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To: [DOL Energy Advisory Board Information](#)
Subject: Public Comments on BeS Borderline Changes
Date: Wednesday, May 11, 2022 5:15:25 PM

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To the ABTSWH,

I am very concerned about a suggested change in the Act. It is important to note that when the DOL responded to your Borderline question they changed the language of the Act as referenced by adding new language e.g. (BeLPT) rather than using the clear and unambiguous language which actually reads:

(8) A of the Act

Beryllium Sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells. For a reason not obvious to me The DEEOIC misquoted the Act while claiming to be administratively bound to it in their response. They quoted the Act as such:

(8) A of the Act

Beryllium Sensitivity as established by an abnormal (BeLPT) performed on either blood or lung lavage cells.

A BeLPT is a very specific patented test with established diagnostic criteria.

This is how I would fix this issue...

Follow the clear language of the Act and submit a beryllium lymphocyte proliferation test that a physician has noted as abnormal. This will meet the statutory criteria clearly and unambiguously stated in the Act. It is the responsibility of the treating physician to interpret the test result and if one assay, or a number of assays tested over time, is abnormal a physician could diagnose sensitization. This mischaracterization of the Act is an example of why there is a need for legal support in order to help the Board understand the Law. I would like to participate in any meetings related to CBD and BeS. Ninety percent of the claims I submit are for CBD under part B and I am very successful in garnering approval for claimants under the Pre 93 criteria (normal BeLPTs) . I have noticed another issue with sensitized employees... They do not get diagnosed with ***established cbd (statutory diagnosis)*** even if they are sensitized and suffer from obstruction which meets the statutory criteria. There are hundreds of Sensitized claimants with approved COPD that continue to be monitored for established cbd under the statutory criteria and never get compensation. So even if we fix the Borderline issue it will be an uphill climb to get a diagnosis from the top hospitals specializing in CBD. This is just what I have seen after reviewing hundreds of files. My two cents...

Thank you,
Stephanie Carroll
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