

U.S. Department of Labor

Office of Workers' Compensation Programs
Washington, DC 20210



JAN 17 2020

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

Dear Mr. President:

Enclosed is the Secretary of Labor's response to the Office of the Ombudsman's 2018 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 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 made several recommendations to address common difficulties brought to his attention in calendar year 2018. The Secretary delegates to the Director of OWCP the authority to respond, and OWCP is responding to those specific recommendations.

Sincerely,

A handwritten signature in cursive script, 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



JAN 17 2020

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

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JULIA K. HEARTHWAY
Director
Office of Workers' Compensation Programs

Enclosure

RESPONSE TO THE OFFICE OF THE OMBUDSMAN'S 2018 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 Fiscal Year (FY) 2018, the Energy Employees Occupational Illness Compensation Program (Energy program) provided benefits to 16,491 claimants, including lump sum, impairment, wage-loss, and/or medical benefits. OWCP remains fully committed to serving its claimants and their families.

1. The Ombudsman recommends that the Division of Energy Employees Occupational Illness Compensation (DEEOIC) continue to hold, and if possible, increase the number of outreach events that it sponsors each year. The Ombudsman states that claimants prefer to speak face-to-face with program representatives and will willingly attend the program's outreach events.

Response: OWCP agrees that direct communication and interaction with claimants, potential claimants, and stakeholders helps increase claimants' understanding of EEOICPA. We agree that OWCP should increase the number of outreach events it conducts annually.

In FY 2018, OWCP hosted seven outreach events, including a town hall meeting in Iowa, a meeting of the Joint Outreach Task Group (JOTG)¹ in New Mexico, and five traveling resource centers in Colorado, Missouri, New Mexico, Pennsylvania, and Utah. In FY 2019, OWCP hosted ten outreach events, including town hall meetings in Illinois and Tennessee, JOTG events in New York and Kentucky, five traveling resource centers in Florida, Nevada, Oregon, Tennessee, and Virginia, and a meeting in Washington, D.C., for its stakeholders. OWCP staff also attended the Ombudsman's outreach events in Ohio. In FY 2018 and FY 2019, the Energy program also held four training workshops in Florida, Nevada, Ohio, and Washington for authorized representatives.

The Resource Centers (RCs) also conduct activities that involve face-to-face contact with claimants. For example, RC staff attend community events, union meetings, retiree luncheons, health fairs, health and safety expos, Hazwoper classes, and farmers' markets. They provide information tables/exhibits and conduct presentations. They make covered facility site visits and arrange inserts into facility newsletters. They also support the outreach events sponsored by the National Office and the JOTG. The RCs reported that in FY 2018, they targeted 95,247 potential contacts through outreach events and another 2,902 potential contacts via public meetings. Additionally in FY 2018, the RCs, as the initial point-of-contact for new claimants, responded to 28,969 phone calls, conducted 7,126 walk-in/scheduled/telephone appointments, handled 40,483 medical billing concerns, conducted 4,071 occupational history interviews, performed 118,999 follow-up actions with claimants, and received a total of 8,825 claims.

¹ Members of the Joint Outreach Task Group (JOTG) include the Department of Labor, the Department of Energy (DOE), DOE's Former Worker Program, the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH), the Office of the Ombudsman for EEOICPA, and the Office of the Ombudsman for NIOSH. The mission of the JOTG is to encourage communication among departments and coordinate joint efforts to reach potential and existing claimants.

In FY 2020, OWCP will essentially double its outreach efforts. OWCP plans to conduct between 12 and 15 satellite resource centers in different locations; host five town hall meetings in Alabama, Massachusetts, Ohio, South Carolina, and Texas; and provide two workshops in New Mexico and Tennessee for authorized representatives. In addition to these events, the RCs will strive to increase the number of outreach activities held within their regions.

2a. The Ombudsman recommends that OWCP utilize mailing lists compiled by the Department of Energy (DOE) Former Worker Program to disseminate information about the EEOICPA to potential claimants.

Response: OWCP already relies on the Former Worker Program (FWP) to distribute announcements/ invitation letters (using their mailing lists) when it is appropriate for an event. In FY 2019, the FWP sent out approximately 1,300 letters for the town hall meeting held in Middle Island, New York, and 6,300 letters for the town hall meeting in Bolingbrook, Illinois. OWCP will continue to seek DOE's assistance in reaching claimants and potential claimants. In addition to conducting targeted mailings, OWCP announces its events via its website, news releases, email subscription services, and local newspaper advertisements.

2b. The Ombudsman recommends that OWCP give greater consideration to using regional and national media, and other outlets, to disseminate information about the Energy program.

Response: In FY 2019, OWCP increased its newspaper/magazine advertising in California by placing ads in *Today's Senior Magazine*, targeting readers in the greater Sacramento metro area, North Sacramento Valley, and North Coast. OWCP also arranged newspaper/magazine advertising in California, Colorado, Hawaii, Idaho, Minnesota, Nevada, New York, Ohio, Oklahoma, Tennessee, and Washington, with ads in *The Mercury News*, *The Garden Island*, *West Hawaii Today*, *San Juan Record Newspaper*, *Miami News Record*, *Sequim Gazette*, *The Salt Lake Tribune*, *Norwalk Reflector*, *Idaho Press*, *St. Cloud Times*, *The Link Magazine*, *Niagara Falls Gazette*, *Niagara Falls Reporter*, *Nutley Sun*, *Cullman Times*, and 10 newspapers associated with *Coeur d'Alene Press*, with circulation to approximately 440,000 homes.

The RC staff distributed brochures and program materials to churches, libraries, senior centers, physicians' offices, hospitals, drug stores, pharmacies, assisted living facilities, residential care facilities, hospice centers, beryllium support groups, senior ride services, the Red Cross, the Veterans Administration, Departments on Aging, the Elks Lodge, and Chambers of Commerce. The RCs also conducted residential mailings, utility mailings, and medical mailings and actively pursued referrals from existing claimants. The RCs reported that in FY 2018, they targeted 129,603 potential contacts through written materials to newspapers, newsletters, and mailings. Claimant referrals, on average, resulted in more than 130 claims filed quarterly.

In FY 2018 and FY 2019, the Energy program also conducted eight medical teleconferences, reaching 370 callers. The quarterly teleconferences addressed various topics of concern to medical providers. OWCP also utilized two email subscription services, which in August 2019 provided medical updates to 730 subscribers and policy updates to another 8,396 subscribers.

Going forward, OWCP will continue to utilize the above-mentioned strategies and will also seek new ways to disseminate information about the Energy program.

3. The Ombudsman recommends that new claimants be given information on common resources available to them and how to find these resources. The Ombudsman also recommends that OWCP should provide a document that describes some of the common resources available to claimants and the web address for each resource.

Response: In FY 2019 OWCP developed an informational “rack card” that lists nearly all of the resources available on our public facing website, as well as a link to the website (<http://www.dol.gov/owcp/energy>). The rack card is available at the RC offices. OWCP also distributes this card at outreach events and in some of our mailings.

4. The Ombudsman suggests that it would be easier for claimants to utilize the Energy program’s resources if they could see tutorials/demonstrations of those resources on the OWCP website.

Response: OWCP strives to provide tutorials/demonstrations of its resources whenever possible. In July 2019, OWCP added a self-guided video demonstration of the Site Exposure Matrices (SEM) database to our website. In this tutorial, viewers learn about the background and history of the SEM and how to navigate the SEM database. The tutorial shows the data contained within the SEM and the search categories. It presents a video demonstration of a SEM search. OWCP is currently exploring other ways to make tutorials/demonstrations available to stakeholders. Additionally, the agency is making changes to its medical provider contract and will work with the contractor to provide tutorials, demonstrations, and guidance regarding the medical billing process.

5. The Ombudsman recommends that claimants be able to talk to their claims examiners and hearing representatives and that their messages be promptly returned.

Response: In OWCP we expect a high level of customer service in all interactions with individuals conducting business with our agency. OWCP trains all staff to be prompt, courteous, professional, flexible, and helpful. Management teams at the National Office, District Offices, and Final Adjudication Branch (FAB) strive to work with claimants and staff to resolve all matters of concern. If a claimant is frustrated by “phone tag” or other concerns, he or she may call the District Office and ask to speak with a unit manager. If the case is at FAB, the claimant may contact the FAB branch chief or a supervisory claims examiner. Claimants may also call the RC office manager for assistance. Toll-free telephone numbers are available for each of these offices.

In addition, in 2018 OWCP gave RC contractor staff access to the Government’s Interactive Voice Response computer-based phone system in order for them to answer (and then transfer to examiners) all calls placed to DEEOIC’s National Office and the District Office’s toll-free phone numbers. OWCP will work with RC management to collect data regarding the number of phone calls answered by contractor staff, the type of assistance provided to callers, and the amount of time needed to assist callers, in order to determine future contract standards and measurements.

The program's Operational Plan includes standards for the performance, responsiveness, and timeliness of customer service. Our records show that in FY 2018, the District Offices received 84,786 phone calls; 97 percent of return calls were completed in one work day and 99 percent within two days. In FY 2018, the FAB received 4,780 calls; 93.5 percent of calls were returned within one work day and 97.8 percent within two days. OWCP continually strives to improve its performance and timeliness in responding to claimants' questions and concerns.

6. The Ombudsman stated that claimants need to be informed that they can request copies of their claim files and/or documents from their claim files. This information needs to be relayed as early in the claims process as possible.

Response: OWCP informs both claimants and authorized representatives of their right to receive a copy of his or her case file, and in Chapter 6.5(d)(3) of the Federal (EEOICPA) Procedure Manual, we outline the steps claims examiners are to follow in handling a document request from a claimant, authorized representative, or authorized third party. OWCP agrees that we need to inform claimants of this right as early in the claims process as possible. The agency tries to repeat this message to claimants and conveys it in training sessions for authorized representatives. In an effort to provide proactive disclosures of case information, along with the recommended decision, OWCP provides copies of Contract Medical Consultant and Industrial Hygienist reports that were relied on to make a decision.

7. The Ombudsman said that in instances where medical reports prepared by the claimant's treating physician are deemed inadequate, OWCP needs to clearly explain its policies and procedures for resolving this concern.

Response: In FY 2019, OWCP conducted training in causation under Part E. Claims examiners were reminded to work with the treating physician first when requesting, receiving, and weighing medical evidence. They were also reminded to clearly explain any denials, including the review of medical evidence.

8. The Ombudsman recommends that OWCP assure claimants that the agency values their input and wants to hear their comments and complaints. The Omsbudsmen suggests that OWCP post a statement on its website encouraging the submission of comments and customer complaints.

Response: OWCP's website provides contact information for all of its offices, including the DEEOIC National Office, DEEOIC Field Operations, Final Adjudication Branch, District Offices, and Resource Centers. We encourage claimants who need assistance to contact any one of these offices through their main and toll-free phone numbers, facsimile, teletypewriter (TTY), or with a visit to the Resource Center physical address. Claimants have several options if they wish to submit a comment or complaint. A claimant may contact his or her claims examiner or hearing representative (or a unit supervisor or branch chief) if he or she has case-related concerns. A claimant may also submit questions or complaints by phone, public email, through written correspondence to the National Office, or through the DOL's Executive Secretariat. OWCP promptly responds to all comments and complaints.

9. The Ombudsman recommends that the Energy program provide a single point-of-contact for complaints. The Ombudsman suggests that the person receiving complaints should not be involved in the adjudication of claims under the energy program.

Response: OWCP has a process that allows claimants to submit comments and/or customer service complaints to the agency. Claimants may submit complaints to the National Office by phone, through written correspondence, and by public email at Deeovic-public@dol.gov. Additionally, claimants may provide feedback via our customer satisfaction survey. OWCP believes it is important to provide multiple feedback channels rather than direct claimants to a single point-of-contact. OWCP promptly responds to all complaints.

10. The Ombudsman recommends that when OWCP suggests that a claimant withdraw his or her claim, OWCP should explain the reasons for the withdrawal and the implications should the claimant seek to reactivate the claim in the future.

Response: A claimant is able to withdraw his or her claim for benefits for any claimed condition(s), wage-loss, or impairment, prior to the issuance of a final decision for the requested benefit(s). All requests to withdraw a claim for benefits must be in writing, signed by either the claimant or his or her authorized representative, and be specific in reference to what Part or Parts under EEOICPA the claim is to be withdrawn.

In some circumstances, claims examiners may suggest that a claimant withdraw his or her claim. For example, a claims examiner will let a claimant know that the case needs to be adjudicated. If, however, no medical evidence has been submitted, the claims examiner will alert the claimant that the district office will need to issue a recommended decision to deny under those circumstances. A claimant may want to withdraw the claim until he or she has the medical evidence, instead of receiving a recommended decision to deny. If that is the case, the claims examiner will explain that the claim can be withdrawn and development later resumed once the medical information is obtained.

If there has been an instance in which a claimant misunderstood or opposed a withdrawal action, OWCP requests that the Ombudsman provide more information.

11. The Ombudsman recommends that when medical billing issues arise, OWCP should immediately work with the provider to resolve these matters.

Response: In April 2018, OWCP added a Branch of Medical Benefits Adjudication and Bill Processing (Medical Benefits Branch) within DEEOIC, which now has three units responsible for medical benefits adjudication, medical bill processing, and program integrity. Claimants in need of information about medical benefits under EEOICPA and/or the medical bill pay process may contact the Medical Benefits Branch for assistance. When OWCP is made aware of medical bill pay issues, the Medical Benefits Branch does everything possible to assist in the resolution of such issues, including outreach to the claimant and provider.

If the issue stems from bill processing, OWCP also intervenes by corresponding with its central bill processing agent to ensure appropriate bill processing and reimbursement. The central bill processing agent is required to process bills within 30 days of submission of a properly completed bill. Services must be related to an accepted work-related condition and preauthorization requirements, if applicable, must be met. Claimants and providers can verify work-related accepted medical conditions by accessing <https://owcpmed.dol.gov/portal/main.do> or by calling the central bill processing agent directly at: 1 (866) 272-2682. In addition, claimants and providers may also contact the District Office claims examiner assigned to the case. Contact information for our District Offices is accessible at:

<https://www.dol.gov/owcp/energy/regs/compliance/law/JurisdictionMap.htm>.

In addition, claimants and providers may send medical billing inquiries to OWCP via email at: DEEOICBillinquiries@dol.gov or contact the examiner assigned to the case.

The RCs also provide guidance to help claimants: resolve medical billing issues; complete medical and travel reimbursement forms for out-of-pocket expenses; or, obtain prior authorizations for medical treatment, home health care, durable medical equipment, and non-local travel associated with covered conditions. If a claimant is hospitalized or unable to travel for medical reasons, RC staff can make home/hospital/nursing home visits to obtain signatures on forms so that the claims or payment processes are not delayed. The RCs also guide medical providers on program enrollment.

12a. The Ombudsman recommends that OWCP clarify the role of the RCs. The Ombudsman says information about the RCs should be widely disseminated so that it reaches those who do not live close to one of the 11 RCs.

Response: OWCP agrees that claimants need to have greater awareness of the services provided by the RCs. In FY 2019, OWCP added a “rack card” to its repertoire of printed materials. The card explains the services of the RCs and is available at the RC offices and on the OWCP website. OWCP distributes this card at outreach events and in some of our mailings. We encourage RC staff to verbally explain their services whenever possible.

12b. The Ombudsman recommends that when an online resource is referenced in a letter or decision, OWCP should include the web address for that resource.

Response: A decision by OWCP to include a web address in a letter or written decision can depend on various factors. If a web address is not included, we generally provide a description of the resource or reference to where it can be found.

12c. The Ombudsman recommends that OWCP explain its policies regarding its review of evidence submitted by claimants. The Ombudsman says claimants need to understand how self-reported evidence is reviewed, considered, and credited.

Response: In FY 2019, OWCP provided training for its claims examiners. Part of the training focused on the relevance of evidence submitted by claimants. The training included guidance on how to review, consider, and credit evidence submitted by claimants. OWCP responds to each

claimant individually, through development letters and phone conversations, regarding the evidence he or she submits. OWCP weighs claimant-submitted evidence in conjunction with other records in the case file to make an informed decision on each claim. The analysis of all evidence is included in both the recommended and final decisions.

13. The Ombudsman recommends that OWCP create a more effective way of providing claimants with the step-by-step instructions they need during the claims adjudication process. The Ombudsman suggests that claims examiners and hearing representatives may not have adequate time to devote to claimants' questions and concerns, stating claimants need additional assistance.

Response: We understand that claimants need a great deal of assistance during the claims adjudication process. Since no claim under EEOICPA is identical to another claim, OWCP relies on its claims examiners and hearing representatives to guide claimants through the adjudication process. These staff members are the ones most familiar with the case. They communicate via phone, development letters, written decisions, and cover letters, advising claimants on deadlines, next steps, claim status, hearings, post-hearing actions, final decisions, remands, and requests for reconsideration and/or reopening.

OWCP also provides How-To Guides on its website that include step-by-step overviews of the adjudication process and guide claimants and medical providers toward resources they can utilize. Claimants may also access our printed brochures, Frequently-Asked-Questions, current and previous versions of the Federal (EEOICPA) Procedure Manual, EEOICPA Transmittals, EEOICPA Bulletins and Circulars, our list of acronyms, and (when requested) a copy of their case file. 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 in need of information about medical benefits under the EEOICPA and/or the medical bill pay processes may contact OWCP's medical bill contractor or the Branch of Medical Benefits Adjudication and Bill Processing.

CONCLUSION

From its inception to the end of FY 2019, the Energy program awarded approximately 124,800 claimants compensation and medical benefits totaling more than \$16.8 billion. This included \$11.6 billion in compensation and just over \$5.2 billion in medical expenses.

OWCP appreciates the work of the Ombudsman and his 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.