UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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APRIL 19-20, 2017

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The Advisory Board met at 8:30 a.m. Pacific Time, at the Red Lion Hanford House, 802 George Washington Way, Richland, Washington, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY:

JOHN M. DEMEN

MARK GRIFFON*

KENNETH Z. SILVER

GEORGE FRIEDMAN-JIMENEZ

LESLIE I. BODEN

MEDICAL COMMUNITY:

STEVEN MARKOWITZ, Chair

LAURA S. WELCH

ROSEMARY K SOKAS*

CARRIE A. REDLICH

VICTORIA A. CASSANO

CLAIMANT COMMUNITY:

DURONDA M. POPE

KIRK D. DOMINA

GARRY M. WHITLEY

JAMES H. TURNER

FAYE VLIEGER

DESIGNATED FEDERAL OFFICIAL:

DOUG FITZGERALD

***Participating via telephone**

Introductions

Doug Fitzgerald, the Designated Federal Official, opened the meeting at 8:36 a.m. Chair Markowitz reviewed the agenda and introduced Rachel Leiton from DOL.

DOL Presentation to the Board

Ms. Leiton, Director of DEEOIC, gave a presentation to the Board. Ms. Leiton read a supportive statement from Gary Steinberg, Deputy Director of the Office of Workers' Compensation Programs, who wanted to attend the Board meeting but was unable to. Ms. Leiton said that DOL has delayed its response to the Board's recommendations due to the lack of a Secretary. DOL has sent an interim response. DOL has already rescinded one circular regarding the Post-1995 Exposures. DOL would like to request that the Board narrow the list of IOM recommendations. With regard to presumptions, Ms. Leiton said that DOL wants the input of industrial hygienists whenever it can get them, but when DOL can avoid it the process can move along a little more smoothly. The Board's discussions during this meeting could impact DOL's draft document on presumptions.

To date, DOL has paid out $13.6 billion in compensation benefits with $1.36 billion being paid out for Hanford claimants alone. DOL has been active with its Joint Outreach Task Force Group in getting the word out about the program and taking questions. DOL is currently working on a PDF of its Procedure Manual. DOL also has a subscriber list for email blasts for information about medical benefits and changes. DOL has also started doing quarterly teleconference calls with medical providers.

SEM Subcommittee

Member Welch gave two presentations, one on the Occupational Health Questionnaire (OHQ) and one on COPD. The SEM subcommittee recommended retaining the list of hazards/exposures on the current OHQ and expanding that list by adding the list of hazards/materials from BTMed. The subcommittee felt these lists can help people recall the work that they did. Workers should be asked what materials they were exposed to, with an emphasis on the tasks associated with the exposure, captured in free text. The worker would also be asked to rate the frequency of

exposure to each hazard, using the scale from the BTMed questionnaire. DOL should assess if the worker used the material directly or was exposed as a bystander. A focus on task is essential for application of Bulletin 16-03 and the subcommittee believes that the OHQ, if revised as recommended, would meet this standard.

The committee discussed the feasibility of creating a list of tasks for production workers, similar to what BTMed uses for construction workers, but felt that would be almost impossible given the wide range of tasks over the years in the DOE complex. The alternative of getting a more detailed occupational history from each worker will provide the comparable information.

The subcommittee recommended adding a specific question to the OHQ regarding vapors, gases, dusts, and fumes (VGDF). For example: "Have you been exposed to vapors, gases, dusts and fumes in your work at DOE?" If the answer is "yes", the worker should be asked about frequency of exposure to VGDF overall using the same scale recommended above. If the answer is "yes," the worker is then asked "Have you already reported all exposures to vapors, gases, dust and fumes in your answers above?" If not, additional information should be elicited. Since it is necessary to assess VGDF exposure outside of the DOE complex (see COPD presumption for the rationale), the worker should be asked to describe how he/she was exposed to same or similar materials in work prior to or after DOE work. The subcommittee recommended that the version of the OHQ developed in response to these recommendations be pre-tested for ease of use and face validity.

With regard to COPD, the subcommittee recommended that DOL replace the presumption it has established in 16-02 with "Any claimant with a physician's diagnosis of COPD who worked in any covered facility, either in any of the labor categories in Attachment 1 (with addition of all construction and maintenance job titles) for at least 5 years cumulative (including non-DOE work) or with reported exposure to VGDF on the OHQ for a period which in aggregate totals at least 5 years cumulative (including non-DOE work) is presumed to have experienced sufficient exposure to toxic agents to aggravate, contribute to, or cause COPD." Additionally, claims examiners should not deny claims for

COPD if the worker had fewer than 5 years of exposure. Claims that do not meet the requirements set forth here but do have reported exposure to VGDF should be sent for IH and/or CMC review under the policy established in Bulletin 16-03.

In addition to aggregate exposure to VGDF, when a worker reports the following specific exposures on the OHQ, separately or in combination for a period of 5 years, these agents should be presumed to cause, contribute, or aggravate COPD as they impose a risk for COPD that is as great as the risk found by DEEOIC in Bulletin 16-02 to be presumptive for asbestos: asbestos, silica, cement dust, engine exhausts, acids and caustics, welding, thermal cutting, soldering, brazing, metal cutting/grinding, machining aerosols, isocyanates, organic solvents, wood dust, and molds and spores.

The subcommittee made several points with regard to timing and duration of exposure. As to timing of exposure, because these exposures continue to take place on DOE sites, many of which are unregulated, it should be presumed that relevant reported exposures at any period of employment covered by EEOICPA, up to the present time, are contributory.

For duration of exposure, based on the evidence presented in the Dement 2015 study, a duration of 5 years of reported exposures to VGDF should be presumed to aggravate, contribute to, or cause COPD. The 5 years can be accumulated by a combination of DOE employment and employment outside of DOE (Note comments on this issue on the following day).

The subcommittee does not recommend specifying time since last exposure. COPD is a slowly progressive disease; individuals are often not diagnosed until the disease is advanced. Since it would not be possible to determine in retrospect when a case of COPD could have been first diagnosed, it is reasonable to assume that VGDF contributed to any diagnosed case even if the disease is diagnosed after the worker has left employment. Exposures outside the DOE complex should be considered when determining if a minimal length of exposure has occurred to meet a presumption (Note comments on this issue on the following day).

There were two rationales for requiring 5 years of cumulative exposure to VGDF or specific agents: 1) Lowest observed

duration associated with COPD, as described in Dement 2015, a study of DOE construction workers, and 2) a systematic review suggests safe occupational exposure limits for low toxicity dusts should be 1 mg m−3 of respirable dust. This also is the limit set by the German government.

Discussion

The idea that inhaled dust exposures or dust and fume exposures can cause COPD goes back many decades and the American Thoracic Society has published on this topic in 2003. Member Dement said that there is a growing and now well-accepted body of information and scientific studies that support the concept that particulates that have been considered relatively low toxicity with regard to regulations are nevertheless contributory to COPD.

There is a growing body of data that supports the concept that particles that have been traditionally disregarded with respect to occupational regulations are contributory to lung diseases. Chair Markowitz said that the challenge was to figure out how to consider the totality of exposure. Member Dement said that a worker’s cumulative lifetime exposures lead to the development of disease. The DOE work that a worker undertook would satisfy the issue of contributing to that worker’s disease. Member Welch said that she didn’t think that smoking belonged on an OHQ. Ms. Leiton said that DOL actually tried to not consider smoking as part of causation because of the aggravation and contribution. This is something that is addressed in training with the claims examiners. Chair Markowitz said that, on balance, ignoring smoking has been a claimant-friendly approach. Member Dement said that one of the most important things that the SEM committee considered was the ability of the industrial hygienist to go back to the worker and directly ask follow-up questions.

With regard to BTMed, Chair Markowitz explained that it was the Former Worker Medical Screening Program supported by the Department of Energy for the last 20 years in which the CPWR has examined 30,000 construction workers and has assisted individuals in understanding their illnesses. It has also published studies about their experience regarding COPD and other diseases in the DOE population.

Recommendations and discussion

The Board unanimously approved the following recommendations: 1) We recommend retaining the list of hazards/exposures/materials on the current OHQ, and expanding that list by adding the list of hazards/materials from BTMed. 2) We recommend adding the list of tasks in BTMed, even knowing that it is incomplete.

The Board approved the following recommendation with one negative vote: 3) We recommend adding a specific question regarding vapors, gases, dusts and fumes (VGDF).

The Board unanimously approved the following recommendation: 4) We recommend that the version of the OHQ developed in response to these recommendations be pre-tested for ease of use and face validity.

Member Silver said that the Board had a recommendation a year ago to rearrange the organizational chart for the occupational medicine person assigned to the program to create more interaction between them and their peers in other parts of DOL. Member Silver also raised the idea that the Board could hire a contractor to help with the ongoing technical and scientific work, similar to the Advisory Board on Radiation and Worker Health.

The Board approved the following recommendation with one abstention: The Board recommends that the DEEOICP enhance its scientific and technical capabilities to support the development of program policies and procedures to improve decision-making on individual claims and to inform its assessment of the merit of the work of its consulting physicians and industrial hygienists.

Weighing Medical Evidence

Member Cassano gave the report. The task of the committee was to review, evaluate, and make recommendations pertaining to the materials available to assist CEs in determining the development and adjudication of medical claims. The committee examined the logic and processes used by the CEs in determining what medical information was valid and what was not. It also evaluated the training materials available on specific toxicants outside of the SEM.

Based on the committee's review of the information, they made a recommendation to the full committee that the entire case file should be sent to the IH and/or CMC when a review is requested.

The committee also asked to review Part E claims and to receive the entire case files. In addition, the committee asked to review the training materials provided to the CEs. Finally, the committee believed it necessary to speak with claims examiners to understand how they used all the information they were given and the logic by which they made decisions.

The committee thought that, overall, the training documents were excellent. It noted several discrepancies between what the training documents required and what was accomplished in the district offices. Specifically, the training material states to use OHQ, SEM, CMC, and IH/toxicology review to determine exposure and causation; SEM is never to be used as a sole reason for a denial. ORISE, OHQ, DEMMP, and Former Worker Programs all are considered acceptable sources of medical evidence.

The training material states that no CMC review is necessary if there is no known exposure to a toxic substance, or no plausible scientific association between a toxin and disease. How does the CE know this?

The training material states that searches of labor processes, buildings, and areas should be used when a person’s labor category is not listed in the SEM. Before 2000, FWP records are usable without corroboration. After EEOICPA was passed, the FWP records must be corroborated with “other evidence.” OHQ evidence must be corroborated by other evidence. Only the SOAF goes to the IH/toxicologist or CMC. The committee has already recommended that the entire case file go. SOAF precludes the consultant from making their own findings of fact.

Member Cassano discussed the committee’s review of case files. Some of the findings included: Not all conditions listed on the EE1 were adjudicated even though medical evidence was provided verifying diagnosis. Not all exposures that could cause a particular medical condition were evaluated by the CE. The information in the Occupational Questionnaire was not utilized by the CE unless corroborated. It was not clear to the committee how this is accomplished. Claims denied by the CE using only the

SEM without sending them to either the IH or the CMC is contrary to what the training materials instruct CEs to do. This is particularly troubling for worksites without a SEM. Some conditions were either accepted or denied despite whether or not the job listed was in the criteria for acceptance. CMCs were only asked to comment on one or two conditions despite more conditions being claimed. In claims where SEM clearly supported an association between exposure and claimed medical condition, the claims were sent to an IH anyway.

There were cases where district offices commented on a known exposure/outcome relationship (COPD), yet never asked a CMC to review the claim and the claim was denied.

There were claims where the IH stated that there is no evidence for an association between TCE and Parkinson's disease, which is not quite where the literature is at this point. They did not consider other exposures, such as synergistic exposures.

Four members of the subcommittee will have a meeting at the Seattle District Office on April 21, 2017. Representatives from district offices will be present, along with Joleen Smith, the District Director. Committee members along with program representatives will use this opportunity to ask questions about specific cases chosen by committee members and supervisors from the district offices. The content of the discussion will be general questions about the process. The point is to find out how to make the process more equitable based on the evaluation of the case files. The committee thought that it would be a good idea to look at some of the cases retrospectively and see how presumptions would have assisted in the development of the claims. The committee is also going to look at the use of the word "significant" in the IH and CMC reports. Another question the committee wants to look at is how to compensate for wage loss prior to a claimant having a definitive diagnosis.

Discussion

Member Boden said that, looking at some of the cases, it seemed like the person making the claim was not medically or legally sophisticated and that the claim failed in part because the claimant didn't provide the necessary records. It would help if

there was a way for DOL to inform claimants about what is missing in their file, instead of simply rejecting a claim.

Member Cassano said that it might be good to have a validated survey go out to CEs with non-identifiable information.

Ms. Leiton said that the claims examiners can email the lead industrial hygienists or talk to them on the phone. CEs are trained to look at what they have and make sure they understand as best they can what additional information they need to ask for. Member Vlieger said that the letters to the claimants have improved significantly since the beginning of the program. Member Vlieger also thought that there are letters from certain district offices that are obviously boilerplate.

The Board discussed how to determine wage loss over a period of time prior to definitive diagnosis, where the wage loss should be considered in those conditions that are slowly progressive or not diagnosed properly for a period of time from when symptoms develop. Ms. Leiton said that DOL looks for medical evidence establishing that the individual lost wages as a result of the condition that is covered. The doctor has to say that the claimant was unable to earn a certain amount of wages as a result of their covered condition beginning on a certain date.

IH & CMC Subcommittee

Member Sokas gave the report. The purpose of the subcommittee was to evaluate the work of the hygienists and physicians to ensure quality, objectivity, and consistency. Previous recommendations of the subcommittee include the following: 1) That DEEOIC establishes a process where the industrial hygienists interview the claimant directly. 2) That the DEEOIC policy teleconference notes taken by DOL be redacted and made searchable and publicly available. 3) That DEEOIC make the entire claimant case files available to the claimant online. 4) That DOL create a departmental occupational medicine resource that serves the agencies in a manner similar to the office of the Solicitor of Labor. 5) That the entire case file be made available to the industrial hygienists and CMCs.

The subcommittee discussed several issues at its 12/16 meeting. These included: 1) Having DOL personnel and the Ombudsman

present at Board meetings and able to provide immediate responses. 2) Developing a formal approach to tracking and responding to comments, similar to the Radiation Board (ABRWH). 3) Reviewing and revising DOL policy requiring claimants to travel up to 200 miles for DOL directed medical evaluations.

With regard to the issue of IH review, three issues arose: 1) It is not clear whether IH review is triggered in all cases where it would be beneficial. 2) It is not clear whether the IH review, when triggered, involves a review of all relevant data. 3) Claimant records easily run several hundred to a thousand pages and are poorly organized.

The subcommittee's review of CMCs came to the following conclusions: CMC qualifications appear to be solid, but some reviewers use their own standards of causation rather than the accepted DEEOIC standard that work exposure must have caused, contributed to, or aggravated the medical condition being considered. The claimant records sometimes are several hundred to a thousand pages, are poorly organized, and are non-searchable PDF files. It appears that this is an obstacle preventing some CMCs from accessing the entire record.

Member Sokas presented a few recommendations for discussion. One suggestion was to organize claimant records into sections and make the records searchable PDFs. Another was to conduct QI for a sample of past CMC letters resulting in denials utilizing worker-centered occupational physicians (consider AOEC subcontract). Based on the results of the QI review, guidance materials could be developed for CMCs. In addition, a briefing package could be provided for CMCs that emphasizes the DEEOIC standard that the work exposure must cause, contribute to, or aggravate the medical condition being considered, along with program definitions and presumptions for each illness. CMCs should be given online access to the entire record.

Discussion

Ms. Leiton said that DOL is working with their contractor to get more physicians in rural areas to participate in the program. Member Cassano suggested that telemedicine might be a good option for some of these cases. Chair Markowitz added that the Former Worker Medical Screening Program, which uses local

facilities and physicians, could be a potential resource. Also, BTMed and the National Supplemental Program may serve as resources. Member Vlieger urged DOL to consider the infirm and the aged and the struggles they endure in making medical appointments. Ms. Leiton noted that DOL will pay the transportation cost of getting someone to an appointment for a second opinion evaluation.

Member Friedman-Jimenez said that he was struck by the inconsistency of how the standard of causation is applied in the denied claims that he reviewed. He also said that the files are massive, often 1,000 pages, and currently not searchable. Ms. Leiton added that in terms of what the claims examiners see, the database is divided. Documents are indexed by type, whether it's an IH report, medical report, decision, or development letter. The information is organized for the claims examiners. When documents are referred to a CMC, they get whatever is medically relevant. Member Boden said that it would be worth looking at what the CMCs see. Member Pope said that DOL needs to make sure there is enough information in the CMC file to make a claimant-friendly decision. The process is dependent on the CE earmarking which documents the CMCs are going to see. Member Sokas said that there were clear examples of poor quality in terms of content and decision-making within some of the CMC files.

Member Cassano floated the idea of having a combined subcommittee meeting with her subcommittee and Member Sokas' subcommittee to discuss overlapping issues.

The Board members decided to discuss formal recommendations on reviewing claims the following day.

Presumptions Working Group

Member Markowitz gave the update. The group thinks that presumptions would enhance fairness. An aspect of fairness is that there wasn't a lot of information about exposure across the DOE complex; absence of exposure information should not work against appropriate claims. Another advantage of presumptions is that it lends consistency to the process and makes decision-making more straightforward and simple. The presumptions should be based on as much science as is available. Presumptions were

incorporated into the original Act. Job title is a good proxy for trying to understand how intense exposures might have been.

Chair Markowitz went through DEEOIC's use of presumptions in detail, as covered in the EEOICPA Procedure Manual, EEOICPA Bulletin No. 13-02, and EEOICPA Circular No. 15-05. Chair Markowitz also spoke about the various facets of presumptions, including fairness, consistency, timeliness, efficiency, error threshold, and positive vs. negative presumptions.

Proposed recommendations with regard to presumptions

The Board recommends that the DEEOICP enhance its scientific and technical capabilities to support the development of program policies and procedures, to enhance decision-making on individual claims, and to inform its assessment of the merit of the work of its consulting physicians and industrial hygienists.

The Board has observed that numerous current EEOICP policies involving important diseases and exposure-disease links, including chronic obstructive lung disease, asbestos-related diseases, asthma, and others, are not based fully on state-of-the-art scientific knowledge. The Board is willing to assist the Department of Labor in implementing this recommendation.

For asbestos-related diseases, the Board made several recommendations:

1) All DOE workers who worked as a maintenance or construction worker at a DOE site for 250 days or more prior to January 1, 2005 and who are diagnosed 15 years or more after the initiation of such work with any of 5 asbestos-associated conditions will be presumed to have had sufficient asbestos exposure that it was at least as likely as not that asbestos exposure was a significant factor in aggravating, contributing to, or causing such asbestos-associated conditions. The five asbestos-associated conditions are asbestosis, asbestos-related pleural disease, lung cancer, and cancer of ovary and larynx. This recommendation was passed unanimously.

2) All DOE workers who worked as a maintenance or construction worker at a DOE site for 30 days or more and who are diagnosed 15 years or more after the onset of such work with malignant mesothelioma of any bodily site will be presumed to have had

sufficient asbestos exposure that it was at least as likely as not that asbestos exposure was a significant factor in aggravating, contributing to, or causing the malignant mesothelioma. This recommendation was passed unanimously.

3) All claims for one of the six asbestos-associated conditions named above that do not meet the exposure criteria described in items #1 and #2 above will be referred to an industrial hygienist for exposure assessment and to a CMC for evaluation of medical documentation and causation. These six conditions are asbestosis, asbestos-related pleural disease, malignant mesothelioma, lung cancer, and cancer of ovary and larynx. This recommendation was passed with 14 votes in favor and one abstention.

4) Chronic obstructive pulmonary disease may have a contribution from asbestos exposure. However, claims for this disease should be evaluated as part of a broader set of presumptions for chronic obstructive pulmonary disease. This recommendation was unanimously approved.

Discussion

Member Domina said that he did not like the 2005 cut-off on asbestos and felt it should be later. Several other members agreed that 2005 seemed arbitrary. Member Welch said that having a date is reasonable as long as there is a process where people who had injurious exposure after 2005 can have their case reviewed without the process being extremely burdensome. After some discussion, Chair Markowitz pointed out that there is going to be a balancing act between certainty on the medical criteria side and certainty on the presumption side. The sticking point of the discussion was the calendar year issue.

Voting on the revisions to the proposed recommendations from the Work Group

1) The Board recommends that there be no calendar year reference for five asbestos-related diseases, excluding malignant mesothelioma. The recommendation had four in favor, one abstention, and eleven no.

2) The Board recommends that the exposure presumptions for asbestos with DOE workers who otherwise meet exposure criteria

that the Board will set out, who had this significant exposure to asbestos prior to January 1, 2005, will be judged to have substantial exposure sufficient to be a significant factor in causing, contributing, or aggravating one of the five asbestos-related conditions, excluding malignant mesothelioma. The recommendation had seven votes in favor, six opposed, and two abstentions. After some discussion over the purpose of having a calendar year, this recommendation was re-voted on. The outcome of that vote was ten in favor with one opposed – enough for a consensus. Several members abstained.

3) The Board repeated the above recommendation but with January 1, 2015 being the key date in determining the significant asbestos exposure. The recommendation had seven in favor, seven no, and one abstention.

Public Comment

Terrie Barrie – Founder of ANWAG. Ms. Barrie commented on the good work that the Board has done in the previous year and lauded their accomplishments. Ms. Barrie was concerned about the delay in implementing the Board's recommendations. Ms. Barrie highlighted the barriers to claimants actually getting approved for wage loss. She urged the Board to review some of the wage loss claims.

Deb Jerison – Director of the Energy Employees Claimant Assistance Project. Ms. Jerison encouraged the Board to get input from lower level claims examiners. The idea of an anonymous survey is a good one. She also recommended using a coworker model to provide exposure information for facilities without a Site Exposure Matrix.

Calin Tebay – MSA employee health advocate at Hanford and the site-wide beryllium health advocate at Hanford. Mr. Tebay wanted the Board to review the current DOL criteria for chronic beryllium disease. He encouraged that the Board compare the current DOL criteria with the guidelines developed by the Department of Labor and Industries in 2015.

Steve Peterson – Manager for a Hanford contractor. As someone who went through the claims process, he wanted to know how DOL could work better with other agencies.

Don Slaugh – Union Hanford site representative. Mr. Slaugh had three concerns: 1) Old HEPA filters, 2) excavations in the tank farms and associated contamination, and 3) chemical vapors. Mr. Slaugh wanted DOL to take his specific concerns about these issues into consideration when considering individual claims.

D'Lanie Blaze – CORE Advocacy for Nuclear and Aerospace Workers. Ms. Blaze was primarily concerned about the lack of information in the SEM about coal gasification and exposures at Santa Susana which apply to both Area I and Area IV workers.

Elnora Bing – Savannah River employee for 33 years. Ms. Bing was diagnosed with sarcoidosis and was accepted under Part B of the program, but withdrew her acceptance letter after a DOL representative told her that she should file under Part E. After she filed for Part E, she was denied. Ms. Bing felt that she was tricked out of her claim by the Department.

Stephanie Carroll – Professional representative specializing in claims for occupational lung disease. Ms. Carroll said that she was concerned that without an authorized representative, claimants are misled and denied claims that are viable under the program. Claims examiners seem to be demoralized and are evaluated by the timeliness in which they complete the adjudication of claims and not by the quality of their work. Ms. Carroll was disappointed that the Weighing of Medical Evidence Subcommittee will not be reviewing the weighing of evidence for Part B, CBD, or sarcoidosis. She was pleased that the subcommittee on lung disease will be addressing these issues. Ms. Carroll thought that the claims examiners were not being trained consistent with the procedure manual.

Shirley Kennedy – Ms. Kennedy asked why radionuclides are not listed in the SEM. She said that she could not obtain the raw data she needs in order to successfully complete her claim.

Tee Lea Ong –Professional Case Management. Ms. Ong expressed concern over the Board's recommendations not being implemented swiftly enough and the timeframe that the Board has to complete its task not being long enough to finish all of the work that the Board needs to do.

Jerry Ferson – Safety representative for Hanford tank farms. Mr. Ferson received significant exposures and lost his nursing care due to his case worker submitting "some paperwork that DOL did not like." Mr. Ferson felt like the resources provided to assist claimants were inadequate or untrustworthy.

Tom Moore – Former Hanford worker. Mr. Moore didn't think the department was consistent in its approach to evaluating exposure as it relates to getting a claim accepted. He also thought that engineers should be included in the list of job descriptions for presumptions. Mr. Moore cautioned that job titles don't tell you everything you need to know about what someone's exposures are.

Richard Bloom – Hanford employee since 1980. Mr. Bloom suggested that the Board get around to defining what maintenance workers are. He said that people who worked in buildings built prior to a certain date would have asbestos falling on their desks. Mr. Bloom said that he was beryllium sensitized, but he was a "pencil pusher." People that worked in these buildings may not have been production workers, but they were also exposed.

Donna Hand – Professional claimant advocate. Ms. Hand wanted to know why the target organs that are defined in the NIOSH pocket chemical guide are not also displayed in the SEM. She argued that the level of exposure is never to be addressed. What should be considered is the frequency of exposure or frequency of job task. Ms. Hand cautioned the Board about the definitions of terms like "significant." Having clear definitions of terms and criteria is critical.

Ms. Diane Leist – Former Hanford worker. Ms. Leist asked if medical studies that link certain cancers to particular types of exposure could be placed in the SEM.

Gary Vander Boegh – Design engineer. Mr. Vander Boegh detailed his experiences with permitting, investigations, and waste falsifications – specifically at the Paducah Gaseous Diffusion Plant. Mr. Vander Boegh emphasized consistency and awareness of significant factors.

April 20

Introductions and roll call

Mr. Fitzgerald called the meeting to order at 8:05 a.m. The Board members introduced themselves.

Discussion on Work Outside of DOE concerning COPD

Member Welch had originally included work outside of DOE as part of the exposure criteria. Member Welch proposed as the final COPD presumption everything that was mentioned yesterday, but with no mention of outside exposures. Member Silver said that a rationale statement will accompany the recommended set of presumptions and that that's the place to elaborate on non-DOE exposures.

Presumptions Work Group Presentation and Recommendations continued

For work-related asthma, the Board made the following recommendations:

1) DOL should use the generally accepted unifying term "work-related asthma" (WRA) for claims evaluation and decision-making. Work-related asthma includes a) occupational asthma (OA), or new onset asthma that is initiated by an occupational agent; and b) work-exacerbated asthma (WEA), which is established asthma that is worsened by workplace exposures.

2) Medical criteria for the diagnosis of asthma. The diagnosis of asthma by a treating or evaluating physician should be sufficient for the recognition that the claimant has asthma. Bronchodilator reversibility of FEV1 and/or a positive methacholine challenge test may be helpful but should not be required to accept the diagnosis of asthma, which is made by a health care provider.

3) Work-related asthma, whether OA or WEA, is defined as the presence of medically-diagnosed asthma that is associated with worsening of any one or more of the following in relation to work: asthma-related symptoms, asthma medication usage temporally related to work, or peak flows. Such a history should be documented by a treating or evaluating health care provider, or addressed by a CMC if consulted in a claim evaluation. The same criteria for WRA should be used in evaluating asthma claims whether the claim is made contemporaneous with the period of DOE employment or after the end of that period of employment. A

specific triggering event causing onset of WRA may occur but is not typical or necessary. Inciting exposures such as dusts, fumes, heat, or cold or others should be specifically identified when possible, but should not be required for the diagnosis of WRA.

Discussion

Member Welch strongly supported the use of well-developed, peer reviewed criteria for the diagnosis of asthma. Member Redlich said that the great majority of asthmatics in the United States and elsewhere have a clinical diagnosis of asthma but have not had spirometry, let alone spirometry that shows a 12 to 15 percent improvement following an inhaled bronchodilator. The test can be falsely negative. There are common misconceptions in some of the guidelines when they get applied to current day workers. The current guidelines need major revisions. The existence of a negative test should not be an automatic denial. Member Friedman-Jimenez suggested that many doctors are not aware of work-exacerbated asthma. Ms. Leiton noted that if the Board's recommendations change any of the presumptions then DOL will need to change in conformity with the recommendations. Bulletins or circulars will be updated with the Board's recommendations. The above recommendations were unanimously approved by the Board.

Assessment of quality, objectivity, and consistency of CMC work

The Board requests that the DOL provide the Board with resources to conduct a quality assessment of a sample of 50 CMC evaluations that have been associated with claim denials. The quality review will assess the nature of the medical information reviewed by the CMC, the use of standards of causation, the reasoning of the CMC, the scientific basis for the CMC conclusions, among other items. The assessment will likely require contracted services of worker-centered occupational physicians who are not associated with the current CMC contract. The review may lead to recommendations, including the development of guidance materials.

The above recommendation was unanimously approved by the Board.

Part B Lung Diseases Subcommittee

Member Redlich gave the presentation. Member Redlich reviewed the subcommittee's discussions on Part B cases, sarcoid presumptions, clarification of beryllium exposure and responses to DOL's (and others') questions regarding chronic respiratory conditions, the procedure manual, and borderline BeLPT.

With regard to Part B cases, there were many common reasons for incorrectly adjudicated cases. For sarcoidosis and CBD claims, these reasons include: 1) Misapplication/understanding of the sarcoid presumption, 2) CMCs narrowly interpreting the data, 3) beryllium exposure being denied for unclear reasons, 4) there was eventually a correct decision on a claim, but it came many years later.

Common reasons for incorrectly adjudicated cases involving pneumoconiosis and chronic silicosis include 1) Eligibility issues, and 2) the SEM identified limited exposure.

Recommendations

1) We recommend a presumption of chronic beryllium disease (CBD) in situations with a diagnosis of pulmonary sarcoidosis in an individual who meets the definition of a "covered beryllium employee" under Part E or Part B. (This is a recommendation to confirm the current DOL policy, so no vote was necessary.)

2) The finding of two borderline BeLPT tests shall be considered the equivalent of one positive BeLPT for the purposes of claims adjudication under subpart B and subpart E of EEOICPA. This recommendation had 13 votes in favor and one abstention.

Ms. Leiton reminded the Board that the recommendations with regard to presumptions, if accepted, will be included in a revised procedures manual.

Recommendation on solvents and hearing loss

Member Welch gave a brief overview of current DOL criteria for solvent-related hearing loss and proposed a recommendation for the Board's consideration. Her subcommittee recommended that the DOL develop direct disease work links for tasks with exposure to certain solvents (toluene, styrene, xylene, trichlorethylene, methyl ethyl ketone, methyl isobutyl ketone, ethyl benzene) in the range of the OEL. The committee recommended that a claimant

work for at least 10 cumulative years in any of the job titles on a list in the current presumption, or have reported exposure to styrene toluene, xylene, ethylbenzene, TCE, carbon disulfide on OHQ, or evidence for exposure to those solvents in the SEM, for at least 10 years cumulative. Or have reported exposures to solvent mixtures on OHQ, or evidence for exposure to those solvent mixtures in the SEM, for at least 10 years cumulative. Or have exposure for 10 years cumulative, established through work history and DDWLP.

Additionally, claims examiners should not routinely deny claims for solvent-induced hearing loss if the worker has had fewer than 10 years of exposure, does not have a DDWL for task, or is not in a labor category on the list. Claims that do not meet the requirements set forth, but do have reported exposure to organic solvents for at least 5 years cumulative should be sent for IH and/or CMC review.

The Board decided to have a July teleconference to discuss the above recommendation. Member Welch said that her subcommittee would look at the recommendation and submit comments. Member Welch will provide a rationale for the recommendation to the Board.

Mr. Fitzgerald closed the meeting at 10:55 a.m.