

U.S. Department of Labor

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



MEMORANDUM

DATE: February 25, 2019

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

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

RE: CMC AUDIT REPORT - 3rd Quarter 2018

Below is the analysis of seven (7) 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]  
Seattle District Office  
Second Medical Opinion (re: Home Health Care)  
Report date: [REDACTED]  
Condition: Accepted: ICD 10 code C34.11, Malignant neoplasm of upper lobe, right bronchus or lung  
Accepted: ICD 10 code E08.65, Diabetes mellitus due to underlying condition with hyperglycemia  
Accepted: ICD 10 code J44.9, Chronic obstructive pulmonary disease, unspecified  
Accepted: ICD 10 code J92.0, Pleural plaque with presence of asbestos

The CMC's report does not communicate information very clearly. While the CMC advocates for the continuation of home healthcare services for the claimant, the CMC did not answer the MBE Supervisor's question as to the "specific medical services the patient requires during each 24 hour period and the frequency at which these services are to be performed each day, week, or month." Instead, the CMC writes of the claimant's ill-defined need for "assistance with medications monitoring, education and training" and "documentation reviews and preparation of monthly review for his pulmonary disease needs."

*I accept the Medical Director's opinion regarding the errors found in this second medical opinion.*

*The CMC's report of [REDACTED] indicated that the employee requires continuation of his home health care due to COPD, lung cancer, and pleural plaques. The district office issued a letter decision on [REDACTED] authorizing home health care for [REDACTED] through [REDACTED]. Given that the period of approved home health care in connection with the second opinion examination has expired, no further action is required for this case.*

**RECOMMENDATION:** Discuss the errors in this report with QTC so the CMC can improve future submissions.

2. [REDACTED]

Jacksonville District Office  
Impairment Evaluation

Report date: [REDACTED]

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

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

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

The CMC inappropriately rated the claimant on a condition, which has not been accepted by the OWCP, and his rating of the claimant's accepted conditions was not consistent with the evidence in the record. Incontinence is not one of the claimant's accepted conditions and there is no evidence to indicate that incontinence is a consequence of or related to an accepted condition. The claimant does not meet the criteria for Class 2 in Table 10-2 on Page 218. Specifically, he does not suffer from a disease process in another body system, which permits only partial replacement of the thyroid hormone. Also, the claimant does not meet the criteria for Class 2 in Table 7-8 on Page 161. Specifically, he does not have any anatomic alteration of his prostate and does not require continuous treatment (other than "watchful waiting"). 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 30% whole person impairment [REDACTED]. The CMC report dated [REDACTED] provided a whole person impairment rating of 55%; however, due to the absence of a current audiogram, the report did not include a rating for the employee's hearing loss. The employee subsequently provided the results of an audiogram performed on [REDACTED]. DEEOIC then referred the case to a new CMC on [REDACTED] for a new impairment rating. The new CMC report dated [REDACTED] included a rating for hearing loss and provided a whole person impairment rating of 59% (29% increase). FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 59% whole person impairment (29% increase for [REDACTED]).*

**RECOMMENDATION:** The Medical Director reviewed the [REDACTED] CMC report and found that previously noted deficiencies remained. 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]

Jacksonville District Office

Supplemental Evaluation (Impairment)

Report date: [REDACTED]

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

Accepted: ICD 9 code 427.31, Atrial fibrillation

Accepted: ICD 9 code 493.20, Chronic obstructive asthma, unspecified

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

Accepted: ICD 9 code 501, Asbestosis

Accepted: ICD 9 code 506.9, Unspecified respiratory conditions due to fumes and vapors

Accepted: ICD 9 code 511.0, Pleurisy without mention of effusion or current tuberculosis

Accepted: ICD 9 code 511.89, Other specified forms of effusion, except tuberculous

Accepted: ICD 9 code 518.89, Other diseases of lung, not elsewhere classified

Accepted: ICD 9 code 786.05, Shortness of breath

The deficiencies in the CMC's supplemental report dated [REDACTED] stem from problems in his initial report dated [REDACTED]. The claimant was 69 years old when he underwent his most recent PFT. The CMC calculated the predicted values for his FVC, FEV1, and DCO using the formulas beneath Tables 5-2a, 5-4a, and 5-6a; DEEOIC policy is to determine the predicted values from the tables--not calculate them using the formulas beneath the tables. Thus, the CMC should have used the predicted values for a male who is 70 years of age and 190 centimeters tall. Also, 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 WPI rating of 76%--an error he carried forward to his supplemental report.

*I accept the Medical Director's opinion regarding the errors found in this supplemental evaluation (impairment).*

*The employee has previously received compensation benefits for 50% whole person impairment [REDACTED]. The CMC's initial impairment rating report dated [REDACTED] provided a whole person impairment rating of 76%. On [REDACTED] the district office requested a supplemental impairment report due to the receipt of new medical records related to the employee's pulmonary heart disease and atrial fibrillation. The CMC's supplemental report dated [REDACTED]*

provided a whole person impairment rating of 77% (27% increase). FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 77% whole person impairment (27% increase for [REDACTED]). The CMC calculated the employee's pulmonary impairment rating based on an erroneous combination of similar organ functions. Therefore, the true level of impairment will be less than the 77% rating awarded by the FAB.

**RECOMMENDATION:** A new rating will likely result in a lower rating than has been awarded, so a new rating is not recommended. Discuss the errors in this report with QTC so the CMC can improve future submissions.

4. [REDACTED]

Jacksonville District Office

Causation Evaluation

Report date: [REDACTED]

Condition: 185, Malignant neoplasm of prostate

232.3, Carcinoma in situ of skin of other and unspecified parts of face

J44.9, Chronic obstructive pulmonary disease, unspecified

The CMC did not correctly apply the "at least as likely as not" standard. In addition, the CMC's report contains errors of fact. For example, she repeatedly misstated the employee's smoking history. Two packs of cigarettes smoked each day for 30 years does not equal a smoking history of 30 pack years; it equals a smoking history of 60 pack years. Finally, the CMC's report was unnecessarily verbose. Her discussions regarding the health effects of the various types of asbestos and of the development of the PEL for asbestos were not germane to the case at hand.

*I disagree with the Medical Director's opinion regarding the error pertaining to the "at least as likely as not" standard found in this causation evaluation. The CMC repeated the question that was posed by the CE; however, the CE's question did not appropriately apply the "at least as likely as not" standard. This is a CE error and is not attributable to the CMC. I agree with the Medical Director's opinion regarding the CMC's report containing errors of fact and discussions that were not germane to the case.*

[REDACTED] the district office referred this case for a causation review. The district office requested the CMC to provide an opinion regarding whether exposure to asbestos, chlorine, and silicon dioxide, crystalline was a significant factor in causing, contributing to, or aggravating the employee's COPD while working at the Savannah River Site in Aiken, SC. The CMC did not respond with the "at least as likely as not" standard because the question posed by the CE was not phrased in such terms. The CMC's [REDACTED] report stated that based upon a review of the evidence, the employee's exposure to asbestos, chlorine, and silicon dioxide, crystalline was not a significant factor in causing, contributing to or aggravating the employee's COPD while working at the Savannah River Site in Aiken, SC. This response was in the manner that the question was posed by the CE. FAB issued a final decision on [REDACTED] to deny the employee's Part E claim for COPD. There is no further action required for this case.

**RECOMMENDATION:** Discuss the errors in this report with QTC so the CMC can improve future submissions.

5. [REDACTED]

Seattle District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 110.5, Dermatophytosis of the body

Accepted: ICD 9 code 135, Sarcoidosis

Accepted: ICD 9 code 250.70, Diabetes with peripheral circulatory disorders, type II or unspecified type, not stated as uncontrolled

Accepted: ICD 9 code 252.1, Hypoparathyroidism

Accepted: ICD 9 code 275.42, Hypercalcemia

Accepted: ICD 9 code 359.4, Toxic myopathy

Accepted: ICD 9 code 503, Pneumoconiosis due to other inorganic dust

Accepted: ICD 9 code 531.0, Gastric ulcer

Accepted: ICD 9 code 585.3, Chronic kidney disease, Stage III (moderate)

Accepted: ICD 9 code 592.0, Calculus of kidney

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 (dermatophytosis, sarcoidosis, diabetes, hypoparathyroidism, hypercalcemia, toxic myopathy, pneumoconiosis, gastric ulcer, kidney disease, and kidney stones). Instead, the CMC arrived at his rating for the claimant's dermatophytosis, sarcoidosis, diabetes, hypoparathyroidism, hypercalcemia, toxic myopathy, pneumoconiosis, kidney disease, and kidney stones based on the rating rendered by another physician almost four 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 72% whole person impairment [REDACTED]. The CMC report dated [REDACTED] provided a whole person impairment rating of 72%. FAB issued a final decision on [REDACTED] to deny the employee's Part E claim for increased whole person impairment. The employee objected to the final decision. FAB issued a final decision after a review of the written record on [REDACTED] to deny the 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.

6. [REDACTED]  
Cleveland District Office  
Second Medical Opinion (Home Health Care)

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 173.1, Other and unspecified malignant neoplasm of eyelid, including canthus

Accepted: ICD 9 code 493, Asthma

The CMC's conclusions are inconsistent with the medical record and he did not sign the required Potential Conflict of Interest Statement. While the claimant is oxygen dependent, he only requires a flow rate of 2 liters/minute to achieve an oxygen saturation of 97% and he does not require a ventilator while sleeping. His requirement for home health care services does not seem to align to the accepted conditions of asthma and history of skin cancer. Rather the evidence suggests the need for care is more closely associated with the patient's dementia, Type II diabetes mellitus, chronic obstructive pulmonary disease (COPD), cardiac arrhythmias, hypertension (HTN), gastroesophageal reflux disease (GERD), arthritis, and other chronic conditions. The CMC does not address clearly the distinction between the need for home health care for accepted versus non-accepted conditions. Moreover, the clinical evidence relating to pulmonary health needs does not reasonably connect to the level of prescribed care.

*I accept the Medical Director's opinion regarding the errors found in this second medical opinion.*

*DEEOIC referred the case to a second medical opinion regarding the medical necessity for the employee's continued home health care. The CMC report dated [REDACTED] indicated that the employee requires home health care for 12 hours per day, 7 days per week. The district office issued a letter decision dated [REDACTED] approving home health care for the period of [REDACTED]. Given that the period of approved home health care in connection with the second opinion examination has expired, no further action is required for this case.*

**RECOMMENDATION:** Have the contractor obtain the signed Potential Conflict of Interest Statement. Additionally, discuss the errors in this report with QTC so the CMC can improve future submissions.

7. [REDACTED]  
Cleveland District Office  
Impairment Evaluation

Report date: [REDACTED]

Condition: Approved: ICD 9 code 153.4, Malignant neoplasm of cecum

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

When rating the claimant's colon cancer, the CMC inappropriately placed him in Class 3 (25%-49% impairment) on Table 6-4 on Page 128. The claimant's colon cancer was completely removed in [REDACTED]; neither chemotherapy nor radiation therapy were required. The claimant's history of colon cancer has no impact on his activities of daily living (ADL). The left-sided abdominal pain and occasional diarrhea he has recently suffered is attributable to abdominal angina due to mesenteric ischemia (See the physician's progress notes dated [REDACTED]). Therefore, he falls into Class 1 (0%-9% impairment) because the signs and symptoms of colonic disease were of brief duration and limitation of activities, special diet, or medication are not required and there are no sequelae after his surgical procedure. When rating the claimant's skin cancer, the CMC inappropriately placed him in Class 2 (10%-12% impairment) on Table 8-2 on Page 178. The claimant's basal cell carcinoma was completely removed on [REDACTED]-leaving him with a scar from the treatment and the need for regular screening, but his history of skin cancer has no impact on his ADL (Outdoor activities in direct sunlight are not considered activities of daily living. See Table 1-2 on Page 4 of AMA Guides.). Therefore, he falls into Class 1 (0%-9% impairment) because his skin disorder signs and symptoms are only intermittently present and he has no or few limitations in the performance of ADL and he requires only intermittent treatment. 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 16% whole person impairment [REDACTED]. The CMC report dated [REDACTED] provided a whole person impairment rating of 33%. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 33% whole person impairment (17% increase for [REDACTED]).*

**RECOMMENDATION:** A new rating will likely result in a lower rating than has been awarded, so a new rating is not recommended. Discuss the errors in this report with QTC so the CMC can improve future submissions.