



File Number:

SEP 19 2017

Dr. Steven Markowitz  
Chair  
Advisory Board on Toxic Substances &  
Worker Health  
Queens College, Remsen Hall  
65-30 Kissena Boulevard  
Flushing, NY 11367

Dear Dr. Markowitz:

I am pleased to send you the response of the Department of Labor to the recommendations made by the Advisory Board on Toxic Substances and Worker Health, at the Board's October 2016 public meeting (enclosed). We provided you an interim response on March 24, 2017, and the enclosed elaborates on the matters discussed therein.

I would also like to express the Department's appreciation for the dedication and expertise that the Advisory Board is providing to the Energy Employees Occupational Illness Compensation Program and its stakeholders. Your important work is making a difference.

On behalf of the Department, the Office of Workers' Compensation Programs, the Energy program, and the communities we serve, I look forward to the continued efforts of the Advisory Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Julia K. Hearthway".

Julia K. Hearthway  
Director

Office of Workers' Compensation Programs

Enclosure

**Department of Labor Responses to Recommendations from the October 2016 Public Meeting of the Advisory Board on Toxic Substances and Worker Health**

***Recommendation #1 – We recommend that EEOICPA Circular No. 15-06 (issued December 17, 2014), Post 1995 Occupational Toxic Exposure Guidance, be rescinded.***

As OWCP communicated to the Board in the interim response of March 24, 2017, we agree with this recommendation and have rescinded this Circular, on February 2, 2017. While OWCP believes that there is literature to support that there were greater safety measures in place beginning in the late 1990s, the Circular was rescinded to avoid the appearance that one cohort of claimants is being held to a higher burden of proof than others. We have a plan in place to review cases that may be affected by this change.

***Recommendation #2 – We recommend that the [Division of Energy Employees Occupational Illness Compensation] DEEOIC ensure that the disease exposure links identified by the sources listed in Table 3-1 of the Institute of Medicine (IOM) report, Review of the Department of Labor’s Site Exposure Matrix Database (2013), are included in the Site Exposure Matrix database (SEM).***

OWCP agrees that a number of the references provided by the IOM may be useful. To facilitate implementing this recommendation, it would be very helpful if the Board reviewed the list of references and narrowed the list specifically to those sources the Board believes are most relevant, with recommendations as to how they could be used in the SEM. As we reviewed the list of 11 sources, we found that some of the information is not relevant to occupational exposure, some sources are redundant, and some sources contradict other sources listed in the Table. OWCP shared this information in the interim response sent to the Board on March 24, 2017, and the Board has agreed to provide more specific and relevant information.

***Recommendation #3 – We recommend that former workers from the Department of Energy (DOE) facilities be hired to administer the Occupational Health Questionnaire (OHQ).***

OWCP agrees that it is beneficial for former DOE workers to administer the OHQ interview. Currently, the Resource Centers, which conduct the OHQ interviews, are operated by a contractor. The contractor employs 17 former DOE employees (14 staff members and three managers) out of the approximately 60 total employees. Former DOE employees work in nine of the 11 Resource Centers. When vacancies occur, the program encourages the recruitment of former DOE employees, to take advantage of their experience and familiarity with DOE work processes, labor categories and work environments. DEEOIC helps to ensure that all Resource Center staff are adequately trained and skilled in assisting EEOICPA claimants, including conducting OHQ interviews.

***Recommendation #4 – We recommend that DEEOIC establish a process whereby the industrial hygienist (IH) may interview the claimant directly.***

OWCP agrees that there are certain circumstances in which it may be beneficial for the IH to speak directly with the claimant. The claims examiners have legal responsibility for adjudication of claims. As the examiner's role is the finder of fact and the liaison between the IH and the claimant, OWCP believes that the claims examiner's participation in any discussion between the IH and the claimant would be necessary and beneficial. Therefore, in these circumstances, the claims examiner would coordinate any discussion between the IH and claimant. DEEOIC has begun to develop procedures for claims examiners to use when such discussions are appropriate.

***Recommendation #5 – We recommend DOL review policy teleconference notes, redact confidential information, and post the information in a publically available database searchable by topic area.***

OWCP does not support this recommendation. In the past, DEEOIC management and Policy Branch staff had conducted internal policy calls on a monthly basis to discuss specific cases, often complex or unusual in nature, which may not align precisely with broader policies. While we provided the Advisory Board with the policy call notes, the notes nevertheless generally constitute case-specific, pre-decisional internal policy deliberations which OWCP does not believe are appropriate for the general public. In this regard, the policy calls are an informal discussion forum for open and candid conversations about the details of individual cases. If the agency participants believed the notes from these discussions were to be shared with the public, it could likely inhibit the open exchange of ideas. Nevertheless, DEEOIC carefully evaluates each policy question/determination, and where material is considered to have broad applicability, any resulting policy is added to the Federal (EEOICPA) Procedure Manual, which is updated regularly and is available to program staff and the public on the OWCP/DEEOIC website. We recently converted the online Procedural Manual to a PDF format, and it is now searchable by topic area.

***Recommendations #6 and #8 –***

***#6: We recommend that the Department of Labor explore the feasibility of prospectively having new case files made accessible to the claimant through a password protected electronic portal.***

***#8: We recommend that the entire case file should be made available to both the industrial hygienists and the contract medical consultants when a referral is made to either, and not be restricted to the information that the claims examiner believes is relevant. The claims examiner should map the file to indicate where relevant information is believed to be.***

Recommendations #6 and #8 are addressed together, as they are both regarding access to case files and have common associated technological and policy issues.

OWCP supports the first of these two recommendations. We agree that claimants are entitled to access to their own case files. To implement this recommendation, DEEOIC plans to leverage technological solutions utilized by other divisions within OWCP. While implementing this recommendation may seem simple on the surface, it requires

that the new interface (portal) be programmed to assure that each claimant can only see his or her own specific and targeted information from our claims and document management systems. This activity will begin in FY 2018, if OWCP is able to obtain additional resources. To access this new interface, DEEOIC would need to create tools and implement methods to authenticate users accessing the portal, including creating and maintaining two-factor authenticated username and password access and system provisioning that assures case specific access to only what the user is authorized to see. Additionally, DEEOIC's systems are not currently able to be accessed outside of the DOL firewall, so there would be additional security measures and costs to develop and maintain the integrity of our claimants' private data and to protect against the vulnerabilities created by public access. Costs would include those for initial start-up and annual maintenance. We would also need to modify our existing IT contract and procure new contracts for identity proofing. DEEOIC will need to develop new procedures, procure additional resources, issue contract modifications and develop training.

With regard to providing the industrial hygienists and contract medical consultants with full access to the case file, we do not believe such access is appropriate for several reasons. First, we believe there are potential challenges associated with industrial hygienists and contract medical consultants (CMC) developing their own set of facts after review of the file, thereby usurping the primary function of our claims examiners as finders of fact, and in particular, those facts that need to be presented to these consultants. In addition, claimants often submit voluminous amounts of medical documentation (sometimes thousands of pages) regarding all medical treatment they've received during their lifetimes. Many of these documents are unrelated to the medical condition being claimed or the reason for a referral to a CMC.

While it is never the intent of a claims examiner to conceal information, it has been OWCP's experience that it is operationally inefficient, and often uneconomical, to supply superfluous documents to the CMC when only parts of the medical information is pertinent to the issue at hand (e.g. completion of an impairment rating for an accepted lung condition). Finally, when cases are referred to industrial hygienists, the claims examiners are seeking guidance on a particular set of circumstances. It would be inappropriate for an industrial hygienist to be required to sift through all of the various employment, exposure and medical documents in order to make his or her own determination regarding which documents are to be reviewed. It is the claims examiner's responsibility to determine the questions that are being asked of the specialists and to provide them with the documents that are relevant to the issue of concern. Finally, it has been OWCP's experience that the contractors performing this work do not want to be required to sort through potentially thousands of pages of documents for each claim, most of which are not relevant to the questions being asked of them.

***Recommendation #7 – We recommend that the Department of Labor re-organize its occupational physicians into an office comparable in organizational structure to the Office of the Solicitor of the Department of Labor, with physicians organized in groups to support OSHA, MSHA, OWCP, and other units, as well as to provide overall support to the Department of Labor.***

The Board has recommended that a separate agency within the Department be established to provide medical advice to OWCP on the basis that it would help ensure quality, consistency and objectivity. While OWCP appreciates the Board's recommendation regarding the provision of medical advice specific to the EEOICPA program, OWCP believes that further information needs to be provided to the Board for it to have a fuller understanding of the current structure OWCP has in place to provide medical advice to the EEOICPA program. In particular, OWCP will provide information on the role of OWCP's Branch of Medical Standards and Rehabilitation (BMSR) and the medical staffing of that branch, as well as the use of contract medical consultants and the process OWCP uses to review the reports of these medical consultants. OWCP believes that following the exchange of this information, some of which has already occurred, the Board will be in a better position to provide a recommendation that is tailored specifically to the EEOICPA program.