

AR-1

Accountability Review Findings

Dates of Review: August 3, 2015 to August 7, 2015
Office Reviewed: National Office Final Adjudication Branch
Reviewing Office: Policy, Regulations and Procedures Unit
Review Period: April 1, 2014 – March 31, 2015

<u>Standard:</u>	Category Name <u>Response to Hearings Requests</u> Category # <u>1</u>
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Sample Size (total # of indicators in the category that were reviewed):	451
Number of cases reviewed:	41
Number of errors in category:	35
Acceptable rating:	85%
Rating for review:	93%

FINDINGS: Describe Findings

The Response to Hearing Requests Category measures whether hearings are scheduled and conducted according to established policy and procedure. The FAB National Office exceeded the acceptable rating of 85% for this category as well as last year's score of 90%, with an overall score of 93%.

There were 35 errors noted in the 41 cases reviewed. In the hearing pre-scheduling category there were multiple deficiencies. These deficiencies included 6 cases where the FAB did not acknowledge receipt of the letter or objection/request for hearing within 5 business days of receipt. There were 4 cases wherein the acknowledgment letter did not inform the claimant of the option of a telephone/video hearing. There were 9 cases wherein the hearing was not scheduled within 40 days of the receipt of the hearing request. In all cases that were reviewed the hearing notice was mailed to the claimant at least 30 days prior to the hearing and the hearing notice accurately advised the claimant of the time and location of the applicable live, videoconference or telephone hearing.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

The Hearings category for FAB National Office improved from the 2014 rating of 90% to the current rating of 93%.

OTHER SIGNIFICANT FINDINGS:

Due to the implementation of OIS, the FAB personnel who send hearing acknowledgement letters are not notified of the receipt of requests for hearings in time to respond within the specified timeframe. This causes a delayed acknowledgement to the claimant.

Hearing letters should be consistent throughout FAB. Some of the letters do not include the video hearing option.

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William Elsenbrock, Karen McKnight, Alison Supanich, Anthony Zona, Patricia DiLeo	August 21, 2015

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Standard:	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):	141
Number of cases reviewed:	47
Number of errors in category:	17
Acceptable rating:	85%
Rating for review:	88%

FINDINGS: Describe Findings

The Addressing Claimant Objections Category 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. The rating for this category is 88%.

There were 17 deficiencies in this category out of the 47 cases reviewed. They include summaries of the objections in the FD that are incorrect or misstated by the FAB, or the summary of the objections left out the relevant facts, ignored or failed to address newly submitted evidence in support of objections, failed to address the objections in the FD altogether, did not respond appropriately/correctly to the objections, incorrectly stated the claimant did not submit any evidence when the claimant in fact submitted multiple pieces of evidence that FAB failed to address in the FD, an instance where minimal development by the FAB could have changed the determination, and an instance where the FAB incorrectly stated what medical evidence or evidence that was submitted, and confusing summaries of the objections. In summary the main errors were:

1. Failing to address objections

2. Summarizing the objections incorrectly
3. Failing to acknowledge evidence submitted in support of the objections
4. Incorrect responses to objections

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

The rating for the Objections category for FAB National Office went down from that of 2014, which was 99%. The current rating is 88%.

OTHER SIGNIFICANT FINDINGS:

The deficiencies in the Objections category tend to be in addressing the objections in the final decisions.

The objections are sometimes addressed in the Objections section of the final decision, and sometimes they are addressed in the Conclusions of Law. While this is not a deficiency, the inconsistency is noted.

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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):	952
Number of cases reviewed:	56
Number of errors in category:	57
Acceptable rating:	85%
Rating for review:	94%

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 94%. The following trends were noted in each Element of the FAB Decision Category:

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

56 cases were reviewed in Category 3. Element 1 had 8 deficiencies noted. In 1 case, the AR was overlooked and not on the Certificate of Service and not sent a copy of the decision. 1 case had errors in the file number and docket number. 1 case had an error in the ECS release date for the FD that did not match the date on the decision that was in OIS. 5 cases had errors that could have been avoided by simple proof reading. One of those 5 was in the claimant's name throughout the decision. 3 cases did not clearly make a distinction or accurately reference B and E considerations at some point in the letter or decision. 1 case cover letter did not reference the surplus amount, include the possible publication of the decision, or language to tell them to report any additional money received to the district office.

Element 2: Statement of the Case

Category 3 Element 2 had 6 deficiencies noted. One PII review noted the claimant's middle initial was wrong. 1 case found the SEM search was wrong in noting silicone dioxide when SEM showed sulfur dioxide. Final Decision SEM search has the same error. SEM search was conducted, but not closely reviewed and reference in error. 1 CBD case did not consider pre-1993 criteria even though the same was raised and documented in the transcript. Also that employee was a 33 year Brush employee with DOE time at the Luckey Plant. The employee died of cancer and we should have invited a cancer claim since it was a DOE facility for a number of years. 1 FD granted \$25,000 to a surviving spouse with absolutely no reference to the marriage certificate, death certificate or age of the employee at the time of death anywhere in the decision. The RD did discuss each in detail. In one case the claimant claimed secondary conditions from a crush injury when a backhoe smashed his leg. We searched SEM for secondary injuries due to a crush injury/accident. Perhaps the case should have been denied because we don't cover crush injuries instead of searching SEM and finding that the crush injury was not due to toxic substance exposure. In 1 case the SOC was confusing. A footnote cited Wikipedia.

Element 3: Findings of Fact:

Category 3 Element 3 had 33 deficiencies noted. 6 cases had issue with the EN 16 language being included in the Findings of Fact as the EN 16 in not in the Conclusion of Law. 1 case had cut and paste employment language from the SOC and should have been shortened. 1 case used an on or about date where the SOC had the exact date of diagnosis. 1 case had confusing findings of fact with employment dates in one finding also in the next finding of fact establishing 250 days for SEC purposes. 1 case finding of fact stated continuous employment rather than intermittent employment. 1 case did not indicate Brush Luckey was also a DOE facility even though it was considered under

Part E. 1 case Finding of Fact did not include a prior impairment award. 2 cases included development actions take in the Findings of Fact which were not needed to support the Conclusions of Law. 1 case had Findings of Fact that referenced marriage cert and death cert where the case was a NIOSH denial and Conclusions of Law did not reference either. 1 case did not reference the employee's age at the time of death where we granted 25,000.00 in wage loss benefits.

Element 4: Conclusions of Law.

There were 20 deficiencies noted in Category 3 Element 4. The one CBD case did not discuss pre-1993 criteria even though it was raised at a hearing and should have been considered. Also, a medical report submitted in support of a diagnosis was not refuted. We should have invited a cancer claim as the employee had years at Brush Luckey which was a DOE facility. 4 cases did not clearly communicate the basis for the denial. The citations were not explained. 1 case had no legal citations at all but the claim was accepted, and the RD had all the info in it. 1 case had wrong citations regarding the DOE contractor employee where the claimant was a uranium miner. 1 case awarded the correct amount for an impairment increase but did not include the correct amounts in the decision. 1 crush injury case should not have been discussed with toxic substance exposure language. 9 cases had duplicate, redundant or repetitious citations or wrong citations completely.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

The rating for the FAB Decisions category for FAB National Office decreased slightly from that of 2014, which was 95%. The current rating is 94%.

OTHER SIGNIFICANT FINDINGS:

There were no significant trends in the FAB Decisions category. It was noted in 2 case comments where the FAB hearing representative provided excellent customer service. One case involved a thorough review of the case file and reversing the decision to an acceptance. Another case involved the hearing representative clearly enumerating and distinguishing the specific objections, which made it clear the HR considered all objections prior to the issuance of the final decision.

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Standard:	Category Name <u>Reconsiderations</u>	Category # <u>4</u>
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Sample Size (total # of indicators in the category that were reviewed):	164
Number of cases reviewed:	41
Number of errors in category:	0
Acceptable rating:	85%
Rating for review:	100%

FINDINGS: Describe Findings.

Review of the Reconsideration Category measures whether the FAB provided a response to formal requests for reconsideration and whether the response is correct pursuant to EEOICPA regulations, policies and procedures, as well as clearly explained. The National Office FAB exceeded the acceptable rating for this Category with a rating of 100%.

There were 0 deficiencies noted.

IMPROVEMENTS SINCE LAST ACCOUNTABILITY REVIEW:

The Reconsiderations category for FAB National Office improved from the 2014 rating of 95% to the current rating of 100%

OTHER SIGNIFICANT FINDINGS:

The case comments noted that 2 reconsideration denial letters did not contain language about the option to reopen the claimant. This was not a ratable question, and, therefore, not a deficiency.

The case comments noted that some documents are not indexed properly on OIS, and is difficult to determine what they are without opening the document. Specifically, they are labeled as "Other" and "Other".

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