

AR-1

Accountability Review Findings

Dates of Review: July 23 – July 27, 2012

Office Reviewed: Denver District Office

Reviewing Office: Policy, Regulations and Procedures Branch

Review Period: July 1, 2011- June 30, 2012

Standard:	Category Name: Development Element Name: Basic Development and Part B Causation Development	Category # <u> 1 </u> Element# <u> 1 </u>
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Sample Size (total # of indicators in the element that were reviewed):	416
Number of cases reviewed:	94
Number of Indicator with Yes (passed)	369
Number of Indicators with No (errors)	47
Acceptable rating:	85%
Rating for review:	89%

FINDINGS:

The Denver District Office performed satisfactory in the Basic and Part B Causation Development element. One significant trend was related to inadequate development for survivorship where letters were not sent to potentially eligible children and spouses were not asked if the employee had children that were not the spouse's biological children. In some instances, birth and death certificates were not requested; instead birth records and affidavits were used to establish survivorship. In another, a spouse was asked for a birth certificate instead of a death certificate. In one case a letter requesting evidence to establish eligibility was sent the same day that the recommended decision (RD) to deny was issued.

Some development letters were redundant, unnecessary or unclear. In many instances evidence was requested even though the requested information was already in the case file. In a few instances, claimants responded in writing that he/she is not eligible under Part E yet subsequent development letters were sent to them explaining the criteria for Part E eligibility. Another development letter identified skin cancer and hearing loss as the claimed conditions yet in a development letter to the claimant, it was stated that the claim

was forwarded to NOISH for skin and bladder cancers. Another letter was sent to Department of Justice (DOJ) requesting confirmation of entitlement to benefits even though there was evidence in the case file indicating that DOJ accepted the claim and DEEOIC previously paid Part B benefits. Other deficiency includes a letter to a claimant advising that a RECA award was prerequisite to consideration under Part B when the claim was not a RECA claim.

Other deficiencies included the fact that correspondences were not sent to authorized representatives and referrals to NIOSH were missing pertinent employment and/or medical evidence. It should be noted that there appears to be some carelessness in writing some of the development letters as one letter stated, “your father was diagnosed” when in fact it should have been “your mother”, another states “your husband” when it should be “your wife”.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

The Denver District Office did an outstanding job handling terminal cases once they are informed of the situation.

REVIEWER(s):	DATE:
Rodney Alston, Mathew Buehrle, Tina Bynum, Patricia DiLeo, Angela Eaddy, Victoria Lewis, Karen McKnight, Sharon Richardson, Andrew Peters, Hang Tung and John Vance.	August 8, 2012

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Standard	Category Name: Development Element Name: Part E Causation Development	Category # <u> 1 </u> Element# <u> 2 </u>
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Sample Size (total # of indicators in the element that were reviewed):	107
Number of cases reviewed:	62
Number of Indicator with Yes (passed)	96
Number of Indicators with No (errors)	11
Acceptable rating:	85%
Rating for review:	90%

FINDINGS:

The Denver District Office performed very well in the element of Part E Causation Development. The majority of the deficiencies in this element were related to whether reasonable resources were used to determine what toxins were present at covered facilities. In most instances a search of Site Exposure Matrix (SEM) was not conducted or the search was done after the issuance of the RD. Additionally, claimants were not notified or afforded the opportunity to provide evidence that could establish causal link between the claimed illnesses and exposure to toxic substance. For example: an employee claimed employment at a DOE facility as a DOE employee; however, this employment was not addressed; in another instance, an employee was never afforded the opportunity to show proof of contractor/subcontractor employment before issuance of a recommendation decision to deny the Part E claim.

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Standard	Category Name: Development Element Name: Impairment Development	Category # <u> 1 </u> Element# <u> 3 </u>
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Sample Size (total # of indicators in the element that were reviewed):	72
Number of cases reviewed:	57
Number of Indicator with Yes (passed)	65
Number of Indicators with No (errors)	7
Acceptable rating:	85%
Rating for review:	90%

FINDINGS:

The Denver District Office performed fairly well in this element. There were minimal deficiencies and the only trend was that the version of the AMA Guide that was used in the impairment evaluation was not always identified in the impairment reports. In one case, the claimant chose to use his treating physician to complete the impairment evaluation yet the district office referred the case to a CMC/DMC and did not explain why it was necessary or appropriate. Most significant is that in one DMC report, the DMC did not use the AMA guidelines for combined rating. The rating was based on simple math addition.

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Standard	Category Name: Development Element Name: Wage Loss Development	Category # <u> 1 </u> Element# <u> 4 </u>
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Sample Size (total # of indicators in the element that were reviewed):	57
Number of cases reviewed:	51
Number of Indicator with Yes (passed)	53
Number of Indicators with No (errors)	4
Acceptable rating:	85%
Rating for review:	93%

FINDINGS:

The Denver district office performed very well in the element of Wage Loss Development. There were no significant trends. These following deficiencies were noted. In one case, the CE noted that the employee died nine years before his normal social security retirement age (NSSRA), but did not develop for the one additional year of wage loss that could have potentially awarded additional compensation. Two deficiencies were assessed because the wage loss calculator was not used and earnings for subsequent years were not developed. It should be noted that the calculations for those missing years were accurately reflected in the Claim Assessment and Notification section of Recommended Decision.

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Standard	Category Name: Recommended Decisions Element Name: Decision Outcome Notification	Category # <u> 2 </u> Element# <u> 1 </u>
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Sample Size (total # of indicators in the element that were reviewed):	370
Number of cases reviewed:	100
Number of Indicator with Yes (passed)	339
Number of Indicators with No (errors)	31
Acceptable rating:	85%
Rating for review:	92%

FINDINGS:

The Denver District Office performed very well in this element. The significant trend seen in this element is that there was no summation of the medical condition (s) being accepted, denied or deferred in the Cover Letter and/or Introductory portion of the Recommended Decision (RD). Most cover letters tend to mention only the approved and covered conditions; deferred conditions were not mentioned at all. The other significant finding is there little distinction between whether the claim was being accepted or denied under Part B for compensation and medical benefits, or under Part E for medical benefits, impairment, or wage loss.

It should be noted that there appears to be some carelessness in writing the cover letters and/or the RD. For example: a medical condition was withdrawn by the claimant yet, an RD was issued after the withdrawal; another decision did not have a "Conclusion of Law" (COL) section and finally; the introduction of a RD recommended denial yet the COL was an acceptance for monetary compensation.

There were instances in which discrepancies were found between the cover letter, the RD introductory paragraph, and the COL sections. For example, lump sum compensation and medical benefits were not mentioned in the cover letter or introductory paragraph, but was cited in the COL. In other instances, medical benefits were accepted in the cover letter and introductory paragraphs but not stated in the COL.

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Standard	Category Name: Recommended Decisions Element Name: Claim Assessment and Narrative Explanation	Category # <u> 2 </u> Element <u> 2 </u>
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Sample Size (total # of indicators in the element that were reviewed):	521
Number of cases reviewed:	100
Number of Indicator with Yes (passed)	449
Number of Indicators with No (errors)	74
Acceptable rating:	85%
Rating for review:	86%

FINDINGS:

The Denver District Office performed marginally above the acceptable rating in the Claim Assessment and Narrative element of the recommended decision. The review indicates missing explanations of key elements or interpretations necessary to support the outcome, failure to address the outcome of claimed conditions (conditions noted in RD but no outcome indicated), and inclusion of conditions not supported by the medical evidence. For example: there was an irrelevant discussion to a claim that was previously adjudicated and not the claim under consideration; a statement about a medical condition that had not been developed was addressed as if it were; or there was a statement that evidence had not been submitted when, in fact, it was already in the case file. There were a few RDs where the chronology of case history was not in proper order.

There were several deficiencies where the identifying information was incorrect, such as the claimant's name, addresses, claimed medical condition, filing dates and dates that were used to describe details of the case.

The explanation of the elements supporting the decision tended to rely too often on direct quotes from the PM or the Act. The excerpts from the PM tended to be overly lengthy, tangential to the issue discussed, and/or did nothing to increase the reader's understanding of the relevant issue being discussed. Complex terms were not explained, transitional language was not utilized when topics were changed, there were unnecessary and repeated information, and the CE did not take the necessary action to assist the claimant with establishing the claim.

In several instances, the narrative content was incomplete and/or incorrect; such as, it did not address all claimed conditions; did not address all evidence in the case file; or did not explain the evidence relied upon to determine how it arrived at the recommendation. In one RD, all claimants were not included in the decision (case was remanded). In some instances, citations were relied upon excessively and exclusively for the basis of explaining the decision, and without additional explanation of what the citations meant.

Another deficiency is the lack of explanation in how wage loss or impairment awards were determined. In one case, the wage loss calculator was not used, and the date of retirement was incorrect (that case was remanded).

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Standard	Category Name: Recommended Decisions Element Name: Factual Findings of the Claim	Category # <u> 2 </u> Element <u> 3 </u>
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Sample Size (total # of indicators in the element that were reviewed):	500
Number of cases reviewed:	100
Number of Indicator with Yes (passed)	440
Number of Indicators with No (errors)	60
Acceptable rating:	85%
Rating for review:	88%

FINDINGS:

Overall, the Denver District Office performed satisfactory for this element. This included a review of the old format for Findings of Fact, and the new format entitled Explanation of Findings. The type of format reviewed depended on the date of the RD.

With respect to whether the factual findings were supported by case evidence and relevant to the decision outcome, several deficiencies were found. There was a pulmonary function test (PFT) that was interpreted to meet pre-1993 CBD, and it was determined that the employee had CBD; however, the claimed condition was pulmonary fibrosis. In another case, a surviving spouse stated that a stepson (biological son of the employee) had died, but did not provide a death certificate or supporting document. The spouse was paid the total Part E benefit. In another instance, a survivor claim was accepted without any evidence to establish eligibility.

In regards to whether the factual findings were presented in a logical manner, it was found that some of the factual findings did not follow a logical progression of events. The findings tended to jump from one subject to another; or included definitions of citations of the PM or

the Act with no explanation as to how it is relevant to the decision outcome. For example, there was a finding where it simply stated that the claim was accepted by DOJ so it is accepted by EEOICPA for the same conditions.

In evaluating factual findings to determine if they were limited to issues pertinent to the adjudication of the claim, deficiencies typically involved extraneous facts or duplicative information either within the section and/or duplication of information already in the statement of the case. For example, one decision provided in depth discussion on allocation of benefits to a spouse and covered child when the claim being adjudicated was for the spouse only; no additional survivors had filed a claim.

A review of the findings to determine whether factual findings corresponded to the legal, regulatory, or procedural requirements of the Act showed that a wage loss claim was re-adjudicated without procedurally reopening a prior final decision that denied wage loss. In another case, a spouse was compensated with all Part E survivor benefits when there was evidence of a stepson who was the biological child on the employee.

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Standard	Category Name: Recommended Decisions Element Name: Conclusions of Law	Category # <u> 2 </u> Element <u> 4 </u>
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Sample Size (total # of indicators in the element that were reviewed):	458
Number of cases reviewed:	100
Number of Indicator with Yes (passed)	409
Number of Indicators with No (errors)	49
Acceptable rating:	85%
Rating for review:	89%

FINDINGS:

The Denver District Office performed well in this element. The deficiencies varied from improper acceptance or denial of benefits to insufficient evidence to establish eligibility. There were three significant trends. Ten errors were based on incorrect interpretation of the case evidence, such as; inadequate development of potentially eligible survivors, missing birth and death certificates, decisions being issued to a subset of claimants instead of one comprehensive decision being issued to all parties of the case where survivorship was being determined, and incorrect mathematical calculations used to determine the employee's retirement date which caused an incorrect decision for wage loss benefit. The second trend was that in ten cases where the medical benefits were awarded, the covered condition(s) was not specified or the status effective date was either incorrect or missing in the written decisions. Thirdly, there were many instances where the COL were confusing and/or difficult to read because they were lengthy, redundant, or had incorrect legal citations.

In other cases, whole body impairment rating were not evaluated, questioned or calculated appropriately. For example: one case had two different impairment ratings, 60% from the treating physician and 50% from the DMC; however the district office did not question or

address each physician's deficiency prior to issuing the recommended decision. Another had 2% increased impairment, but no explanation on how that decision was reached. The review also found that some COL were redundant in that it reiterated what was already covered in either the findings or the narrative sections of the RD.

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Standard	Category Name: Award Procedures Element Name: Award Procedures	Category # <u> 3 </u> Element <u> 1 </u>
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Sample Size (total # of indicators in the element that were reviewed):	301
Number of cases reviewed:	97
Number of Indicator with Yes (passed)	297
Number of Indicators with No (errors)	4
Acceptable rating:	85%
Rating for review:	99%

FINDINGS:

The Denver District Office's performed exceptionally well in processing awards. There were only four (4) deficiencies. One case was missing the Authorization/DD's printed name, signature and date on the PTF form, another used the old PTF form instead of the new PTF for a March 2012 payment, and two others involved cases where the district office issued paper checks without calling the payee to validate the 'payment only addresses'.

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