

AR-1

Accountability Review Findings

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

Office Reviewed: Final Adjudication Branch (Summary of all offices)

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

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:	255
Rating for Element #1	95%
Rating for Element #2	94%
Rating for Element #3	96%
Rating for Element #4	94%
Acceptable rating:	90%
Overall Category Rating for review:	95%

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.

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.

The major trend throughout this category is that in three instances, the FD was not bronzed in the OWCP Imaging System (OIS). Since the FD could not be reviewed, every Element and Indicator for those cases under Category 1 were counted as an error. This mistake, not bronzing, created 28 errors from a total of 114 errors for this category.

Under Element 1, in four cases, the FD was not forwarded to the Authorized Representative; in three medical benefits letters, there are references to the Employment Standards Administration (ESA) – an obsolete sub-agency; and in three (3) cases, the FD does not acknowledge the Authorized Representative in the cover letter or Certificate of Service.

Under Element 2, in three cases, the SOC contained inappropriate legal citations. Additionally, three decisions contained errors relative to the adjudication of cases with presumptive asbestos exposures and/or asbestosis acceptances. The three decisions reference language, obsolete since 2017, which concerns the levels of asbestos exposure during the years 1987 to 1995. Two of these decisions also did not explain how the district office reached its conclusions. Another of these decisions did not mention 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.

Under Element 3, there were no trends noted. The errors found varied.

Under Element 4, seven cases included errors regarding the COL. These errors consisted of either using an incorrect citation or not including the appropriate citation.

Other Significant Findings:

AR TEAM REVIEWER(S):	DATE:
Sidne Valdivieso; Carolina Harris; Wendell Perez; Cyril Pratt; Alison Supanich; Keiran Gorny; Kristina Green; Angela Eaddy; Hang Tung; Curtis Johnson; Cryril Pratt; Gregg Knapp; Tracy Smart, Anthony Zona, Sarah Friedman	June 12, 2019

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Accountability Review Findings

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

Office Reviewed: Final Adjudication Branch (Summary of all offices)

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

Standard:	Category #2: Remands
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Number of cases reviewed	218
Acceptable rating:	90%
Overall Category Rating:	97%

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 FAB in reaching the remand decision.

All the FAB offices did exceptionally well in this category with all five offices exceeding the acceptable rating of 90%. The majority of the errors (9 errors) relate to having the incorrect address or name in the remand decision (for example, using "Beech Lane" instead of "Beach Lane"). However, evidence in the case file indicates that all the claimants received their Remand Order. The reviewers also found four errors relating to the FAB not mentioning some or all the objections raised by the claimants. Additional errors (6 errors) relate to either the incorrect presentation of the case history or the remand order containing incorrect information. For example, in one case, the cover letter mentions that the Remand Order was issued for chronic obstructive pulmonary disease (COPD) when the Remand Order specified that it was not only for COPD but also for pneumoconiosis and consequential sleep apnea.

The reviewers found that all the remand decisions were decided correctly based on the evidence in the case file.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Sidne Valdivieso; Carolina Harris; Wendell Perez; Cyril Pratt; Alison Supanich; Keiran Gorny; Kristina Green; Angela Eaddy; Hang Tung; Curtis Johnson; Cryril Pratt; Gregg Knapp; Tracy Smart, Anthony Zona, Sarah Friedman	June 12, 2019

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Accountability Review Findings

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

Office Reviewed: Final Adjudication Branch (Summary of all offices)

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

Standard:	Category #3: Reconsiderations
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Number of cases reviewed	205
Acceptable rating:	90%
Overall Category Rating:	96%

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 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.

The reviewers found 28 total errors in this category. The majority of the errors (8 errors) include having the incorrect information in the decision. Either the name was incorrect (4 errors) or other information such as identifying the wrong medical condition in the decision. More substantially, the reviewers found five (5) errors in five different cases judged to be an incorrectly decided reconsiderations. The majority of those reconsiderations determined to be incorrectly adjudicated (4 total) involve assessment of the medical report. For example, in one reconsideration, the FAB received new medical evidence from the treating physician alleging contribution of several substances. The Reconsideration Denial determined that the physician's report was not well-rationalized because the treating physician did not have a copy of the Industrial Hygienist's report. The reviewer stated that it is unfair to dismiss the treating

physician's opinion without remanding for additional development. The reviewers found no other trends with all the FAB offices exceeding 90% rating for this category.

Other Significant Findings:

AR TEAM REVIEWER(s):	DATE:
Sidne Valdivieso; Carolina Harris; Wendell Perez; Cyril Pratt; Alison Supanich; Keiran Gorny; Kristina Green; Angela Eaddy; Hang Tung; Curtis Johnson; Cryril Pratt; Gregg Knapp; Tracy Smart, Anthony Zona, 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 (summary of all offices)

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

Standard:	Category #4: Response to Hearing Requests Element #1: Hearing Pre-Scheduling Element #2: Hearings
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Number of cases reviewed	203
Rating for Element #1	98%
Rating for Element #2	99%
Acceptable rating:	90%
Overall Category Rating:	99%

Summarize Category (or Element) Findings:

This Category assesses whether hearings were scheduled appropriately and claimants given accurate notice. It also assesses whether the hearing representative addressed all required topics, clearly communicated program policy and procedure, and asked logical and relevant questions. There are two elements that correspond to the hearing scheduling process and to the quality and substance of the scheduled hearing.

Element 1 – Hearing Pre-Scheduling

This element reviews whether the hearing notice was mailed at least 30 days prior to the scheduled hearing and sent to the appropriate recipients. It also requires that the notice gives accurate time, date, and location information. This element is rated for FAB National Office cases only.

Element 2 – Hearings

This element reviews the appropriateness of the hearing, given the evidence provided. In addition, it also examines whether the hearing representative covered all necessary topics during the hearing, accurately communicated program policy, and asked logical and relevant questions. It also assesses the post-hearing process, which includes giving the claimant the proper period of time to submit comments and additional evidence.

Overall, the FAB performed exceptionally well in this category, with each individual office committing no more than three (3) errors. The most common trend identified among the FAB offices involved opening statements which did not cite specific objection(s) raised by the claimant and/or the designated authorized representative.

In an overwhelming majority of the cases reviewed, the hearing transcript reflected that the assigned Hearing Representative (HR) was familiar with the recommended decision under review and that the HR addressed all required topics during the course of the hearing (i.e. opening statement, oath administration, purpose of hearing, hearing process, discussion of objections and presentations. Program policy/procedure was accurately communicated and logical/relevant questions related to the issue(s) in the case were asked. Hearing conversations were directed in a manner responsive to input or issues raised by the hearing participants. The assigned HR explained that the claimants/representatives would be provided with the hearing transcript and identified the proper period for comment and submission of additional evidence.

Other Significant Findings:

One major topic of discussion in this category involved establishing policy/procedural guidelines for cancelling hearings. The discussion focused mainly on cases where the HR determines the need for cancelling a schedule hearing within close proximity of the hearing date. Team members discussed the many aspects of cancelling hearings without reaching a mutual agreement. However, common ground was established in that both sides agreed that the ultimate decision to cancel a hearing lies with the claimant and that claimants must be given ample notice in instances where hearings are cancelled. Opposing parties further agreed that constant communication between the claimant and the Hearing Representative must also be an integral part of the process.

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, Anthony Zona	July 31, 2019

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Accountability Review Findings

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

Office Reviewed: Final Adjudication Branch (summary of all offices)

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

Standard:	Category #5: Addressing Claimant Objections Element #1: Addressing Claimant Objections
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Number of cases reviewed	205
Rating for Element #1	93%
Acceptable rating:	90%
Overall Category Rating:	93%

Summarize Category (or Element) Findings:

This Category assesses whether the final decision correctly summarizes the objections to the recommend decision. It additionally assesses whether the hearing representative correctly assessed the objections, explained the DEEOIC handling of the objections, correctly applied DEEOIC policies and procedures in resolving those objections and clearly explained the analysis of the facts in context of the policy. There is only one element in this category.

In making the assessment, the AR team reviewed the objections submitted as well as all hearing documentation and then reviewed the resulting Final Decision to determine whether the objections were properly summarized and explained.

Overall, the team found good work in this category. However, in those cases in which an error was found, there were often multiple errors. A common trend identified among all the offices involved instances in which the final decision did not explain why the employee's objection did not alter the outcome of the case. Specifically, 26 cases had deficiencies which resulted in a total of 42 errors found across all indicators. The two most frequent "stand alone" errors involved four decisions that did not summarize specific (albeit irrelevant) objections and two others did not fully explain a Part E causation determination. An additional two multi-error cases were linked to not fully explaining Part E determinations in general terms.

One trend involved the handling of technical objections related to NIOSH dose reconstructions. There were four multi-error cases pertaining to explanations of NIOSH dose reconstructions and in each of the four cases, the hearing representative (HR) would have benefited from consulting with a health physicist, as the PM recommends in Chapter 17.14.

Other cases which resulted in multiple errors spanned a variety of topics, including a complex survivorship case, a discussion about how to apply the AMA Guides to the specific facts of an impairment case, one Paducah employment case and a case which was confusing in its distinctions between entitlement under B and/or E.

One final decision was not in OIS, accounting for another three errors.

Other Significant Findings:

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, Debra Teitenberg, Aaron Warren, Anthony Zona	July 31, 2019

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Accountability Review Findings

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

Office Reviewed: Final Adjudication Branch (Summary of All FAB Offices)

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

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	257
Rating for Element #1	92%
Rating for Element #2	94%
Rating for Element #3	97%
Acceptable rating:	90%
Overall Category Rating:	96%

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 are compared to the ECS entries.

Element 1 - Recording the Claimant's Response

This element involves review of the claimants' response type and the filing date of the response. Response type can be a full waiver, partial waiver, or request for hearing or RWR. The response filing date of the response is determined by the earliest date of: fax receipt, postmark, date stamp, receipt through portal or the receipt by the Central Mail Room. Of the cases reviewed, 19 were found to have errors. Ten errors were because an incorrect filing date was entered into ECS. Most commonly, the postmark date on an attached envelope or fax date were not used. Instead,

the submission date in OIS was used. The other nine errors consisted of waivers or objections not entered into ECS. However, on these particular cases, there was no adverse impact on the claimants. The majority of the cases were full waivers that were not recorded and the claimants still received a timely decision.

Element 2 - Coding RWR or Hearings

This element involves cases where either a hearing or RWR was conducted. The AR team reviewed the hearing or RWR status, and status date. Of the cases reviewed, only six cases had errors. Three cases showed an incorrect RWR completion date because the status was updated to "completed" on the RWR tab, but the associated date field was not updated to reflect the RWR release date. Two cases had an incorrect hearing status date. One case did not accurately capture the hearing request filed by one of the multiple claimants.

Element 3, Recording FAB Determinations

For this element, the AR team reviewed ECS to see if the corresponding code matches the written final decision. This portion of the ECS review 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 codes were entered to properly generate medical benefits. Medical eligibility dates in ECS were reviewed and compared against case file evidence for accuracy. For all the cases reviewed, 30 were found to have errors with the coding of the FAB Determination. The majority of the errors came from erroneous or missing SEF coding. This deficiency accounted for 16 of the total errors found in the element, most of which were missing the SEF coding entirely. The next most prevalent error was in the coding for medical eligibility. There were seven cases with incorrect medical eligibility dates or where the medical benefits were not selected for inclusion when the FD was coded. Any cases that had negatively impacted medical benefit eligibility have already been referred to management for correction. Three cases had incorrect denial reasons. The remaining errors were 2 cases that did not include all components in the FD, one case where the benefits were not allocated properly on the benefits screen, and one case with an inaccurate remand reason code.

Other Significant Findings:

The ECS portion of the review resulted in several significant findings.

One issue that was discussed is what to do when a hearing is requested and then cancelled, withdrawn, no show, etc. The case is then treated as an RWR. However, ECS will not allow data entry on the Hearings tab and the RWR tab. The question was whether the case should ultimately be recorded as a hearing or an RWR. The ECS SOPs do not specifically address this situation, so no errors were recorded for this situation. If the case went from a hearing to an RWR, DEEOIC Technical Support would have to be involved to remove the information from the Hearings tab. Also, because of the associated change in due dates, this could also cause many cases to be

processed “late”, even though they were processed appropriately. Because of these factors, it seems most appropriate to leave the coding as a hearing case and not populate the RWR tab, even though the case is assigned an RWR. National Office recognizes that the SOPs need to be updated to accommodate this scenario and will also be looking into the feasibility of an ECS enhancement to better accommodate this type of situation.

The secondary hearing screen also created a lot of discussion. Several errors were originally noted by one reviewer because of failure to update that screen. Discussion within the review team revealed that the majority of users were not completing this screen. It appeared the information may be duplicative and unnecessary. Errors involving that screen were removed. National Office is going to research this issue further to confirm the information is not duplicative or used for any reports. This will allow us to determine if this screen needs removed or improved in some way.

Finally, the review uncovered a display issue within ECS. Several reviewers noted date errors on various fields. When those errors were reviewed by other reviewers, no error was noted. The team realized that the same exact date field would display dates one day apart depending on the user. This issue was brought to the attention of BAS who identified 177 cases effected. All 177 cases were corrected with last Friday’s ECS release. Any errors associated with this display issue were removed from the review as well.

AR TEAM REVIEWER(s):	DATE:
Sarah Friedman, Matthew Fowler, Anthony Zona, Aaron Warren, Marek Brustad, William Elsenbrock, Robert Garcia, Debra Teitenberg, Mark Stewart, Jeana LaRock, Curtis Johnson, Angela Eaddy, Hang Tung	July 31, 2019