

U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, DC 20210



MEMORANDUM

DATE: January 12, 2019

TO: JOHN VANCE
Branch Chief, Branch of Policy, Regulations and Procedures

FROM: CURTIS JOHNSON *Curtis Johnson*
Unit Chief, Branch of Policy, Regulations and Procedures

RE: CMC AUDIT REPORT - 2nd Quarter 2018

Below is the analysis of nine (9) cases determined to have a deficient Contract Medical Consultant (CMC) report based on a review by the Division of Energy Employees Occupational Illness Compensation (DEEOIC) Medical Director.

1. [REDACTED]
Denver District Office
Impairment Evaluation
Report date: [REDACTED]
Condition: Accepted: ICD 9 code 502, Pneumoconiosis due to other silica or silicates
Accepted: ICD 9 code 505, Pneumoconiosis, unspecified
Accepted: ICD 9 code 508.1, Chronic and other pulmonary manifestations due to radiation
Accepted: ICD 9 code 515, Post-inflammatory pulmonary fibrosis

The Medical Director opined that the CMC did not provide a meaningful clinical summary. He noted that the CMC only included a recitation of the claimant's [REDACTED] PFT data. The rating physician also improperly combined his WPI rating for the claimant's accepted conditions with a WPI rating for the employee's diagnosed asthma. The CMC also did not include claimant's post-bronchodilator FEV1 when he applied Table 5-9 on Page 104 to calculate the claimant's asthma score. Finally, the CMC inappropriately used the Combined Values Chart on Pages 604-606 to combine two ratings for the same organ system (COPD and asthma) to yield a final WPI rating of 28%. The employee's impairment rating must be based on either the accepted pulmonary illnesses or the diagnosed asthma, but not both.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 17% whole person impairment [REDACTED]. The CMC report of [REDACTED] provided a whole person impairment rating of 28%. FAB issued a final decision on [REDACTED] [REDACTED] to accept the employee's Part E claim for 28% whole person impairment (increase of 11%). The employee received [REDACTED] in impairment compensation.

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies. Aggregating impairment associated with the respiratory conditions results in a higher percentage of impairment than would otherwise be allowable. Any redo of the rating will result in a lower rating. As such, no action is warranted at this time with regard to the final decision on impairment.

2. [REDACTED]

Cleveland District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 173.31, Basal cell carcinoma of skin of other and unspecified parts of face

Accepted: ICD 9 code 185, malignant neoplasm of prostate

The Medical Director opined that the CMC did not appropriately rate the claimant's prostate cancer. He applied Table 7-8 on Page 161 and decreased the claimant's assigned WPI rating by 50% due to the claimant's age (>65 years) in accordance with Section 7.7 on Page 156. However, he did not "combine impairment estimates for prostate and seminal vesicle loss with impairment for sexual dysfunction or urinary incontinence" as required for claimants who are placed in Class 3 on Table 7-8. Since the claimant is impotent, the CMC should have also applied Table 7-5 on Page 156 when determining the claimant's WPI rating for prostate cancer. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 20% whole person impairment [REDACTED]. The [REDACTED] provided a whole person impairment rating of 13%. [REDACTED] FAB issued a final decision to deny the employee's Part E claim for increased whole person impairment.

RECOMMENDATION: Recommend that QTC redo the impairment correctly to determine if a higher rating exists. If a correct rating results in a higher award, DEEOIC must take action to reopen the case to issue a corrected final decision for impairment.

3. [REDACTED]

Cleveland District Office

Supplemental Evaluation (Impairment)

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 142.1, Malignant neoplasm of submandibular gland

Accepted: ICD 9 code 173.32, Squamous cell carcinoma of skin of other and unspecified parts of face

Accepted: ICD 9 code 185, Malignant neoplasm of prostate

Accepted: ICD 9 code 525.11, Loss of teeth due to trauma

Accepted: ICD 10 code C18.4, Malignant neoplasm of transverse colon

Accepted: ICD 10 code C44.229, Squamous cell carcinoma of skin of left ear and external auricular canal

The reviewed CMC report served as a supplemental report to the original [REDACTED] [REDACTED] impairment rating, which was based on the accepted conditions of salivary gland cancer, loss of teeth, and colon cancer. Subsequent to the [REDACTED] impairment rating, the claim was accepted for prostate cancer and skin cancers of left cheek and ear. In lieu of performing an independent evaluation for all covered illnesses, the CMC based its 84% WPI impairment rating for the employee's accepted conditions by combining the WPI rating determined by another physician more than six years earlier for the conditions of salivary gland cancer, loss of teeth, and colon cancer with his own rating of the recently accepted conditions of prostate cancer and skin cancers of the left cheek and ear.

According to the *AMA Guides™ to the Evaluation of Permanent Impairment, Fifth Edition*, "A 90% to 100% WPI impairment indicates a very severe organ or body system impairment requiring the individual to be fully dependent on others for self-care, approaching death." It follows, then, that a WPI of 84% is indicative of fairly severe impairment—but a discharge summary dated [REDACTED] recommends a regular diet without added salt for the claimant, and documents that the claimant is able to complete self-care tasks with only occasional assistance donning and doffing his socks and shoes. In addition, he can complete light meal preparation while seated at a table, enjoys watching TV and reading the newspaper, is able to go outdoors in nice weather, listens to music, and spends time with family and friends. Therefore, a WPI rating of 84% does not reasonably align to the functional description of the employee's ability to perform activities of daily living.

I accept the Medical Director's opinion regarding the errors found in this supplemental (impairment) evaluation. The employee received compensation benefits for 84% whole person impairment, based on the [REDACTED] impairment report. The CMC performed an impairment evaluation on [REDACTED] which considered additional accepted conditions. The district office requested a supplemental impairment evaluation to address the deficiencies noted by the DEEOIC Medical Director within the [REDACTED] impairment evaluation. The CMC

indicated in his [REDACTED] supplemental report that the employee's whole person impairment was now 64%. The DEEOIC Medical Director did not review the [REDACTED] impairment evaluation. Therefore, the employee's current level of impairment remains unknown. A recommended decision to deny the employee's claim for impairment based on the findings of the [REDACTED] evaluation is pending.

RECOMMENDATION: The DEEOIC Medical Director will review and assess the validity of the [REDACTED] impairment evaluation. An additional supplemental report may be required based on the findings of the DEEOIC Medical Director.

4. [REDACTED]

Cleveland District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 053.9, Herpes zoster without mention of complication

Accepted: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face

Accepted: ICD 9 code 173.5, Other malignant neoplasm of skin of trunk except scrotum

Accepted: ICD 9 code 389.18, Sensorineural hearing loss, bilateral

Accepted: ICD 9 code 492.8, Other emphysema

Accepted: ICD 9 code 501, Asbestosis

Accepted: ICD 10 code C44.319, Basal cell carcinoma of skin of other parts of face

The Medical Director indicated that the CMC rated the claimant on his accepted conditions of skin cancer, herpes zoster, and hearing loss, but he was unable to rate the claimant on his emphysema and asbestosis given that the claimant's medical record lacked the results of a current PFT. To complete the claimant's impairment rating, the CMC should have requested that the CE determine if updated medical records (including the necessary PFT) could be obtained to allow for a more accurate rating.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 57% whole person impairment [REDACTED]. The [REDACTED] provided a whole person impairment rating of 18%. FAB issued a final decision on [REDACTED] to deny the employee's Part E claim for increased whole person impairment.

RECOMMENDATION: Recommend that QTC redo the impairment correctly to determine if a higher rating exists, after DEEOIC receives all necessary medical evidence including an updated PFT. If a correct rating results in a higher award, DEEOIC must take action to reopen the case to issue a corrected final decision for impairment.

5. [REDACTED]

Seattle District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 185, Malignant neoplasm of prostate

Accepted: ICD 10 code C43.21, Malignant melanoma of right ear and external auricular canal

Accepted: ICD 10 code C43.4, Malignant melanoma of scalp and neck

Accepted: ICD 10 code C44.02, Squamous cell carcinoma of skin of lip

The Medical Director opined that each of the claimant's skin cancers has been cured--leaving him with scars from the treatment and the need for regular screening for new lesions. There were no indications in the medical records of significant dysfunction of activities of daily living due to the accepted skin cancers that warranted the CMCs inclusion of the claimant in a Class 2 impairment. Based on the available evidence of the claimant's functionality, the Medical Director opined that the evidence more closely supported a finding of a Class 1 rating (0%-9% Impairment of the Whole Person). The Medical Director noted that the claimant's skin disorder signs and symptoms are only intermittently present; he has no or few limitations in his performance of activities of daily living; and he requires only intermittent treatment.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The CMC report dated [REDACTED] provided a whole person impairment rating of 18%. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 18% whole person impairment. The employee received [REDACTED] in impairment compensation.

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies. As the finding in this case indicates that the outcome of any new review would reduce the percentage of assigned impairment and DEEOIC has issued a final decision based on the rating received from the CMC, no additional action is warranted at this time.

6. [REDACTED]

Cleveland District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 174, Malignant neoplasm of female breast

Accepted: ICD 9 code 233.0, Carcinoma in situ of breast

Accepted: ICD 10 code J44.9, Chronic obstructive pulmonary disease, unspecified

The Medical Director indicated that claimant was 79 years old when she underwent her most recent PFT. The CMC calculated the predicted values for her FVC, FEV1, and DCO using the formulas beneath Tables 5-3a, 5-5a, and 5-7a. DEEOIC policy is to treat

individuals older than age 74 years the same as individuals aged 74 years; i.e., to not use the formulas beneath the tables. In addition, the CMC was asked to review the claimant's medical records and independently determine a WPI rating, which takes into consideration each of her accepted conditions (breast cancer and COPD). Instead, he combined his rating for the claimant's COPD with the WPI rating for her breast cancer determined by another physician more than three years ago. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 8% whole person impairment [REDACTED]. [REDACTED] provided a whole person impairment rating of 54%. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 54% whole person impairment (46% increase). The employee received [REDACTED] in impairment compensation.

RECOMMENDATION: Recommend that QTC redo the impairment correctly to determine if a higher rating exists. If a correct rating results in a higher award, DEEOIC must take action to reopen the case to issue a corrected final decision for impairment.

7. [REDACTED]

Denver District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 414.01, Coronary atherosclerosis of native coronary artery

Accepted: ICD 9 code 416.8, Other chronic pulmonary heart diseases

Accepted: ICD 9 code 427.31, Atrial fibrillation

Accepted: ICD 9 code 508.1, Chronic and other pulmonary manifestations due to radiation

Accepted: ICD 9 code 515, Post-inflammatory pulmonary fibrosis

The Medical Director indicated that the CMC was asked to review the claimant's medical records and independently determine a WPI rating, which takes into consideration each of his accepted conditions. Instead, he combined his rating for the claimant's CAD, atrial fibrillation, and pulmonary hypertension with the WPI rating for his pulmonary fibrosis determined by another physician more than a year ago. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 42% whole person impairment [REDACTED]. The CMC report dated [REDACTED] provided a 74% whole person impairment rating. FAB issued a final decision on [REDACTED] to accept the employee's Part E

claim for 74% whole person impairment (32% increase). The employee received [REDACTED] in impairment compensation.

The employee died on [REDACTED]. His surviving spouse has filed Form EE-2 claiming survivor's benefits. Since the employee is deceased, there is no further action for this case.

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies.

8. [REDACTED]

Jacksonville District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Claimed: ICD 9 code 351.0, Bell's palsy

Claimed: ICD 9 code 496, Chronic airway obstruction, not elsewhere classified

Accepted: ICD 9 code 188.2, Bladder cancer

The Medical Director opined that the CMC's rating of the claimant's chronic renal disease was inappropriate, because it was not one of claimant's accepted conditions. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 41% whole person impairment [REDACTED]. The employee is deceased and two surviving children have filed claims. The CMC report of [REDACTED] provided a whole person impairment rating of 49%. The CMC then provided an amended report, dated [REDACTED] [REDACTED] where he indicated that he provided the new impairment evaluation based on new instruction to not consider non-covered conditions such as renal disease. The new whole person impairment rating was 3%. A recommended decision to deny the survivor claims for bladder cancer is pending.

The surviving children have filed claims for chronic kidney disease (CKD). A review of the claim reveals that the CMC has provided a negative opinion regarding toxic causation.

RECOMMENDATION: No further action is required for this case, given the lack of evidence supporting that the employee's level of impairment at the time of death exceeds the prior award based on 41% whole person impairment.

9. [REDACTED]

Jacksonville District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face

Accepted: ICD 9 code 173.4, Other and unspecified malignant neoplasm of scalp and skin of neck

Accepted: ICD 9 code 193, Malignant neoplasm of thyroid gland

Accepted: ICD 9 code 250.00, Diabetes mellitus without mention of complication, type II or unspecified type, not stated as uncontrolled

Accepted: ICD 9 code 496, Chronic airway obstruction, not elsewhere classified

Accepted: ICD 9 code 733.09, Other osteoporosis

The Medical Director indicated that the CMC was asked to review the claimant's medical records and independently determine a WPI rating, which takes into consideration each of the claimant's accepted conditions. Instead, the CMC combined his rating for the claimant's osteoporosis and peripheral neuropathy with the WPI rating for the claimant's CAD, diabetes, thyroid cancer, and skin cancer determined by another physician more than a year ago. Also, the CMC rated the claimant's diabetic peripheral neuropathy using Table 13-15 on Page 336, which is used to rate station and gait disorders. The claimant's diabetic neuropathy is more appropriately rated using Table 13-23 on Page 346, which is used to rate impairment due to pain or sensory deficit due to peripheral nerve disorders. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation. The employee has previously received compensation benefits for 79% whole person impairment [REDACTED]. The CMC report of [REDACTED] provided a whole person impairment rating of 83%. FAB issued a final decision on [REDACTED] to accept the Part E claim for 83% whole person impairment (4% increase). The employee received [REDACTED] in impairment compensation.

RECOMMENDATION: Recommend that QTC redo the impairment correctly to determine if a higher rating exists. If a correct rating results in a higher award, DEEOIC must take action to reopen the case to issue a corrected final decision for impairment.