

AR-1

Accountability Review Findings

Dates of Review: June 4 - 8, 2018

Office Reviewed: Denver Final Adjudication Branch

Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 1: Response to Hearing Requests Element 1: Hearing Pre-Scheduling Element 2: Hearings
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Number of cases reviewed	40
Rating for Element #1	N/A
Rating for Element #2	97%
Acceptable rating:	90%
Overall Category Rating:	97%

Summarize Category (or Element) Findings:

The Response to Hearing Requests category reviews whether hearings were scheduled and conducted according to established policy and procedure. Element 1 only applies to National Office FAB and measures the timeliness in preparing and scheduling a hearing.

Element 2 evaluates whether the HR was familiar with the case and if the hearing was appropriate and conducted in a manner that would be responsive to the claimant(s) issues and their objections.

Six cases were identified with errors. Three cases involved a delay in sending out transcripts. One transcript went out on the 8th day, one day over the seven day standard. The other two were substantial delays. In one case, the transcript was received on October 23, 2017, and was not sent out until January 19, 2018. In the other case, the transcript was received on November 27, 2017, but not sent out until January 19, 2018, (upon further examination, the HR that was assigned left the FAB, BUT the cases were reassigned in December and there was a month delay in getting the transcripts sent out).

The fourth case error dealt with the denial of silicosis under Part B. The review found that the HR did not discuss the requirement of 250 days in the mines in Alaska or Nevada during the hearing.

The fifth case error identified a lack of the HRs understanding of the employment issue during the hearing and indicated development should have occurred prior to the hearing and a remand issued prior to the hearing.

The sixth case involved an error where the HR did not swear in the hearing participants.

Other Significant Findings:

AR TEAM REVIEWER(S):	DATE:
Anthony Zona, Charles Bogino, Anna DePasquale, Curtis Johnson, Greg Knapp, Mark Stewart, Aaron Warren	06/08/18

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Accountability Review Findings

Dates of Review: June 4 – 8, 2018
Office Reviewed: Denver Final Adjudication Branch
Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 2: Addressing Claimant Objections
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Number of cases reviewed	41
Acceptable rating:	90%
Overall Category Rating:	95%

Summarize Category (or Element) Findings:

This category reviews whether the final decision appropriately address the objections raised by the claimant either in writing or presented during an oral hearing. For each objection raised, we reviewed the response in the final decision to determine if it was clearly communicated and correctly adjudicated given the evidence of record and application of program policy and procedure. We also reviewed the decision to determine if it provided sufficient descriptive content to explain the interpretive analysis applied to justify the outcome.

Three of the cases had deficiencies.

The Objections section of the first case included a statement that the employee indicated he had no further employment evidence. On the contrary, the employee submitted two new and detailed letters concerning employment with a subcontractor. In addition, this Final Decision does not mention the deficiency of that claimed employment – lack of proof of a contractual relationship.

The second case was remanded for what appeared to be appropriate reasons; however, during the hearing, the claimant indicated that his subcontractor employer worked under the Army (rather than the DOE). Therefore, he would not have covered employment and the remand reason was moot.

In the third case, the objections were summarized, but there is no clear response to the specific objections.

Other Significant Findings:

AR TEAM REVIEWER(S):	DATE:
Mark Stewart, Charles Bogino, Anna DePasquale, Curtis Johnson, Greg Knapp, Deborah Rinella, Hang Tung, Aaron Warren, Anthony Zona	June 8, 2018

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Accountability Review Findings

Dates of Review: June 4 - 8, 2018

Office Reviewed: Denver Final Adjudication Branch

Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 3: ECS Coding Element 1: Recording the Claimant's Response Element 2: Coding RWR or Hearings Element 3: Recording FAB Determinations
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Number of cases reviewed	51
Rating for Element #1	95%
Rating for Element #2	75%
Rating for Element #3	98%
Acceptable rating:	90%
Overall Category Rating:	95%

Summarize Category (or Element) Findings:

This category reviews the accuracy of Energy Compensation System (ECS) coding as it relates to the FAB actions - recording the claimant's response, recording hearings and reviews of the written record (RWR), and FAB determinations (FDs), which include final decisions and remands. The documents and dates seen in the electronic case file will be directly compared to the ECS entries.

For Element 1, Recording the Claimant's Response, we reviewed whether the correct response type and the file date was entered, whether the waiver coding was correct and whether the filing date was correct. Of the cases reviewed where the claimants filed a response, two cases were found to have errors. The error in both cases was that the postmark was the earliest determinable date, but was not coded as the filing date.

For Element 2, ECS Coding RWR or Hearings, if there were a hearing or RWR, we reviewed the hearing or RWR status and status date. Of the cases reviewed, six cases were found to have errors. The error in all six cases was that the hearing representative failed to update the hearings status screen with the information that the transcript was received.

For Element 3, Recording FAB Determinations, we reviewed ECS to see if it matched the written final decision. This included ensuring all claimants and components were entered with the correct decision type, the FAB portion of the SEC path was completed where appropriate, benefits were properly allocated, the correct release date was recorded, the correct denial reasons and remand reasons were recorded, and the proper eligibility begin dates and ICD 9/10 codes were entered to properly generate medical benefits. Of the cases reviewed, six were found to have errors. The following errors were noted in the FAB Determinations.

The error in two cases was that the examiner/hearing representative failed to code conditions as deferred which were deferred in the final decision.

The error in three cases was that the examiner/hearing representative failed to code the SEF code which reflects the Special Exposure Cohort (SEC) class relied on in the final decision.

The error in one case was that the examiner/hearing representative selected the incorrect denial reason. In this case, ECS reflects a denial reason of "negative causation result" when the language in the final decision indicates that a denial reason of "medical information insufficient" is appropriate.

Other Significant Findings:

Although the above mentioned ECS coding errors were discovered, it is noteworthy that the Denver FAB Office did not have any errors related to benefits allocations, ICD 9/10 codes, or medical condition status effective dates. Denver is to be commended for its accuracy in this area because any errors of this kind would negatively impact claimants by delaying the processing of payments and/or creating problems in the administration of medical benefits.

AR TEAM REVIEWER(S):	DATE:
Anna DePasquale, Mark Stewart, Charles Bogino, Curtis Johnson, Greg Knapp, Aaron Warren, Victoria Lewis, Sarah Friedman, Hang Tung, Tony Zona	06/08/18

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Accountability Review Findings

Dates of Review: July 16, 2018 – July 20, 2018

Office Reviewed: Denver Final Adjudication Branch

Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 4: Remands
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Number of cases reviewed	45
Acceptable rating:	90%
Overall Category Rating:	94%

Summarize Category (or Element) Findings:

This category measures whether a remand was necessary and appropriate based on the evidence in the file. It also measures whether or not the basis of the remand and further action taken were accurately and clearly described. Specifically, it evaluates whether the decision to remand was correct and consistent with program policies; whether the decision clearly explained the specific evidentiary, legal, regulatory and/or policy guidelines which resulted in the recommendation of the district office not being finalized; that the Final Adjudication Branch (FAB) took all necessary actions to avoid a remand; and that the remand order included a cover letter to the claimant(s) explaining that the case was returned to a specific district or co-located FAB office.

Of the 45 cases reviewed, 13 were found to have errors. In five cases, the remand order was not correct because new evidence was received in the FAB office which provided a basis for FAB to reverse to accept (this error covered two indicators); the claimant advised the Division of Energy Employees Occupational Illness Compensation (DEEOIC) that he wished to withdraw the claim and it should have been administratively closed; the new evidence that was submitted did not provide a basis for additional employment development; and the remand was based on an exclusion of a primary cancer, but FAB did not note that the secondary cancer was incorrectly included in the National Institute for Occupational Safety and Health (NIOSH) referral.

Three cases were found to be deficient due to the background content not communicating relevant historical information relating to the remand order topic; i.e., a remand based on impairment that did not discuss the full history of the employee's impairment; a remand based on asthma and lack of employment that discusses hearing loss and provides no employment specifics in the case history, and an incorrect claimant name included in the remand order.

In three cases, the remand order did not identify the appropriate statute, regulation, or program resource which served as the basis for the determination.

One case was found to be deficient because the remand based on employment does not indicate why the employment evidence is insufficient.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Yolanda Greer, Chris Patterson, Paula Rangoon, Marek Brustad, Lawrence Ricci, Jill Mortimer, Mark Langowski, Kristina Green, Curtis Johnson, Hang Tung, Angela Eaddy.	July 20, 2018

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Accountability Review Findings

Dates of Review: July 16, 2018 – July 20, 2018

Office Reviewed: Denver Final Adjudication Branch

Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 5: Reconsiderations
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Number of cases reviewed	41
Acceptable rating:	90%
Overall Category Rating:	99%

Summarize Category (or Element) Findings:

This category measures whether the Final Adjudication Branch (FAB) provided an appropriate response to formal requests for reconsideration. It also measures whether the response was clearly explained and correct pursuant to program regulations, policies and procedures.

Specifically, this category reviews whether an acknowledgement letter was sent in response to the reconsideration request, or new evidence was submitted within 30 days of the Final Decision (FD) which could be considered a request for reconsideration; whether a FAB Claims Examiner (CE) or Hearing Representative (HR) not affiliated with the FD under review considered the request; whether the response to the request was correct given the evidence of record; and whether the reconsideration decision contained narrative language that clearly explained the basis for the decision, including the granting of the reconsideration constituting a new FD.

The Denver FAB exceeded the acceptable rating in this category with a rating of 99%. Of the 41 cases reviewed, only one error was found. The reconsideration request was denied due to a lack of medical evidence to establish anemia. The claimant submitted a pathology report that frequently referenced the condition and may be sufficient to diagnose the condition. This new medical evidence is potentially relevant to the denial. The reconsideration should have been granted and the claim remanded for additional development.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Yolanda Greer, Chris Patterson, Paula Rangoon, Marek Brustad, Lawrence Ricci, Jill Mortimer, Mark Langowski, Kristina Green, Curtis Johnson, Hang Tung, Angela Eaddy	July 20, 2018

AR-1

Accountability Review Findings

Dates of Review: July 16, 2018 – July 20, 2018

Office Reviewed: Denver Final Adjudication Branch

Review Period: May 1, 2017 – April 30, 2018

Standard:	Category 6: FAB Decisions Element #1: Decision Correspondence; FD Introduction; Written Quality & Formatting Element #2: FD – Statement of the Case Element #3: FD – Findings of Fact Element #4: FD – Conclusions of Law
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Number of cases reviewed:	51
Rating for Element #1	94%
Rating for Element #2	90%
Rating for Element #3	93%
Rating for Element #4	93%
Acceptable rating:	90%
Overall Category Rating for review:	92%

Summarize Category (or Element) Findings:

The category measures whether the Final Decisions (FD) and medical/monetary benefits issued by the Final Adjudication Branch (FAB) were written in the proper format, with correct content supported by the evidence of record.

Element 1 reviews the accuracy of the information contained in the cover letter, FD introduction, and accuracy of attachments to the FD.

The errors in this Element ranged from decisions in which the FD was not sent to either the authorized representative (AR) or the claimant in care of the AR when both are at the same address; incorrect docket # in the final decision header; the FD preamble not identifying the part of the Act under which the condition was being denied; the FD cover letter discussing impairment benefit eligibility, but it was a survivor's claim that included an award of Part E survivor's compensation;

the cover letter contradicting itself in the same paragraph as to what part of the Act the condition was being denied under; and cases where there was an incomplete EN-20 form from one of two survivors and an incorrect ICD-10 code in the medical benefits award letter.

Element 2 reviews the accuracy of Personally Identifiable Information (PII) in the Statement of the Case and that it contains an accurate description of the development actions taken that led to the decision being made.

The general trend of deficiencies in this Element ranged from cases with incorrect employment and filing dates; no description of the medical evidence regarding the claimed condition(s) or inaccurate identification of all of the conditions being claimed; a lack of explanation of an employment related issue that is first discussed in the Findings of Fact or Conclusions of Law, but not in the Statement of the Case and exclusion of the development actions taken by the district office.

There were also more specific errors such as:

- 1 case involves an RD that both accepted and denied and, despite the fact that no bifurcated waiver was issued, the FAB did not address this "failure to provide due process." The subject FD was issued more than 60 days post RD and affirmed the RD acceptance/denial.
- 1 case involves an FD accepting an E survivor's Radiation Exposure Compensation Act (RECA) 5 claim for boilerplate lung conditions but none of those conditions were identified on the death certificate, just COPD, and an opinion from a doctor is equivocal in indicating whether the RECA 5 conditions had caused, aggravated or contributed to the employee's death. Additional development should have been obtained regarding RECA 5 conditions and claimant's death.

Element 3 covers the factual information contained in the Findings of Fact and that the facts of the case are clearly identified and listed in a logical order.

There was no general trend regarding the errors found in this Element. The errors included no Finding of Fact regarding the cause of the employee's death; an incorrect finding for DOE contractor/subcontractor employment but the evidence indicates only Atomic Energy Commission (AEC)/DOE employment; and a case involving a RECA 5 E survivor acceptance but doesn't make a finding of fact regarding the cause of the employee's death.

Most of the errors found in this Element were due to the Findings of Fact not including all the findings necessary to support the Conclusions of Law. For instance, a case involving the lack of a finding of fact regarding a CMC's causation statement relative to the acceptance/denial under E and a case involving the lack of a finding of fact regarding the specific toxic substance exposures that were found by a physician to be causally related to the employee's COPD/emphysema.

Element 4 reviews the Conclusions of Law for accuracy in the decision being made, citations referenced, and a clear narrative description for the decision being made.

The deficiencies noted for this Element also did not follow a general trend. Errors for this Element include a case involving a RD to deny for the lack of survivorship with no finding regarding the lack of medical evidence establishing diagnosis of the claimed condition, although development

letters were sent asking for both survivorship and medical evidence. FAB received the survivorship evidence but issued an FD denying for lack of medical. The claim should have been remanded for an RD specifically denying the medical.

There were several cases where there were errors due to the Conclusions of Law not containing a correct outcome given the evidence of file. For example, a case where an FD makes reference to two conditions that were not included in the RD; a case where the FD erroneously awarded Part E medical benefits to an employee who only had verified employment directly with the AEC/DOE; and a case involves an FD denial but which didn't identify any of the denied conditions in the conclusions of law.

There were also errors regarding the Conclusions of Law containing incorrect legal citation(s) that are specific to the issue(s) being decided. In one case, an error was found where a RECA 5 decision under E doesn't cite that part of the Act under 7385s-5(1) and which discussed survivorship eligibility under E but erroneously cites 7385s. In another case, an FD has no legal citations at all save for a reference to the regulations regarding receipt of the claimant's waiver of objections. One case involves an FD under Part E only but the conclusions makes Part B citations relative to a previously adjudicated cancer condition under that part.

Other Significant Findings:

AR TEAM REVIEWER(S):	DATE:
Yolanda Greer, Chris Patterson, Paula Rangoon, Marek Brustad, Lawrence Ricci, Jill Mortimer, Mark Langowski, Kristina Green, Curtis Johnson, Hang Tung, Angela Eaddy.	July 20, 2018