Advisory Board on Toxic Substances and Worker Health

February 1, 2024

Ms. Julie A. Su
Acting Secretary of Labor
Department of Labor
200 Constitution Ave.
Washington, DC NW 20210

Honorable Secretary Su:

On behalf of the Department of Labor Advisory Board on Toxic Substances and Worker Health, I submit the attached Advisory Board Recommendation that was adopted unanimously at the Board's meeting on November 15-16, 2023.

We sincerely hope that our advice is useful to the Department. We thank you for the opportunity to serve as Board members and wish the Program continued success in meeting the needs of the United States energy employees. Please let us know if there are questions.

Sincerely,

Steven Markowitz MD, DrPH
Chair
Advisory Board on Toxic Substances
and Worker Health

Exposure Assessment and Industrial Hygiene in Claims Evaluation in EEOICP

Advisory Board on Toxic Substances and Worker Health Recommendation

(Adopted by the Advisory Board on Toxic Substances and Worker Health, November 15-16, 2023)

Recommendation

The ABTSWH recommends that the Department of Labor modify its exposure assessment and communication procedures as follows:

1. Require that the IH consultant:

    a. Explicitly address in the IH report all reported exposures in the OHQ.
    b. Describe what exposure-relevant information was found in each of the data sources reviewed (including DAR). If none, this should be explicitly stated.

2. Share the OHQ with any physician asked to use the IH report for causation analysis.

Rationale

Referral of a case for industrial hygiene (IH) review and evaluation of potential exposure is a critically important part of the claim adjudication process, with many stakeholders relying on this evaluation for their next decisions. These include the claims examiner, the treating physician, the contract medical consultant and the claimant. The importance of this report in subsequent decision-making, especially causation analysis, is fundamental.

The usual EEOICP IH report template describes the sources of information reviewed to reach their conclusions. For example, the following statement was made in the model IH report shared by OWCP Director Godfrey in the Department's response to the Board's previous recommendation to implement a new report form:

> "The following information, which was included with the IH referral, was reviewed: e.g., OHQ, EE-3, SEM reports, physician's letter."

Statements such as this, which is, in the Board's experience, representative of what is found in a typical IH report, frequently proceed to provide details only about what is contained in the SEM. Little or no information, either in the affirmative or the negative, from the non-SEM exposure information sources is provided in the IH report. The SEM effectively becomes the dominant or sometimes the only source of information on which the conclusions reached in the IH report and ultimately in the CMC report as well.

The Board believes, as a matter of fairness and transparency, that IH consultants should be instructed to affirmatively include in their reports a description of all information concerning (regarding facility, work area, job tasks or personal monitoring records) that was available for the IH review. The claimant's specific information from the OHQ, and interview if performed, should be included in the report, as should any exposure-related information shared by the physician. This is especially true if the claimant cited any potential exposure that is linked to the claimed condition. If no specific information is available from non-SEM sources, or no monitoring data are available, the IH report should so state. The IH report can then explicitly address the significance of the non-SEM exposure information.

This envisioned more inclusive IH report would be beneficial in multiple respects. Claimants and their representatives would better understand that the claimant-supplied information was specifically considered as part of the claims evaluation process. Secondly, the CMC or other physicians involved in claims development and evaluation would gain a more well-rounded and informative understanding of the claimant's exposures, which would result in improved CMC reports. This would also be aided by the routine provision of the OHQ to the CMC when they are asked to evaluate claims.