., evaluations for state workers' compensation claims, Social Security disability examination, Veterans' Administration programs, etc.)
  - Medical reports or opinions obtained for litigation under state or federal rules of evidence.
3. Reports produced in response to a DEEOIC referral to a CMC, Second Opinion physician, or Referee Specialist.
4. Other types of evidence
  - Cancer Registry records
  - Death certificates
  - Secondary evidence
  - Factual affidavits

## **Contract Medical Consultant Referrals**

We first rely on medical evidence submitted by the claimant. The claims examiner will communicate with the treating physician to obtain supportive documents and clarification, if needed. However, if the CE does not receive a sufficient response from the treating physician, the CE may refer the case to a contract medical consultant (CMC) specialist. A CMC is a contracted physician who conducts a review of case records to render opinions on medical questions. The DEEOIC implemented this contract after realizing that oftentimes the claimants' treating physicians are unable or unwilling to provide the detailed medical opinions required to meet the EEOICPA standards. This contract was our way of assisting claimants in meeting their burden of proof. CMC medical opinions are highly case-specific, and cover a broad range of issues that arise during the development of individual claims for benefits under the EEOICPA. As appropriate, district offices refer claims to CMCs to review, analyze and apply their professional training and judgment to a variety of questions that arise in the context of specific claims for benefits under the EEOICPA. Depending on the circumstance of the case, CMCs may be asked to render medical opinions on the following issues:

- confirmation of medical diagnoses;
- medical causation based on individualized assessments of medical documentation and exposure information;
- the percentage of whole-person impairment resulting from covered illnesses;
- the onset and period of illnesses in relation to employee wage-loss claims;
- the medical necessity of medical care, durable medical equipment, and home/automobile modifications;
- causation for claimed consequential conditions;
- clarification of medical reports, test results, or other medical evidence; and
- resolving conflicts of medical opinion.

## **Developing Medical Evidence**

It is DOL's responsibility to develop medical evidence

- Claimant's Responsibility
  - Provide all medical evidence in their possession that is relevant to the claim
  - Respond to DOL's requests for information
- Claims Examiner's Responsibility is to develop the medical evidence
  - Explain deficiencies
  - Request supporting documentation
  - Communicate with treating physicians
  - If unable to obtain information from the claimant, obtain clarifying medical evidence (through CMC, Second Opinion, or Referee Physician)

## **Contents of Medical Reports**

Added value when reports contain this pertinent information:

- Description of subjective complaints, objective findings, assessment and plan for follow up or treatment (SOAP)
- Review of treatment records to include the following:
  - Lab findings (If appropriate, the physician's interpretation)
  - Diagnostic procedures (If appropriate, the physician's interpretation)
  - Physical findings
- Assessment should include physicians' opinions, suspicions & diagnoses along with medical rationale

## Weighing the Evidence

- Based upon accurate and complete medical and factual background vs. an opinion based on incomplete, subjective or inaccurate information.  
*(E.g. one physician assumes a higher level of exposure or employment in a causation analysis than the claimant actually had, while the other bases the analysis on a complete and accurate employment and exposure history)*
- An opinion based on a definitive test(s) and includes the physician's findings over an opinion based on incomplete, subjective or inaccurate information.  
*(E.g. A positive pathology report from a physician is sufficient evidence of the diagnosis of cancer)*
- A well-rationalized opinion over one that is unsupported by affirmative evidence  
“Reasoned” or “rationalized” means supported by medical findings on examination and thorough review of the records, references to scientific articles (as appropriate) and thorough medical explanation. We need more than just an affirmation--we also need an explanation of the causes and the relationship of these factors to the condition and/or disability
- The opinion of an expert over the opinion of a general practitioner or an expert in an unrelated field.
  - Appropriate field carries more weight
  - Board certification
- An unequivocal opinion over one that is vague or speculative.  
A physician offering a clear, unequivocal opinion on a medical matter is to be viewed as more probative compared to an opinion that waives or hesitates in its presentation or, contains vague and speculative language
  - E.g. “could,” “may,” or “might be” are speculative
  - “Probably” is less speculative
  - “Medical probability” may be acceptable if adequately explained, but “medical possibility” is NOT

## **Advice & Assistance**

DEEOIC is interested in the Board's advice and assistance. To that end, below is a list of items with which we hope the Board could assist:

- Clarification/recommendation regarding the assessment of medical opinion regarding the “rationalization” supporting a particular conclusion.
  - Standardized triggers for requiring independent medical reviews by CMC or SECOP.
- Methodologies for improving physician responsiveness to data requests including review of development letters, outreach efforts, and provider communications.
- Training resources for improving quality of medical review of medical evidence in weighing conflicting evidence.
- Application or guidance relating to assessing “contribution to or aggravation” of toxic substance exposure to disease.