U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington D.C. 20210

February 29, 2024

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:

Thank you for your letter dated January 19, 2024, transmitting an information request by the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board). Our responses to your inquiries are below.

The Board requested information on the status and outcome of the claims re-evaluation process initiated by updates to eligibility criteria for Part E claims for work-related hearing loss, and Parts B and E claims for chronic silicosis. Specifically, the Board requested:

1. <u>How many claims for each of the two conditions have been or will be re-evaluated? From what calendar period (claims submission dates) are claims being re-reviewed</u>?

   On October 20, 2022, the Division of Energy Employees Occupational Illness Compensation (DEEOIC) issued Federal (EEOICPA) Procedure Manual (PM) Version 7.0 which, in part, updated employment requirements related to Part E claims for bilateral sensorineural hearing loss to create an alternate pathway for employees who did not work in a "qualifying" labor category. As a result, DEEOIC reviewed more than 1000 cases based on the updated requirements, ultimately identifying 139 Part E claims for reevaluation.

   Of these 139 claims for bilateral sensorineural hearing loss, DEEOIC has thus far re-adjudicated 96 of these claims, resulting in 82 acceptances and 10 denials. DEEOIC administratively closed 3 additional claims due to the lack of a required Form EN-16 from the claimant, and a single claim was closed due to the claimant's death. Forty-three claims are currently pending re-evaluation as of the date of this letter, including assessing employee exposure to toxic substances and high-level noise.

   Regarding chronic silicosis, DEEOIC issued Bulletin No. 23-01 on October 24, 2022, which updated the Part E criteria for chronic silicosis claims when evidence establishes that the employee had significant exposure to silica dust for an aggregate of 180 workdays of occupational exposure, and there is a latency of at least 10 years between the initial occupational exposure and diagnosis. As a result, DEEOIC identified 15 claims for reopening consideration. Of those 15 claims, DEEOIC has issued a final decision to accept 12 claims. One claim was determined to not meet the established criteria for

chronic silicosis, and one was administratively closed due to the lack of a required Form EN-16 from the claimant. Finally, one claim was reopened on December 22, 2023, and is currently pending the issuance of a decision.

2. What is the post-reevaluation claim status (# and % accepted, denied, in process) for each type of claim (hearing loss versus silicosis)? For how many (and %) of claims was the decision reversed?

   As outlined above, DEEOIC identified 139 Part E claims for bilateral sensorineural hearing loss as being potentially affected by the updated hearing loss criteria issued on October 20, 2022. Of those, DEEOIC has re-adjudicated 96 claims, resulting in 82 acceptances (85%) and 10 denials (10%). There are 43 claims currently pending. The percentage of claims in which DEEOIC reversed the decision (previously denied, overturned to accept based on the updated eligibility criteria) is approximately 85%.

   With regard to Parts B and E claims for chronic silicosis, DEEOIC identified 15 claims requiring reevaluation based on the updated criteria. Of those, 12 (80%) were ultimately accepted, 2 are currently pending, and a single claim (6%) was identified as not meeting the eligibility criteria for chronic silicosis.

3. For the claims that are denied on re-review, what are the general causes of or reasons for the denials?

   DEEOIC denied 10 Part E claims for bilateral sensorineural hearing loss after revaluation. In all 10 cases, it was determined that the evidence was insufficient to establish that the employee was consistently exposed to noise levels in excess of 85 decibels.

   As for the single chronic silicosis claim denied after revaluation, the evidence in that case was insufficient to establish that the employee had been diagnosed with chronic silicosis.

4. In relation to the re-review and subsequent denial of the hearing loss claims, what were the main specific reasons for denial if available: i.e., did not have a total of 10 years of toxic exposures, did not have 10 consecutive years of exposure; did not complete exposure by 1990; did not have a listed job title or the equivalent (as defined in the PM 8.0); did not have exposure to listed solvents (as defined in the PM 8.0), or other?

   All 10 Part E hearing loss claims were ultimately denied due to insufficient evidence that the employee was exposed to noise levels in excess of 85 decibels.

The Board also requested information on DEEOIC Contract Medical Consultants (CMCs) and the reports that they produce for the period 2020-2023. Specifically:

1. How many CMCs are currently under contract or agreement with the contractor? Are all "active" in producing reports in the recent 2022-2023?

There are currently 338 CMCs actively under contract. Of those, 97 produced reports in 2022-2023.

2. What is the distribution of CMCs by medical specialties? If the CMCs are further identified by special areas by the contractor for EEOICP purposes, what is distribution of CMCs by special areas?

Specialty	# of CMCs	Specialty	# of CMCs
Allergist	2	Obstetrics	9
Anesthesiology	1	Occupational Medicine	47
Cardiology	17	Oncology	33
Dentist	2	Ophthalmology	20
Dermatology	12	Orthopedic	14
Emergency Medicine	1	Otolaryngology	15
Endocrinology	10	Pathology	4
Family Medicine	9	Pharm D	3
Gastroenterology	9	Physical Medicine and Rehabilitation	11
Gynecology	3	Psychiatry	16
Hematology	1	Pulmonology	14
Immunology	1	Rheumatology	11
Infectious Disease	2	Surgery	8
Internal Medicine	16	Toxicology	3
Nephrology	10	Urology	14
Neurology	15	Vascular Surgery	5

3. Are CMCs divided by type of service? i.e., CMC file review; SECOP examination, Referee Medical Examination, others. If so, how many medical practitioners perform each type of service and what is the distribution of their medical specialties or special areas?

   The contractor does not divide CMCs by the type of service they perform. In most cases, a CMC within a specialty, can fulfil different types of contracted service types. The assignment of a CMC to a claim is based on the unique conditions in the claim and the availability of each CMC.

4. How many of each type of CMC service (e.g., CMC file review; SECOP examination, Referee Medical Examination, others) have been performed during each of the last 4 years, 2020-2023? Does each service result in a report?

   Each service results in a report. The table below represents the breakdown of CMC services for the period of 2020-2023:

Type of Service	Number of Reports Delivered
File Review-Causation	6,530
File Review-Clarification of Diagnosis	820
File Review-Impairment Rating	1,195
File Review-Referee Impairment Rating	7
File Review-Referee Causation	268
Second Opinion	2
File Review-Wage Loss	38

5. How many CMC reports are produced by each CMC each year? A listing by individual CMC (identified by number, not by name), their specialty, and type of report would be helpful.

   Neither DEEOIC nor the contractor maintain data that contains specific details of the review, such as the related disease; however, the contractor does capture the type of service. The table below provides a breakdown of CMC per request for the period of 2020-2023.

CMC	Specialty	File Review Causation	File Review Clarification of Diagnosis	File Review Impairment Rating	File Review Referee Impairment Rating	File Review Referee	Second Opinion	File Review Wage Loss
CMC 1	INT	1						
CMC 2	NEP	5	5			1		
CMC 3	DER	97	8	1		2		
CMC 4	NEP	3	3					
CMC 5	HEM	1						
CMC 6	ONC	51	13			3		
CMC 7	NEP	2						
CMC 8	PSY		1					1
CMC 9	RHE	1						
CMC 10	RHE	1						
CMC 11	INF		1					
CMC 12	RHE	6						
CMC 13	NEU					1		
CMC 14	DIA	2						
CMC 15	OCC	741	31	75	2	34		4
CMC 16	OCC	2						
CMC 17	FAM		1					
CMC 18	URO	1						
CMC 19	OCC						1	
CMC 20	INF		1					
CMC 21	OPH	5	1			1		
CMC 22	END	1						
CMC 23	OCC	336	20			8		3
CMC 24	PUL	1						
CMC 25	PUL	1						
CMC 26	NEP		1					
CMC 27	DER	1						
CMC 28	OCC	152	11			2		
CMC 29	INT						1	
CMC 30	HEM	1	1					

CMC	Specialty	File Review Causation	File Review Clarification of Diagnosis	File Review Impairment Rating	File Review Referee Impairment Rating	File Review Referee	Second Opinion	File Review Wage Loss
CMC 31	ONC	4	4					
CMC 32	OCC	14	7	74				
CMC 33	OCC	199	15			5		
CMC 34	PSY	11	5					1
CMC 35	NEU	2	1					
CMC 36	OTO	2	1					
CMC 37	END	9	2					
CMC 38	OCC	606	74			9		6
CMC 39	END	2	1					
CMC 40	CAR	15	3					
CMC 41	OCC	146	3	210				
CMC 42	GYN		1					
CMC 43	CAR	2	1					
CMC 44	INT	5	2					
CMC 45	PUL	368	123			13		1
CMC 46	OCC	159	11					
CMC 47	GAS	1						
CMC 48	INT	4						
CMC 49	ONC	15	3					
CMC 50	NEU	3				1		
CMC 51	OTO	2						
CMC 52	ONC	2						
CMC 53	NEU	4						
CMC 54	URO	2						
CMC 55	END	4						
CMC 56	INT	5	5					1
CMC 57	OCC	324	39			7		
CMC 58	OCC	533	24	175	1	57		6
CMC 59	A/I					2		
CMC 60	FAM	1						
CMC 61	OCC	151	10			1		
CMC 62	OCC	185	19			6		2
CMC 63	CAR	2						
CMC 64	GAS	1						
CMC 65	A/I		2					
CMC 66	INF		1					
CMC 67	PUL	2						
CMC 68	CAR	1						
CMC 69	HEM		1					
CMC 70	ONC	87	47			1		1

CMC	Specialty	File Review Causation	File Review Clarification of Diagnosis	File Review Impairment Rating	File Review Referee Impairment Rating	File Review Referee	Second Opinion	File Review Wage Loss
CMC 71	OTO	5	3			1		
CMC 72	OCC	9						
CMC 73	OCC	97	9	130	1	46		2
CMC 74	CAR	6						
CMC 75	OPH	3						
CMC 76	NEP	43	5			3		
CMC 77	OCC	282	18			3		1
CMC 78	OCC	676	32			4		2
CMC 79	INT	2						
CMC 80	ONC	18	20					
CMC 81	NEU	2						
CMC 82	OTO	1						
CMC 83	GYN		1					
CMC 84	OCC	128	41	1		1		1
CMC 85	OCC	8	1	399	1			
CMC 86	ORT	1						
CMC 87	HEM		1					
CMC 88	ONC	23	48					1
CMC 89	OCC	206	27			10		4
CMC 90	ONC	1	2					
CMC 91	INT	2						
CMC 92	PUL	95	18			5		
CMC 93	DER	1						
CMC 94	OCC	209	16			3		
CMC 95	ORT	1						
CMC 96	END					1		
CMC 97	OCC			22				
CMC 98	INT	3		1		1		
CMC 99	OCC	102	7	9		4		
CMC 100	PUL	134	40	53	2	25		1
CMC 101	CAR	7	1					
CMC 102	INT		2					
CMC 103	OCC	44						
CMC 104	OCC	1		43				
CMC 105	PUL	2				1		
CMC 106	PAT		1					
CMC 107	GAS	1						
CMC 108	INT					1		
CMC 109	GAS	3						
CMC 110	ONC	2				1		

6. Do data exist on the subject of the CMC review request? For example, beryllium-related disease, or COPD, or cancer? If so, a listing of subject and #requests by subject per year in the last 4 years would be of interest.

   Neither DEEOIC nor the contractor maintain data regarding the subject of CMC review requests.

7. Can you ascertain whether the CMC report finds causation (yes versus no) or supports claims outcome (accept versus deny) in each report? That is, are there data fields for these outcomes? If so, it would (sic) useful to know how many reports support causation (vs. not) and also how many reports support claims acceptance (vs. not). If condition-specific information were available (perhaps limited to the top 10 most claimed conditions), this would be helpful.

   The contractor does not monitor, track, nor record data regarding CMC findings. It is the objective of DEEOIC and the contractor to ensure each CMC produced report responds accurately to referral and communicates a substantive, well-rationalized opinion.

8. How many CMC reports are rejected or found to be deficient in some respect by the contractor? By the claims examiner? Do such problematic reports distribute equally across type of report and medical specialties?

   The number of clarification requests from CEs for a deficiency is less than 2% of the total CMC file reviews. This includes issues relating to new information becoming available, concerns with the accuracy of the response, or clarifications of the written opinion. There is no correlation between the type of report or medical specialty.

9. How many CMC reports result in second MD reviews (by contractor) of the same case? Do such problematic reports distribute equally across type of report and medical specialties?

   The contractor does not track referrals based on "problematic" reports. If an issue exists in the content of a report, or new evidence becomes available that must be evaluated, the CE will return the request to the original CMC for supplemental assessment. Should the CE deem it necessary to seek out the opinion of a separate specialist, or referee for file review, it would be submitted and tracked by the contractor as a new referral. The CE is responsible for discerning when it is necessary to seek a supplemental opinion from the same CMC, or to complete a separate referral to a different CMC for some other reason.

Finally, the Board requested that DEEOIC provide the instructions, protocols, and forms used by analysts in the quality assessment process. Please find accompanying this letter, DEEOIC's *Quality Assurance Plan for Industrial Hygienist Contract*, as well as its *Contract Medical Consultant Quality Assurance Surveillance Plan*.

On behalf of DEOIC and the communities we serve, I look forward to the Board's continued efforts.

Sincerely,

John Vance
Branch Chief,
Branch of Policy, Regulations, and Procedures
DEEOIC

Encl: Quality Assurance Pan for Industrial Hygienist Contract
Contract Medical Consultant Quality Assurance Surveillance Plan