

# AR-1

## Accountability Review Findings

Dates of Review: August 3, 2015 to August 7, 2015

Office Reviewed: Cleveland Final Adjudication Branch

Reviewing Office: Policy, Regulations and Procedures Unit

Review Period: April 1, 2014 – March 31, 2015

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<b>Standard:</b>	Category Name: <u>Hearings</u>	Category # <u>1</u>

Sample Size (total # of indicators in the category that were reviewed):	210
Number of cases reviewed:	35
Number of errors in category:	9
Acceptable rating:	85%
Rating for review:	97 %

### **FINDINGS: Describe Findings.**

The Response to Hearing Requests Category measures whether hearings are scheduled and conducted according to established policy and procedure. The FAB exceeded the acceptable rating criterion with a score of 97%.

Nine deficiencies were noted. These deficiencies included the following: failure to inform the claimant that the FAB would provide a copy of the transcript; failure to document post-hearing cover letters and mailing of transcripts to claimant and/or AR; and delayed mailing of the hearing transcript.

### **Improvements Since Last Accountability Review:**

The rating for this category exceeded the acceptable rating as done in the prior review of 2013.

<b>Other Significant Findings:</b>
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Overall, the AR team members agreed that based on review of the hearing transcripts, the Hearing Representatives from FAC conducted hearings with thorough knowledge of the case history and a clear understanding of the issue presented for discussion.

<b>REVIEWER(s):</b>	<b>DATE:</b>
Pat Davidson, James Johnson, Krystyna Frolich, Victoria Lewis	8/6/2015

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<b>Standard:</b>	Category Name: <u>Objections</u>	Category # <u>2</u>
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Sample Size (total # of indicators in the category that were reviewed):	123
Number of cases reviewed:	41
Number of errors in category:	3
Acceptable rating:	85%
Rating for review:	98%

### **FINDINGS: Describe Findings.**

The Addressing Claimant Objections Category measures whether every objection is identified and thoroughly addressed. It also measures if the response is correct pursuant to EEOICPA regulations, policies and procedures, as well as clearly explained. The rating for this category is 98%.

The reviewers noted three deficiencies in this category related to one case. The final decision did not address every objection posed by the claimant(s). Specifically, the objections pertaining to the dose reconstruction were addressed by the HR/CE, but the objections pertaining to causation for other claimed conditions under Part E were not addressed.

### **Improvements Since Last Accountability Review:**

The rating for this category exceeds the acceptable rating and is a 2% increase from the last AR conducted in 2013.

**Other Significant Findings:**

There were some noted inconsistencies with regard to how claimant objections are addressed in the Final Decisions (FD). In some cases, the objections were addressed in the Objection section of the FD. In others cases, the objections were listed out in the Objections section but addressed in the Conclusion of Law.

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<b>Standard:</b>	Category Name: <u>Final Decisions</u>	Category # <u>3</u>
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Sample Size (total # of indicators in the category that were reviewed):	867
Number of cases reviewed:	51
Number of errors in category:	21
Acceptable rating:	85%
Rating for review:	98%

### **FINDINGS: Describe Findings.**

This FAB Decisions category measures whether final decisions (FD), and medical/monetary benefits issued by the FAB, are written in the proper format with correct content 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 a final outcome that is appropriate.

The elements for this category include: (1) Decision Correspondence, FD Introduction, Written Quality & Formatting; (2) Statement of the Case; (3) Findings of Fact; and (4) Conclusions of Law.

The rating for this category is 98%.

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

Overall, results in this Element were good, but several deficiencies were noted. There were two (2) instances where the FD did not have a cover letter addressed to the authorized representative. There were 12 instances where the docket number was incorrect or incomplete.

**Element 2: Statement of the Case**

In this Element, we identified one (1) deficiency. The FD denied Part B benefits for 25 skin cancers based on the PoC being less than 50%, but awarded Part E benefits for the same cancers, based on ultraviolet radiation exposure during covered employment. The SOC did not present evidence that such exposure occurred. Moreover, the SOC did not mention that the case was referred to a CMC or an IH, nor was causation based on SEM identifying toxic substances linked to skin cancer.

**Element 3: Findings of Fact:**

In this Element, we identified one (1) deficiency. The FOF found potential exposure to electrical arc and ultraviolet radiation; however, evidence of such exposure was not presented. The FOF #6 rested on medical opinion and not diagnostic medical records.

**Element 4: Conclusions of Law.**

In this Element, we identified five (5) deficiencies. The FD of 02/12/2015, COL does not explain the conclusion that electrical arc and ultraviolet radiation constitute a toxic substance under Part E; there is no reference to the NIOSH dose reconstruction, CMC and/or IH reviews. Additionally, if Part E award for multiple skin cancers is merited in this case, the FD does not explain why. The FD of 05/27/2014, COL does not indicate the Part E basis for determining that the two surviving children are eligible for benefits, nor does the COL provide the Part E authority for survivor wage loss benefits. The FD of 03/26/2015, COL cites the compensation provided for a living employee, instead of provisions for survivor compensation for a deceased employee's lost wages due to the accepted illness.

**Improvements Since Last Accountability Review:**

The FAC continues to exceed this category with a rating of 98% as rated in the AR of 2013.

**Other Significant Findings:**

There were no reported significant findings for this category.

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<b>Standard:</b>	Category Name: <b><u>Reconsiderations</u></b>	Category # <b><u>4</u></b>
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Sample Size (total # of indicators in the category that were reviewed):	160
Number of cases reviewed:	40
Number of errors in category:	4
Acceptable rating:	85%
Rating for review:	96%

### **FINDINGS: Describe Findings.**

Review of the Reconsideration Category measures whether the formal request and receipt of new evidence are provided an appropriate response. The rating for this category is 96%.

There were four (4) deficiencies identified in this category however only on two (2) cases. A reconsideration decision was not bronzed into OIS. Additional findings included a case where the claimant clearly stated on his waiver form that he was not waiving his rights but an FD was issued within the 60 day expiration period. The claimant then requested reconsideration but the denial of reconsideration failed to address the fact that he did not waive his rights.

### **Improvements Since Last Accountability Review:**

The FAC exceeded the acceptable rating for this category as they did in the prior AR of 2013.

<b>Other Significant Findings:</b>
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No significant findings were reported by the team for this category.

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