

AR-1

Accountability Review Findings

Dates of Review: August 12, 2013 to August 16, 2013

Office Reviewed: National Office Final Adjudication Branch

Reviewing Office: Policy, Regulations and Procedures Unit

Review Period: July 1, 2012 to June 30, 2013

Standard:	Category Name: <u>Response to Hearing Requests</u> Category #: <u>1</u>
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Sample Size (total # of indicators in the category that were reviewed):	236
Number of cases reviewed:	22
Number of errors in category:	32
Acceptable rating:	85%
Rating for review:	87%

FINDINGS: Describe Findings.

The Response to Hearing Requests Category measures whether hearings are scheduled and conducted according to established policy and procedure. The reviewers marked 15 errors for timeliness issues. This includes nine errors for sending late hearing request acknowledgement letters; four errors for the late scheduling of hearings, and one error each for sending the hearing notice and sending the hearing transcript in an untimely fashion. There was one case in which the hearing transcript was not in the file. This mistake accounted for six errors in different indicators. Six errors were also noted because the hearing notices did not indicate the type of hearing (live, video, telephone). The rest of the errors were miscellaneous.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

In one case, the reviewer noted that during the hearing, the Hearing Representative did an outstanding job of empathizing with the employee, asking questions to draw-out information which may have been pertinent to the case, and offering suggestions to assist the employee in obtaining additional supportive evidence.

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<u>Standard:</u>	Category Name: <u>Addressing Claimant Objections</u> Category #: <u>2</u>
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Sample Size (total # of indicators in the category that were reviewed):	96
Number of cases reviewed:	32
Number of errors in category:	3
Acceptable rating:	85%
Rating for review:	98%

FINDINGS: Describe Findings.

Review of Addressing Claimant Objections measures whether every objection is identified and provided a response. It also measures if the response is correct pursuant to EEOICPA regulations, policies and procedures, as well as clearly explained.

Of the 32 cases reviewed, there were 3 errors noted in this Category. The errors pertained to discussing incorrect information within the objections portion of the Final Decision (FD); the Hearing Representative's failure to explain why the claim was remanded; and in response to the claimant's objections, the FD did not clearly explain the reason for the outcome. The response provided little rationale.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

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Standard:	Category Name: <u>FAB Decisions</u>	Category #: <u>3</u>
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Sample Size (total # of indicators in the category that were reviewed):	1692
Number of cases reviewed:	105
Number of errors in category:	117
Acceptable rating:	85%
Rating for review:	92%

FINDINGS: Describe Findings.

The Final Decisions Category measures whether final decisions (FD), and medical/monetary benefits issued by the Final Adjudication Branch (FAB) are written in the proper format and that the content is correct and supported by the evidence of record. The FD must be a fair and independent assessment of the claim, and must correctly apply program policies and procedures to ensure an appropriate final outcome.

The National Office FAB office performed very well in this Category, with a rating of 92%. In this category, the following areas were reviewed: (1) Decision Correspondence; FD Introduction; Written Quality & Formatting; (2) FD - Statement of the Case; (3) FD - Findings of Fact; and (4) FD - Conclusions of Law.

Element #1: Decision Correspondence, FD Introduction, Written Quality & Formatting.

In one case, a copy of the FD was not sent to the Authorized Representative. In one instance, the mailing address contained an incorrect zip code. Two cases included the incorrect docket number. A RECA case contained an FD introduction which incorrectly mentioned \$150,000 when the entitlement is only \$50,000. There were a few cases where medical letters were not sent or the letters referred to an incorrect condition. A

few cover letters did not correctly note the specific Part (B or E) under which the claim was accepted or the accepted medical condition.

Element #2: FD – Statement of the Case.

A trend was noted where there were errors or omissions concerning the diagnosis date, the correct medical conditions being adjudicated, prior actions in case (remand order), the mention of Part E when a case involved Part B only, referring to a survivor claim in an employee case, and no mention of wage loss benefits that were accepted in the conclusions. One case did not explain how employment at AWE was verified. Two cases did not include a discussion of other potential claimants.

Element #3: FD – Findings of Fact.

In a few cases, the Findings of Fact section did not reference all of the medical conditions that were adjudicated; the finding concerning relationship to toxins was not mentioned, or the medical evidence of a condition (depression) was not acknowledged. In one case, a conclusion of law was included in findings of fact section. One case revealed that the NIOSH results were not mentioned. A few cases noted that there was no discussion regarding the potential for additional survivors.

Element #4: FD – Conclusions of Law.

One case revealed that diabetes was denied although the claim had been withdrawn. In at least three cases, changes were inappropriately made to the basis of the denial from what was noted in the Recommended Decision (RD). In one case, a Part E denial noted in the RD was not addressed. In two cases, benefits were awarded when there were other potential claimants. In one case, a tort offset was not mentioned. In several cases, the conclusions of law included repetitive citations or citations that were not related to the reason the claim was being denied or approved. In two cases, it was not stated how the citation applied to the case.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

The case comments revealed that the final decisions were well written. In one case, the reviewer noted that the FD was extremely well-written and addressed the deficiencies of the claim succinctly and in a manner which is understandable for the claimant.

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<u>Standard:</u>	<u>Category Name:</u> <u>Remands</u>	<u>Category #:</u> <u>4</u>
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<u>Sample Size (total # of indicators in the category that were reviewed):</u>	155
<u>Number of cases reviewed:</u>	45
<u>Number of errors in category:</u>	4
<u>Acceptable rating:</u>	85%
<u>Rating for review:</u>	97%

FINDINGS: Describe Findings.

Review of remands measures whether a remand was necessary and appropriate based on the evidence in the file. It also measures if the basis of the remand and further action to be taken are accurately and clearly described.

The National Office Final Adjudication Branch (FAB) had very good results of 97% in the Category of Remands. There were only 4 deficiencies that were found, with no overall trend identified. In one instance, the FAB remanded a claim where minor development could have been conducted. One case found that the remand was based on an e-mail from the National Office without a review of the file and the remand did not address an issue of established covered employment. This resulted in two errors for the Element. In one case, the FAB remanded a claim in which it was noted that hundreds of documents had been submitted by the claimant, but there was no analysis of the documentation in support of the remand.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

In one case, the reviewer noted that the remand appropriately explained, in detail, the employment exposure evidence that required a remand of the Recommended Decision to accept the case.

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<u>Standard:</u>	<u>Category Name:</u> <u>Reconsiderations</u>	<u>Category #:</u> <u>5</u>
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Sample Size (total # of indicators in the category that were reviewed):	40
Number of cases reviewed:	10
Number of errors in category:	2
Acceptable rating:	85%
Rating for review:	95%

FINDINGS: Describe Findings.

The review of reconsideration requests measures whether the formal request and receipt of new evidence are provided an appropriate response. The National Office Final Adjudication Branch exceeded the acceptable rating for this Category with a rating of 95%.

There were 10 cases reviewed and 2 cases were identified with errors. In one case, the reviewer noted that the claimant never requested a reconsideration; however, the FAB granted the reconsideration because the Final Decision was issued without consideration of objections or convening of the requested hearing. The claimant never requested reconsideration of the Final Decision and the case file evidence shows that an acknowledgment letter was never sent to the claimant acknowledging such a request. In accordance with DEEOIC procedures, the case file should have been forwarded to the National Office with a request for reopening.

The second deficiency was found because the claimant submitted a request for reconsideration and provided evidence that the DOL does recognize hearing loss related to toxic exposure, but the reconsideration request failed to address clearly why exposures to

toxic material did not apply in the employee's case. EEOICPA Procedure Manual Chapter 2-1000.18.a outlines the criteria that must be met for hearing loss to be compensable.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

OTHER SIGNIFICANT FINDINGS:

In one case, the reviewer noted that the Order Granting Request for Reconsideration was a good decision.

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