

REOPENING A CLAIM

SESSION BACKGROUND INFORMATION

Session Title	Reopening a Claim
Instructional Time	60 minutes
Session Description	This session focuses on the conditions under which a case may be reopened. It begins with a discussion of the general criteria relevant to reopening a claim. This is followed by a review of Bulletin 09-01 which applies to reopening due to the discovery of new evidence. Other situations where a case may be reopened are then discussed.
Instructional Objectives	<ul style="list-style-type: none">• List the criteria for reopening a case• Define 'compelling evidence'
Instructor Materials	For this session, the following materials are required: ReopeningSession.PPT
Trainee Handouts	PM 2-1900
Participant Guide References	Reopening Session Reopening Session Case Study Materials

INTRODUCTION



#1

EEOICP
The Energy Employees Occupational Illness Compensation Program

REOPENING CLAIMS UNDER THE EEOICPA

1

The slide features a blue header with the EEOICP logo and name. The background is a light blue gradient with faint icons of a radiation symbol, a biohazard symbol, and a stethoscope. The main title is centered in large, bold, blue letters. A small number '1' is in the bottom right corner.



#2

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PURPOSE

- ***Define the following DEEOIC processes***
 - ***Reopening claims for benefits under the EEOICPA***
 - ***Vacating decisions of the Final Adjudication Branch (FAB)***

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The slide features a blue header with the EEOICP logo and name. The background is a light blue gradient with faint icons of a radiation symbol, a biohazard symbol, and a stethoscope. The word "PURPOSE" is centered in bold blue letters. Below it is a bulleted list with one main item and two sub-items, all in bold italicized black text. A small number '2' is in the bottom right corner.

INTRODUCTION, CONTINUED



#3

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AUTHORITY AND REFERENCE

- ***DEEOIC Director has sole discretion over the following processes***
 - *Reopening a claim*
 - *Vacating a FAB decision*
 - *Delegating certain reopening functions to streamline the reopening process*
- ***20 C.F.R. § 30.316, 20 C.F.R. § 30.320***
- ***Procedure Manual, Chapter 2-1900***

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#4

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HOW ARE CLAIMS REOPENED?

- ***Claimant's explicit request for Reopening***
- ***Nonspecific Requests from Claimants***
- ***DD Disagrees with a FAB FD or Remand Order***
- ***Review on Motion of DEEOIC Director***

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Transition One of the more common reasons for reopening a claim is due to the discovery of new evidence.

CLAIMANT REQUEST RECEIVED IN DO OR DO FAB



#5

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Request Received in DO or DO FAB

Request is reviewed by District Director with jurisdiction over case file to determine:

1. Is the new evidence/argument sufficient for Reopening?
2. And/or whether the totality of the evidence ***might***, taking into account the claimant's new evidence/argument, affect the outcome of the case?

→ **Yes?** DD reopens case by issuing Director's Order to vacate FD or pertinent portion of FD

→ **No?** DD issues a Denial of Reopening Request

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The DD only denies or reopens on the basis of authority delegated to them by the Director. All other reopenings are submitted to the Office of the Director for review.

CLAIMANT REQUEST RECEIVED IN NO FAB



#6

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Request Received in NO FAB

Claim is assigned to an HR with no prior association with claim file. HR will review the file to determine:

1. Is the new evidence/argument sufficient for Reopening?
2. And/or whether the totality of the evidence ***might***, taking into account the claimant's new evidence/argument, affect the outcome of the case?

→ **No?** HR forwards claim file to the appropriate DD for denial of the Reopening Request

→ **Yes?** HR forwards the case to FAB NO Branch Chief with memo for possible transfer to DEEOIC Director to review for reopening

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WHEN DOES DD SEND A REOPENING TO THE NATIONAL OFFICE FOR REVIEW?

SHOW PPT

#7

A presentation slide for EEOICP. The header features the EEOICP logo and the text 'The Energy Employees Occupational Illness Compensation Program'. The main title is 'When Does DD send to National Office'. Below the title is a bulleted list with one main bullet point and two sub-bullet points. The slide number '7' is in the bottom right corner.

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When Does DD send to National Office

- The District Director sends the Request to the National Office when:
 - DD cannot determine if evidence warrants reopening
 - The request presents an issue that is complex or one not previously addressed by DEEOIC policy guidance

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KEY
POINT

Example: Claimant was previously denied under Part B because the employee was determined to be a DOD employee. The claimant submits evidence of a contractual arrangement between DOD and DOE which could possibly make the employee eligible. This case should be forwarded to the National Office for review of possible covered employment.

Example: Surviving spouse previously paid survivor benefits under Part B of \$150,000. Surviving children now file claims for survivor claims under Part B and submit evidence strongly suggesting fraud on the part of the “surviving spouse” and that employee was not married to anyone at the time of his death. Are children eligible for Part B benefits?



#8

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Claimant's Explicit Request for Reopening

- No time limits or limits on number of requests
- Request may be based on:
 - New evidence of employment
 - Change in survivorship
 - New evidence of exposure to toxic substance or update to SEM
 - New cancer in a claim previously denied based on POC
 - Change in dose reconstruction methods
 - Addition of class of employees to Special Exposure Cohort
 - Change in law, regulations or policies governing EEOICP
 - Challenge to interpretation of evidence or an incorrectly issued FD
- ECMS Coding: MC [Reopening requested by claimant]

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A claimant may file a request for reopening at any time after the FAB has issued a final decision. Each request for reopening will be evaluated for any evidence of a new or compelling nature which is material to the outcome of the claim and which might warrant a reopening.

When a claimant requests a reopening by submitting evidence of an additional cancer or additional exposure for a previously submitted and denied cancer based on POC, the CE must request a NIOSH rework of the dose reconstruction prior to the reopening of the claim.

- If the DR rework results in a PoC of equal to or greater than 50%, the claim will be reopened.
- If the DR rework results in a PoC of less than 50%, the district office will proceed to issue a recommended decision to deny the new cancer –the RD will **not** deny those cancers previously adjudicated.

REOPENING EXAMPLES:

-SURVIVORSHIP- Claim was previously denied based on evidence that did not substantiate a marital relationship with the employee. New evidence now establishes claimant was married to employee for the requisite period of time.

-SEM- Part E claim previously denied based on a lack of causation between the claimed medical condition and any toxic exposure. A change in SEM now provides a direct link between the claimed condition and toxic exposure at the facility where the claimant had covered DOE contractor employment.

-EMPLOYMENT- Claim was denied based on the lack of any verified covered employment. New evidence from the DOE now establishes employee had verified covered employment

NONSPECIFIC CORRESPONDENCE



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Nonspecific Correspondence Received in NO FAB After Deadline for Reconsideration

- If correspondence is related to FD denial, FAB reviews for probative value to determine if reopening is warranted
 - **Yes?** FAB HR prepares memorandum for DEEOIC Director and transfers case file to FAB Branch Chief
 - **No?** Reopening not warranted, a formal decision to the claimant is not required

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Instructor NOTE

Stress that if the FAB HR finds determines that a reopening is not warranted, this is not a decision, but merely an evaluation of the evidence and a conclusion that no action is necessary.



#10

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Nonspecific Correspondence Received in DO or DO FAB

- Forwarded to District Director with jurisdiction over the case file for review
- DD reviews evidence to see if it meets evidentiary requirement and if evidence as a whole warrants reopening
 - **Yes?** DD reopens case by issuing a Director's Order to vacate pertinent final decision or portion of the final decision
 - **No?** No decision denying a reopening will be issued, as claimant did not request a specific action

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Instructor NOTE

Again, stress that if the FAB HR finds determines that a reopening is not warranted, this is not a decision, but merely an evaluation of the evidence and a conclusion that no action is necessary.

DD DISAGREES WITH FINAL DECISION OR REMAND ORDER

SHOW PPT

#11

A presentation slide with a blue header and footer. The header contains the text 'EEOICP' in large blue letters, followed by 'The Energy Employees Occupational Illness Compensation Program' in smaller blue text. The background of the slide features a collage of images including radiation warning symbols, a stethoscope, and a computer keyboard. The main content of the slide is a bulleted list. The footer contains the number '11' in white text on a blue background.

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DD Disagrees with Final Decision or Remand Order

- When the District Director disagrees with a FD or Remand, he/she
 - Prepares memorandum for DEEOIC Director regarding his or her concerns
 - Forwards case and memorandum to DEEOIC Director

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REVIEW ON MOTION OF DEEOIC DIRECTOR

SHOW PPT

#12

A presentation slide with a blue header and a white body. The header contains the text 'EEOICP' in large blue letters and 'The Energy Employees Occupational Illness Compensation Program' in smaller blue letters. The slide title is 'Review on Motion of DEEOIC Director'. The main content is a bulleted list of points regarding the Director's authority to reopen claims. The slide number '12' is in the bottom right corner.

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Review on Motion of DEEOIC Director

- At the sole discretion of DEEOIC Director
- Can occur without a request for Reopening
 - Example:
 - A class has been added to the Special Exposure Cohort
 - NIOSH has issued a change in the dose reconstruction procedures for a given facility
- DEEOIC Director may reopen a claim to
 - Vacate FAB final decision
 - Vacate a FAB remand order
 - If FD or Remand Order is vacated, a Director's Order is issued with instructions for future handling of the claim

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KEY
POINT

The DEEOIC Director retains sole signature authority for remand reviews of extremely complex or precedent setting reopenings.

The DEEOIC Director's decision regarding reopening a claim or vacating a FAB decision is not reviewable.

The District Office and FAB Office must strictly comply with the Director's instructions contained in a Director's Order.

There are instructions for the DO or FAB to follow should they disagree with the Director's Order (see 2-1900 7.a(1) and b(2) respectively).

REOPENING MULTIPLE CLAIMANT CLAIMS

#13

A presentation slide with a blue header and footer. The header contains the text "EEOICP" in large blue letters and "The Energy Employees Occupational Illness Compensation Program" in smaller blue letters. The slide content includes the title "REOPENING MULTIPLE CLAIMANT CLAIMS" and a paragraph followed by a bulleted list. The footer contains the number "13".

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REOPENING MULTIPLE CLAIMANT CLAIMS

Although the reopening of a claim may only directly affect one claimant,

- All claims associated with the case file must be reopened
- A new recommended decision will be issued to all parties to the claim

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ECMS CODING



#14

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ECMS CODING

- All ECMS codes reflecting reopening requests, requests to vacate FAB decisions, and decisions granting such requests must be properly entered
- ECMS coding:
 - MD [claim reopened, file returned to District Office] entered by NO
 - MZ [receipt of Director's Order in District Office or Final Adjudication Branch] entered by person receiving it when DEEOIC Director's Order received in DO (If ordered by DD, this code is not needed)

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#15

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ECMS CODING (cont'd)

- ECMS coding:
 - MF [claim reopened, file returned to the Final Adjudication Branch] entered by NO
 - MZ [receipt of Director's Order in District Office or Final Adjudication Branch] entered by person receiving it when DEEOIC Director's Order received in FAB
 - MX [reopening request denied] entered by NO
 - Enters "M7" [DO submits FAB Remand to possible vacate] + status effective date (=date of memo) into ECMS
 - "MV" [FAB Remand Order Vacated, Requires New Final Decision] + status effective date (=date of order vacating FAB Remand)
 - "MX" [Reopening Request Denied] + status effective date (=date of memo)

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ECMS CODING, CONTINUED



#16

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ECMS Coding Exception

- **Exception: When Reopening Request is received within timeframes for Reconsideration**
- **Reconsideration must be addressed by FAB before case can be reopened**
 - Case may be remanded due to evidence submitted
 - MC only entered if case returned by FAB with denial of reconsideration request

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#17

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Questions



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Transition Now that we've reviewed the requirements and conditions under which a reopening may occur, let's work through two 'real-life' examples.

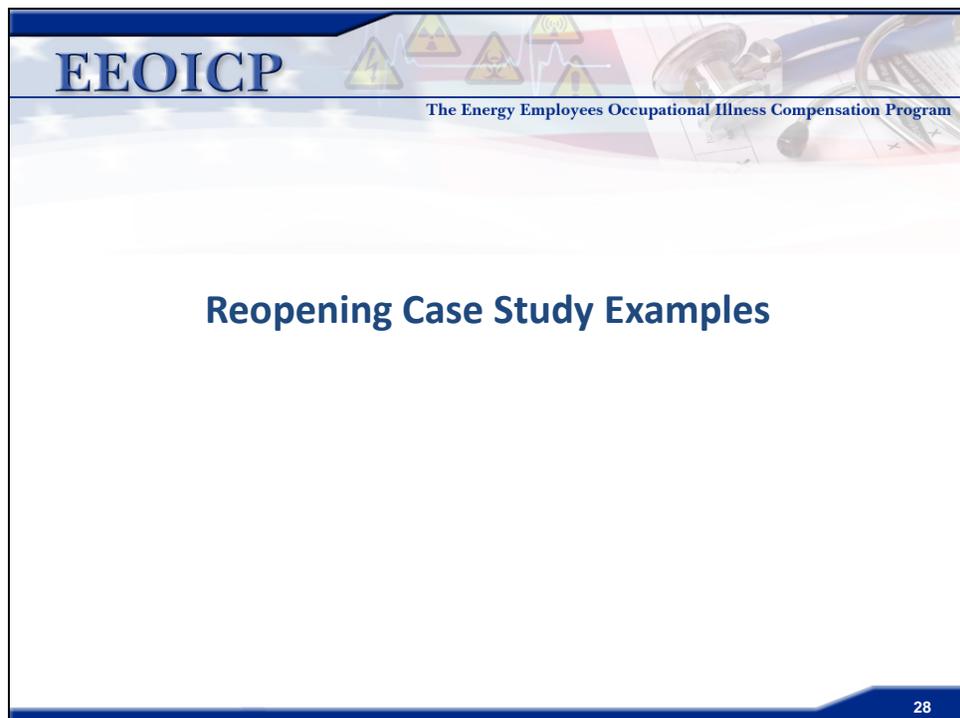
REOPENING CASE STUDY ACTIVITY

Instructor NOTE *This case study is conducted as a large group activity.*
There are two reopening case study examples.
Twenty (20) minutes (roughly 10 minutes per case study) have been allotted for this activity.



SHOW PPT

#28



Participants Guide *Direct the trainees to turn to page 18 of the Participant's Guide for the Reopening Case Study #1 and page 23 for Case Study #2 .*

Instructor NOTE *The first case study includes the accepted facts of the case and the letter from the claimant.*
The second case study includes the accepted facts of the case and a memo from the District Director.
Instruct the trainees to review each set of materials and answer the questions posed for each case study example.
Allow 10 minutes for their review and answering of the questions.

REOPENING CASE STUDY ACTIVITY, CONTINUED



#29

The slide features a blue header with the text "EEOICP" in large white letters and "The Energy Employees Occupational Illness Compensation Program" in smaller white letters below it. The background of the slide is a collage of images including radiation warning symbols, a medical stethoscope, and a microscope. The main content area is white with two numbered discussion questions. The slide number "29" is in the bottom right corner.

Case Study #1 – Discussion Questions

1. How would you classify this letter? Is it non-specific correspondence? Is the claimant requesting a reopening?
2. Considering the accepted facts, what do you think the outcome of receiving this document will be and why?

Case Study
#1 Q&A

Facilitate discussion around each of the questions.

Before advancing to the next question, make sure to identify the 'correct' answer.

The answers are as follows:

1. *This letter represents the claimant's written request for a reopening of his claim as indicated in the first sentence of his letter.*
2. *Based on the evidence provided, the reopening request would be denied. The claimant submitted hearsay evidence, but provided no evidence that his tuberculosis was related to any exposure that occurred during his employment at the Savannah River site.*

REOPENING CASE STUDY ACTIVITY, CONTINUED



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#30

A presentation slide with a blue header. The header contains the text 'EEOICP' in large white letters, followed by 'The Energy Employees Occupational Illness Compensation Program' in smaller white text. The background of the slide features a collage of images including radiation warning symbols, a medical monitor, and industrial machinery. The main content area is white with the following text:

Case Study #2 – Discussion Question

What criteria were met that led to the DD to request a reopening ?

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**Case Study
#2 Q&A**

Facilitate discussion around this question.

The answer is that two new pieces of evidence were discovered that led the DD to request the reopening:

- ***Additional covered employment and***
- ***Addition of an SEC class.***

**Trainee
HANDOUT**

Distribute the Reopening Case Study Answer Sheets to the trainees.

Transition

If there are no other questions or points to be made regarding these case studies, we'll continue with a review of the salient points of this session on reopening a claim.