U.S. Department of Labor Office of Workers' Compensation Programs

Division of Energy Employees Occupational

Illness Compensation Washington, DC 20210



## **MEMORANDUM**

DATE: June 24, 2020

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: Contract Medical Consultant (CMC) Audit Report

3rd Quarter 2019

Below is the analysis of eight cases (8) determined to have a deficient CMC report based on a review by the Division of Energy Employees Occupational Illness Compensation (DEEOIC) Medical Director.

1.

**Jacksonville District Office** Impairment Evaluation

Report date:

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

The Medical Director's findings are as follows: The CMC did not articulate the basis for his impairment rating (30% WPI) and its relationship to the employee's accepted condition. While the CMC referred to the appropriate table (Table 7-1 on Page 146) in the "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition", he did not use it. Had he done so, he would have been forced to conclude that the employee's accepted condition has been appropriately treated, leaving him with 0% WPI. The mass in the employee's right kidney was discovered "by accident" while he was being evaluated for ongoing problems with musculoskeletal back pain. Removal and examination of the mass revealed it to be renal cell carcinoma. There was no local invasion and there were no distant metastases. The tumor was completely removed. The employee did not require either radiation therapy or chemotherapy and he has been free of disease for over six years. There is no evidence in the file that connects the employee's difficulty with activities of daily living to his accepted condition. 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 CMC's report provided a 30% whole person impairment (WPI). FAB issued a final decision on to accept the employee's Part E claim for 30% WPI. The employee received in compensation. Given that the employee's true level of impairment would most likely be less than the 30% WPI already awarded, there is no basis for pursuing an amended rating.

**RECOMMENDATION**: I recommend discussing the circumstance with the contractor for improvements to future submissions.

2.	
Denver District Office	
Impairment Evaluation	
Report date:	

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

Accepted: ICD 9 code 502, Pneumoconiosis due to other silica or silicates

Accepted: ICD 9 code 505, Pneumoconiosis, unspecified

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

The Medical Director's findings are as follows: While the CMC rated the employee's level of impairment at Class 1 and applied the correct table when determining the employee's WPI due to his accepted pulmonary conditions, the CMC misread the table. Class 1 in Table 5-12 on Page 107 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" equates to 0% WPI--not 10%-25% WPI. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the error found in this impairment evaluation.

The employee has previously received compensation benefits for 25% WPI which represents the maximum rating for Class 2 impairment. The CMC's report provided a 16% WPI rating. FAB issued a final decision on to deny the employee's Part E claim for increased impairment. Since this error is solely based on the CMC rating the employee within the incorrect class, (Class 2 rating covers 10-25% WPI, not Class 1), the employee's current impairment rating would not exceed the previously awarded 25% WPI. There is no further action required for this case.

**RECOMMENDATION:** I recommend discussing the circumstance with the contractor for improvements to future submissions.

3.

Seattle District Office

Impairment Evaluation

Report date:

Condition: Accepted: ICD 9 code 173.22, Squamous cell carcinoma of skin of ear and

external auditory canal

Accepted: ICD 9 code 173.41, Basal cell carcinoma of scalp and skin of neck

Accepted: ICD 9 code 173.42, Squamous cell carcinoma of scalp and skin of neck Accepted: ICD 9 code 232.4, Carcinoma in situ of skin, Scalp and skin of neck

Accepted: ICD 9 code 493.00, Extrinsic asthma, unspecified

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

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

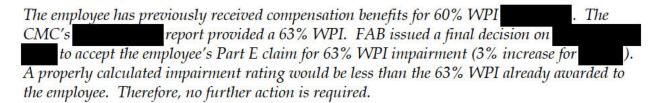
Accepted: ICD 9 code 511.0, Pleurisy, Without mention of effusion or current tuberculosis

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

Accepted: ICD 10 code C67.9, Malignant neoplasm of bladder, unspecified Accepted: ICD 10 code D04.4, Carcinoma in situ of skin of scalp and neck Accepted: ICD 9 code V81.4, Other and unspecified respiratory conditions

The Medical Director's findings are as follows: The CMC inappropriately used the Combined Values Chart on Pages 604-606 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" to combine two WPI ratings for the same organ system (51% WPI for COPD, pleurisy, beryllium sensitivity, CBD, and 18% WPI for asthma). This may change the final determination in this case.

I accept the Medical Director's opinion regarding the error found in this impairment evaluation.

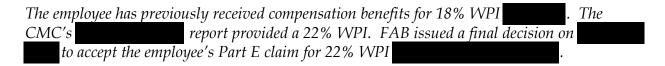


**RECOMMENDATION**: I recommend discussing the circumstance with the contractor for improvements to future submissions.

4.
Jacksonville District Office
Impairment Evaluation
Report date:
Condition: Accepted: ICD 10 code J44.1, Chronic obstructive pulmonary disease with
(acute) exacerbation
The Medical Director's findings are as follows: The CMC in deventantly used 2.06 liter

The Medical Director's findings are as follows: The CMC inadvertently used 2.96 liters as the observed value for the employee's pre-bronchodilator FEV1; this is actually the reference value from the employee's spirometry report dated . Also, the CMC inadvertently used 2.61 ml/mmHg/min as the observed value for the employee's DLCO; this, too, is the reference value from the report. Finally, the CMC used the predicted values for FVC, FEV1, and DLCO from the spirometry report instead of using the predicted values found in Table 5-2a on Page 95, Table 5-4a on Page 97, and Table 5-6a on Page 99 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition", and adjusting them based on the employee's ethnicity as described under Section 5.4d on Page 94 of the "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition." This may change the final determination in this case.

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



**RECOMMENDATION**: In order to determine if a reopening of the case is appropriate, I 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. I recommend discussing the circumstance with the contractor for improvements to future submissions.

Seattle District Office
Supplemental Evaluation
Report date: with addendum dated

Condition: Accepted: ICD 9 code 274.9, Gout, unspecified Accepted: ICD 9 code 285.21, Anemia in chronic kidney disease Accepted: ICD 9 code 405.91, Unspecified renovascular hypertension

Accepted: ICD 9 code 585.1, Chronic kidney disease, Stage I Accepted: ICD 9 code 728.87, Muscle weakness (generalized)

The Medical Director's findings are as follows: The CMC inappropriately equated the employee's accepted condition, muscle weakness (generalized) (ICD 9 code 728.87), with cervical myopathy. Then, he rated a condition, which has not been accepted (cervical myelopathy). Finally, the CMC inappropriately employed Table 13-16 on Page 338 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" to rate cervical myopathy, which is a peripheral neurological impairment. "Tables 13-16 and 13-17 are used to rate upper extremity dysfunction from any lesion in the brain." Section 13.6 on Page 338 is germane. This may change the final determination in this case.

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

The claimant has pre	viously received compensation benefits	s for 77% WPI	. The
CMC's	report (with addendum dated	) provided an 87	% WPI. The
Policy Branch provid	led the Medical Director with the	report and	
addendum report for	the audit review. FAB issued a final a	decision on	to
accept the employee's	Part E claim for 87% WPI	).	

**RECOMMENDATION**: In order to determine if a reopening of the case is appropriate, I 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. I recommend discussing the circumstance with the contractor for improvements to future submissions.

6.	
Jacksonville District Office	
Impairment Evaluation	
Report date:	
Condition: Accepted: ICD 9 code 501, As	bestosis
Accepted: ICD 110 code D46.9, Myelodys	splastic syndrome, unspecified

The Medical Director's findings are as follows: The CMC was correct when he placed the employee in Class 4 on Table 5-12 on Page 107 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition", but erred when he assigned the employee a WPI rating of 44%; Class 4 equates to 51%-100% impairment of the whole person. The CMC's WPI rating for the employee must fall between 51% and 100% unless the CMC provides a clear and convincing argument as to why a rating of 51%-100% overestimates the employee's impairment due to asbestosis. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the error found in this impairment evaluation.

The employee has previously received compensation benefits for 38% WPI  CMC's report provided a 44% WPI. FAB issued a final decision on to accept the employee's Part E claim for 44% WPI.
<u>RECOMMENDATION</u> : In order to determine if a reopening of the case is appropriate, I 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. I recommend discussing the circumstance with the contractor for improvements to future submissions.
Jacksonville District Office Impairment Evaluation Report date: Condition: Approved: ICD 10 code J44.9, Chronic Obstructive Pulmonary Disease, Unspecified
The Medical Director's findings are as follows: The CMC did not adjust the predicted values he obtained from Table 5.2a on Page 95, Table 5-4a on Page 97, and Table 5-6a on Page 99 to reflect the employee's ethnicity, as directed in Section 5.4d on Page 94 before applying Table 5-12 on Page 107 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" to determine the Class of the employee's pulmonary impairment. This may change the final determination in this case.
I accept the Medical Director's opinion regarding the error found in this impairment evaluation.
The CMC's report provided a 28% WPI. FAB issued a final decision on to accept the employee's Part E claim for 28% WPI. The employee received in compensation.
<u>RECOMMENDATION</u> : In order to determine if a reopening of the case is appropriate, I 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. I recommend discussing the circumstance with the contractor for improvements to future submissions.
8. Seattle District Office Impairment Evaluation Report date: Condition: Accepted: ICD 9 code 189.0, Malignant neoplasm of kidney and other and unspecified urinary organs, Kidney, except pelvis

Accepted: ICD 9 code 197.0, Secondary malignant neoplasm of respiratory and digestive systems, Lung

Accepted: ICD 9 code 197.8, Secondary malignant neoplasm of respiratory and

digestive systems, Other digestive organs and spleen

Accepted: ICD 9 code 249.8, Secondary diabetes mellitus with other specified manifestations

Accepted: ICD 10 code C07, Malignant neoplasm of parotid gland

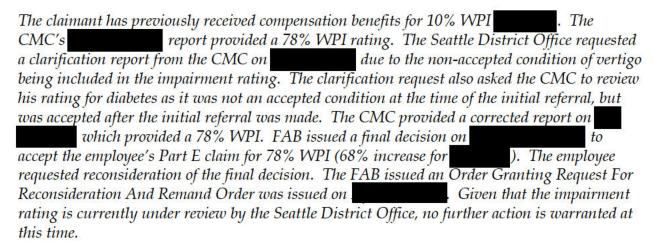
Accepted: ICD 10 code H02.20B, Unspecified lagophthalmos left eye, upper and lower eyelids

Accepted: ICD 10 code H91.8X2, Other specified hearing loss, left ear

Accepted: ICD 10 code I89.0, Other non-infective disorders of lymphatic vessels and lymph nodes, Lymphedema, not elsewhere classified

The Medical Director's findings are as follows: The CMC placed the employee in Class 1 (0%-5% Impairment of the Whole Person) on Table 10-8 on Page 231 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" when rating the employee's diabetes mellitus (DM), but then the CMC assigned the employee a 6% WPI rating for DM. Also, the CMC inappropriately applied Table 8-2 on Page 178 to rate the employee's lymphedema. Lymphedema is not a skin disorder and it is not ratable using the "AMA Guides, Fifth Edition"; it has no effect on activities of daily living. Finally, the CMC provided a WPI rating (2%) for vertigo, but vertigo is not one of the employee's accepted conditions. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the error found in this impairment evaluation.



**<u>RECOMMENDATION</u>**: I recommend discussing the circumstance with the contractor for improvements to future submissions.