U.S. Department of Labor

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

MEMORANDUM

DATE: September 11, 2018

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: CMC AUDIT REPORT - 4th 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]
Denver District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 10 code J43.9, Emphysema, unspecified

The Medical Director's findings are as follows: The CMC failed to state that the claimant had reached the point of maximum medical improvement (MMI). In addition, rather than using Table 5-2a on Page 95, Table 5-4a on Page 97, and Table 5-6a to estimate the predicted values for this 85 year old claimant, the CMC chose to use his own method. The CMC's method is inconsistent with the "AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition" and, therefore, inconsistent with EEOICP policy. These defects in the CMC's report would not have changed the final determination in this case.

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

The CMC report dated [redacted]*, provided a whole person impairment rating of 42%. On* [redacted]*, FAB issued a final decision to accept the employee's Part E claim for impairment and award the employee compensation benefits of* [redacted]*. The employee died on* [redacted] *prior to FAB issuing the impairment compensation. The surviving spouse filed*

Form EE-2 (Survivor's Claim for Benefits). On [redacted] FAB issued a final decision to accept her Part E claim and award her compensation benefits of [redacted]

Since the Medical Director has determined that the deficiencies in the CMC report would not change the final determination in the case, the employee is now deceased, and the survivor has received compensation benefits of [redacted] under Part E, there is no further action required for this case.

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies. Additionally, Claims Examiners (CE) should indicate in the question posed to the CMC that the CMC address whether MMI has been reached. In this referral, language regarding MMI is provided in the introductory statement of the CE's referral, but it is not specifically included in the question posed to the CMC.

2. [redacted]
Cleveland District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 150.4, Malignant neoplasm of middle third of esophagus
Accepted: ICD 9 code 173.21, Basal cell carcinoma of skin of ear and external auditory canal
Accepted: ICD 9 code 173.31, Basal cell carcinoma of skin of other and unspecified parts of face
Accepted: ICD 9 code 173.41, Basal cell carcinoma of scalp and skin of neck
Accepted: ICD 9 code 389.18, Sensorineural hearing loss, bilateral
Accepted: ICD 9 code C44.319, Basal cell carcinoma of skin of other parts of face

The Medical Director's findings are as follows: 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 (esophageal cancer, multiple skin cancers, and sensorineural hearing loss). Instead, the CMC took the WPI rating determined by another physician seven months earlier and combined it with his own rating of the claimant's most recently accepted condition (sensorineural hearing loss) 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 evaluation.

The employee previously received compensation for 25% whole person impairment [redacted]. The CMC report dated [redacted] provided a whole person impairment rating of 39%. On [redacted] FAB issued a final decision to the employee for 39% whole person impairment

(14% increase for [redacted] for esophageal cancer, multiple skin cancers and bilateral sensorineural hearing loss.

RECOMMENDATION: 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.

3. [redacted]
Denver District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 173, Other and unspecified malignant neoplasm of skin
Accepted: ICD 9 code 173.2, Other and unspecified malignant neoplasm of skin of ear and external auditory canal
Accepted: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face
Accepted: ICD 9 code 173.4, Other and unspecified malignant neoplasm of scalp and skin of neck
Accepted: ICD 9 code 173.5, Other and unspecified malignant neoplasm of skin of trunk, except scrotum
Accepted: ICD 9 code 173.6, Other and unspecified malignant neoplasm of skin of upper limb, including shoulder
Accepted: ICD 10 code C44.212, Basal cell carcinoma of skin of right ear and external auricular canal
Accepted: ICD 10 code C44.310, Basal cell carcinoma of skin of unspecified parts of face
Accepted: ICD 10 code C44.311, Basal cell carcinoma of skin of nose
Accepted: ICD 10 code C44.41, Basal cell carcinoma of skin of scalp and neck
Accepted: ICD 10 code C44.42, Squamous cell carcinoma of skin of scalp and neck

The Medical Director's findings are as follows: The CMC failed to indicate that the employee's accepted conditions had reached maximum medical improvement (MMI). In addition, each of 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 (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 ADL and he requires only intermittent treatment. This may change the final determination in this case.

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

FAB issued a final decision on [redacted] *to accept the employee's Part E claim for 5% whole person impairment due to multiple skin cancers* [redacted]. *The CMC report dated* [redacted] *provides a 10% whole person impairment rating. On* [redacted] *FAB issued a final decision to accept the employee's Part E claim for 10% whole person impairment (5% increase for* [redacted]. *It is noted that the referral to the CMC for impairment referenced MMI in an introductory statement, but did not explicitly request that the CMC address whether the claimant was at MMI.*

RECOMMENDATION: The evidence from review shows that the maximum rating that the CMC should have assigned is 9%, but the claimant has been given a rating of 10%. As any recalculation of the impairment would merely result in a lower rating, no action is needed to redo the rating. QTC must be advised of the calculation error. With regard to the MMI issue, as the referring CE did not explicitly request that the CMC answer whether the claimant was at MMI, the district office must take appropriate action to ensure that referrals to the CMC pose the correct questions for which a CMC is to respond.

4. [redacted]
Jacksonville District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 204.10, Chronic lymphoid leukemia, without mention of having achieved remission

The Medical Director's findings are as follows: The CMC inappropriately references Table 5-11 on Page 106 in his report; Table 5-11 is only used to rate claimants with lung cancer--and lung cancer is not one of the employee's accepted conditions. Section 5.9 is germane. In addition, the CMC inappropriately included a separate rating for anemia in his WPI rating for the employee's chronic lymphocytic leukemia (CLL). The CMC should not have applied Table 9-2 on Page 193; the employee's anemia is a function of his accepted condition (CLL) and is neither a consequential condition nor the cause of his symptoms. For guidance on rating CLL, see Paragraph 9.4b on Page 198, and Example 9-13 on Page 201. 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 received compensation for 67% whole person impairment [redacted]. *The CMC's impairment report dated* [redacted] *provided a 99% whole person impairment rating. The employee then obtained an impairment rating from his treating physician. The treating physician's report dated* [redacted] *provided a 100% whole person impairment rating. On* [redacted] *FAB issued a final decision to accept the employee's Part E claim for 100% whole person impairment (33% increase for* [redacted]. *The employee died on*

[redacted] *prior to FAB issuing the impairment benefits. The employee's surviving three children filed EE-2 Forms (Survivor's Claim for Benefits). On* [redacted] *FAB issued a final decision to accept the Part E claim for* [redacted] *for two of the surviving children (both medically incapable of self-support on the date of the employee's death) and deny the Part E claim for one surviving child. Since the two surviving children have been awarded all available compensation benefits under Part E, there is no further action required for this case.*

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies.

5. [redacted]
Jacksonville District Office
Causation Evaluation
Report date: [redacted]
Condition: Claimed: ICD 9 code 173.0, Other and unspecified malignant neoplasm of skin of lip
Claimed: ICD 9 code 173.1, Other and unspecified malignant neoplasm of eyelid, including canthus
Claimed: ICD 9 code 173.3, Other and unspecified malignant neoplasm of skin of other and unspecified parts of face
Claimed: ICD 9 code 173.4, Other and unspecified malignant neoplasm of scalp and skin of neck
Claimed: ICD 9 code 173.42, Squamous cell carcinoma of scalp and skin of neck
Claimed: ICD 9 code 173.5, Other malignant neoplasm of skin of trunk except scrotum
Claimed: ICD 9 code 173.62, Squamous cell carcinoma of skin of upper limb, including shoulder
Claimed: ICD 9 code 173.7, Other and unspecified malignant neoplasm of skin of lower limb, including hip
Claimed: ICD 9 code 202.8, Other malignant lymphomas
Claimed: ICD 9 code 202.11, Mycosis fungoides, lymph nodes of head, face, and neck
Claimed: ICD 9 code 202.80, Other malignant lymphomas, unspecified site, extra-nodal and solid organ sites

The Medical Director's findings are as follows: The SOAF focuses on the claimant's exposure to 1,3 butadiene, but asks about the consequences of his exposure to asbestos. The CMC acknowledges the CE's question regarding asbestos, but focuses on the claimant's exposure to 1,3 butadiene. Which substance is the focus of the CE's interest--1,3 butadiene or asbestos? This may change the final determination in this case.

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

A review of the CMC's medical causation report dated [redacted] *shows that there is no discussion of the employee's potential asbestos exposure as stated in the question from the CE.*

The CMC determined that it was not at least as likely as not that the employee's toxic substance exposure was a significant factor in causing Non-Hodgkin's lymphoma. However, following additional development of the claim, on [redacted] *FAB issued a final decision to accept the survivor's Part E claim for lymphoma. The survivor was awarded Part E compensation benefits of* [redacted]. *Since a final decision has been issued to accept the Part E claim, despite the errors found by the Medical Director, there is no further action required for this case.*

RECOMMENDATION: The principle deficiency here is that the quality of the referral to the CMC was not good. The referral presented a confusing set of information from which the CMC made assumptions on what information the CE likely needed. The district office should work to ensure that its staff sends referrals that describe clearly the factual findings of exposure, and that questions to the physician explain specifically what exposure data the physician is to use in rendering a causation opinion. QTC should reiterate to the CMCs that any incoming referral that presents with confusing information or unclear questions is not to be responded to until clarification is obtained from the referring CE.

6. [redacted]
Seattle District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 202.8, Other malignant lymphomas
Accepted: ICD 9 code 457.1, Other lymphoedema
Accepted: ICD 9 code 521.0, Dental caries
Accepted: ICD 9 code 527.7, Disturbance of salivary secretion
Accepted: ICD 9 code 780.7, Malaise and fatigue

The Medical Director's findings are as follows: The CMC erred when he used Table 13-4 on Page 317 of AMA Guides to assign a WPI rating for the employee's fatigue. Table 13-4 is intended for rating sleep and arousal disorders associated with neurological disorders (See Paragraph 13.3c on Page 317.). The employee does not have a neurological disorder. Her fatigue is a function of her lymphoma (See Page 1 of 8 of the progress note dated [redacted]) and is included in the WPI rating the CMC derived from Table 9-3 on Page 200. This may change the final determination in this case.

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

FAB issued a final decision on [redacted], *to accept the employee's Part E claim for 64% whole person impairment* [redacted]. *In the CMC's report of* [redacted], *he provided a whole person impairment rating of 82%. On* [redacted] *FAB issued a final decision to accept the Part E impairment claim for 82% whole person impairment (18% increase) 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 a higher award, DEEOIC must take action to reopen the case to issue a corrected final decision for impairment.

7. [redacted]
Seattle District Office
Impairment Evaluation
Report date: [redacted]
Condition: Accepted: ICD 9 code 502, Pneumoconiosis due to other silica or silicates

The Medical Director's findings are as follows: The CMC erred when he calculated the employee's predicted DLCO. 35.3 x 0.93 = 32.83 ml/min/mm Hg NOT 33.11 ml/min/mm Hg. This would not have changed the final determination in this case.

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

FAB issued a final decision on [redacted] *to accept the employee's Part E claim for 26% whole person impairment* [redacted]. *The CMC's report of* [redacted] *provided a whole person impairment rating of 35%. On* [redacted] *FAB issued a final decision to accept the employee's Part E claim for 35% whole person impairment (9% increase) and award the employee compensation benefits of* [redacted]. *Since the Medical Director indicates that the error in the calculation of the employee's predicted DLCO would not have changed the final determination in this case, there is no further action required.*

RECOMMENDATION: Discuss the errors in this report with QTC so the CMC can be advised of the deficiencies.

8. [redacted]
Cleveland District Office
Second Medical Opinion (Home Health Services)
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

The Medical Director's findings are as follows: The CMC did not include and sign the Potential Conflict of Interest Statement. This would not have changed the final determination in this case.

I accept the Medical Director's opinion regarding the error found in this second medical opinion.

FAB issued a final decision on [redacted] *to deny the claimant's request for home health care for the period of* [redacted] *through* [redacted] *and* [redacted] *through* [redacted]. *Since the fact that the CMC did not provide a signed Potential Conflict of*

Interest Statement would not have changed the final determination in this case, there is no further action required.

RECOMMENDATION: QTC needs to have the physician complete the statement acknowledging that at the time of the report submission, no conflict existed. QTC should have this submitted to DEEOIC for inclusion in the file.