

AR-1

Accountability Review Findings

Dates of Review: June 3, 2019 – June 7, 2019

Office Reviewed: Cleveland Final Adjudication Branch

Review Period: May 1, 2018 – April 30, 2019

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| Standard: | Category # 1 - FAB Decisions Element #1: Decision Correspondence; FD Introduction; Written Quality 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 | 95% |
| Rating for Element #2 | 84% |
| Rating for Element #3 | 93% |
| Rating for Element #4 | 87% |
| Acceptable rating: | 90% |
| Overall Category Rating for review: | 90% |

Summarize Category (or Element) Findings:

This Category assesses whether the Final Decisions (FDs) were clearly written with correct content supported by the evidence of record. This Category is separated into four Elements that correspond to different sections of the FD.

Element 1 reviews the accuracy of the information contained in the cover letter and FD introduction. It assesses whether the attachments included in the FD were appropriate and properly completed. It also reviews the FD to evaluate the overall readability of the decision and determine if it is free of substantial grammatical or typographical errors.

Element 2 reviews the Statement of the Case (SOTC) section of the FD to determine if it contained an accurate and descriptive discussion of the relevant facts. This Element also evaluates whether the SOTC communicates a case history that is relevant to the FD being issued.

Element 3 covers the Findings of Fact (FOF) section of the FD to evaluate if this section is limited to the facts needed to reach the conclusions of law. It assesses whether the FOF were correct given the evidence of file and application of legal, regulatory or procedural standards.

Element 4 reviews if the FD addressed each of the conclusions reached in the Recommended Decision (RD). This Element reviews the Conclusions of Law (COL) section to assess whether the Final Adjudication Branch (FAB) communicated appropriate analysis of case evidence based on applicable standards to arrive at a correct decision. It also evaluates citations to determine if they support the FD.

Overall, the majority of decisions were well-written and appropriate.

Under Element 1, one final decision was not bronzed into OIS (it was apparently mailed since the EN-20 was returned and processed). Since it could not be reviewed, every Element and Indicator was marked as an error.

Also under Element 1, several decisions were determined to contain errors. Two medical benefit letters contained a reference to the Employment Standards Administration, an obsolete sub-agency name (it occurred in the mailing address for billing claim forms, indicating re-use of an old letter without updating it). One decision's cover letter did not address two out of four conditions denied in the COL. In another decision, the cover letters in a multiple survivor claim that accepted one condition and denied another did not mention the denial of that condition or provide claimant appeal rights. The cover letter for one decision mentioned both Parts of the Act, but the decision itself only addressed Part B. In addition, the introductory paragraph of the decision did not mention the awarding of medical benefits to the estate and the effective date of medical benefits entitlement. One decision (a Part B and Part E denial) did not specify the Part of the Act being denied in the introductory paragraph.

Under Element 2, regarding SOTC issues, the only potential trend noted in this Category concerned problems with the adjudication of cases with presumptive asbestos exposures and/or asbestosis acceptances: three decisions reference language obsolete since 2017 concerning the levels of asbestos exposure during the years 1987 to 1995. Two of those decisions also neglected to explain how the District Office reached their conclusions (a third decision also failed to do this, but it concerned CBD, not asbestosis). Another of those decisions has no mention of the employee's job title, which was actually not one of the specific job categories, but relied on the presumption criteria as if it were, and, therefore, should have been a remand for an Industrial Hygienist (IH) assessment. An additional decision concerning asbestos exposure contained no reference to the type or level of exposure at all in the SOTC.

Two decisions contained legal citations in the SOTC (see PM 26.3.b(2)). One decision did not contain a description of the evidence, such as birth certificates, supporting that the claimants are the children of the employee. One decision was an acceptance under Parts B and E, but a discussion of how the claimant qualified as a 'DOE contractor employee' as required for Part E was not mentioned. One decision indicated that the employee stated on the EN-16 that he filed a lawsuit; however, the EN-16 did not reflect this.

Under Element 3, the errors noted under Element 2 were generally repeated in the FOF, such as neglecting to mention the job title in presumptive situations where it is pertinent, whether the employee had DOE contractor employment, and whether or not there was potential exposure. The FOF in one decision did not include the filing date, although medical benefits were being awarded. Two decisions had a FOF that read as if it was a COL, rather than merely stating the facts of the case: "It is at least as likely as not that exposure to a toxic substance (asbestos) at a DOE facility was a significant factor in aggravating, contributing to or causing your asbestosis." One decision contained a FOF that identified the DOE facility as an AWE facility.

Under Element 4, again, the errors noted in the SOTC and FOF generally were repeated in the COL. Because of this, at least one decision should have been a remand since the lack of discussion about exposures led to an incorrect acceptance, because the evidence of record did not support a presumptive acceptance of asbestos exposure (an IH assessment was needed in accordance with Exhibit 15.4.3 since the job of engineer/draftsman is not on the labor category list). In addition, in that same decision, the RD was based on a medical opinion from the treating physician which was not based on correct exposure levels (since an IH assessment was needed), but the medical opinion was not mentioned or analyzed anywhere. One decision did not address all of the recommended determinations in the COL and only two out of the four conditions were adjudicated. One decision did not discuss whether or not the claimant qualified as a 'DOE contractor employee' although it was an acceptance under Part E. One decision stated that there was no relationship between the employee's Y-12 exposures and COPD, although the IH assessment in the file found occasional exposure. Four decisions did not contain appropriate citations in the COL (one had no citations at all; one had no citations for the appropriate Parts; and two contained citations for Part E medical benefits when medical benefits were only awarded under Part B).

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| Other Significant Findings: |
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The cover letters do not generally contain the Correspondence Mail Room (CMR) information, either in the letterhead or as a paragraph. Several cover letters did not contain the disability paragraph that is supposed to be at the bottom of all letters (see Bulletin 14-01) – these were not considered errors due to the inconsistency in usage across the FAB offices. One cover letter did not mention the newly pending claim (an EE-1 for a consequential condition was filed while the case was at FAC). The reviewers also noted inconsistencies across FAB offices in how Authorized Representatives (AR) were notified (either by separate letter or by cc: and address label) and when (or if) the AR fee paragraph should be included in FAB cover letters. In addition, there was discussion concerning the appropriate language for the reopening right (whether it be standard wording or specific to the issue being denied in the FD).

| AR TEAM REVIEWER(S): | DATE: |
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| Sidne Valdivieso; Carolina Harris; Wendell Perez; Cyril Pratt; Alison Supanich; Keiran Gorny; Kristina Green; Angela Eaddy; Hang Tung; Curtis Johnson | June 12, 2019 |

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Dates of Review: June 3, 2019 – June 7, 2019

Office Reviewed: Cleveland Final Adjudication Branch

Review Period: May 1, 2018 – April 30, 2019

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| Standard: | Category #2: Remands |
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| Number of cases reviewed | 44 |
| Acceptable rating: | 90% |
| Overall Category Rating: | 95% |

Summarize Category (or Element) Findings:

This Category measures whether a remand was necessary and appropriate based on the evidence in the file. Specifically, it evaluates whether the claimant's information was correct; whether there was appropriate justification to support the remand; whether the remand contained an accurate and descriptive discussion of the relevant facts and whether the remand clearly communicated the analysis applied by the Final Adjudication Branch (FAB) in reaching the remand decision.

Three deficiencies were based on inaccurate information in the cover letter - a typo in the claimant's name, a typo in the Authorized Representative's address, and a Remand Order sent to the wrong address.

Four deficiencies were based on the Remand Order not adequately addressing the aspects of the case. One deficiency occurred when conditions not yet adjudicated were included as part of the Remand Order. Three deficiencies occurred in Remand Orders issued without any mention of the objections raised or the request for a hearing.

One deficiency occurred when a Remand Order was issued unnecessarily. In this case, the Recommended Decision (RD) was issued to the incorrect address. Instead of sending the case to the District Office to send the RD to the correct address, a Remand Order was issued.

Other Significant Findings:

| AR TEAM REVIEWER(s): | DATE: |
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| Kristina Green; Carolina Harris; Wendell Perez; Sidne Valdivieso; Cyril Pratt; Alison Supanich; Keiran Gorny; Angela Eaddy; Hang Tung; Sarah Friedman | June 12, 2019 |

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| Standard: | Category #3: Reconsiderations |
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| Number of cases reviewed | 41 |
| Acceptable rating: | 90% |
| Overall Category Rating: | 92% |

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 assesses whether the FAB clearly and correctly explained program regulations, policies and procedures.

Specifically, this Category reviews whether the National FAB sent an acknowledgement letter in response to a reconsideration request; whether a FAB Claims Examiner (CE) or Hearing Representative (HR) not affiliated with the Final Decision (FD) under review considered the request; and whether the factual information was correct in the decision. It also evaluates the reconsideration to determine if it was written in a manner understandable to the reader and free of grammatical or typographical errors. Finally, it evaluates whether the response to a request for reconsideration was correct given the evidence of record.

In one case, the Energy Compensation System (ECS) reflected that a reconsideration was granted; however, there was no evidence of the reconsideration in OIS. This error spanned four Indicators.

In five cases, the errors ranged from an incorrect Authorized Representative's (AR) name on the cover letter; an incorrect claimant's name in the header of the decision; an AR's copy of the reconsideration sent to an incorrect address; an incomplete docket number; and a male claimant referred to as "Ms." on the cover letter.

More errors were found in the following three cases – 1) The reconsideration was denied because the medical evidence consisted of a report received prior to the FD. However, the new medical evidence was not addressed or mentioned in the FD. The reconsideration should have been granted for the FAB’s error and a new decision issued which weighed the medical evidence; 2) The reconsideration did not address the claimant’s objections or challenges presented against the FD. They were dismissed with a generic statement that the arguments presented were not sufficient; and 3) The FD denied the employee’s Parts B and E melanoma claims and the Part E claim for cataracts; however, the reconsideration only referenced the Part E denial. It did not address that Part B was also denied.

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| Other Significant Findings: |
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| AR TEAM REVIEWER(s): | DATE: |
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| Angela Eaddy; Carolina Harris; Wendell Perez; Sidne Valdivieso; Cyril Pratt; Alison Supanich; Keiran Gorny; Kristina Green; Hang Tung; Sarah Friedman | June 12, 2019 |

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Accountability Review Findings

Dates of Review: July 22, 2019 – July 26, 2019

Office Reviewed: Final Adjudication Branch (Cleveland)

Review Period: May 1, 2018 – April 30, 2019

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| Standard: | Category #4: Response to Hearing Requests Element #1: Hearing Pre-Scheduling Element #2: Hearings |
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| Number of cases reviewed | 41 |
| Rating for Element #1 | N/A |
| Rating for Element #2 | 98% |
| Acceptable rating: | 90% |
| Overall Category Rating: | 98% |

Summarize Category (or Element) Findings:

Element 1 is ratable for FAB National Office cases only.

Element 2: The three errors in this category were unrelated. Two errors were procedural missteps rather than a substantive error in applying the law or analyzing the evidence. One procedural error was the manner in which the HR received hearing exhibits. The HR did not direct the court reporter how and when to enter exhibits into record, but instead allowed the claimant's AR to do so at the end of the hearing; the other error was that the HR did not mention how much time the claimant had to submit additional evidence post hearing.

A substantive error occurred in one case where the HR did not consider properly the validity of the evidence used to perform an impairment rating. Specifically, the employee's most recent audiological test results were not considered as part of the employee's impairment rating for hearing loss. This error had no effect on the outcome of the claim, as the case was remanded following the hearing. However, remanding the case prior to conducting the hearing would have expedited the overall claims adjudication process.

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| Other Significant Findings: |
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N/A

| AR TEAM REVIEWER(s): | DATE: |
|---|---------------|
| Karoline Anders, Marek Brustad, William Elsenbrock, Sarah Friedman, Matthew Fowler, Robert Garcia, Curtis Johnson, Jeana LaRock, Mark Stewart, Aaron Warren | July 31, 2019 |

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Accountability Review Findings

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Office Reviewed: Final Adjudication Branch (Cleveland)

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| Standard: | Category #5: Addressing Claimant Objections Element #1: Addressing Claimant Objections |
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| Number of cases reviewed | 41 |
| Rating for Element #1 | 91% |
| Acceptable rating: | 90% |
| Overall Category Rating: | 91% |

Summarize Category (or Element) Findings:

In eight of the cases reviewed, ten errors were found. All errors resulted from final decisions (FDs) that either did not mention objections or did not fully address all objections.

Four errors were based on FDs that did not mention objections. These objections were not relevant to the outcome of the case, but they should have been summarized and an explanation given as to why they did not change the outcome.

In the first case that did not fully address all objections, the employee objected to his dose reconstruction, specifically stating that NIOSH's use of on-site ambient dose was inappropriate and that NIOSH should have instead used co-worker dose data. The HR addressed this simply by providing standard language regarding the NIOSH dose reconstruction process. This objection should have been specifically addressed with a referral to the IH for a more detailed explanation, as per PM Chapter 17.14.

In a second case where objections were not fully discussed, a negative causation opinion was identified as the basis for denial of a claim. The claimant contested this finding and read a journal article as part of the rebuttal during a scheduled hearing. However, this issue was not mentioned in the FD.

The third case where objections were not fully address involved a survivor claim where the claimant's birth certificate showed she was the daughter of a man other than the employee. (The claimant had explained during the hearing that the employee was actually her father but that her mother wanted to avoid a scandal.) However, the claimant also submitted a will and another legal document showing that the employee considered her to be his daughter. The FD cited procedural guidance stating that the claimant is presumed to have a genetic link to the father listed on the birth certificate, but should have also referenced the PM guidance that a "recognized natural child is presumed to have a genetic link to a deceased employee." The FD should have explained which piece of evidence was given greater weight in adjudicating the claim. (This represented errors in two indicators.)

The final case did not adequately respond to the claimant's objection regarding the Combined Values Chart of the AMA Guides. Although this issue is discussed clearly in the Statement of the Case, the discussion in the Objection section makes it appear that FAB's calculations were mathematically incorrect. Furthermore, explaining in layperson's terms what the Combined Values Chart from AMA Guidelines would more fully respond to the claimant's concerns. (This represented errors in two indicators.)

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| Other Significant Findings: |
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N/A

| AR TEAM REVIEWER(s): | DATE: |
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| Standard: | Category #6: 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 | 89% |
| Rating for Element #2 | 93% |
| Rating for Element #3 | 96% |
| Acceptable rating: | 90% |
| Overall Category Rating: | 95% |

Summarize Category (or Element) Findings:

Under Element 1, five errors were identified. Three errors were noted because the waiver was received but not recorded in ECS. The two remaining errors were for claimant responses, one RWR request and one waiver, that were dated in ECS for the date received in OIS, not the date the document was post-marked or faxed.

Under Element 2, only one error was identified. The RWR status date was not updated when the RWR status was updated to reflect completed.

Under Element 3, there were a total of nine errors. One written FD did not defer any conditions but the conditions were deferred in ECS. In another case, the FD accepted a condition under Part E, but ECS was coded to deny this condition.

With regard to SEF coding, five cases did not have the SEF coding entered. Of those five cases, two of them had no SEC causation pathway created by the district office and FAB did not correct

this oversight. In the last error, the incorrect SEF code was entered and the SEF date was missing.

The final error in this element was the failure to make the selection to approve medical benefits on the case when the FD was built in ECS.

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| Other Significant Findings: |
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N/A

| AR TEAM REVIEWER(s): | DATE: |
|--|---------------|
| Marek Brustad, Matthew Fowler, Aaron Warren, William Elsenbrock, Robert Garcia, Curtis Johnson, Sarah Friedman, Mark Stewart, Jeana LaRock | July 31, 2019 |