

This memorandum provides a discussion of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) work with regard to the establishment of presumptive exposure and causation standards that case adjudicators must apply in the evaluation of claims filed under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Moreover, the memorandum discusses the content of a presentation assembled by the Advisory Board on Toxic Substances and Worker Health: Working Group on Presumptions.

The program develops presumptive standards with the goal of identifying expedited routes of claim adjudication that are derived from a reasonable application of available medical and health science. To date, the DEEOIC has developed presumptive standards that offer generalizations regarding exposure to toxic substances or causation (relationship between exposure and diagnosed condition). It is important to be aware that any claim evaluated for a presumptive standard that an adjudicator finds excluded from consideration undergoes additional review for compensability using standard adjudicatory review procedures.

Exposure presumptions exist to allow an adjudicator to apply a specific finding of the level, extent or nature of exposure to a particular toxic substance when certain conditions apply. A presumption relating to a toxic substances exposure may exist under any number of employment circumstances, such as the employee job title, employment period, work process and even work location. Moreover, the potential may exist for a presumption to apply given temporal or location-specific circumstances. For example, DEEOIC accepts that certain labor categories, regardless of where the work occurred, are likely to have exposure to asbestos prior to 1986. Accordingly, when an adjudicator examines a case involving one of the positions identified in this exposure presumption, he or she may immediately make a factual finding that the employee had asbestos exposure. The adjudicator can then report that information to a physician for causation opinion on the applicable diagnosed illness. In this way, the adjudicator achieves timesaving in his or her claim analysis, because an exposure presumption negates any need for standard development including evaluation of employment records, Site Exposure Matrix research and industrial hygiene referral. The DEEOIC views this as claimant-favorable process, as it applies universally to all employees in a particular job category, regardless of whether there is employee-specific evidence contradicting the presumed level of exposure.

Causation presumptions are claimant-favorable generalizations by which program is able to accept as compensable any claim where specific exposure and medical criterion are satisfied. In these situations, so long as the presumptive causation criteria are met, a physician's opinion on causation is unnecessary.

Causation presumptions originate from an analysis of conducted by the program of the epidemiological data that demonstrates an epidemiological relationship between X exposure and Y disease. Other factors that can play a role in the establishment of causation presumption can be the latency of exposure to disease onset or the extent, nature or duration of exposure. A causation presumption established by the program to date has to have sufficient scientific underpinnings to substantiate that a claim meeting the stipulated criteria is compensable based on the legal criteria for Part E causation. In other words, if a claim meets the criteria of the presumption, DEEOIC accepts that the evidence is sufficient to establish that it is as least as likely as note that the (presumed) exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness and it is as least as likely as not that the exposure to a such toxic substance was related to employment at a Department of Energy facility.

During the course of the administration of the EEOICPA, the program has developed several presumptions utilized in the evaluation of claim. Attached to this memorandum is a comprehensive listing of exposure and medical causation presumptions. A beneficial course of action for the program would be advice on expanding upon established presumptions or the introduction of new categories of presumptions that would be beneficial to identifiable populations of employee claims.

With regard to specific feedback on the content of a presentation titled, Presumptions Power Point March 14, 2017, assembled by the Advisory board on Toxic Substances and Worker Health: Working Group on Presumptions, we provide the following feedback:

Slide 1 – Use of Presumptions

See exhibit for complete listing of exposure and causation presumptions.

Slide 2 – Program Comparison Chart

While other programs may have established presumptions, the contexts of those programs are significantly different from the atomic weapons production complex. It may be helpful to understand how other program effect the development of presumptions, but the application of those presumptions may prove difficult given the unique features of EEOICPA claims. For example, most mining activities covered under the EEOICPA relate to uranium extraction rather than coal.

Slide 4 – Presumption Elements

Consider the distinction between exposure presumptions vs. causation presumptions as explained earlier in this memorandum. Spelling error third bullet item.

Slide 5 – Exposure Presumption, Part B in EEOICPA

Review for accuracy and clarity. Slide relates to employment definition Part B claims for the Special Exposure Cohort class and silicosis. SEC and silicosis standards have very specific legal definitions in the statute, which summarization may obscure. It is also important to note that there is an also required medical criterion for each as well. For reference, the following statutory information is provided:

Reference from EEOICPA to silica employment criteria -

(c) EXPOSURE TO SILICA IN THE PERFORMANCE OF DUTY – A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

Reference from EEOICPA on Special Exposure Cohort employment criteria -

(14) The term “member of the Special Exposure Cohort” means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee’s body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 30 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals

Slide 6 – 43

Review attachment for all relevant guidance on asbestos presumptions

Slide 10 – Significant Asbestos Exposure – Associated Labor Categories and Job Tasks (ATSD 2014)

Note – the DEEOIC has provided the Board with the ATSD 2014 document (reference pg. 32) that was the source of the job list. The source is available online - https://www.atsdr.cdc.gov/csem/asbestos_2014/docs/asbestos.pdf

Slide 12 – Ovarian Cancer and Asbestosis

Since the issuance of this bulletin, the DEEOIC has increased its reliance on IH analysis for the nature, extent and duration of exposure – suggest deleting “when needed.”

Slide 13 – Exposure Presumptions, Asbestos

Review attachment for all relevant guidance on asbestos presumptions, including reference to jobs with asbestos exposure.

Slide 17 –

Repeat of slide 10

Slide 21 – EEOICPA Circular No. 15-05

Review attachment for all relevant guidance on asbestos presumptions, including reference to jobs with asbestos exposure. Several policy directives refer to asbestos presumptions.

Slide 25 – EEOICPA Circular No. 15-05

DEEOIC has increased its reliance on IH analysis regarding the extent, duration and nature of toxic substance exposure.

Slide 27 – EEOICPA Circular No. 15-05

Cases not meeting standard do undergo normal development including exposure and medical causation assessment.

Slide 29 –

Need to clarify intent of question(s) – seems to be similar to content of slide 27.

Slide 34-35 – EEOICPA Procedure Manual Chapter 2-1000, Exhibit 1: Matrix

This is an informational exhibit only for assessing common considerations by a doctor when assessing for COPD. See header – “Common characteristics for the diagnosis of the medical

condition." Diagnosis of COPD with or without identified characteristics is a medical issue for a physician to resolve.

Slide 37 -

Repeat of slide 10 & 17

Slide 38 – COPD Presumptive Issues

Consideration of the definition of a toxic substance is needed with regard to reference to vapors, gases, dusts or fumes. Toxic substance means any material that has the potential to cause illness or death because of its radioactive, chemical or biological nature.