U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs (OWCP)

Department of Labor
Final Adjudication Branch

Presented by:

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May 31, 2023

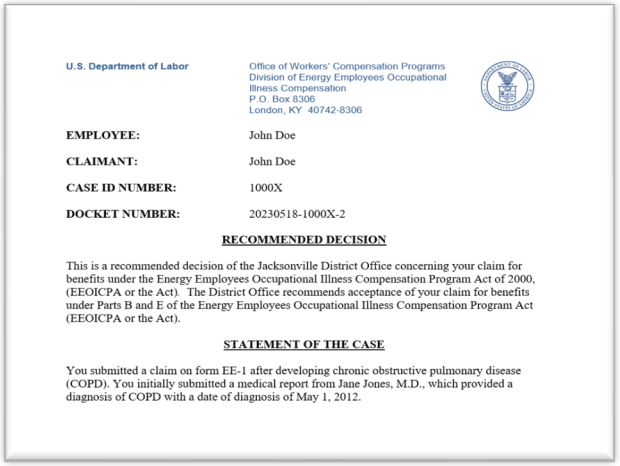
What is the Final Adjudication Branch (FAB)?

- FAB is independent of the District Office and conducts its own through review of all recommended decisions (RDs) and the entirety of the case evidence.
- FAB considers written objections filed by a claimant/Authorized Representative (AR) or conducts a hearing, if requested to do so by the claimant/AR.
- FAB then issues a final decision (FD) or sends the claim back to the District Office (DO) for additional action or consideration (a remand order).
- An FD is our office's determination of eligibility. It may deny a claim, approve a condition for medical benefits, or approve a lump sum payment.
- An FD is not "final" in the sense that a claimant may ask for a claim to be reconsidered or reopened.

What are FAB's limits?

- FAB has no authority over the DO as far as their timelines, the way they write their RDs, or the exact manner in which they develop their claims.
- The FAB must rely on the judgment of the DO claims examiner unless that judgment is based on inaccurate information or runs counter to guidance and results in an incorrect conclusion.
- The FAB must rely on the medical opinion of experts. FAB cannot substitute our medical understanding over that of experts.
- However, since the FAB must make factual determinations, they must confirm that these opinions are thorough, logical, and based on an accurate background.

What is a Recommended Decision (RD)?



U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational Illness Compensation
P.O. Box 8306
London, KY 40742-8306

EMPLOYEE: John Doe

CLAIMANT: John Doe

CASE ID NUMBER: 1000X

DOCKET NUMBER: 20230518-1000X-2

RECOMMENDED DECISION

This is a recommended decision of the Jacksonville District Office concerning your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act of 2000, (EEOICPA or the Act). The District Office recommends acceptance of your claim for benefits under Parts B and E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act).

STATEMENT OF THE CASE

You submitted a claim on form EE-1 after developing chronic obstructive pulmonary disease (COPD). You initially submitted a medical report from Jane Jones, M.D., which provided a diagnosis of COPD with a date of diagnosis of May 1, 2012.

- Written by the DO after:
  - Review of the evidence.
  - Identification of missing information.
  - Providing the claimant, the opportunity to submit this information,
  - and, when appropriate, referral to experts.

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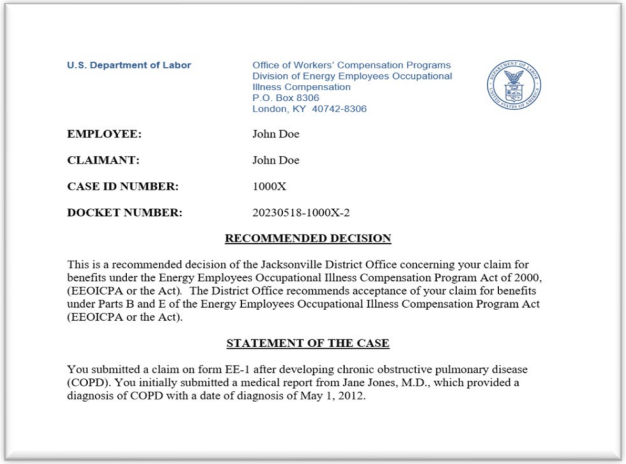

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STATEMENT OF THE CASE

You submitted a claim on form EE-1 after developing chronic obstructive pulmonary disease (COPD). You initially submitted a medical report from Jane Jones, M.D., which provided a diagnosis of COPD with a date of diagnosis of May 1, 2012.

- A written document that:
  - identifies what was claimed, the evidence submitted, and the requirements for entitlement.
  - analyses the evidence and considers entitlement requirements.
  - presents recommendations to FAB as to whether the claim should be accepted and provides the claimant with the opportunity to respond.

Work Begins with the Recommended Decision

- FAB performs an initial review on the case.
- If we determine the RD's conclusions were appropriate, we wait for a response from the claimant or AR.
- If we determine the RD's conclusions were not correct, we will take action according to DEEOIC guidelines to address the issue.

What does FAB review?

- We consider whether the development of the claim was accurate and complete.
- We consider whether the RD is factually correct and in compliance with the Act, regulations, and policy.
- We perform an independent analysis of case evidence, including an assessment of toxic substance exposures and the sufficiency of medical evidence.

FAB's actions are driven by the claimant's response to the RD

- The regulations provide a 60-day time period for claimants/ARs to provide written objections. Therefore, FAB must wait until this period has expired to issue an FD.
- Claimants who have no intention of filing objections and want FAB to proceed with the issuance of the FD, can submit a waiver.

Claimant's response:

No response: FAB waits until the expiration of the 60-day period
Waiver: FAB can proceed with the FD
Hearing request: FAB schedules a hearing
Objection with no hearing request: FAB performs a review of the written record.

What if FAB **agrees** with the Recommended Decision?

- The FAB issues a final decision (FD) that affirms the ultimate conclusions of the RD.
- If medical benefits are involved, FAB attaches a medical benefits letter.
- If a payment is involved, FAB completes an EN-20 payment form that must be completed by the claimant.

What if FAB **disagrees** with the Recommended Decision?

- **Development**
  - FAB can quickly develop evidence in order to reach an appropriate conclusion—with an eye towards getting to “Yes.“
- **Remand**
- **Reversal**
  - The evidence is sufficient to support an acceptance.

Waivers

- Indicates no plan to send objections.
- Does away with FAB's requirement to wait 60 days to allow for objections.
- Does *not* indicate agreement with RD.
- Just the waiver, please.
  - Signature and date only.
  - Any comment should be on a separate piece of paper.

Two Options on Waiver Form

- RD often accepts one or more aspects of a claim and denies others.
- Examples
- A claimant may:
  - waive the right to object to all determinations, or
  - waive the right to object to acceptances and hold on to the right to object to the denials.
- A claimant should choose only one.

Waiver Example:

(Option 1)

I, _____, being fully informed of my right to object to any of the findings of fact and/or conclusions of law contained in the Recommended Decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act, do hereby waive those rights **only** as those rights pertain to the portion of my claim recommended for acceptance. I do, however, reserve my right to object to the findings of fact and/or conclusions of law contained in the Recommended Decision that recommend denial of claimed benefits.

I understand that should I choose to file an objection, I may either attach such objection to this form or submit a separate written objection to the address listed above within 60 days of the date of issuance of the Recommended Decision.

_____

Signature Date

(Option 2)

I, _____, being fully informed of my right to object to any of the findings of fact and/or conclusions of law contained in the Recommended Decision issued on my claim for compensation under the Energy Employees Occupational Illness Compensation Program Act, do hereby waive those rights.

_____

Signature Date

(**NOTE ON WAIVER:** If you wish to file a waiver of objections, please select and sign **only one** of the above options. Select Option 1 to waive your right to object to the portion of your claim recommended for acceptance but reserve your right to object to the recommended denial of benefits. Select the Option 2 to waive your rights to object to ALL findings and conclusions.)

If someone disagrees with the recommended decision… *first consider why*

- You may disagree with a fact presented in the RD.
  - You may not disagree with the ultimate recommendations, but simply want a fact to be corrected for the record.
  - Or you may not know whether the factual error has an impact on your claim.
- You may disagree with or fail to understand the reasoning in the RD.
  - You may think the reasons are not logical.
  - You may think the reasons are not in compliance with the Act.
  - Or you may simply want the reasons to be explained.
- You may disagree that your claim should be denied.
- You may disagree with the amount of the recommended compensation.

If someone disagrees with the recommended decision… *next consider what you want FAB to do*

- If you simply want a fact corrected for the record, call or write FAB, noting the correction you would like to be made. Indicate that you are not objecting. You may submit a waiver as well.
- If you want a hearing, send FAB a letter, specifically asking for a hearing. FAB will then schedule and conduct a hearing.
- If you would rather FAB look at the evidence of file, including new evidence, send FAB a letter indicating that you are objecting to the RD. FAB will then perform a review of the written record.

Objections

- An objection must be submitted in writing within 60 days of the issuance of the RD (simply submitting new evidence will generally not be considered an objection).
- Here are some common reasons for objection:
  - The claim was missing information and you now have it.
  - You do not believe the DO properly or fully analyzed the evidence on file.
  - You do not believe the NIOSH dose reconstruction was accurate.
  - You do not believe the DO followed the Act, regulations, or procedures.

Objection Tips

- Begin your letter by making it clear you don't agree with the RD and have specific objections.
- Always include the case ID.
- Focus your objections on the reason for denial.
- Make your objections clear and understandable.
- Number or bullet your objections.
- Offer evidence supporting your objections.
- Number attachments and provide a summary.

Objection Support

- If the claim was denied due to no medical evidence being submitted, submit the missing medical information or explain that you are in the process of obtaining it (the information must be received before the issuance of the FD).
- If a contract medical consultant (CMC) provided a medical opinion and the claim was denied, provide a medical report from your physician responding to the CMC report.
- If the claim was denied because the evidence did not support exposure to a toxic substance linked to the condition, describe the claimant's specific exposures and provide documentation.
- Be case specific:
    - Information on another person's claim is not helpful
    - General information from the internet may not be helpful; however, relevant scientific journal articles combined with a specific medical opinion may support a claim.

Hearing Request

- Must be made in writing within 60 days of the issuance of the RD.
- Objections may be submitted prior to or during the hearing.
- Be specific as to any accommodations you may need for the hearing, i.e., dates, times, TDY, etc.

During the Hearing

- You may discuss the specific reasons you disagree with the RD.
- You may describe your work duties or other facts that provide context to your claim.
- You may present exhibits relevant to the claim.
- If you have a prepared statement, you may read it or simply present it into evidence.
- You may ask the hearing representative (HR) to clarify issues you have questions about.
- **Evidence and testimony are presented at the hearing. A decision is not made during the hearing.**

After the Hearing

- You will receive a copy of the hearing transcript, and you will have 20 days to review it and make comments.

- You have 30 days from the date of the hearing to present any further information concerning the claim.

Final Decisions

- Issued after
  - Objection period ends **or**
  - Claimant submits objections or waiver **and**
  - Full review of evidence.
- Contains:
  - **Introduction:** whether the claim has been accepted or denied;
  - **Statement of the Case:** describes evidence and actions;
  - **Finding of Facts:** outlines pertinent findings upon which the conclusions are based; and
  - **Conclusions of Law:** explanation of reasoning behind the decision, along with citations to the Act or regulations.

Final Decisions following a Hearing or Review of the Written Record

- Contains the same sections plus an Objection section.

- This section summarizes the objections and responds to them, explaining why they are or are not sufficient to challenge the recommendations of the District Office.

Remand Orders

- Written directive instead of FD. Sends case back to the DO for further consideration or development.
- No remand if minor development can resolve issue.
- FAB uses reasonable discretion when assessing case.
  - Not necessarily sufficient grounds:
    - Mere disagreement (if it's a judgment call, defer to the DO's authority)
    - New evidence
    - Error
  - Assess impact
    - Does the new evidence address all of the deficiencies noted in RD?
    - Did the error result in inadequate development?

Examples of Remand Orders

- New medical evidence that addresses the deficiency noted in the RD.
- The DO missed evidence in the case file.
- The DO did not take an essential development step.
- The medical evidence is not sufficiently supported.
- The DO missed or incorrectly applied a presumption policy.
- Miscalculation of the lump sum payment.

Reversal to Accept

- RD denied but evidence is sufficient for an acceptance.
- This can be new evidence that satisfies the deficiency mentioned in the RD.
- Or FAB may decide that the evidence already on record was actually sufficient.

What happens after an acceptance?

- If you are approved under Part E of the Act for a new condition, you may file a claim for wage loss or impairment.
- If you are granted medical benefits, you will receive a medical benefits card under separate cover.
- If you are awarded money, carefully fill out the EN-20 payment form. This will be processed by the DO.
- The maximum payment allowed under Part B is $150,000 and the maximum payment allowed under Part E is $250,000. Once those amounts have been paid, there is no more lump sum compensation available.

What happens after a denial?

- You may request a reconsideration.
- Request must be received within 30 days of the issuance of the FD.
- If a reconsideration is granted, FAB will take another look at the evidence.
- You may request a reopening.
- May be made at any time.
- The evidence must be sufficient to vacate the FD.

Requirements for a Reconsideration Request to be Granted

- Evidence or argument must be new
  - No diagnosis denial:
    - Submit a medical report providing a diagnosis.
  - You think the FD ignored policy:
    - Send well-supported argument.

- Evidence or argument must be sufficient to change the outcome of the FD:
  - If the writer had this new evidence or argument, the FD would have been different.

A Reconsideration Request will be Denied if:

- The request is received after the 30-day time limit has passed.
- No new and relevant evidence or argument is submitted.
- The information has already been reviewed by FAB.
- The claimant merely disagrees.

Reopening Request

- FAB does not issue determinations regarding reopening. These are made at the District Director or Director level.
- New evidence and/or argument must be submitted, sufficient to overcome the deficiencies noted in the FD.
- Depending on the reason for denial, this might be new medical or employment evidence, a change in policy, an update in SEM, etc.
- Make the request impossible to miss: write “Reopening” and the case ID clearly in the top right corner.

Claimant Assistance

- **Resource Centers – 11 locations Nationwide**

- **5 Final Adjudication Branch Offices**
  Cleveland, Denver, Jacksonville, Seattle, and Washington, D.C.
  (Your claim may be assigned to any of these. Use our general toll-free number: 1-866-538-8143)

- **DEEOIC website**
  - http://www.dol.gov/owcp/energy/
  - General program information
  - SEM website
  - Claimant Resources (Forms, Medical Benefits Information)
  - Medical Provider Resources (Enrollment, Bill Processing)

Questions

Questions can also be submitted to DEEOIC-Outreach@dol.gov

Thank you very much for attending the DEEOIC Webinar