



May 1, 2020

Dr. Steven Markowitz  
Chair  
Advisory Board on Toxic Substances and  
Worker Health  
Queens College, Remsen Hall  
65-30 Kissena Boulevard  
Flushing, NY 11367

Dear Dr. Markowitz:

I am writing in response to your March 5, 2020, letter to the Department of Labor (Department) regarding the recommendation made by the Advisory Board on Toxic Substances and Worker Health (Advisory Board) regarding a content edit to the Federal (EEOICPA) Procedure Manual (Version 4.0).

The Advisory Board has recommended that the Department edit content to Exhibit 15-4 Exposure and Causation Presumptions with Development Guidance for Certain Conditions. Specifically, the Advisory Board recommends making the following edit to Section 5c(ii) relating to asthma, that the bolded sentence be added and the sentence with the line through it be removed:

After a period of covered employment, a qualified physician conducts an examination of either the patient or available medical records and he or she concludes that the evidence supports the employee had asthma and that an occupational exposure to a toxic substance was at least as likely as not a significant factor in causing, contributing to, or aggravating the condition. **The qualified physician must provide a well-rationalized explanation for his or her conclusions.** ~~The qualified physician must provide a well-rationalized explanation with specific information on the mechanism for causing, contributing to, or aggravating the conditions.~~ The strongest justification for acceptance in this type of claim is when the physician can identify the asthmatic incident(s) that occurred while the employee worked at the covered work site and the most likely toxic substances trigger.

In its supporting rationale, the Advisory Board argues that physicians generally understand “mechanism of disease” to signify the cellular or physiological processes and mediators that cause disease. The Advisory Board further states that clinicians are unable to identify mechanisms for work-related illness, because clinical tools generally do not identify mechanisms of disease, and the mechanisms of work-related asthma remain poorly defined.

After considering the Advisory Board’s recommendation, the Department agrees that the reference to a causal “mechanism” may add ambiguity for physicians regarding the evidence necessary to establish compensability for an asthma claim. The Department agrees to modify the

language by removing, “mechanism for causing, contributing to, or aggravating the condition.” However, in keeping with the explanation that the Department provided to the Advisory Board in a November 9, 2017, letter, the Department will make the following revision:

After a period of covered employment, a qualified physician conducts an examination of either the patient or available medical records and he or she concludes that the evidence supports the employee had asthma and that an occupational exposure to a toxic substance was at least as likely as not a significant factor in causing, contributing to, or aggravating the condition. **The qualified physician must provide a well-rationalized explanation for this conclusion that identifies the toxic substance(s) that likely caused, contributed to, or aggravated the diagnosed asthma.** ~~The qualified physician must provide a well-rationalized explanation with specific information on the mechanism for causing, contributing to, or aggravating the conditions.~~ The strongest justification for acceptance in this type of claim is when the physician can identify the asthmatic incident(s) that occurred while the employee worked at the covered work site and the most likely toxic substances trigger.

As the Department explained previously, it must obtain evidence that identifies the toxic substance that is the most likely trigger for the asthmatic event that forms the basis for the physician’s diagnosis of asthma, because the condition can only be accepted as a compensable “covered illness” if “it is at least as likely as not that the exposure to such toxic substance was related to employment a Department of Energy facility.” Reference 42 U.S.C. § 7385s-4(c)(1)(A). Given this stipulation, the Department will make the aforementioned edit to communicate to claims staff more clearly the evidence required legally to establish compensability for asthma.

On behalf of the Department, the Office of Workers’ Compensation Programs, the Energy program, and the communities we service, I look forward to the continued efforts of the Advisory Board.

Sincerely,

/s/

Julia K. Hearthway  
Director  
Office of Workers’ Compensation Programs