

Basic Claims Examiner (CE) Training Course

Reopening a Claim

PARTICIPANT GUIDE

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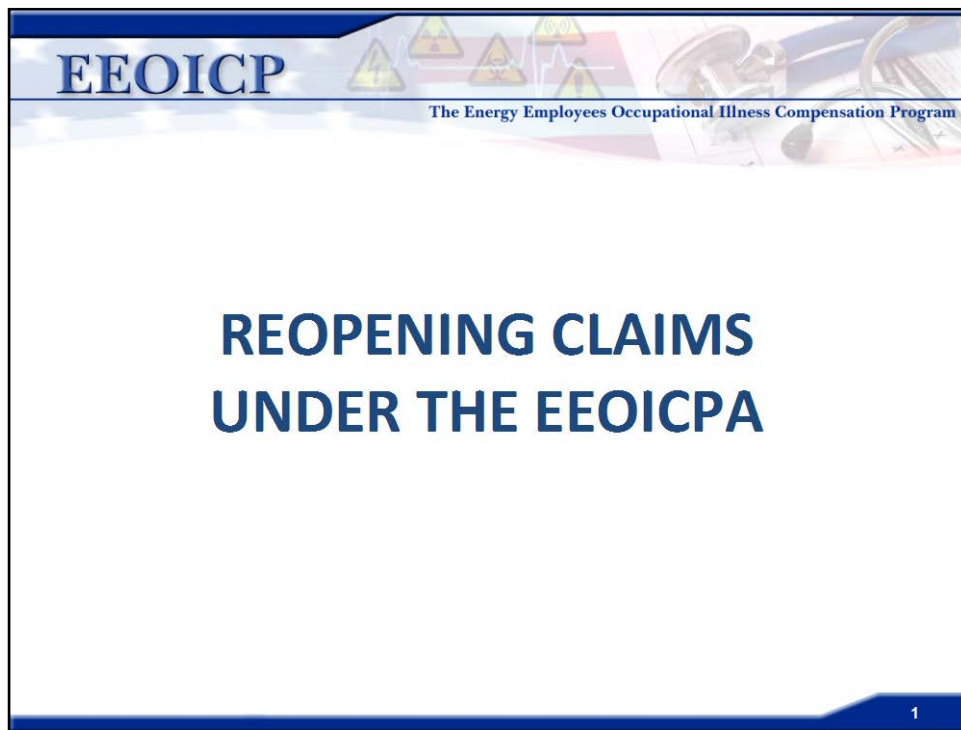
Session Description

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

Upon completion of this session, you will be able to:

- List the criteria for reopening a case
- Define 'compelling evidence'



What is a Reopening Request?

Regulations provide that claimants can request a reopening of their claim. This request for a reopening can only be requested after a Final Decision is issued.

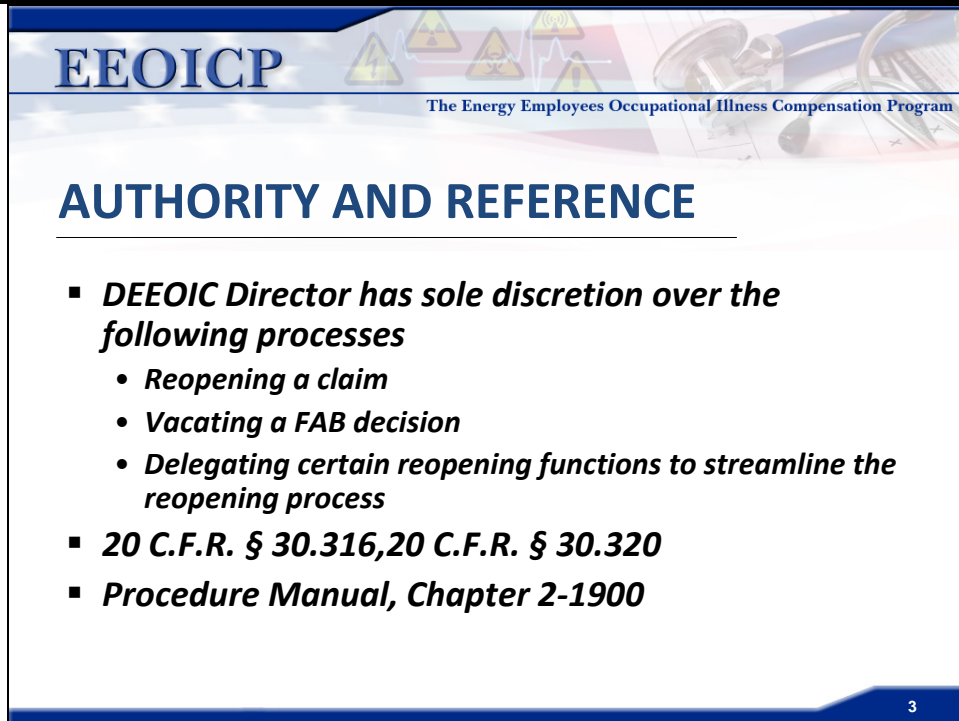
The claimant must request a Reopening in writing. The written request may be sent to the District Office, DO FAB or National Office FAB. Regardless of where it is received, the request is forwarded to the District Office with jurisdictional authority over the claim file.

A presentation slide for the EEOICP (The Energy Employees Occupational Illness Compensation Program). The slide has a blue header with the EEOICP logo and a background image of a stethoscope and radiation warning symbols. The main content is titled 'PURPOSE' and lists the following:

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

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There is no time limit on when a claimant can request a reopening, and there is no limit to the number of times a claimant can request a reopening.



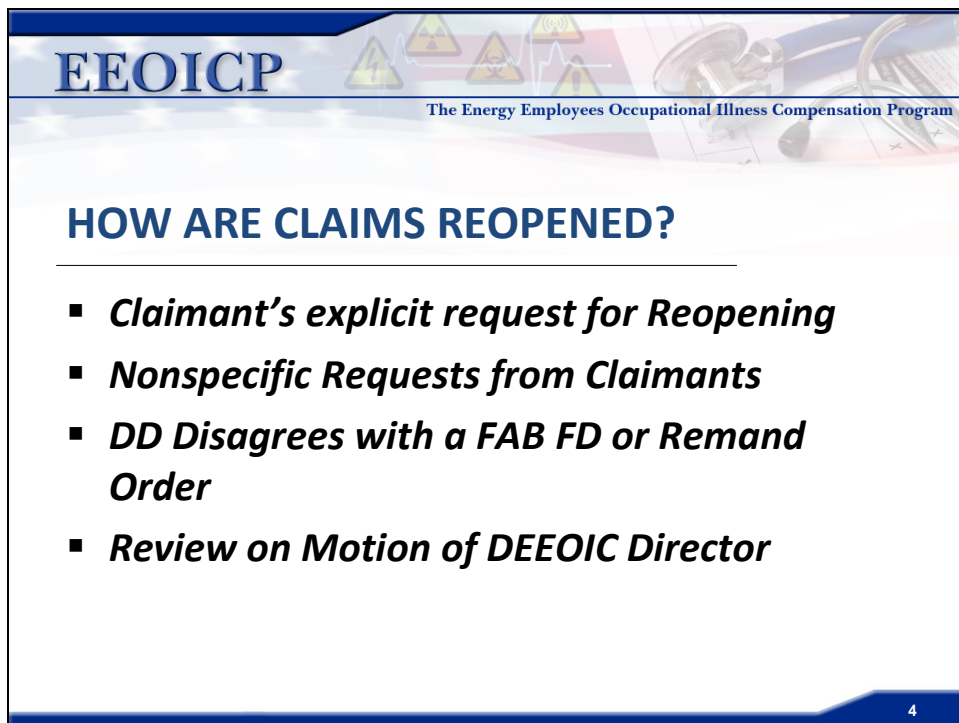
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AUTHORITY AND REFERENCE

- ***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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How Claims are Reopened



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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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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

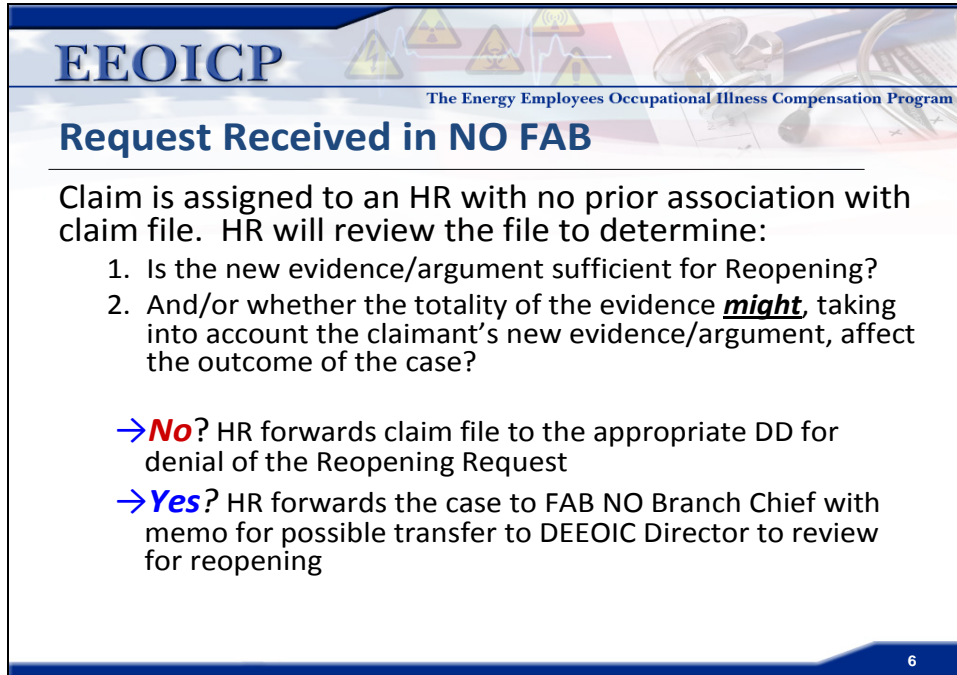
→ **No?** DD issues a Denial of Reopening Request

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The DDs only deny or reopen claims on the basis of authority delegated to them by the Director. All other reopenings are submitted to the Office of the Director for review.

Your Notes

Request Received in NO FAB



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Request Received in NO FAB

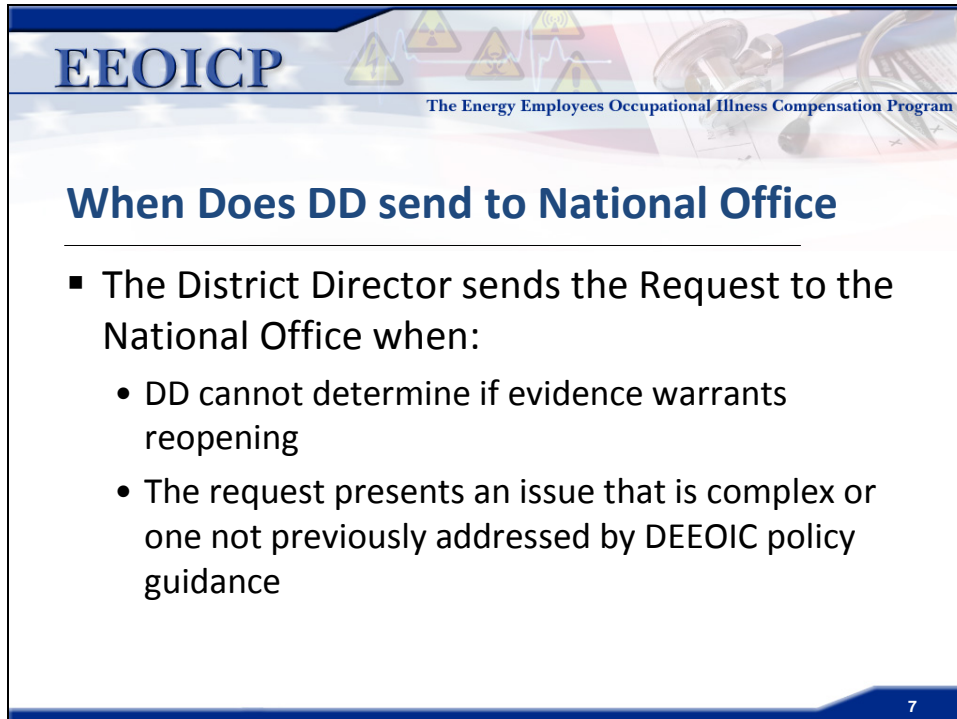
Claim is assigned to an HR with no prior association with claim file. HR will review the file to determine:

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 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

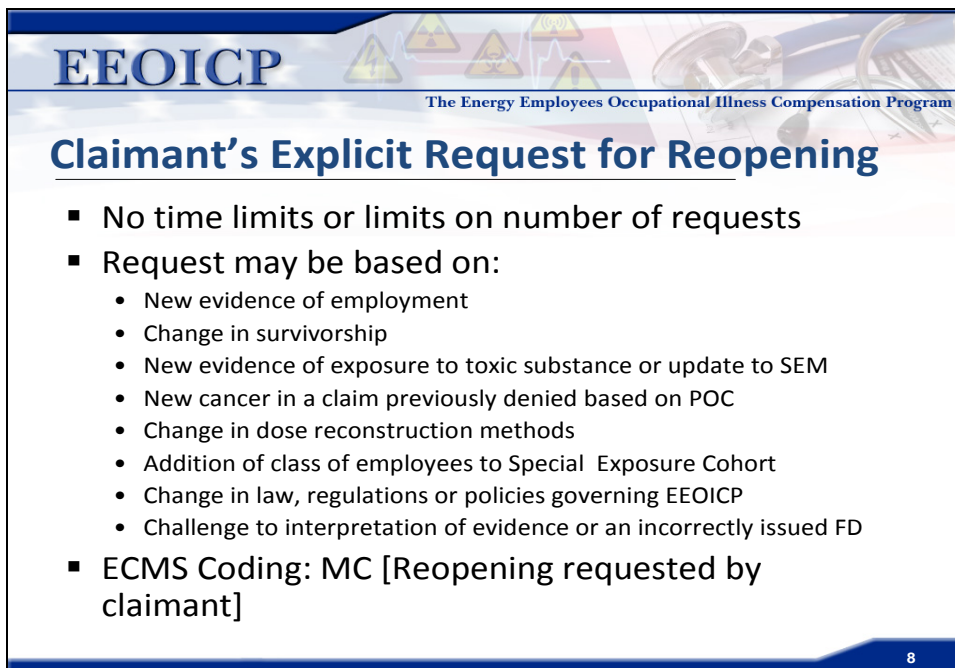
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Example: Claimant was previously denied under Part B because the employee was determined to be a DOD employee. The claimant submits evidence of a contractual arrangement between DOD and DOE which could possibly make the employee eligible. This case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

Example: Surviving spouse was 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?

Your Notes

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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.

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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

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.

Your Notes

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Nonspecific Correspondence Received in DO or DO FAB

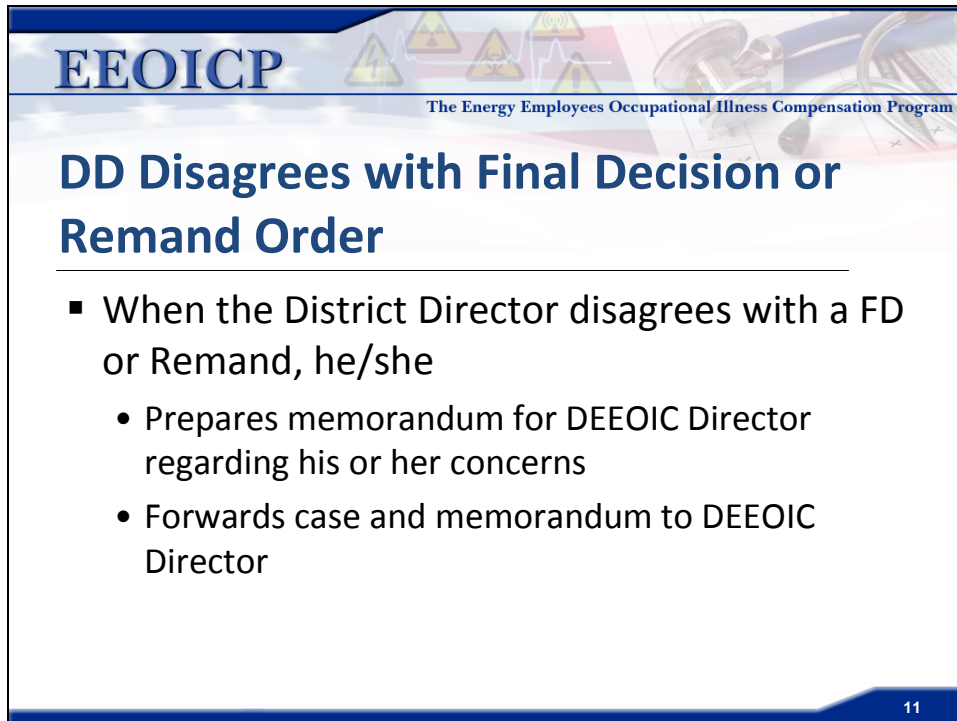
- Forwarded to District Director with jurisdiction over the case file for review
- DD reviews evidence to see if it meets evidentiary requirement and if evidence as a whole warrants reopening
 - **Yes?** DD reopens case by issuing a Director's Order to vacate pertinent final decision or portion of the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

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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

Your Notes

DD Disagrees with Final Decision or Remand Order



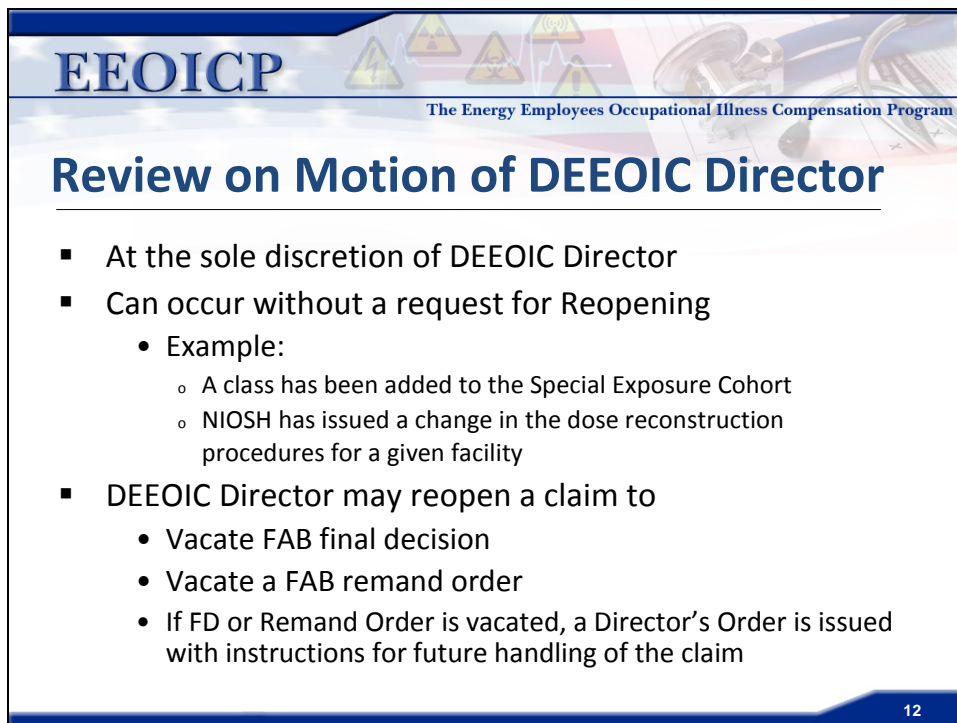
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DD Disagrees with Final Decision or Remand Order

- 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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DEEOIC Director Requests a Review of a Claim



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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

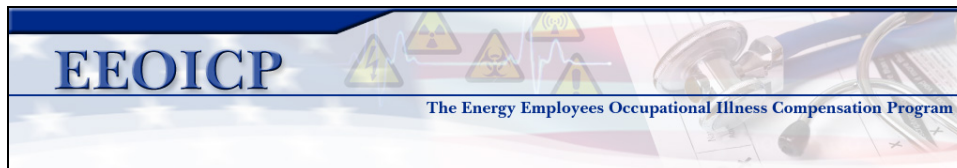
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The DEEOIC Director retains sole signature authority for remand reviews of extremely complex or precedent setting reopenings. The DEEOIC Director's decision regarding reopening a clam or vacating a FAB decision is not reviewable.

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

Your Notes

Reopening Multiple Claims



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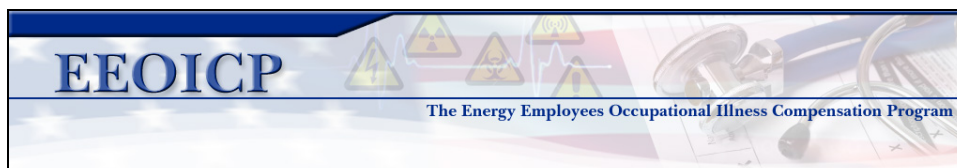
REOPENING MULTIPLE CLAIMANT CLAIMS

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




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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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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 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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Your Notes

Summary

Claimants may request the reopening of a claim after issuance of the FD. There are no time limits for requesting a reopening, and no limits on the number of reopening requests a claimant can make.

The claimant must request a reopening in writing. The request ultimately is sent to the DO with jurisdictional authority over the claim file.

The reopening of a claim may occur as result of any of the following:

- New evidence discovered that is relevant to employment, medical condition, survivorship, exposure and/or change in dose reconstruction result (i.e., PoC now >50%),
- A request submitted without new evidence,
- The discretion of the DEEOIC Director,
- Processing after the DO or DO FAB FD, or
- Additional development is identified.

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Questions



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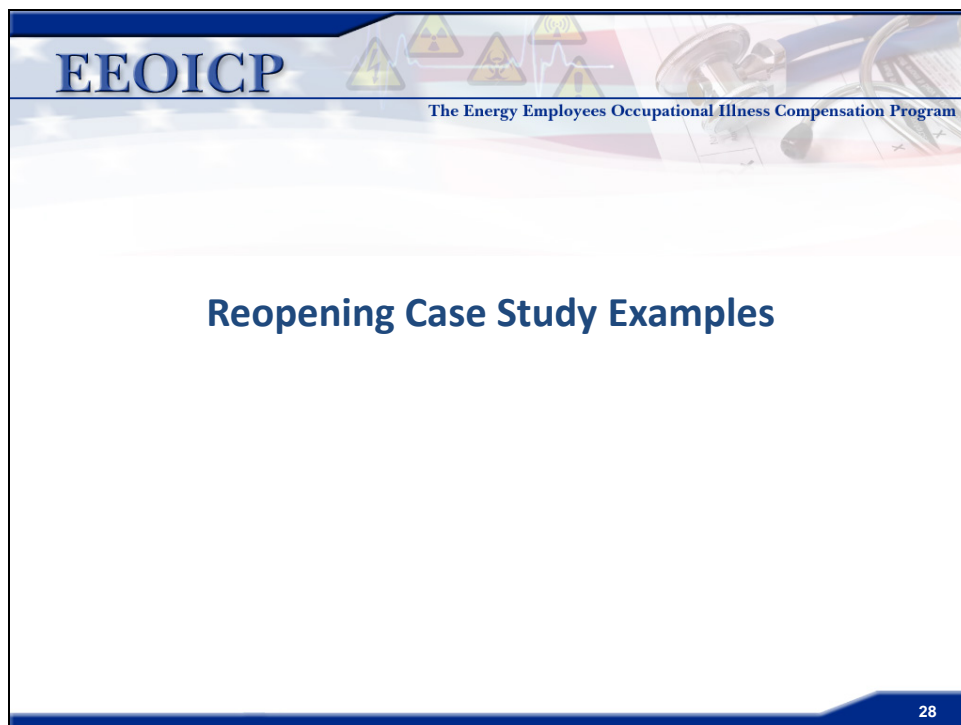
Your Notes

[illegible]

Your Notes

[illegible]

Case Studies



Case Study 1

Accepted Facts

The Part E claim was previously denied because the employee did not establish that it is at least as likely as not that a toxic substance at the Savannah River Site aggravated, caused, or contributed to the claimed illness.

Letter from Claimant

<p>District Office US Department of Labor Jacksonville District Office 400 West Bay Street, Suite 772 Jacksonville, FL. 32202</p>	<p>RECEIVED OCT 26 2007 EEOICPA JACKSONVILLE, FL</p>	<p>Employee: [REDACTED] File Number: [REDACTED]</p>
<p>I am requesting a <u>reopening</u> of my claim and including my supporting evidence. My claim was denied because the review did not reveal any toxic substance that I was exposed to. It states under the EEOICPA Part E FAQ's website; "Q3 – What constitutes a toxic substance?" "A – A toxic substance is any material that has the potential to cause illness or death because of its radioactive, chemical or biological nature. Some examples of common toxic substances include: asbestos, acetone, beryllium, benzene, chromium, lead, mercury, nickel, silica, thorium, and uranium." I do not meet these criteria.</p>		
<p>According to the American Heritage Dictionary; "Biological - 1. Of, relating to, caused by, or affecting life or living organisms."</p>		
<p>According to Web MD, article link: http://webmd.com/a-to-zguides/tuberculosis-TB-Topic-overview "What is tuberculosis? Tuberculosis (TB) is a bacterial infection that is most often found in the lungs (pulmonary TB) but can spread to other parts of the body (extra pulmonary TB). TB in the lungs is easily spread to other people through coughing or laughing. Treatment is often successful, though the process is long, averaging between 6 and 9 months. Cause Tuberculosis (TB) is caused by mycobacterium tuberculosis, slow-growing bacteria that thrive in areas of the body that are rich in blood and oxygen, such as the lungs."</p>		
<p>According to the World Health Organization, "Tuberculosis This website describes the work of the 3 top TB Departments. Tuberculosis(TB) is primarily an illness of the respiratory system, and is spread by coughing and sneezing. Each year about 1.6 million people die from this curable disease."</p>		
<p>According to the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Sept. 1999</p>		

NIOSH – Respiratory protection program in health care facilities. TB administrators guide.

“Respiratory Protection program elements for Health Care workers exposed to Tuberculosis.

From [] to [], the incidence of tuberculosis (TB) in the general U.S. population increase by approximately 14%, reversing a 30-year downward trend. In 1993, 25,313 new cases of TB were reported in the U.S. (CDC 1994). Associated with this resurgence were hospital outbreaks of TB, and the emergence of multiple-drug-resistant TB. In response to the public health threats, extensive efforts were taken across the nation to improve TB-prevention and TB-control programs. As a result of these measures, since 1992, there has been a consistent decline in the number and incidence of TB (i.e., 7.4 cases per 100,000 population and 19,855 total cases in 1997) and a decline in multiple-drug-resistant TB [CDC 1998b]. The public health and the occupational risks of TB thus appear to be once again decreasing, but they remain very significant.

Health care workers exposed to patients with infections TB require protection from that disease.

Feel susceptible to the disease or conditions related to the hazard.

The worker must understand that the disease is related to exposure, and that symptom onset maybe delayed. In explaining TB, tell the worker how the inhaled droplet nuclei from an infectious person’s cough or sneeze lodge themselves in the alveoli of the lungs, where infection begins. No immediate symptoms will occur as the infection spreads to other areas in which TB is most likely to develop. The immune system usually intervenes within 2 to 10 weeks after infection and halts the multiplication of tubercle bacilli, approximately 10% of those infected will develop the disease. The other 90% will remain infected but free of disease for the rest of their lives.

In 1992 American Hospital Association survey/ CDC survey 90 of 729 (13%) respondents reported nosocomial TB transmission to health care workers. More than 80% of those facilities experienced TB skin test conversions among workers. More than 100 cases of active TB disease in health care workers were known to CDC and reported to Congress by Dr. William Roper in Spring of 1993. Twelve (12) health care workers have died.

“The employer’s obligations are those set forth in the Occupational Safety and Health Act (OSH Act) of 1970.”

Violations. All elements in this section must be addressed to ensure adequate protection of employees from TB hazards. Violations of the ASHA requirements will normally be classified as presided.

1. General Duty Clause – Section 5 (a) (1).

Section 5 (a) (1) provides “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

c. Citations shall be issued to employers with employees working in one of the work places where the CDC has identified workers as having a higher incidence of TB infection that the general population when employees are not provided appropriate protection and who have exposure as defined below:

1. Exposure to the exhaled air of an individual with suspected or confirmed pulmonary TB disease, or facility has identified an individual as having symptoms to be: Productive cough, coughing up blood, weight loss, loss of appetite, lethargy/weakness, night sweats, or fever.

d. If a citation under 5(a) (1) is justified, the citation, after setting forth the SAVE for section 5 (a) (1), shall state:

Section 5 (a) (1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees exposed to the hazard of being infected with the mycobacterium tuberculosis through unprotected contact with who was/were infectious or suspected infectious with tuberculosis.

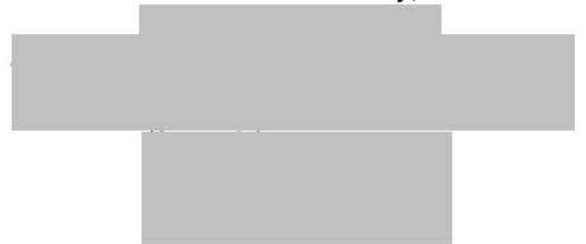
4. Accident prevention signs and tags: 29C FR 1910.145

a. In accordance with 1910.145 (f) (8), a warning shall be posted outside the Respiratory Isolation or Treatment room. 1910.145(f) (4) regulates that a signal word(i.e. "STOP", "HALT", or "NO ADMITTANCE") or Biological Hazard symbol be presented as well as a major message (e.g.; "special respiratory isolation).

(13) Toxic Substance or harmful physical agent means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non ionizing radiation, hypo- or hyperbaric pressure, etc.).

So, in conclusion by the very definitions established by NIOSH, I meet the requirements of toxic substance.

Sincerely,

A large rectangular area of the document is redacted with a solid gray fill, covering the signature and any accompanying text or contact information.

Case Study Questions

1. Which of the following is this correspondence considered? Check the box that corresponds with your answer.

☐ Non-specific correspondence

☐ Request for Reopening

2. Considering the accepted facts, what do you think the outcome of receiving this document will be? Check the box that corresponds with your answer.

☐ Reopening denial

☐ Reviewed and filed


☐ Case reopened

Case Study 2

Accepted Facts

The Y-12 Survivor Claim was originally denied because the NIOSH PoC was less than 50%.

District Office Memo

U.S. Department of Labor		Employment Standards Administration Office of Workers Compensation Programs Division Of Energy Employees' Compensation 400 West Bay Street, Room 722 Jacksonville, FL 32202	
September 25, 2007			
MEMORANDUM FOR:	[REDACTED]	Chief, Policy Unit DEEOICP Washington, D.C.	
FROM:	[REDACTED]	District Director DEEOICP Jacksonville, Florida	2007 SEP 27 A 10:18 RECEIVED OMCP
SUBJECT:	REOPENING REQUEST Employee: [REDACTED] Claimant: [REDACTED] File No.: [REDACTED] Docket No.: [REDACTED]		

On [REDACTED], [REDACTED] filed a claim for benefits under Part B of the Act, as the survivor of [REDACTED]. The claimant claimed that her late husband, Mr. [REDACTED], developed "lung cancer with mets to brain and bone" as a result of his Department of Energy (DOE) employment at the Y-12 plant in Oak Ridge, TN from [REDACTED] to [REDACTED]. The DOE verified Mr. [REDACTED]'s employment at the Y-12 plant from [REDACTED] to [REDACTED].

A work history report, compiled from electronic databases by the Oak Ridge Institute for Science and Education (ORISE), documents Mr. [REDACTED]'s employment at the Y-12 Plant as a Draftsman and Designer from [REDACTED], [REDACTED] to [REDACTED]. The ORISE confirms Mr. [REDACTED] wore dosimetry badge numbers [REDACTED] and [REDACTED].

20 C.F.R. §30.320(b) provides that, at any time after the final decision has been issued pursuant to §30.316, by the Final Adjudication Branch (FAB), a claim may be reopened based on an addition of a class of employees to the Special Exposure Cohort (SEC). The decision whether or not to reopen a claim under this section is solely at the discretion of the Director.

Page 2

File: [REDACTED]

On [REDACTED], the (FAB) issued a final decision to deny Ms. [REDACTED]'s claim for benefits, finding that her husband's diagnosed lung cancer did not meet the "at least as likely as not" probability that it was caused by radiation exposure during his employment at the Y-12 plant.

On [REDACTED], Ms. [REDACTED] submitted a second Form EE-2 claim for benefits, claiming lung cancer, for the purpose of being considered under Part E of the Act. During development of the Part E claim, evidence was presented to establish the employee's SEC employment at the Y-12 plant.

EEOICPA Bulletin No. 07- 04 (issued December 26, 2006) created a new SEC class for covered employees in work locations within certain buildings at the Y-12 plant, from [REDACTED] to [REDACTED]. In accordance with Bulletin 07-04, "Those employees who worked in jobs which required them to move around the site because they supported activities site-wide (i.e. an operational support role); the CE is to assume that the worker entered the buildings included in the SEC, but must consider evidence that would place these employees elsewhere on the site."

In a letter to the Jacksonville District Office, dated [REDACTED], [REDACTED]. [REDACTED], a former co-worker of Mr. [REDACTED], made the following statement:

"Mr. [REDACTED] and I both worked in the Engineering Division for [REDACTED] and its predecessors... Work assignments in the Engineering Division all included support of the operating divisions and required extensive field studies in the plant's operating areas. The Ventilation Department provided support for uranium chemical processing facilities in buildings 9212 and 9206; and machining operations in 9212..."

Additionally, the District Office requested a Document Acquisition Request (DAR) from the DOE. The DAR records revealed four entries totaling four days for buildings not included in the SEC. These entries were for building 9739. Mr. [REDACTED]'s letter noted that building 9739 was the office location of the Heating and Ventilation Department.

Page 3

File: [REDACTED]

Therefore, using the procedures outlined in EEOICPA Bulletin No. 07-04 (issued December 26, 2006), the employee's employment meets the requirements for those employees in work locations within certain buildings at the Y-12 Plant, from January 1948 through December 1957. According to the evidence of record, [REDACTED] worked in a job which required him to move around the site and his work supported activities site-wide in an operational support role.

Social Security Administration, Earnings records were received in our office, which confirmed that Mr. [REDACTED] also was employed at the Oak Ridge Gaseous Diffusion Plant (K-25) for Ford, Bacon, and Davis from [REDACTED]

Based on the totality of evidence, Mr. [REDACTED] was employed at the Y-12 plant during the designated period of SEC and at the Oak Ridge Gaseous Diffusion Plant for an aggregate of more than 250 days and therefore meets the requirements of a member of the SEC (SEC employment and having a specified cancer).

I have reviewed the evidence submitted on the above referenced claim and have determined that the new evidence meets the evidentiary requirements described in 20 C.F.R. §30.320.

In accordance with PM 2-1400, it is requested that the Final Decision of [REDACTED], be vacated and returned to the District Office for a re-adjudication under Part B of the Act. We will also be accepting Ms. [REDACTED]'s Part E claims based on Part B, in accordance with § 7385s-4(a).

Case Study Question

What criteria were met to consider reopening this claim? Check the box that corresponds with your answer.

☐

Additional covered employment

☐

Addition of a class of SEC

☐

Diagnosis of a new cancer/illness

Your Notes

Your Notes

[illegible]

Case Study #1 Answers

3. Which of the following is this correspondence considered? Check the box that corresponds with your answer.

☐

Non-specific correspondence



Request for Reopening

This was explicitly stated in the first sentence of the letter.

4. Considering the accepted facts, what do you think the outcome of receiving this document will be? Check the box that corresponds with your answer.



Reopening denial

☐

Reviewed and filed

☐

Case reopened

Case Study #2 Answers

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

☐

Additional covered employment



Addition of a class of SEC

☐

Diagnosis of a new cancer/illness

Two new pieces of evidence were discovered that will impact the outcome:

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

Evaluation Form

We value your opinion. Please rate the following:

	Poor	Fair	Good	Excellent
Organization of subject matter				
Explanation of key concepts				
Presenter's knowledge of subject				
Presentation was clear and understandable				
Appropriate pace for training				
Relevance of training material				
Correct level of detail				
Exercise content was appropriate				
Examples were clear and helpful				

Which topics were most beneficial to you?

Which topics were least beneficial to you?

Reopening Session

Other comments or suggestions for improvement:

Name (optional): _____ Date: _____