

AR-1

Accountability Review Findings

Dates of Review: June 4 – 8, 2018

Office Reviewed: National Office 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
------------------	---

Number of cases reviewed	42
Rating for Element #1	96%
Rating for Element #2	96%
Acceptable rating:	90%
Overall Category Rating:	96%

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 the National Office Final Adjudication Branch (FAB) and measures the timeliness in preparing and scheduling a hearing.

In one case, the acknowledgment letter was sent late. In five cases, the hearing notice was sent late. In one case, the hearing notice was mailed less than 30 days prior to the date of the hearing.

Element 2 evaluates whether the Hearing Representative (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.

In two cases, the claim could have been remanded prior to the hearing. One hearing had an incomplete opening statement, and another had an incomplete closing statement. One hearing showed that the HR was not sufficiently familiar with the claim; the authorized representative asked if the audiogram and accompanying medical information was

sufficient to establish a hearing loss diagnosis, and the HR appeared to not have reviewed this new evidence. In eight cases, the transcript was not sent within seven calendar days.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Mark Stewart, Anna DePasquale, Curtis Johnson, Greg Knapp, Aaron Warren, Anthony Zona	June 8, 2018

AR-1

Accountability Review Findings

Dates of Review: June 4 – 8, 2018

Office Reviewed: National Office Final Adjudication Branch

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

Standard:	Category 2: Addressing Claimant Objections
------------------	--

Number of cases reviewed	41
Acceptable rating:	90%
Overall Category Rating:	98%

Summarize Category (or Element) Findings:

This category reviews whether the final decisions 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.

There are three errors in this category.

The first case did not mention the objection letter or the objections.

In the second case, the claimant submitted a general objection, stating the employee's condition was caused by Department of Energy (DOE) contractor employment. To properly respond to this, the HR would have had to fully analyze the case file evidence. On the contrary, evidence showed additional development was needed and not done; therefore, the denial is premature.

In the third case, objections were not clearly addressed. In response to a Contract Medical Consultant (CMC) report, the claimant submitted medical records. The HR provided extensive explanation as to why the medical records were insufficient to support the claim, but did not explain why the CMC report held more probative value than the medical records submitted.

Other Significant Findings:

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

AR-1

Accountability Review Findings

Dates of Review: June 4 - 8, 2018

Office Reviewed: National Office 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
------------------	--

Number of cases reviewed	52
Rating for Element #1	90%
Rating for Element #2	62%
Rating for Element #3	97%
Acceptable rating:	90%
Overall Category Rating:	93%

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.

The National Office Final Adjudication Branch (FAB) exceeded the acceptable rating for this Category with a rating of 93%.

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. Four cases were found to have errors.

All four cases used the captured date in Office of Workers Compensation Imaging System (OIS) instead of the postmark date of the envelopes or fax. In one instance, the waiver was missed.

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. A trend was demonstrated as all ten cases found to be in error did not have the "transcript sent" entered in the hearing tab.

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 Special Exposure Cohort (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 International Classification of Disease (ICD) codes were entered to properly generate medical benefits. Of 52 cases reviewed, seven were found to be in error for not entering the "SEF" coding on the SEC causation tab which represents when the decision was accepting the cancer claim based on SEC. Two cases had a different decision date on the document in OIS than that date in ECS.

Other Significant Findings:

AR TEAM REVIEWER(S):	DATE:
Anna DePasquale, Mark Stewart, Curtis Johnson, Greg Knapp, Aaron Warren, Victoria Lewis, Sarah Friedman, Hang Tung, Mel Teal, Kathy Matau, Tony Zona, Deborah Rinella	06/08/18

AR-1

Accountability Review Findings

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

Office Reviewed: National Office Final Adjudication Branch

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

Standard:	Category 4: Remands
------------------	---------------------

Number of cases reviewed	42
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.

In two of the cases reviewed, medical evidence was received while the case was at FAB that was sufficient to allow for a reversal rather than a remand. Two cases used citations from outdated Procedure Manuals. The wrong claimant name was used in one case. Although an error in the filing date was noted for only one of four claimed conditions in one case, all four conditions were remanded when a partial decision/partial remand would have been appropriate. In one case, three survivors who had not filed claims under Part E were listed as claimants and sent copies of the remand, and the remand itself did not explain why they were included.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
-----------------------------	--------------

Kathy Matau, Helen O'Neill, Yolanda Greer, Chris Patterson, Paula Rangoon, Marek Brustad, Lawrence Ricci, Jill Mortimer, 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: National Office Final Adjudication Branch

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

Standard:	Category 5: Reconsiderations
------------------	------------------------------

Number of cases reviewed	41
Acceptable rating:	90%
Overall Category Rating:	97%

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.

One reconsideration denial did not discuss the arguments put forth by the claimant to support the reconsideration request. Although the denial based on untimely filing of a reconsideration request was correct in one case, the wrong filing date was cited because it was based on the receipt date rather than the earlier postmark date.

One case used citations from an outdated Procedure Manual, and the same case had “(dates of employment here)” rather than the actual dates of employment in the body of the document.

In one case, an Authorized Representative (AR) objected on the basis that outdated policy for exposures that occurred after 1995 was applied. The denial of the request for reconsideration only stated that

the relevance of this argument was unclear. The objection could have been addressed with guidance in Circular 17-04, Rescind Post 1995 Toxic Exposure Guidance.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Kathy Matau, Helen O'Neill, Yolanda Greer, Chris Patterson, Paula Rangoon, Marek Brustad, Lawrence Ricci, Jill Mortimer, 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: National Office 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
-----------	---

Number of cases reviewed:	52
Rating for Element #1	98%
Rating for Element #2	93%
Rating for Element #3	93%
Rating for Element #4	96%
Acceptable rating:	90%
Overall Category Rating for review:	95%

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.

- Several errors were found regarding addressing correspondence to an authorized representative (AR). In one case, the AR was not sent their own copy of the final decision (FD). Instead, a copy was sent to the employee (EM) c/o the AR. In another case, the FD had the wrong address for AR.

- Several errors were found in the FD header. One FD had an incorrect docket number, and another FD had the wrong case ID.
- One FD's cover letter and medical benefits letter did not state a condition was being accepted under both Parts B and E including compensation and medical benefits.
- One FD did not include a medical benefits letter to the estate of a deceased employee when posthumous medical benefits were awarded.

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

The following errors were found:

- One FD made a reference to the wrong medical condition, one cited incorrect employment dates, and one gave the wrong filing date for a condition.
- An FD to award increased impairment gave the wrong date for a prior impairment grant.
- One FD did not address the receipt of the waiver. This case also cited the effective date for a Special Exposure Cohort (SEC) class incorrectly.
- One SOC failed to mention the Recommended Decision (RD) and its recommendations.
- One FD stated that the Industrial Hygienist (IH) determined that the employee's exposure to asbestos caused his chronic obstructive pulmonary disease (COPD).
- One FD did not discuss the date of diagnosis for a claimed condition that was denied due to negative causation.
- Two FDs discussed Site Exposure Matrix (SEM), but the SEM results were not in OIS.
- One SOC did not give an accurate summation of district office (DO) development.

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

- Many errors that were found in SOC were also errors in the FOF element:
 - The FOF incorrectly stated that an IH determined that the employee's exposure to asbestos caused his COPD.
 - A prior impairment grant FD had the wrong date.
 - The claimed dyspepsia was not discussed in the FOF.
 - The FOF cited wrong employment dates.
- Additionally, in one case, the FOF did not discuss an employee's toxic substance exposures and a Contract Medical Consultant (CMC) report. Another case's FOF did not discuss an employee's labor categories and

potential exposure to asbestos.

- In one case, the FOF did not mention the employee's filing date for a condition when awarding medical benefits to the estate.

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

The following deficiencies are noted:

- In one case, the claim should have been remanded because the DO did not issue two development letters requesting medical evidence. Note: This policy changed to a one letter requirement after the issuance of the FD under review (PM v2.0 Ch. 11).
- One COL did not weigh the medical opinion between a treating physician and a CMC. Additionally, the EM had presumptive exposure to asbestos based on his labor category, and this information was not provided to the CMC.
- Again, the increased impairment grant cited the wrong date for a prior impairment award in the COL.
- One COL did not clearly explain that exposure to toxic substances was considered but resulted in a negative causation finding.
- One COL had repetitive citations, and one COL cited a bulletin that was superseded by the PM.
- One COL incorrectly cited the PM's presumptive criteria for asbestos as the basis for accepting asbestoses. The basis for the asbestos acceptance was a physician's opinion on causation.
- One COL did not discuss presumptive asbestos exposure.

Other Significant Findings:

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