

U.S. Department of Labor

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



MEMORANDUM

DATE: September 8, 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
4th Quarter 2019

Below is the analysis of three (3) cases 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]
Denver District Office
Impairment Evaluation
Report date: [REDACTED]
Condition: Accepted: ICD 10 code J64, Unspecified pneumoconiosis

The Medical Director's findings are as follows: It was inappropriate for the CMC to use Section 2.5g on Page 20 of Chapter 2 in "AMA Guides™ to add 3% to the employee's whole person impairment (WPI) rating. Section 2.5g is for use in instances where "the treatment of an illness may result in apparently total remission of the person's signs and symptoms...yet it is debatable whether, with treatment, the patient has actually regained the previous status of normal good health." The employee's pneumoconiosis is not – and never will be – in apparently total remission; his degree of impairment is appropriately quantified using only the methodology in Chapter 5. In this case, given that the employee has only one accepted condition (pneumoconiosis) and his degree of impairment is best described by Class 1 (0% Impairment of the Whole Person) on Table 5-12 on Page 107, his final WPI must be 0%. 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 3% WPI. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 3% WPI impairment. The employee received [REDACTED] in compensation.

RECOMMENDATION: The employee has received a compensation award of [REDACTED] based on the CMC's determination of 3% WPI. It would not be appropriate to seek a corrected impairment rating to reflect the Medical Director's determination of 0% WPI. Discuss the errors in this report with the contractor for improvements to future submissions.

2. [REDACTED]

Seattle District Office

Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 154.1, Malignant neoplasm of rectum

Accepted: ICD 9 code 564.1, Irritable bowel syndrome

The Medical Director's findings are as follows: The CMC could have better summarized the available medical notes rather than transcribing them again. In assessing the employee's impairment, the CMC appropriately turned to Chapter 6 in "AMA Guides" when asked to rate the employee's two accepted conditions; both are diseases of the lower digestive tract (colon, rectum, and anus). It was not appropriate, however, for the CMC to combine the rating he obtained from Table 6-4 on Page 128 for the employee's rectal cancer with the rating he obtained from Table 6-5 on Page 131 for the employee's irritable bowel syndrome; this combines two ratings for the same organ system--yielding an inflated and misleading final WPI rating. This may change the final determination in this case.

I accept the Medical Director's opinion regarding the errors found in this impairment evaluation as it relates to the overall rating.

The employee has previously received compensation benefits for 75% WPI [REDACTED]. The CMC's [REDACTED] report provided a 79% WPI. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 79% WPI [REDACTED].

RECOMMENDATION: A new rating would be based on either the rating for colon cancer or irritable bowel syndrome, so it would not be higher than the 79% WPI already awarded. Therefore, an amended impairment rating is not appropriate. Discuss the errors in this report with the contractor for improvements to future submissions.

3. [REDACTED]

Jacksonville District Office
Impairment Evaluation

Report date: [REDACTED]

Condition: Accepted: ICD 9 code 172.2, Malignant melanoma of skin of ear and external auditory canal

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

Accepted: ICD 9 code 501, Asbestosis

Accepted: ICD 9 code 780.4, Dizziness and giddiness

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

The Medical Director's findings are as follows: The CMC's report includes both inaccuracies and inappropriate applications of the tables in "AMA Guides™." The CMC states that the employee's "activity [sic] of daily living questionnaire indicates all diagnoses have reached MMI," but this is untrue; every diagnosis listed on the ADL questionnaire dated [REDACTED], is marked as not being at MMI. The physical therapy evaluation of the employee performed on [REDACTED] revealed that his dizziness (ICD 9-CM 780.4) is due to a combination of vestibular disease and his neuropathy (ICD 10-CM G62.2); it is not due to muscle weakness in the lower limbs. The employee's dizziness manifests as a gait derangement, which is appropriately rated using only Table 13-15 on Page 336. In addition, the CMC inappropriately combines impairment due to gait derangement with impairment due to muscle strength. Impairment due to gait derangement may not be combined with impairment due to muscle strength (See Section 17.2 and Table 17-2 on Page 526.); "AMA Guides™" considers both muscle strength and gait derangement to be "functional" methods of assessment--they measure the same thing. Finally, review of the employee's audiogram dated [REDACTED] reveals that the employee has a total hearing loss at 500Hz, 1000 Hz, 2000Hz, and 3000Hz of 160 in the right ear and 220 in the left ear (I confirmed this with his audiologist). Applying the method described in Section 11.2a of "AMA Guides™" reveals that the employee's WPI due to hearing loss is only 9%--not 10%. These defects may change the final determination in this case.

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

The claimant has previously received compensation benefits for 45% WPI [REDACTED]. The CMC's [REDACTED] report provided a 78% WPI. FAB issued a final decision on [REDACTED] to accept the employee's Part E claim for 78% WPI (33% increase for [REDACTED]).

RECOMMENDATION: Since the 78% WPI rating was based on an improper combination of multiple tables, an amended rating based on one table would not yield a rating higher than the 78% WPI already awarded. Therefore, an amended rating is not

appropriate. Discuss the errors in this report with the contractor for improvements to future submissions.