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. [REDACTED]
Jacksonville District Office
Impairment Evaluation
Report date: [REDACTED]
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 [redacted] report provided a 30% whole person impairment (WPI). FAB issued a final decision on [redacted] to accept the employee's Part E claim for 30% WPI. The employee received [redacted] 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. [redacted]
Denver District Office
Impairment Evaluation
Report date: [redacted]
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 [redacted] which represents the maximum rating for Class 2 impairment. The CMC's [redacted] report provided a 16% WPI rating. FAB issued a final decision on [redacted] 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. [redacted]

Seattle District Office
Impairment Evaluation
Report date: [redacted]
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.

The employee has previously received compensation benefits for 60% WPI [redacted]. The CMC's [redacted] report provided a 63% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 63% WPI impairment (3% increase for [redacted]). A properly calculated impairment rating would be less than the 63% WPI already awarded to the employee. Therefore, no further action is required.

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 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.

The employee has previously received compensation benefits for 18% WPI . The CMC's report provided a 22% WPI. FAB issued a final decision on to accept the employee's Part E claim for 22% 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.

5.
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 previously received compensation benefits for 77% WPI [redacted]. The CMC's [redacted] report (with addendum dated [redacted]) provided an 87% WPI. The Policy Branch provided the Medical Director with the [redacted] report and [redacted] addendum report for the audit review. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 87% WPI [redacted]).

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. [redacted]
Jacksonville District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 501, Asbestosis
Accepted: ICD 110 code D46.9, Myelodysplastic 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 [redacted]. The CMC's [redacted] report provided a 44% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 44% WPI. [redacted]).

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.

7. [redacted]
Jacksonville District Office
Impairment Evaluation
Report date: [redacted]
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 [redacted] report provided a 28% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 28% WPI. The employee received [redacted] in compensation.

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.

8. [redacted]
Seattle District Office
Impairment Evaluation
Report date: [redacted]
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.

The claimant has previously received compensation benefits for 10% WPI [redacted]. The CMC's [redacted] report provided a 78% WPI rating. The Seattle District Office requested a clarification report from the CMC on [redacted] due to the non-accepted condition of vertigo being included in the impairment rating. The clarification request also asked the CMC to review his rating for diabetes as it was not an accepted condition at the time of the initial referral, but was accepted after the initial referral was made. The CMC provided a corrected report on [redacted] which provided a 78% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 78% WPI (68% increase for [redacted]). The employee requested reconsideration of the final decision. The FAB issued an Order Granting Request For Reconsideration And Remand Order was issued on [redacted]. Given that the impairment rating is currently under review by the Seattle District Office, no further action is warranted at this time.

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