U.S. Department of Labor

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

MEMORANDUM

DATE: August 9, 2019

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

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

RE: CMC AUDIT REPORT – 1st Quarter 2019

Below is the analysis of six (6) 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]
Cleveland District Office
Supplemental Evaluation (re: Impairment)
Report date: [redacted]
Condition: Accepted: ICD 9 code 157.4, Malignant neoplasm of islets of Langerhans
Accepted: ICD 9 code 196.2, Secondary and unspecified malignant neoplasm of intra-abdominal lymph nodes
Accepted: ICD 9 code 197.0, Secondary malignant neoplasm of lung
Accepted: ICD 9 code 197.7, Malignant neoplasm of liver, secondary
Accepted: ICD 9 code 197.8, Secondary malignant neoplasm of other digestive organs and spleen
Accepted: ICD 9 code 198.5, Secondary malignant neoplasm of bone and bone marrow
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 782.3, Edema
Accepted: ICD 10 code H04.123, Dry eye syndrome of bilateral lacrimal glands
Accepted: ICD 10 code H05.313, Atrophy of bilateral orbit
Accepted: ICD 10 code H34.8110, Central retinal vein occlusion, right eye, with macular edema
Accepted: ICD 10 code H47.013, Ischemic optic neuropathy, bilateral

The Medical Director's findings are as follows: The CMC's report [redacted] does not mention significant aspects of the claimant's medical history; i.e., her diabetes and metastatic pancreatic cancer. In addition, the CMC was asked to review the claimant's medical records and independently determine a whole person impairment (WPI) rating, which takes into consideration each of her accepted conditions (central retinal vein occlusion, optic neuropathy, atrophy of bilateral orbit, dry eye syndrome, pancreatic cancer with metastases, diabetes, and edema). Instead, he combined his rating for the claimant's eye conditions with the WPI rating for her pancreatic cancer with metastases, diabetes, and edema determined by another physician almost 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 supplemental evaluation for impairment.*

*The employee has previously received compensation benefits for 93% WPI [redacted]. The CMC's [redacted] report provided a WPI rating of 28%, which was solely based on the claimant's accepted visual conditions. The Cleveland District Office requested a supplemental report from the CMC on [redacted], that included the WPI based on all of the accepted conditions. The CMC provided a supplemental report on [redacted], where he stated that the 28% impairment combined with the previous impairment award of 93% for the remaining accepted conditions and using the Combined Values Chart on page 605 of the AMA Guides to the Evaluation of Permanent Impairment, 5th edition, resulted in a 95% WPI. The Final Adjudication Branch (FAB) issued a final decision on [redacted], to accept the employee's Part E claim for 95% WPI [redacted].*

**RECOMMENDATION**: The CE referral was worded poorly (listing "accepted conditions" and "previously accepted conditions" separately and then asking the CMC to opine on the accepted conditions - when all of the accepted conditions should have been listed in one group, without the misleading and unnecessary delineation). The CE also asked the CMC to use the combined values chart in adding the visual impairment to the prior 93% rating. The CE should have asked the CMC to conduct a new rating for the "previously accepted conditions" and then combine this rating with the rating for the visual acuity conditions. The CMC, however, should have realized what was occurring and likely have asked for clarification. In order to determine if a reopening of the case is appropriate, it is recommended 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.

2. [redacted]
Jacksonville District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 162.3, Malignant neoplasm of upper lobe, bronchus or lung
Accepted: ICD 9 code 173.11, Basal cell carcinoma of eyelid, including canthus
Accepted: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face
Accepted: ICD 9 code 173.31, Basal cell carcinoma of skin of other and unspecified parts of face
Accepted: ICD 9 code 232.4, Carcinoma in situ of scalp and skin of neck

The Medical Director's findings are as follows: The CMC provided a WPI rating for a claimant who is neither terminal nor at maximum medical improvement (MMI) (See the ADL questionnaire dated [redacted]. In addition, without having reviewed current information regarding the claimant's lung cancer (cancer in remission with no evidence of active treatment or palliative care), the CMC based his assessment on a combination of the WPI rating of the claimant's lung cancer determined by another physician almost three years previously and an ADL questionnaire that may--or may not--reflect limitations due to the claimant's accepted condition. Finally, 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, but his history of skin cancer has no impact on his activities of daily living (Outdoor activities in direct sunlight are not considered an activity of daily living. See Table 1-2 on Page 4 of "AMA Guides".). Therefore, the claimant falls into Class 1 (0%-9% Impairment of the Whole Person) because his skin disorder signs and symptoms are only intermittently present and he has no or few limitations in his performance of activities of daily living and he requires only intermittent treatment. These defects in the CMC's report 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 46% WPI* [redacted]. *The CMC's* [redacted] *report provided a 91% WPI rating. FAB issued a final decision on* [redacted] *to accept the employee's Part E claim for 91% WPI (45% increase for* [redacted].

**RECOMMENDATION**: A recalculation of the impairment rating would likely result in a lower rating, so no further action is needed for this case. Discuss the errors in this report with the contractor so the CMC can be advised of the deficiencies and can improve future submissions.

3. [redacted]
Jacksonville District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 503, Pneumoconiosis due to other inorganic dust
Accepted: ICD 9 code V81.4, Screening for other and unspecified respiratory conditions
Accepted: ICD 9 code 585.1, Chronic kidney disease

The Medical Director's findings are as follows: The CMC's report is incomplete and may be misleading. (1) The employee is not terminal. The CMC did not state whether the employee has reached MMI in each of his accepted conditions. (2) The CMC did not rate the employee's accepted conditions (chronic beryllium disease (CBD) and chronic kidney disease) individually and then combine them into a final WPI rating that reflects only the level of the employee's impairment attributable to his accepted conditions. Much of the employee's inability to perform activities of daily living (ADL) is due to conditions other than his accepted conditions. He has a history of stroke, which left him with residual left-sided weakness; he now requires a brace on his left lower extremity and uses a cane--but he still drives (progress note dated [redacted]. He also has a history of prostate cancer, diabetes, excess weight (BMI 27.44) and depression. (3) DEEOIC policy requires physicians to use the most recent, valid pulmonary function test (PFT) results in the claimant's medical record as a basis for their rating of a claimant's level of impairment due to pulmonary disease. While Section 5.10 on Page 107 does allow physicians latitude to "assign an impairment rating based on the extent and severity of pulmonary dysfunction and the inability to perform activities of daily living," the DEEOIC does not allow physicians to ignore valid (in this case, fairly normal) PFT results. The CMC did not use the most recent, valid PFT results in the employee's medical record [redacted] as a basis for determining the employee's WPI rating due to pulmonary disease. (4) The CMC did not provide a WPI rating for the employee's chronic kidney disease using Table 7-1 on Page 146. (5) The CMC did not combine individual WPI ratings for the employee's CBD and chronic kidney disease into a final WPI rating using the Combined Values Chart on Pages 604-606. The defects in the CMC's report 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 53% WPI [redacted]. The CMC's [redacted] report provided a 75% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 75% WPI (22% increase for [redacted].*

**RECOMMENDATION**: In order to determine if a reopening of the case is appropriate, it is recommended 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. Discuss the errors in this report with the contractor so the CMC can be advised of the deficiencies and can improve future submissions.

4. [redacted]
Seattle District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 172.6, Malignant melanoma of skin of upper limb, including shoulder
Accepted: ICD 9 code 173.0, Other and unspecified malignant neoplasm of skin of lip
Accepted: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face
Accepted: ICD 9 code 173.31, Basal cell carcinoma 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 173.6, Other and unspecified malignant neoplasm of skin of upper limb, including shoulder
Accepted: ICD 9 code 173.62, Squamous cell carcinoma of skin of upper limb, including shoulder
Accepted: ICD 9 code 173.7, Other and unspecified malignant neoplasm of skin of lower limb, including hip
Accepted: ICD 9 code 173.72, Squamous cell carcinoma of skin of lower limb, including hip
Accepted: ICD 9 code 174.9, Malignant neoplasm of breast (female), unspecified
Accepted: ICD 9 code 232.5, Carcinoma in situ of skin of trunk, except scrotum
Accepted: ICD 9 code 232.6, Carcinoma in situ of skin of upper limb, including shoulder
Accepted: ICD 9 code 707.10, Ulcer of lower limb, unspecified
Accepted: ICD 10 code C44.519, Basal cell carcinoma of skin of other part of trunk

The Medical Director's findings are as follows: Federal (EEOICPA) Procedure Manual (Version 3.1) Chapter 21, Paragraph 8b. is applicable to this case. (1) The CMC did not provide a clinical history or summary of the case. (2) The CMC inappropriately applied Section 10.9a on Page 239 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. The employee is ineligible for a WPI rating for the loss of her breast; she underwent a right, partial mastectomy (a so-called "lumpectomy")--not a total mastectomy. (3) The medical records provided do not mention any loss of function in the employee's right upper extremity or other physical impairments affecting ADL. The CMC's WPI rating of the employee's right upper extremity is "borrowed" from a WPI rating determined by another physician more than eight years ago. An accurate WPI rating will require determination of the amount of residual swelling in the

employee's right upper extremity (Page 74, Table 4-4) and accurate measurements of her range of motion in her right upper extremity (Chapter 16, Pages 433-512 and Table 16-3). The defects in the CMC's report 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 14% WPI [redacted] The [redacted] report provided a 25% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 25% WPI (11% increase for [redacted]*

**RECOMMENDATION**: In order to determine if a reopening of the case is appropriate, it is recommended 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. Discuss the errors in this report with the contractor so the CMC can be advised of the deficiencies and can improve future submissions.

5. [redacted]
Denver District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 492.8, Other emphysema
Accepted: ICD 9 code 493.90, Asthma,unspecified type, unspecified
Accepted: ICD 9 code 496, Chronic airway obstruction, not elsewhere classified
Accepted: ICD 9 code 502, Pneumoconiosis due to other silica or silicates
Accepted: ICD 9 code 505, Pneumoconiosis, unspecified
Accepted: ICD 9 code 506.4, Chronic respiratory conditions due to fumes and vapors
Accepted: ICD 9 code 515, Postinflammatory pulmonary fibrosis

The Medical Director's findings are as follows: The final WPI rating assigned by the CMC is inconsistent with the evidence in the file. The CMC's final combined WPI rating for the employee is 95%. "AMA Guides™ to the Evaluation of Permanent Impairment, Fifth Edition" considers a WPI of 90% to 100% to be indicative of "very severe organ or body system impairment requiring the individual to be fully dependent on others for self-care." In fact, the ADL questionnaire completed for him on [redacted] documents the fact that he is able to perform 37 of 40 ADL "independently without reminder or assistance," requires "assistance or reminders" for 2 ADL, and is unable to perform only 1 ADL "on [his] own, even if assisted" (climbing stairs). This defect in the CMC's report 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 94% WPI [redacted]. The [redacted] report provided a 95% WPI. The Denver District Office issued a recommended decision on [redacted] to accept the Part E claim for 95% WPI (1% increase for [redacted]. The employee objected to the recommended decision and requested a Review of the Written Record. The case file was referred back to [redacted] to perform an impairment rating. [redacted] report provided a 98% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 98% WPI (4% increase for [redacted].*

**RECOMMENDATION**: It is unlikely that a new impairment rating will yield a higher percentage as the employee is 2% from 100% WPI. Discuss the errors in this report with QTC so the CMC can improve future submissions.

6. [redacted]
Jacksonville District Office
Supplemental Evaluation (re: Impairment)
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 389.18, Sensorineural hearing loss, bilateral
Accepted: ICD 9 code 503, Pneumoconiosis due to other inorganic dust
Accepted: ICD 10 code G47.33, Obstructive sleep apnea (adult)
Accepted: ICD 10 code J45.998, Other asthma
Accepted: ICD 9 code V81.4, Screening for other and unspecified respiratory conditions

The Medical Director's findings are as follows: The CMC inappropriately used Table 9-3 on Page 200 of "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" to assign a WPI rating of 8% for beryllium sensitivity. Table 9-3 is for rating white blood cell disease; beryllium sensitivity is not a white blood cell disease and it does not affect one's ability to carry out activities of daily living. Also, the CMC inappropriately used old information [redacted] from the employee's medical record to assign a rating for asthma. The employee underwent an extensive pulmonary evaluation--including pulmonary function studies--on [redacted] The source of the data the CMC used to determine the employee's hearing loss is unclear. The medical records I received did not include an audiogram. This may change the final determination in this case.

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

*The employee has previously received compensation benefits for 29% WPI [redacted]. The CMC's [redacted] report provided a 32% WPI rating. The district office requested a supplemental impairment rating due to the acceptance of chronic beryllium disease. The CMC's [redacted] supplemental report provided a 38% WPI. FAB issued a final decision on [redacted] to accept the employee's Part E claim for 38% WPI (9% increase for [redacted].*

**RECOMMENDATION**: In order to determine if a reopening of the case is appropriate, it is recommended 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. Discuss the errors in this report with the contractor so the CMC can be advised of the deficiencies and can improve future submissions.