

U.S. Department of Labor

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



MEMORANDUM

DATE: JUN 04 2018

TO: KRISTINA GREEN *Kristina Green*  
Unit Chief, Branch of Policy, Regulations and Procedures

FROM: ANGELA EADDY  
WCCE Policy Analyst, Branch of Policy, Regulations and  
Procedures

RE: CMC AUDIT REPORT - 3rd Quarter 2017

Below is the analysis of eight (8) 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

Impairment Evaluation - (Terminal Case)

Report date: [REDACTED]

Condition: Claimed multiple skin cancers of various sites (basal cell carcinoma, squamous cell carcinoma, malignant neoplasm, carcinoma in situ), malignant neoplasm of prostate, secondary malignant neoplasm of bone.

The Medical Director's findings are as follows: 1) the CMC inappropriately applied Table 13-17 on Page 340 to render an impairment pertaining to the employee's upper extremities because there is no evidence in the medical record that the employee has any impairment in his upper extremities; his difficulty with feeding relates to his decreased appetite and somnolence (He sleeps up to 18 hours per day.); 2) there was no need for the CMC to rate the employee on anything other than station and gait. Use of the Combined Values Chart was unnecessary; and 3) the CMC inappropriately placed the employee in Class 4 on Table 13-5 on Page 336. The medical record describes the employee as "unsteady, weak," but he CAN stand without help, mechanical support, and/or an assistive device. The employee's wife, reports that, "At this time the employee is able to perform most ADLs but is getting weaker." The employee is more

appropriately placed in Class 3 because he cannot walk without assistance. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*In his report of June 20, 2017, the CMC rated the employee at 80% whole person impairment. The Final Adjudication Branch (FAB) issued a final decision on June 22, 2017 to accept the Part E claim for whole person impairment due to the accepted condition of metastatic bone cancer and award the employee compensation benefits of [REDACTED]. The employee died on November 2, 2017 (death certificate is in [REDACTED]). Since the employee is now deceased, there is no further action required for this case.*

**RECOMMENDATION:** Recommend that QTC consult with the CMC regarding the errors in the impairment rating.

2. [REDACTED]

Cleveland District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 173.2, Other and unspec malignant neoplasm of skin of ear and external auditory canal

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

Accepted: ICD 9 code 232.3, Carcinoma in situ of skin of other and unspecified parts of face

Accepted: ICD 10 code C44.211, Basal cell carcinoma of skin of unspecified ear and external auricular canal

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

Accepted: ICD 10 code C44.42, Squamous cell carcinoma of skin of scalp and neck

The Medical Director determined that the CMC used the incorrect Class in rating the employee's skin cancer impairment (CMC used Class 2 instead of Class 1). The employee's skin cancers has been cured--leaving him with scars from the treatment and the need for regular screening for new lesions, but his history of skin cancer has little impact on his activities of daily living (ADL) (Outdoor activities in direct sunlight are NOT considered activities of daily living. See Table 1-2 on Page 4 of AMA Guides™). Therefore, the employee falls into Class 1 because his skin disorder signs and symptoms are only intermittently present and he has no or few limitations in his performance of ADL and he requires only intermittent treatment. As an aside, if the CMC had chosen to do so, he could have used Table 11-5 on Page 256 to increase the employee's WPI based on facial disfigurement. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*The employee has previously received impairment ratings of 5% in 2009 and 11% (6% increase) in 2012. In his report of August 24, 2017, the CMC provided a whole person impairment rating of 15% (4% increased impairment). On September 25, 2017, FAB issued a final decision to accept the Part E claim for increased impairment due to the accepted conditions and award the employee compensation benefits of [REDACTED]*

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

3. [REDACTED]

Seattle District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 174.8, Malignant neoplasm of other specified sites of female breast

The Medical Director determined that the CMC incorrectly placed the employee at Class 3 impairment per Table 8-3 on Page 178 of the *AMA Guides*, because there is no evidence in the file that the lesion on the employee's chest limits her "performance of many activities of daily living." The employee's activities of daily living are limited largely due to her confinement to a wheelchair (She has had both knees replaced, and she has advanced degenerative disease of the spine and shoulder joints.). The CMC placed the employee in Class 3 on Table 13-17 on Page 340, but there is no evidence in the file that her decreased ability to grasp, lift, push/pull, and reach up/down/out is due to her accepted condition; it's more likely the result of the degenerative disease in her shoulder joints.

The employee's range of motion is noted to be limited to 40 degrees in the "right arm" and she is noted to be unable to wear a stocking, but the reader is left to assume that the examining physician was referring to the employee's right shoulder joint and 40 degrees of flexion at her right shoulder; the file is silent regarding extension, abduction, adduction, internal rotation, and external rotation at her right shoulder. In order to properly assess the employee's accepted breast cancer for impairment rating purposes, the CMC should have requested additional information regarding the employee's range of motion at her right shoulder, which would have allowed him to employ Table 16-3 on Page 439 when determining her final WPI rating. EEOICPA Bulletin No. 06-12 is germane. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

In his report of June 22, 2017, the CMC provided a whole person impairment rating of 84%. FAB issued a final decision on July 31, 2017 to accept the Part E claim and award the employee compensation benefits of [REDACTED]

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

4. [REDACTED]

Cleveland District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 170.0, Malignant neoplasm of bones of skull and face, except mandible

Accepted: ICD 9 code 473.0, Chronic maxillary sinusitis

Accepted: ICD 9 code 473.1, Chronic frontal sinusitis

Accepted: ICD 9 code 473.2, Chronic ethmoidal sinusitis

Accepted: ICD 9 code 473.3, Chronic sphenoidal sinusitis

Accepted: ICD 9 code 527.7, Disturbance of salivary secretion

Accepted: ICD 9 code 909.2, Late effect of radiation

Accepted: ICD 10 code C71.9, Malignant neoplasm of brain, unspecified

The Medical Director determined that the CMC was asked to review the employee's medical records and INDEPENDENTLY determine a WPI rating, which takes into consideration EACH of the employee's accepted conditions (xerostomia; dental problems; chronic maxillary, frontal, ethmoidal, and sphenoidal sinusitis; synovial sarcoma; and malignant neoplasm of the brain). Instead, the CMC took the WPI rating DETERMINED BY ANOTHER PHYSICIAN TEN MONTHS EARLIER and combined it with his own rating of the claimant's most recently accepted condition (malignant neoplasm of the brain) to determine a WPI rating--which may or may not accurately reflect the claimant's level of impairment. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*The employee has previously received compensation benefits for 9% whole person impairment (2014) and 28% (increase of 19% in 2016). In his report July 14, 2017, the CMC provided a whole person impairment of 57% (increased impairment of 29%). On September 6, 2017, FAB issued a final decision to accept the Part E claim for increased impairment and award the employee compensation benefits of [REDACTED]*

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

5. [REDACTED]

Jacksonville District Office

Impairment Review

Report date: [REDACTED]

Condition: Accepted: Multiple skin cancers of various sites (malignant neoplasm, basal cell carcinoma, squamous cell carcinoma, malignant neoplasm of prostate, disorder of bone and cartilage, unspecified).

The Medical Director determined 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 (multiple skin cancers, prostate cancer, and osteopenia). Instead, the CMC took the WPI rating DETERMINED BY ANOTHER PHYSICIAN MORE THAN TWO YEARS EARLIER and combined it with his own rating of the claimant's most recently accepted condition (osteopenia) to determine a WPI rating--which may or may not accurately reflect the claimant's level of impairment. In addition, the CMC inappropriately applied Section 10.10c on Page 240 to assign the employee a rating of 15% for his osteopenia, but progress notes from Baptist Health dated April 21, 2017 document the fact that the employee has "no bone pain, weight loss, abdominal pain, [or] back pain" and the Activities of Daily Living Questionnaire completed by the physician on June 7, 2017 documents the fact that the employee can stand, sit, recline, walk, and climb stairs "independently without reminder or assistance." This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*The employee has previously received compensation benefits for 37% whole person impairment (2011) and 40% (3% increase in 2015). In his report dated August 8, 2017, the CMC provided a whole person impairment rating of 49% (9% increase). On October 24, 2017, FAB issued a final decision to accept the Part E claim for increased impairment and awarded the employee compensation benefits of [REDACTED]*

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

6. [REDACTED]

Seattle District Office

Impairment Review

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 189.0, Malignant neoplasm of kidney, except pelvis

Accepted: ICD 9 code 202.0, Nodular lymphoma

Accepted: ICD 9 code 357.6, Polyneuropathy due to drugs

Accepted: ICD 9 code 736.79, Other acquired deformities of ankle and foot

The Medical Director determined that the CMC inappropriately placed the employee in Class 4 on Table 9-3 on Page 200; the employee does NOT require continuous treatment FOR HIS LYMPHOMA. He completed treatment (R-CHOP) in August 2013 and has been under observation since then (See Page 2 of the treating physician's clinic note dated May 3, 2017.). In addition, the CMC failed to appropriately rate the employee's station and gait disorder using Table 13-5 on Page 336. The treating physician's letter of May 3, 2017 documents the fact that the employee suffers "from chemotherapy induced neuropathy that affects his gait...and will need to continue physical therapy for his gait disorder." This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*In his report dated August 18, 2017, the CMC provided a whole person impairment rating of 60%. On October 6, 2017, FAB issued a final decision to accept the Part E claim for impairment and award the employee [REDACTED]*

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

7. [REDACTED]

Seattle District Office

Impairment Review

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 152.9, Malignant neoplasm of small intestine, unspecified site

Accepted: ICD 9 code 173.11, Basal cell carcinoma of eyelid, including canthus

Accepted: ICD 9 code 185, Malignant neoplasm of prostate

Accepted: ICD 9 code 186.9, Malignant neoplasm of other and unspecified testis

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

Accepted: ICD 9 code 198.89, Secondary malignant neoplasm of other specified sites

The Medical Director stated that the employee's right testicle was removed and he underwent radiation therapy for testicular cancer in 1978. The CMC inappropriately rated the employee's testicular cancer at Class 1 level impairment, based on Table 7-6. Table 7-6 is used to rate permanent impairment due to scrotal disease; Table 7.7 on Page

159 is used to rate permanent impairment due to testicular disease. In addition, although lung cancer is NOT one of the employee's accepted conditions, the CMC references Table 5-11 on Page 106 in his report; Table 5-11 is only used to rate claimants with lung cancer. Section 5.9 is germane. Finally, the CMC inappropriately placed the employee in Class 1 on Table 6-4 on Page 128 when rating his history of cancer of the small intestine. A physician's letter dated June 22, 2017 documents the fact that the employee "is without any residual GI symptoms." The employee has fully recovered and is without any residual impairment. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the errors found in this impairment rating.*

*The employee was previously rated at 72% whole person impairment (2010) and 45% (no increase in 2015). In his report dated August 2, 2017, the CMC provided a whole person impairment rating of 45% (no increase). On October 31, 2017, FAB issued a final decision to deny the employee's Part E claim for increased impairment.*

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

8. [REDACTED]

Seattle District Office

Supplemental Review (for Impairment)

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 162.8, Malignant neoplasm of other parts of bronchus or lung

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

The Medical Director determined that in accordance with Section 5.9 on Page 106, the CMC correctly placed the employee in Class 4 on Table 5-12 on Page 107 and assigned him a WPI of 75% for his lung cancer. Then, using the results of a pulmonary function test (PFT) administered on May 24, 2017, the CMC correctly placed the employee in Class 4 on Table 5-12 on Page 107 and assigned him a WPI of 77% for his COPD. At this point, the CMC should have assigned the employee EITHER a WPI of 75% OR a WPI of 77% (Most physicians would have chosen the latter rating because it is more claimant-favorable.) and ended his report. Instead, the CMC incorrectly applied the Combined Values Chart to combine three ratings for the same organ system (asthma, COPD, and lung cancer) to yield a 96% rating. The impairment rating can be based on either the WPI rating for condition of lung cancer or the WPI rating for condition of COPD but not both. This may change the final determination in this case.

*I accept the Medical Director's opinion regarding the error found in this supplemental review.*

*The employee was previously rated at 60% whole person impairment in 2015. In the CMC report of September 7, 2017, he provided a whole person impairment of 96% (36% increase). On October 20, 2017, FAB issued a final decision to accept the Part E impairment claim for 96% whole person impairment (36% increase) and awarded the employee compensation benefits of*

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