Question and Answers from April 2024 Cancer Claims under EEOICPA

Questions	Answer
Q: Where can I view the presentations for today?	A: The first presentation can be accessed through the following link: www.dol.gov/sites/dolgov/files/OWCP/energy/regs/compliance/Outreach/Outreach_Presentation/deeoic_overview043024.pdf The second presentation from NIOSH can be accessed through the following link: www.dol.gov/sites/dolgov/files/OWCP/energy/regs/compliance/Outreach/Outreach_Presentation/niosh_overview043024.pdf
Q: Is a CE Allowed to deny a claim if a medically unnecessary test is requested and not able to be performed?	A: It depends on whether other clinical or diagnostic evidence is present that allows the physician to offer a reasonable opinion about the diagnosed condition. If a physician prescribes a particular test to confirm or validate a diagnosis and the test can not be performed, it may not allow for physician to reach a definitive diagnosis which could then result in a claim denial.
Q: I would like to know how a true dose reconstruction can be done at the PDGP during the period time frame of 1975 to 1990 when there wasn't proper safety and Health Physics programs being used until 1990.	A: The PGDP is a statutory SEC. SECs are established because some portion of the dose cannot be reconstructed. During the SEC period, we use all available information to estimate the dose. There is no other option for cancers that don't meet the SEC criteria during an SEC period.
Q: Part 1 - One of the several unanswered questions concerning my dose reconstruction estimate has to do with the seemingly arbitrary changes to radiation dose values due to "policy changes and current practice." In my case the originally calculated dose estimates were reduced from the 95% confidence level to the mean value of around 11%. What is the justification for these seemingly arbitrary dose estimates that may have impaired my chance of reaching a 50% probability of causation?	A: Without seeing the case we cannot answer specifically. In general, we use overestimating and underestimating techniques. In this particular case it is likely that we started with an overestimating technique. There is a section in the dose reconstruction report that states that an overestimating approach was used and any revisions could result in a lower dose being assigned. The revised dose reconstruction report should also contain some detail as to how the dose was changed and why. As more cancers or employment are added the dose reconstruction is completed as more of a best estimate case. We cannot issue a dose reconstruction at 50% or greater if any doses were overestimated.
Q: Part 2 - Is current practice and policy a moving target? How does this "dumbing down" of the original dose estimates square with the ACT's required high confidence level? Is this a "claimant friendly" process as the law requires?	A: I am not sure I understand the question but please refer to the response above. Additionally, the probability of causation, which determines compensability, is calculated at the 99th percentile of confidence. That means that there is a 99% likelihood that the probability of causation reported is lower than that reported. There are also many other claimant favorable approaches used which were detailed in the webinar.
Q: if a person is accepted into a SEC for one cancer, does that automatically qualify that person for other cancer claims that are not on the list of 22 ?	A: Once an employee satisfies the employment criteria for inclusion in an SEC class, any diagnosed SEC "specified" cancer qualifies for coverage. Coverage would extend to any diagnosed cancer that is a metastasis of a SEC qualifying cancer. However, a primary cancer that is not a qualified SEC "specified" cancer would not qualify for coverage unless a dose reconstruction occurs that results in a finding that the Probability of Causation (PoC) for the cancer being related to occupational radiation exposure is 50% or greater.
Q: I had heard that 2 more cancers were being added to the list- totaling to 24, is there any truth to this?	A: From a statutory standpoint, there have been no additions to the listing of 22 "specified" SEC cancers enumerated under the EEOICPA. For more information about the qualifying SEC "specified" cancers recognized by the DEEOIC, refer to the federal (EEOICPA) Procedure Manual Chapter 14 - Establishing Special Exposure Cohort Status (Version 8.0).
Q: Every time I submit new evidence to NIOSH , they reduce my scores to prevent going over 50%. I believe this to be intentional. Does the DOL have the ability to override NIOSH when it is obviously in error?	A. Without seeing the case we cannot answer specifically. In general, we use overestimating and underestimating techniques. In this particular case it is likely that we started with an overestimating technique. There is a section in the dose reconstruction report that states that an overestimating approach was used and any revisions could result in a lower dose being assigned. The revised dose reconstruction report should also contain some detail as to how the dose was changed and why. As more cancers or employment are added the dose reconstruction is completed as more of a best estimate case. We cannot issue a dose reconstruction at 50% or greater if any doses were overestimated. DOL can refer a case back to us if they believe that there is new data that wasn't considered or if they believe we have not followed established protocols. That does not mean the case will go into compensable range but we will review the dose reconstruction and report back to DOL.
Q: Are side effects caused by cancer treatment covered?	A: Yes, if the effect of treatment causes, aggravates or contributes to a separately diagnosed condition, the claimant may file a claim for consequential illness. Approval of a consequential illness would enable medical coverage for that illness.
Q: Do cancer claims fall under the same umbrella as non cancer claims?	A: The question is unclear. However, Part B of the EEOICPA provides compensation to qualifying employees with beryllium sensitivity, chronic beryllium disease, cancer, chronic silicosis or certain illnesses accepted under Section 5 of the Radiation Exposure Compensation Act. Part E provides compensation for DOE contractors or subcontractors who develop any diagnosed illness (including cancer and non cancer conditions) due to the effect of exposure to an occupational toxic substance.
Q: Why are some NIOSH claims "pending methodology?" Is there a time frame for those claims to move?	A. This is because there is a technical document used for dose reconstruction, being revised. This often involves discussion with our advisory board. We realize that this can be frustrating but are working to get the ones on hold the longest moving.

Q: Does my current insurance need to cover first and this is secondary insurance? Or does this pay first/all?	A: This Program is the primary payer for medical care related to covered illnesses under the EEOICPA. This includes reasonable and customary medical care, physician prescribed medications, and travel directly associated with the treatment of a covered illness. □
Q: How long is a claim at NIOSH?	A. 90% of all cases at NIOSH are completed within 60 days of receiving the last information needed to complete a dose reconstruction. Delays can be caused by pending revisions to technical basis documents, and information requested from DOL, DOE and claimants.
Q: Will diagnoses claim final decisions and dose reconstruction results/ decisions be posted in the D.O.L. ECAMS system / website / portal?	A. Dose reconstruction results and final decisions are displayed in Employees' Compensation Operations & Management Portal (ECOMP) IF they are the only claimant on the case. More information can be found here https://www.dol.gov/agencies/owcp/energy/regs/compliance/ecomp
Q: Can you take questions about Part E cancer claims? e.g. asbestos exposure and prostate cancer.	A: A claim may be filed for an illness claimed being the result of occupational exposure to a toxic substance. However, there must be a credible medical health science basis to link a particular disease to a chemical exposure like asbestos. A qualified physician would need to provide a compelling explanation as to how they believe that a condition like prostate cancer is reasonably associated with some level of exposure to asbestos.
Q: Will the recorded versions of these webinars be posted, not just the power point slides, as there is additional and useful information provided by the presenters that are not on the slides?	A: The DEEOIC team is looking into recording options. At this time, the webinars are not recorded, so slides from each webinar will be your best reference point. I hope that helps!
Q: I did not submit an OCAS-1 form because all relevant data was not included in the partial dose reconstruction of a deceased DOL/DOE employee. (NIOSH conducted an interview with an DOL/DOE employee and the data collected introducing potentially hundreds of acute exposures was not included in the NIOSH partial dose reconstruction report.) How should we proceed? Thank you.	A. This claimant should contact NIOSH and request more information or we can contact them if we have the information. In general though, the OCAS-1 form needs to be signed and returned or the case can be administratively closed. If there is still a conflict, the claimant can appeal through DOL.
Q: The statute states that SEC cancers include the physical or nomenclature of any of the above SEC cancers. Will the DEEOICP and NIOSH then recognize these cancers, such as 2004 myelodysplasia was accepted as an leukemia.	A. The Federal (EEOICPA) Procedure Manual, Chapter 14.7 (version 8.0) lists the eligibility criteria for all specified cancers in accordance with 20 CFR § 30.5(gg).
Q: If you are approved for one sec cancer and contract another cancer that is on the list of 22 approved cancers- are you automatically approved?	A: This answer has been provided above.
Q: Can the DOL override NIOSH?	A: No, the calculation of Poc based on a NIOSH dose reconstruction is the mechanism for deciding claim compensability for cancer under Part B. Factual errors or technical deficiencies with a dose reconstruction can result in a need for correction.
Q: In 2002 until recently, the policy was that if one cancer is >50%, then all cancers from then on is included. When did the policy change to not to automatically accept the other cancers?	A: From the federal (EEOICPA) Procedure Manual Chapter 24 - Recommended Decisions, "Once a PoC value has been calculated at 50% or greater and a FD [Final Decision] accepting the cancer has been issued, any subsequent new claim for cancer will be presumed linked to occupational exposure to radiation under either Parts B or E of the EEOICPA."
Q: How long is the pending methodology process? I have a claim that has been sitting since 2022 (skin cancer)	A. This is because there is a technical document used for dose reconstruction, being revised. This often involves discussion with our advisory board. We realize that this can be frustrating but are working to get the ones on hold the longest moving.
Q: Since the method is in the regulations 42 CFR 82, then how can you change the method without notice and comment? The method is binding but the application of the method is not binding.	A. The dose reconstruction methodologies used are much more detailed than anything listed in the regulations but are consistent with those requirements. The technical dose reconstruction methodologies used are often revised as new information is obtained and do not require notice and comment outside of NIOSH. The Advisory Board on Radiation and Worker Health reviews the technical documents and approaches used by NIOSH.
Q: How can NIOSH close a case? if the claimant fails to sign a form ? It should go back to DOL for determination.	A: If the claimant does not complete an OCAS-1, NIOSH will notify DEEOIC and DEEOIC will administratively close the affected cancer claim until the completed form is submitted.
Q: I am a Medical Consultant and wondering where I can discuss policy regarding Part E cancer claims.	A: Please send an email to the address on the screen (DEEOIC-Outreach@dol.gov) with more information so we can direct you to the correct person.
Q: Why does the DCAS not answer the concerns regarding the dose reconstruction at the close out interview?	A. This is a case specific question and it is recommended that the claimant contact NIOSH directly. In general, the close out interview is intended to ensure that all available information was considered. If new information is presented it will be considered.