



MAR 26 2019

The Honorable Michael R. Pence
President of the United States Senate
Washington, DC 20510

Dear Mr. President:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2017 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by his office during each calendar year and an assessment of the most common difficulties encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The administration of EEOICPA involves the coordinated efforts of four federal agencies: the Department of Labor (DOL), the Department of Energy, the Department of Health and Human Services, and the Department of Justice. DOL, through its Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, has primary responsibility for administering the EEOICPA, including adjudicating claims for compensation and paying benefits for illnesses covered under both Part B and Part E of the statute.

The Secretary is required to provide a response to Congress regarding the Annual Report that includes a statement of whether he agrees or disagrees with the specific issues raised by the Ombudsman, and if he agrees, the response is to include a description of the corrective actions that will be taken. If he disagrees, he is required to respond with reasons for the non-concurrence. The Ombudsman's 2017 report highlights ten areas of concern and certain misconceptions about the program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia K. Hearthway".

JULIA K. HEARTHWAY
Director
Office of Workers' Compensation Programs

Enclosure

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, DC 20210



MAR 26 2018

The Honorable Nancy Pelosi
Speaker of the U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2017 Annual Report. Pursuant to 42 U.S.C. § 7385s-15(e)(2), the Ombudsman's report provides Congress with the number and types of complaints, grievances, and requests for assistance received by his office during each calendar year and an assessment of the most common difficulties encountered by claimants and potential claimants under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The administration of EEOICPA involves the coordinated efforts of four federal agencies: the Department of Labor (DOL), the Department of Energy, the Department of Health and Human Services, and the Department of Justice. DOL, through its Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, has primary responsibility for administering the EEOICPA, including adjudicating claims for compensation and paying benefits for illnesses covered under both Part B and Part E of the statute.

The Secretary is required to provide a response to Congress regarding the Annual Report that includes a statement of whether he agrees or disagrees with the specific issues raised by the Ombudsman, and if he agrees, the response is to include a description of the corrective actions that will be taken. If he disagrees, he is required to respond with reasons for the non-concurrence. The Ombudsman's 2017 report highlights ten areas of concern and certain misconceptions about the program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia K. Hearthway", written over a horizontal line.

JULIA K. HEARTHWAY
Director
Office of Workers' Compensation Programs

Enclosure

RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2017 ANNUAL REPORT

The Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) administers its responsibilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) with the intent of following the will of Congress in enacting the EEOICPA: to pay compensation and medical benefits to all eligible nuclear weapons workers (or their eligible survivors) who incurred illnesses in the performance of duty at a covered facility. In FY 2017, OWCP continued to improve benefit delivery by strengthening program integrity, improving technology, updating policy, and enhancing the accuracy and efficiency of medical claims adjudication and payments. The Energy program's mission is an important one and OWCP remains committed to serving its claimants, beneficiaries, and their families.

1 – Difficulties with the Statute

The Ombudsman states that claimants find it difficult to obtain guidance from DOL when trying to understand and apply the attorney fee schedule.

Response: The guidance regarding attorney fees originates in the EEOICPA statute and regulations. The statute states that under Part B, with respect to services rendered in connection with a claim, an individual cannot receive a payment that is more than two (2) percent for the filing of an initial claim for payment of lump-sum compensation, and ten (10) percent with respect to objections to a recommended decision denying payment of lump-sum compensation. Payments under Part E apply to the same extent as Part B. Guidance regarding representative services can be found on the Division of Energy Employees Occupational Illness Compensation (DEEOIC) website in Chapter 12 of the DEEOIC Procedure Manual.

There are stark differences in the way claims are filed, adjudicated, and paid, between Part B and Part E of the EEOICPA. OWCP agrees the attorney fee structure does not work for Part E, for many of the reasons that the Ombudsman notes on pages 17, 18, and 34 of his report. Further, the fee structure provides little incentive for authorized representatives to take on EEOICPA claimants who have complex and/or time-consuming cases. The complaints the Ombudsman receives from claimants and authorized representatives regarding the attorney fee structure are accurate and in fact have been raised ever since Part E was enacted in 2004. However, OWCP cannot change or remove the limits imposed by Congress in the statute. Any change to the fee limits and the way that they apply can only be attained through legislation.

Claimants asked whether the Division of Energy Employees Occupational Illness Compensation can develop a procedure that allows claimants to file a claim (and thus establish a date of filing) yet postpone the processing of the claim when they are currently facing other pressing life challenges.

Response: With regard to preserving the date of filing, a claimant who wishes to postpone action on a claim can do so by withdrawing his or her claim. A claimant is able to withdraw a claim for benefits (for any claimed condition) at any time prior to the issuance of a final decision for the requested benefits. Withdrawal of a claim does not change the record of the initial date of filing. OWCP honors all requests to withdraw a claim for benefits that are submitted in writing and signed

by either the claimant or his or her authorized representative. Claimants may also request a reopening of their claims at any time. OWCP ensures claims are processed and adjudicated as quickly as possible, and therefore manages the timeliness of claims from the date of initial filing to recommended and final decisions. OWCP's claims examiners are held to strict standards for adjudication timeliness; once a claim is filed, they are allowed limited windows of time for certain actions. If claimants were allowed to file to preserve a filing date, without withdrawing a claim or receiving a recommended or final decision, it would be difficult for OWCP to ensure all claimants are treated fairly by an expeditious, objective process.

2 – Difficulties Arising from a Lack of Awareness of the EEOICPA Program

The Ombudsman mentions that there are potential claimants who are still not aware of this program. He notes that DEEOIC's outreach efforts have primarily focused on areas near covered facilities. The Ombudsman would like OWCP to explain efforts undertaken to bring awareness of the program to those who have moved away from covered facilities to other areas of the country.

Response: OWCP understands the importance of outreach to the nuclear weapons community, and agrees that the agency must use a variety of outreach strategies to reach as many people as possible. The Energy program continues to focus its outreach on both nuclear weapons workers and healthcare providers. The purpose of the outreach is to educate potential claimants, current beneficiaries, and authorized representatives about the program; provide assistance in filing claims; provide an understanding of the adjudication process; and inform healthcare providers (including physicians and home healthcare organizations) about EEOICPA benefits as well as their responsibilities in prescribing care and providing services.

OWCP recognizes former employees or their survivors may no longer live close to covered facilities. The agency has therefore tried various methods to reach a broader audience. In FY 2017 and FY 2018, the program conducted a series of face-to-face outreach events across the country with nuclear weapons workers and their families, to raise awareness of the program. These events drew 567 people and targeted employees of facilities located in Colorado, Illinois, Iowa, Missouri, New Mexico, Pennsylvania, Utah, and West Virginia. In FY 2018, OWCP also conducted outreach in Ames, Iowa, to align with the new Ames Laboratory Special Exposure Cohort effective February 1, 2018. OWCP also placed advertisements in newspapers and newsletters in Alaska, Arizona, California, Illinois, Florida, Kansas, New York, Ohio, and Texas, to alert readers to the names of covered facilities in the various regions and how to file claims under the program.

As mentioned, OWCP's outreach efforts target multiple audiences. During FY 2017 and FY 2018, OWCP conducted twelve medical teleconferences for medical providers, reaching 454 callers. The agency held training in Florida and Washington for more than 45 authorized representatives, after sending invitation letters to more than 2,200 individuals currently serving as authorized representatives in 17 states. OWCP utilizes an email subscription service for 629 current subscribers seeking medical updates, and 5,684 subscribers interested in policy updates (as of January 2019). The agency also utilizes its website and social media platforms to provide comprehensive program information online to the general public.

The Energy program's network of resource centers in 11 regions of the country provide an initial point-of-contact for workers interested in the program and those filing claims under the EEOICPA. The resource centers serve new claimants who need to complete claim forms and gather documentation to support their claims, and they assist claimants who have been awarded compensation and medical benefits under the program. For example, the resource centers help beneficiaries complete prior authorization forms for medical care and durable medical equipment, fill out medical and travel reimbursement claim forms for out-of-pocket expenses, and resolve medical billing issues. They also help medical providers enroll in the program. Further, they provide information about the program to local groups and organizations; support OWCP's outreach efforts across the country; coordinate with covered facilities to distribute program information to unions and employee newsletters; and place program information at senior centers, residential care facilities, Departments on Aging, libraries, etc.

OWCP partners with the Joint Outreach Task Group (JOTG) whose members include OWCP, the Department of Energy (DOE), the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH), the Office of the Ombudsman for the EEOICPA, and the Office of the Ombudsman for NIOSH. JOTG members plan the locations and annual schedule of all JOTG-sponsored town hall meetings, and they help advertise these events. In FY 2017 and FY 2018, JOTG-sponsored outreach included town hall meetings in Simi Valley, California; San Bernardino, California; Pasco, Washington; and Santa Fe, New Mexico. The meetings drew 266 participants.

Accordingly, OWCP utilizes multiple outreach strategies to reach audiences and continually seeks new ways to improve its outreach efforts to potential claimants, and will continue to do so.

3 – Claimants Do Not Understand the EEOICPA Program

The Ombudsman states that his office encounters claimants who do not have a basic understanding of the EEOICPA program. He says that, according to claimants, information is only provided if and when they specifically ask for information. Claimants do not know what to ask for and often receive vague information or pertinent information well after the timeframe in which it would have been most useful.

Response: OWCP understands claimants may not fully understand the EEOICPA, the claims adjudication process, or their role versus the supportive role of OWCP in collecting evidence to support a claim. Although a great amount of information is provided to claimants, the fact is Congress created EEOICPA as a complex, ever-changing program with different eligibility criteria between Part B and Part E and multi-faceted issues to develop and adjudicate on any given case.

During the development of a claim, claims examiners communicate with claimants primarily by phone and through written development letters to explain "next steps" and provide guidance on what information is needed from the claimant. OWCP continually works with claims staff to ensure development letters are specific in requesting what is needed and advising of actions the claims examiner will take or has taken already. The Final Adjudication Branch provides written guidance for hearings, final decisions, remands, and reopenings, and OWCP's medical bill

contractor and DEEOIC's Branch of Medical Benefits Adjudication and Bill Processing provide ongoing guidance concerning medical benefits and medical bill pay.

OWCP would benefit if the Ombudsman could convey more specific questions being asked as they occur, so that OWCP can immediately address a claimant's need for information.

4 – Difficulties Obtaining Assistance

The Ombudsman states that claimants' lack of familiarity with the program hinders their ability to seek assistance. He explains that claimants do not know where to turn for assistance. For example, the Ombudsman's office has been approached by claimants who were trying to resolve medical bills. He also notes that claimants who do not have access to the Internet or who are not familiar with using the Internet are at a disadvantage when it comes to obtaining information about the EEOICPA. Likewise, the use of program terminology and acronyms are a barrier to claimants' understanding of the claims process and what is expected of them.

Response: OWCP invests a great deal of time in communicating with, supporting, and working with claimants on a one-on-one basis. In FY 2017, for example, the resource centers responded to 31,152 phone calls, conducted 4,538 occupational history interviews, and performed 112,698 follow-up actions with claimants. In FY 2018, their interactions included 28,969 phone calls, 4,071 occupational history interviews, and 118,999 follow-ups. The resource centers also worked with claimants to file 18,366 claims in the two fiscal years combined. At the district offices, claims examiners worked directly with claimants to collect information and evidence to support their claims, leading to the issuance of 22,400 recommended decisions in FY 2017 and 21,289 recommended decisions in FY 2018. The Final Adjudication Branch issued 35,432 final decisions in the two fiscal years combined. In all communication to claimants throughout the claims process, OWCP provides instructions (including phone numbers, fax numbers, and mailing addresses) regarding who to contact for questions and assistance. Claimants are also given access to printed brochures, Frequently Asked Questions, a list of acronyms, and the Federal (EEOICPA) Procedure Manual. In addition, resource center staff are available to assist claimants with their use of website tools such as the Electronic Document Portal (EDP), Claimant Status Page, the DOE Facility List Database, Site Exposure Matrices (SEM), BTCComp Subcontractor Database, and OWCP's Medical Provider Search.

In April 2018, DEEOIC added a new Branch of Medical Benefits Adjudication and Bill Processing, which has a new Branch Chief and two Unit Supervisors, one overseeing Medical Benefits Adjudication and the second overseeing Medical Bill Processing and Program Integrity. Employees selected to serve as medical benefits examiners are experts in medical authorizations and billing. The new OWCP structure has helped to ensure a consistent decision-making process with respect to medical requests, increased effectiveness in processing medical benefits claims, and more efficient one-on-one resolution of medical bills. When DEEOIC is made aware of a claimant having medical billing issues, the medical bill processing team does everything within its purview to assist. This includes outreach to the provider to resolve any billing issues or clear up any discrepancies. The central bill processing agent is required to process bills within 30 days of submission of a properly completed bill, and as long as the services are related to an accepted

condition and any preauthorization requirements are met, the services are paid. The claimants may also contact the appropriate district office and speak with their claims examiners regarding any medical bill. In addition, the resource centers assist with medical billing issues; resource center staff can provide assistance in person or over the telephone.

OWCP understands some claimants may not use or have access to the Internet and this can prevent their access to the information, tools, and resources available on the website. However, OWCP believes its investment in online technology is a critical benefit to a majority of claimants. For instance, the agency has seen an increased use of the EDP which allows claimants to submit documents electronically. Since 2015, when the EDP was first implemented, DEEOIC has seen a steady increase in the number of documents submitted online (35,904, 72,358, 81,544, and 87,313 in fiscal years 2015, 2016, 2017, and 2018, respectively) while simultaneously seeing the number of documents received through the mail room decrease. This demonstrates a substantial increase in claimants' use of the web-based EDP over the four years and a reduction in physical mail compared to pre-EDP levels.

For claimants without Internet access, OWCP is always willing to provide verbal assistance and printed information, and will continue to do so. When the Ombudsman's office encounters claimants with these issues, it would be helpful if they could provide the claimants with the educational materials that they have created and/or are available through the Program's web site.

5 - Difficulties Obtaining Representation and Locating Physicians

The Ombudsman noted that some claimants cannot find an authorized representative who is willing to assist them and/or assist them with certain aspects of their claim.

Response: The duty of an authorized representative under the EEOICPA is to the appointing claimant. The claimant has the ultimate decision-making authority to designate or remove an authorized representative from acting on his or her behalf with regard to a claim. Each claimant also bears the responsibility of paying any fee or other costs associated with the actions of a representative. OWCP does not attempt to persuade a claimant toward representation, nor do we interfere in his or her choice of representative. It should be noted representation is not required in order to file a claim or receive payment. It is the claimant's option to choose representation. The same level of support and service is provided to all claimants, regardless of representation.

The Ombudsman reports that claimants encounter difficulties finding physicians to treat them. Physicians often cite one or more of three reasons for refusing to treat EEOICPA claimants: prior problems getting paid, not wanting to be second-guessed by DEEOIC, or too much paperwork.

Response: Physicians play an important role as OWCP's partner in improving the quality of care for claimants. The OWCP is committed to helping claimants access the highest quality physicians, hospitals, and other healthcare providers. ~~The OWCP medical bill contractor offers the following~~ services to assist physicians: online functionality, one-day authorizations, one of the shortest application processes in the industry, reimbursement amounts above Medicare, and a 24-hour pharmacy call center. Through their website, physicians are able to enroll online, submit medical

bills electronically, receive guidance on OWCP pricing methodologies, and access a range of topics, including International Classification of Diseases code set 10 (ICD-10) announcements, prior authorization requirements, EEOICPA bulletins, and impairment evaluations, to name a few.

OWCP district offices also assist physicians, often serving as the mediary between the claimant and his or her physician. For instance, claims examiners may contact physicians to collect and clarify medical evidence; delineate between a claimant's covered and non-covered illnesses; explain what is needed in a letter of medical necessity; discuss medical bills; discuss authorizations for durable medical equipment; and/or simply update provider information. In addition, DEEOIC's National Office conducts quarterly teleconferences, which include specific topics and question-and-answer sessions, with medical providers. DEEOIC's Branch of Medical Benefits Adjudication and Bill Processing oversees medical benefits adjudication and medical bill processing, and works with providers to resolve medical billing issues.

If a claimant is having difficulty locating a physician, OWCP can provide a list of enrolled medical providers. OWCP can also provide a list of physicians who are qualified to conduct impairment evaluations. There are also provider search features on the DEEOIC website and the Web Bill Processing Portal, which allow claimants to search for medical providers in their locale. The provider search feature allows searches by the following: provider type, physician's last name or practice name, physician's first name, city, state, zip code, and specialty. Each of the providers listed in the search feature is actively enrolled with OWCP as a medical provider and has opted to be included in the search feature.

A listed provider (or services rendered by the provider) does not constitute an endorsement by OWCP, nor does it guarantee the medical provider/facility will be reimbursed by OWCP for specific medical services provided to a particular claimant. The appearance of a specific medical provider's name in the listing of providers does not require the provider to treat a particular claimant. This is true even if OWCP has already advised the claimant in writing medical treatment for a particular condition within the provider's listed specialty has been authorized. With respect to physicians not wanting to be second-guessed, pursuant to the statute and regulations DEEOIC is under an obligation to obtain supporting medical rationale for any statements made by a physician, rather than to simply accept them as factual.

6 – Difficulties Locating Evidence

The Ombudsman said claimants question the assistance they can expect to receive from OWCP when trying to locate employment and exposure records since these records are not always available. He also noted claimants' concern that 30 days is not sufficient time to develop and submit evidence, especially medical evidence. He noted that when given 30 days to submit evidence, claimants are not aware that they can ask for an extension of time. Claimants have also indicated they do not always receive adequate guidance on what DEEOIC needs from them in order to approve their claim.

Response: Under the EEOICPA, unless otherwise specified in the statute, the claimant bears the burden of proving by a preponderance of evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category. To help claimants meet

this burden, OWCP is required by § 7384v to provide claims assistance under Part B, specifically, assistance in securing medical testing and diagnostic services for covered beryllium illnesses, chronic silicosis, or radiogenic cancer, and such other assistance as may be required to develop facts pertinent to the claim. To meet its statutory obligation under Part B, OWCP has implemented a number of policies and procedures to assist claimants in gathering facts or finding evidence. OWCP has also voluntarily applied the same standards of assistance to claimants under Part E.

To assist claimants in verifying their employment, OWCP has implemented interagency agreements with both DOE and the Social Security Administration for access to earnings/employment records, and in the case of DOE, any retained health records or other work-related documents. OWCP works closely with DOE and DOE's Former Worker Medical Screening Program on locating records. Additionally, OWCP contracts with the Center for Construction Research and Training to maintain a database of contractor/subcontractor employers at certain DOE facilities. Evidence of employment by DOE, a DOE contractor or subcontractor, beryllium vendor, or atomic weapons employer (AWE) may be made by the submission of any trustworthy contemporaneous records that on their face, or in conjunction with other such records, establish the employee was so employed, along with the location and time period of such employment. No single document is likely to provide all elements needed for a finding of covered employment, but rather, each piece of evidence can contribute valuable elements needed to make a finding of covered employment.

Regarding exposure records, the Site Exposure Matrix (SEM) database goes a long way toward helping claimants meet their burden of proof to establish work-related exposure to toxic substances under Part E. OWCP, with the assistance of DOE, conducted extensive research and investigation into sites, facilities, groups of workers (i.e., job categories, job duties, etc.), exposures, diseases, and exposure links. Based on this research, OWCP developed the SEM database, which contains information on the types of known toxic substances at DOE facilities (and uranium mines and mills) covered under the EEOICPA, the associated job categories likely exposed to the toxic substances, and the possible health effects of exposure. In addition to utilizing the SEM, OWCP considers DOE employment and exposure records, security clearances, dosimetry badging, incident or accident reports, industrial hygiene and safety records, and affidavits attesting to the accuracy of a claim.

OWCP contracts for the services of industrial hygienists to conduct individual exposure assessments for Part E claims. This is particularly important when claimants may not have been aware of the extent of their exposure to toxic substances while performing their jobs. Further, OWCP provides the services of contract medical consultants to assist claimants in establishing work-related causes of illnesses, particularly in cases where a claimant's treating physician may not be able to provide the necessary medical support for the claim.

OWCP sets deadlines for submission of evidence to prompt timely action on claims by both claims staff and claimants. However, a claimant who requests an extension of time beyond 30 days may be granted an extension. OWCP continually strives to improve its communication to claimants, including guidance regarding the medical and exposure evidence necessary to prove a claim and the timeframes in which information must be submitted. The procedure manual guidance and

training provided to claims examiners are available on the OWCP, Division of Energy Employees Occupational Illness web site.

7 – Difficulties with the Weighing of Evidence

The Ombudsman reports that claimants complain that DEEOIC does not independently judge the credibility of the affidavits prepared by claimants and close family members.

Response: OWCP considers statements provided by way of an affidavit in conjunction with other evidence submitted in support of a claim. Affidavits completed by co-workers, supervisors, family members, or other credible sources are accepted when they are consistent and make sense with the claim as a whole. The claims examiner must use his or her own judgment to ascertain the weight given to any piece of evidence, including affidavits. The Federal (EEOICPA) Procedure Manual provides the following guidance:

- When documentation in the file supports portions of an affidavit, the probative value of the remainder of the content of that affidavit is high. In the alternative, when an affidavit is in conflict with other material in the file, its probative value is diminished.
- Affidavits from co-workers and managers generally carry more weight than those from family members, as it is likely they would be in a better position to provide details about job descriptions, labor categories, buildings, covered timeframes, monitoring, and potential exposure.
- Affidavits alone are usually insufficient to prove the existence of a contractual relationship between DOE and a company.
- More detailed affidavits carry more weight than vague, generalized statements because more specific information is more easily corroborated than that which is ambiguous.
- An affidavit not containing first-hand knowledge has very little probative value, as it is nothing more than hearsay.

The Ombudsman reports that claimants do not understand why they are not provided a copy of their Occupational History Questionnaire. He said claimants complained they were not provided with an adequate opportunity to supplement the evidence they submitted.

Response: The Occupational History Questionnaire (OHQ) is used to record information supplied by an employee or a survivor concerning first-hand knowledge of the employee's occupational exposure to toxic substances. For Part E causation claims, the OHQ is important because it helps identify the labor categories and job titles an employee held and when these jobs were held at each claimed site. The OHQ provides the claimant an opportunity to identify the buildings and work areas the employee was assigned, union affiliation, the chemicals or substances that the employee may have used or encountered, and his or her use of any personal protective equipment and how that equipment was used in his or her daily work. If a claimant requests a copy of the OHQ at the time it is recorded, one is provided. Additionally, a claimant may request a copy of his or her case

file at any time. If a claimant needs to add information to his or her case file, including information which they believe was missing on the OHQ, he or she may do so. The EDP allows claimants, their attorneys, authorized representatives, and authorized family members to easily upload claim documentation into the OWCP Imaging System (OIS). Claimants may also contact their claims examiners at any time to submit additional evidence to support their claims.

The Ombudsman said claimants felt that DEEOIC did not credit evidence they submitted if it was not consistent with the information found in the Site Exposure Matrices (SEM).

Response: Under Part E, claims examiners must determine whether sufficient evidence exists to show that an employee's occupational exposure to a toxic substance was "at least as likely as not" a significant factor that caused, contributed to, or aggravated his or her diagnosed condition (CFR 30.230d(1)(ii)). During the development of a claim, a claims examiner will research medical, employment, and occupational records for evidence of an employee's exposure to toxic substances. The claims examiner will also utilize the SEM database to determine if there is a known causal link between covered employment, exposure to toxic substances during such covered employment, and the resultant illnesses arising out of such exposure.

While the SEM is a valuable tool in developing and assessing for exposure information and potential relationships between exposure and disease, it is one of many sources claims examiners use. When claimants and/or authorized representatives provide information regarding exposure or causation, claims examiner weigh the information along with all of the other documentation they can obtain. This may include a search in SEM, referral to an industrial hygienist or toxicologist, or referrals to contract medical consultants. Claimant-submitted evidence is weighed along with all of the other information in the case file in order to make an informed decision.

The OWCP would benefit if the Ombudsman could convey the specific concerns raised as they occur, so that OWCP can immediately address a claimant's need for more information.

The Ombudsman reported that claimants do not understand why DEEOIC specialists are provided a Statement of Accepted Facts (SOAF) and documentation from their claim file before issuing report, but neither they nor their physician are provided this documentation when being asked to produce similar reports or evidence. The Ombudsman said claimants wonder why they are not permitted to speak to the Industrial Hygienist (IH) or Contract Medical Consultant, or why they are not provided DEEOIC specialist reports prior to receiving their recommended decision.

Response: Sometimes a claimant will submit documentation of a scientific nature that s/he believes shows a relationship between their illness and exposure to a toxic substance that is not validated by available program resources (e.g., SEM). In these instances, the matter is referred to a toxicologist or industrial hygienist who is asked to assess whether such studies are appropriate to establish a scientifically established health effect. For a toxicology referral, the claims examiner prepares a Statement of Accepted Facts (SOAF) along with a set of questions relating to the issue(s) for determination. The claims examiner must include factual information on the SOAF that is relevant to assist the toxicologist with his or her review. A claims examiner also uses the SOAF when referring a case to a contract medical consultant, for example, when DEEOIC seeks

an opinion on whether medical records support an acceptance of an illness, or a second opinion/referee opinion is required.

Copies of relevant consultant reports are sent with a recommended decision denying a claim based on causation. If the claimant requests a copy of the specialist's report outside of this process, the claims examiner will provide a copy of the report along with a cover letter which explains the specialist is acting in a consulting capacity to DOL on an aspect of the claim and DOL will make the final decision on the claim. OWCP agrees there are situations in which it would be beneficial to send a SOAF or similar document to the treating physicians and is currently training claims staff to ensure that they provide treating physicians with an equal opportunity to review information where appropriate and feasible.

8 – Difficulties with the Adjudication Process

The Ombudsman mentioned that there are instances where evidence that claimants submit is not acknowledged or discussed in the decisions issued by DEEOIC.

Response: Chapter 24.6 of the Federal (EEOICPA) Procedure Manual provides guidance to claims examiners on writing recommended decisions. The guidance states that in writing decisions, claims examiners are to provide a robust, descriptive explanation of how the evidence satisfied or failed to satisfy the eligibility requirements of the EEOICPA, including any interpretive analysis the claims examiner relied upon to justify the decision. In a recommended denial, the claims examiner will discuss the evidence he or she sought; how the claims examiner advised the claimant on evidence sought; deficiencies of the evidence; assistance provided to overcome a defect; and the claimant's response. The claims examiner's recommended decision is to communicate to the claimant the claims examiner's interpretive analysis of available evidence in satisfying the legal requirement for claim acceptance or denial, and provides the narrative content, which allows the Final Adjudication Branch to properly conduct its role of independently assessing the sufficiency of the claims examiner's recommendation.

Not every single piece of evidence will be mentioned in a decision. Given the disparate types of evidence that may exist in a claim record, there may be instances where the discussion is based exclusively on the presentation of undisputed evidence that clearly affirms findings leading to a conclusion. In other instances, there will be a need to use inference or extrapolation to support a finding. In either situation, the claims examiner is to provide a compelling argument as to how the evidence is interpreted to support the various findings leading to acceptance or denial of benefit entitlement. This is particularly important in situations involving toxic chemical exposure analysis under Part E, conflicting medical opinion, or other complex procedural applications. The assessment will rest on various factors, such as the probative value of documentation, relevance to the issue under contention, weight of medical opinion, as well as the reliability of testimony, affidavits, or other evidence.

~~The OWCP would benefit if the Ombudsman could convey the specific concerns raised as they occur, so that OWCP can immediately address a claimant's need for information.~~

The Ombudsman mentioned that there are instances where evidence that claimants submit is not acknowledged in the reports prepared by DEEOIC specialists.

Response: Although a particular piece of evidence may not have been mentioned in a report, it does not mean the evidence was not reviewed or that the totality of evidence for the claim was not considered. In any referral, the district office sends all pertinent information to the specialist for review.

The Ombudsman states that when DEEOIC undertakes, on its own initiative, to determine if reopening of a claim is warranted, the claimant is not notified that reopening is under consideration; if the claim is not reopened, the claimant is not informed that his/her claim was reviewed and that it was determined a reopening was not warranted. Claimants are only provided an opportunity to participate after a Reopening Order is issued and their claim is in a posture for a Recommended Decision to be issued.

Response: OWCP may reopen a claim for a variety of reasons: a claimant request; requests by the district offices or Final Adjudication Branch for the DEEOIC Director to review a prior final decision; the designation of a new class of employees to the Special Exposure Cohort (SEC); the release of a Program Evaluation Report (PER) by NIOSH; audits and/or requirements to reopen a claim to implement a corrective action; and specific changes to program policy (for example, changes to presumptive standards applied to the evaluation of claims for specific illnesses as outlined in EEOICPA Bulletin No. 19-03).

DEEOIC processes reopenings on its own when there is a likelihood that a prior final decision needs to be vacated to allow for a new decision due to some change in circumstance. DEEOIC may not necessarily notify a claimant that his or her claim underwent a reopening review, because it may be that the original decision is found to be correct. In situations like a new SEC or PER, DEEOIC casts a wide net for any case potentially affected. This generally means a large population of cases are reviewed. We do not typically notify every claimant who may be part of such a review, because in many situations there is low likelihood any new evidence will alter the claim outcome. Nonetheless, it is important to review the claims. Once we are confident a case with a final decision to deny may likely change to a positive decision due to a program change, DEEOIC will issue a Director's Order to the claimant and/or authorized representative and develop the case to allow for a new recommendation.

The Ombudsman notes that DEEOIC's continued use of language from Circular 15-06 in recommended and final decisions, as well as in reports prepared by DOL specialists, has spurred concerns that this Circular is still being applied in the adjudication of claims.

Response: Circular 15-06, "Post-1995 Occupational Toxic Exposure Guidance," issued December 17, 2014, communicated the fact DOE had made significant methodical improvements in worker safety and health by 1995, including better recordkeeping, careful monitoring of employees, and increased involvement of employees in identifying potential hazards. The Circular was intended to provide a "context" for claims examiners that starting in 1995 DOE had implemented sufficient worker protections and monitoring programs suggesting exposure after 1995 would generally be within regulatory limits. OWCP understood hazards, incidents, and significant toxic substance

exposures were possible after 1995, and the Circular was never intended to prevent employees with evidence of significant or increased exposures after 1995 from seeking compensation and benefits under EEOICPA. The Circular caused some confusion and complaints among stakeholders, and the Advisory Board on Toxic Substances and Worker Health recommended that OWCP rescind this Circular. OWCP did so, at their request, on February 2, 2017. The fact the Circular was rescinded does not mean that the use of 1995 as a threshold to indicate generally exposures would have been within regulatory limits was not factual. In fact, in April 2017, the Board agreed to the use of 1995 as a threshold date. The Circular was rescinded so that cases with exposures only after 1995 will still be evaluated on a case-by-case basis through a referral to an industrial hygienist, as appropriate.

The Ombudsman states that claimants are confused by DEEOIC's current approach to hearing loss claims, and says that claimants want to know whether there is a presumption of causation for hearing loss, or if the presumptive language in the Procedure Manual is a rule which must be satisfied in order to have a claim accepted. Specifically, they want to know if the following apply to hearing loss claims: the statement that lack of a presumptive illness (alone) is never justification for a denial of a claim, and the statement that claimants are legally entitled to prove his/her case regardless of any presumption.

Response: The Federal (EEOICPA) Procedure Manual, in Exhibit 15-4 Section 8, explains the standards for evidence which must be presented to determine an employee's claim for hearing loss is work-related. The guidelines specify one must first establish a diagnosis of bilateral sensorineural hearing loss (conductive hearing loss is not known to be linked to toxic substance exposure). Additionally, the employee must have worked in a particular labor category for 10 consecutive years prior to 1990 and have been exposed to particular ototoxic substances. DEEOIC continues to evaluate its hearing loss standard to update it, given new or evolving epidemiological evidence. As recently as July 2018, DEEOIC made revisions to the standard to add two new substances with a known hearing loss health effect: Carbon Disulfide and N-Hexane. Due to this change, DEEOIC reevaluated prior claims to determine if this update changed any determination made by the program from a negative to positive outcome. DEEOIC, in collaboration with its Advisory Board on Toxic Substances and Worker Health, also continues to consider additional modifications to the hearing loss standard.

9 – Interactions with DEEOIC

The Ombudsman mentions that claimants complain it is difficult to talk to the claims examiner when they call the District Office. He also states that DEEOIC's method for reporting incidents of inappropriate customer service is only available online. He says claimants are wary of reporting such incidents to the District Office that employs the staff member and prefer to direct their complaints to a specific person who is not part of the team or office adjudicating their claims.

Response: I agree it is important claimants be able to contact their claims examiner for questions and submit customer service complaints. OWCP staff is trained in customer service, and OWCP's management teams at the National Office, district offices, and Final Adjudication Branch strive to work with claimants and staff to resolve all matters of concern. If a claimant is frustrated by "phone

tag” with his or her claims examiner, s/he may call the district office’s toll-free number and ask to speak with a unit manager. Claimants may submit comments and/or customer service complaints to the National Office in writing, by phone, through public email via Deeoic-public@dol.gov, or via customer satisfaction survey. Contact information for the National Office is found on the DEEOIC website. All responses/comments made on the customer satisfaction survey are anonymous. If a claimant would rather not provide feedback in the manners we have available, it would be helpful if the Ombudsman’s office could relay those complaints directly to OWCP at the times they are received so specific problems can be addressed directly.

The Ombudsman states that there are continuing problems with delays and that in addition to the anxiety that arises when a delay occurs, claimants are not notified of delays and do not receive a full explanation of the reasons for delays.

Response: I agree it can be frustrating for a claimant if s/he feels his or her case is being delayed. Delays may occur during the adjudication process, for example, when the claims examiner is waiting on information from the Social Security Administration or DOE regarding employment; waiting for the results of a dose reconstruction by NIOSH; trying to resolve an issue related to exposure; waiting on a physician for a letter of medical necessity or medical records; or when there has been a request to the claimant or physician for additional information. Such delays do not mean that the case is dormant; the claims examiner may well be attending to other aspects of the case while waiting for information needed for another part of the case. Claimants who are concerned about delays may contact their claims examiner directly or send a letter to the district office or National Office requesting a status update on their claim.

DEEOIC also provides an online web-based Claimant Status Page, which gives claimants access to claims information from our ECS electronic claims database as utilized by DEEOIC claim examiners. The Claimant Status Page allows claimants to access certain information contained in his or her claim under the EEOICP. The Claimant Status Page makes information available online to claimants regarding their claimed medical conditions, worksite locations, most recent claim action, payment information, and current case location. Claimants under the EEOICP are provided with an individual claim identification number to gain access to their claim information and to prevent the access by other individuals to a claimant’s specific claim information.

Given the Ombudsman’s concern that claimants are not notified of delays or given a full explanation of the reasons for delays, OWCP is developing improved processes for notifying claimants when delays occur.

The Ombudsman states that when there is a delay in reauthorizing home health care, claimants report that they experience a lapse in service.

Response: DEEOIC grants six-month authorizations for in-home health care when prescribed by a qualified physician and which DEEOIC considers medically necessary because of an employee’s ~~accepted work-related illness or injury. All requests for reauthorization require review and updated~~ medical information prior to expiration of a previous authorization. To prevent lapses in service, the medical benefits examiners send notification letters to providers and claimants sixty (60) days prior to expiration, reminding them of the need for updated medical information. A failure to

provide updated information can result in another reminder letter, again stating the need for updated medical information. A failure to produce updated medical evidence or a letter of medical necessity may ultimately result in a denial letter advising that care cannot be reauthorized due to lack of necessary medical evidence. If a physician or a claimant is not clear about the exact information that is needed, he or she may contact the medical benefits examiner, and the medical benefits examiner will provide a verbal explanation to the physician or claimant of what is required and why. Upon receipt of medical evidence, it is the medical benefits examiner's responsibility to evaluate such evidence and determine if information provided is sufficient to authorize the care requested. If the medical information is deficient or unclear, the medical benefits examiner explains the nature of the deficiencies and the specific information necessary in order to proceed with adjudication of the home health care request. OWCP has a reporting structure in place which is monitored to ensure that there are no lapses in authorizations. To our knowledge, there have been no lapses in home health care authorizations for which we did not provide multiple communications to the claimant/provider to explain the reason for termination of care.

10 – Circumstances Confronting Claimants Not Adequately Addressed by the Program

The Ombudsman's report notes that some claimants have physical and/or cognitive limitations which prevent them from handling their claim on their own and states that DEEOIC does not have adequate procedures currently in place to accommodate this population of claimants.

Response: OWCP recognizes EEOICPA claimants may face physical challenges that include ill health, bodily impairment, lack of mobility, pain, diminished hearing and/or vision, and weakened abilities following surgery. OWCP understands due to illness and disability, a claimant may have difficulty speaking, walking, breathing, performing manual tasks, and/or caring for oneself, and some may have cognitive limitations in thinking, reasoning, learning, remembering, and following instructions. Some are end-stage terminally ill and in hospice care. OWCP is aware that this population of claimants requires special care. The agency has customer care strategies intended to meet the needs of each individual claimant. Below are just a few examples of how OWCP accommodates these claimants.

A claimant may, at any time, request reasonable accommodation for his or her needs by calling the contact number provided on the DEEOIC website. The DOL also offers TTY phone assistance through a toll-free number posted on the website. The TTY is a special device that lets people who are hard of hearing, deaf, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening.

Since no claim under EEOICPA is identical to another claim, OWCP works with each claimant individually. Each person who files a claim is assigned a claims examiner whose task is to provide one-on-one assistance throughout the claims process. Claims examiners communicate via phone, development letters, written decisions, and cover letters, advising claimants on deadlines and next steps. If a claimant needs additional help, he or she may arrange the services of an authorized representative to represent him or her. A claimant may also contact the resource center for assistance at any time. If a claimant is hospitalized or unable to travel for medical reasons, resource

center staff can (as needed) make home/hospital/nursing home visits to obtain signatures on forms. The Final Adjudication Branch offers each claimant the option of a hearing by telephone, video conference, or in-person, and a claimant may be accompanied at the hearing by a person other than himself or his authorized representative. The Final Adjudication Branch reimburses a claimant for reasonable and necessary travel expenses if s/he has to travel more than 200 miles roundtrip for the hearing. If a claimant is end-stage terminal, OWCP takes steps to expedite the claim and the payment.

In planning outreach events, OWCP considers the need for wheelchair access, accessible parking designated for person with disabilities, effective egress for individuals with difficulty in mobility in case of emergency, accessible restrooms, and accessible water fountains. At such events, OWCP may authorize a claimant's use of a service animal, offer seating up front, provide an adjustable-height table or armrest, distribute large-print handouts, make room for a family member or accompanying aid, arrange seating appropriate for expected wait times, and/or contract with a sign language interpreter or conference interpreter. Speakers at these events use microphones to enhance sound, and printed handouts and large-screen PowerPoint presentations to aid presentations. At OWCP's workshops for authorized representatives, OWCP arranges small group sessions, schedules, and handouts to enhance the training. If a claimant needs earphones, headsets, clipboards, etc., they will be provided. At outreach events, OWCP staff also provide one-on-one claims updates and answer questions specific to any claim.

OWCP also addresses the claimant's medical needs related to his or her covered illness through the benefits provided. Medical benefits under the program include any of the following: diagnostic laboratory and radiological testing, reasonable and customary medical care (doctor's office visits, medical treatments, and consultations), travel (and companion travel) associated with the treatment of a covered illness, emergency room visits, ambulance services, inpatient and outpatient hospital stays, rehabilitative therapy, durable medical equipment, drugs prescribed by a physician, home health care, nursing home or assisted living facilities, hospice care, psychiatric treatment, chiropractic treatment, acupuncture treatment, organ or stem cell transplants, home modifications, health or gym facility memberships, home exercise equipment, and home and automobile modifications.

OWCP has a long standing policy of considering the changing needs of claimants when adjudicating claims and making payments under the EEOICPA to ensure appropriate accommodations are available to the fullest extent possible.

CONCLUSION

From its inception to the end of fiscal year (FY) 2018, the Energy program awarded more than 121,000 claimants compensation and medical benefits totaling over \$15.6 billion. This included \$11.1 billion in compensation and just over \$4.4 billion in medical expenses.

OWCP appreciates the work of the Office of the Ombudsman and their assistance in helping EEOICPA stakeholders. We will continue to work toward improving this program and providing quality assistance to eligible employees, former employees, and their eligible family members.