DOL/DEEOIC ADVISORY BOARD

"PUBLIC OPINION"

March 25, 2022

Who Am I?

The Board chairman may delete any of this first section she believes contains too much personal information. It is provided so board members will know the association between the opinion holder and the DOL. I have no reason to exclude any of this personal information.

Dr. Robert E. Rothe (DOL case #28222) living in Boulder, CO, 80303; Age: 86

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Worked as experimental nuclear physicist at Rocky Flats (RFP) 1964 to 1994

Accepted DOL Coverage: COPD (J44.9), Hypoxemia (R09.02), Unspecified, fumes and vapors (J68.9), Sleep Apnea (G47.30), Cough (R05), and either CBD (J63.2) or Pneumoconiosis (J63.6) (I've never known the distinction between these two nor which illness I actually have.)

Claimed new Coverage: Bilateral sensorineural Hearing Loss (H90.3)

OPENING STATEMENT

I have several accusations of wrongdoing that I make against DOL. Some are more-general; the others, deeply personal. I respectfully ask this Advisory Board to give *both* of them fair, open, and honest consideration. With equal respect, I request a written reply to these observations.

Some DOL procedures attempting to implement the intent of the EEOICPA (as amended) are, in my scientific opinion, poorly conceived, unscientific in nature and statistically unsound leading to inaccurate Impairment Ratings (IRs) and wrongly denied claims. In addition to identifying these errors, I provide simple scientific tests DOL could do to substantiate or refute my observations and I even point out better alternatives that DOL could implement to replaced them. My hope is to be helpful and not just critical.

Accusation #1 (General)

Determining Impairments

The existing method of determining IRs (a precise percentage, an integer between 1 and 100) is unscientific, unfair to the evaluating physician, and correspondingly unfair to the client. When I pointed this out to DEEOIC (name withheld) in early 2022, he replied that this was fixed by statute. His emailed reply is copied below (still highlighted as he had sent):

§ 7385s-2. Compensation schedule for contractor employees

(a) COMPENSATION PROVIDED.—The amount of contractor employee compensation under this part for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

> (1) IMPAIRMENT.—(A) The Secretary shall determine— (i) the minimum impairment rating of that employee, expressed as a number of percentage points; and (ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility. (B) The employee shall receive an amount under this paragraph equal to $2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

(*I removed a section that speaks to wage loss*)

(b) DETERMINATION OF MINIMUM IMPAIRMENT RATING.—For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment

He explained that he has simply identified those responsible for this particular methodology – The US Congress in 2000. That apparently made sense to Congress then; but, I insist, it is illogical, inaccurate, unscientific, statistically unsound, and unfair to everyone involved.

Section 7385s would be improved by requiring evaluating doctors to place a client in one of a very few (4 suggested or 5 maximum) **Impairment Ranges** in place of the current precise percentage. If 4 Ranges are selected, they might become "Minimally Impaired", "Moderately Impaired", "heavily Impaired" and "Terminally Impaired". Subsection 1 A would then identify specific compensation for each of the Ranges: possibly 25%, 50%, 75% and 100% of the maximum $250,000 for anyone defined as terminally ill (or whatever compensation DOL decides to implement per range.)

Subsection 1b (sic) would still determine impairment in accordance with "AMA's guide to Permanent Impairment"; but, if it, too, requires a distinct percentage point, redefine that to allow for broader ranges.

The problem the evaluating doctor faces is having to define a specific integer out of 100 with that daunting task only based on a single half-hour-long contact with a client never before met and a single PFT (using my pulmonary case as an example). Every percentage point said doctor is in error results in $2500 too little or too much). That's a heavy burden to impose on the doctors.

> Here is a one-time experiment DOL could do to verify my contention. Subject a few clients with varying degrees of their illness, to, say, 10 IR measurements obtaining the current percentage value using existing procedures. For scientific purposes and eliminate biases), distribute the evaluation hearings over a small number of weeks and different times of the day for the 10 different doctors. Compare the 10 results statistically. Only if all 10 arrived at the *same precise percentage*, I would withdraw this accusation. I believe I am safe!

I note that the EEOICPA has been amended in the past. I imagine this amendment ought to be a relatively easy one and quickly passed. Merely explain to Congress that DOL wishes to replace an outmoded inefficient procedure with one having sound science behind it. DOL may also point out enhanced fairness and less pressure on the evaluating physicians as an added benefit.

> This paragraph forwards a suggestion related to Impairment evaluation mythologies made by my Case Manager from the DOL-approved Home Health Care Provider (both names withheld) serving my needs. Their suggestion: DOL should create a questionnaire for all authorized evaluating doctors soliciting each doctor's personal opinion of the requirement of Section 7385s identifying the precision of a specific, <u>unique</u> percentage (IR). Offer to them the option of placing their evaluation into one of 4 or 5 specified ranges instead. Point out that Impairment ***<u>Ranges</u>*** (not percentages) might be more confidently identified by the doctor, easier for DOL to administrate, and probably could be performed less frequently (e.g., every 4th year instead of every other year?).

Accusation #2 (General)

Inconsistent IR assessments

My IR determination in 2020 (officially provided by (name withheld) was a botched disaster from its very onset. Initially, I had decided to use the same evaluator doctor as my first two assessments and she agreed to do it. Later, however, I was encouraged to change to an evaluator suggested by a company called *PCM Impairments*. That proved to be a mistake because that evaluator (name withheld) – following DOL's procedures – produced an IR of 75% apparently thinking he was increasing me from 55% (his believed starting point) a 20% increase. This doctor evidently had not realized my actual existing 84%.

Furthermore, this same doctor had documented the DOL-approved illnesses that he had considered. When, said doctor was informed by me that he had overlooked two of my currently approved illnesses, that very same doctor merely increased the 75% to 77%; and he did this with no further contact with me, his client. I am in possession of two different letters from this doctor containing the two different official IR evaluations; and, astonishingly so, both letters contain the same date!

I submit that this reality illustrates that DOL's existing procedures are too confusing, too complicated, clearly too precise, too subject to physician interpretation, and, in this real example, laughable (2 *different* ratings for one IR on the *same* date).

The final illustration of DOL procedural inadequacy, derives from the unsolicited IR evaluation from the evaluator I had initially requested. Evidently, she had not received my notification to replace her because she chose to make an evaluation of my 2020 IR independently (not aware of the above fiasco). Her IR was made without any contact with me (She knows my case history well and had my PFT measurement.) I have a letter from her wherein she differs with the proposed 75% (or 77%) claiming: "His IR should clearly be in the 80s". She, too, was unaware of my IR having been increased years earlier to 84%.

In summary (just this accusation), DOL's existing IR evaluating policies are unscientific, unsound, inconsistent for a given client at a given time unfair and based on incomplete knowledge of a client's history.

Therefore, I repeat my suggested (first indented paragraph, above) that suggests a much improved impairment evaluation methodology.

TIMELINE OF *MY* EEOICPA IR COMPENSATIONS

Initial IR: 33% $82,500	fall	2008
2nd IR: 15% $37,500 (now 48%)	Nov 24	2010
3rd IR: 7% $17,500 (now 55%)	May 23	2013
4th IR: 3% $7,500 (now 58%)	Nov	2015
5th IR: 9%: $22,500 (now 84%)	Feb 13	2018
6th IR: 75% and 77% $0.00 (both < 84%)	April 21	2020

Accusation #3 (Personal)

Job Titles

The DOL has unfairly denied – for about 4 years and at every level (DDO, Washington, FAB, and all FAB reconsiderations) – my doctor-supported claim for *bilateral sensorineural hearing loss* (hearing loss) basing that denial, at every level, solely on my job title not fitting DOL's (believed self-generated) list of eligible job titles. This is wrong on two counts –

- DOL's list does not include *any* job title that a professional Research Scientist might have held even though he did the tasks to cause or contribute to the claimed hearing loss.
- DOL's list is clearly incomplete. My case reveals it does not contain all job titles of workers contracting bilateral sensorineural hearing loss since I have the illness obtained because of my employment

I presume that DOL wrote their own procedures, charts, tables, policies and methodologies for implementing the intent of the 2000 act. I credit DOL for doing so with the best of intentions aimed at fairness and integrity. My decades of association with DOL, however, have revealed an appalling lack of good science, a misunderstanding of statistics, and the variability of the human body. Indeed, I conjecture that none of these many self-generated DOL procedures have ever been satisfactorily peer reviewed by a panel of uninvolved scientists. (In the world of scientific publications, every such publication must be peer-reviewed by a knowledgeable uninvolved person to ensure that the contents is logical, sensible, correct, and applicable before it is permitted to be published and used by the

industry. DOL's use and total reliance on a worker's job title is remiss in many ways. A job title (assigned by the employer to serve as a measure of experience in a field but often not the actual work done!) does not identify all that a worker does throughout his/her career. DOL's list of job titles contain only blue-collared, often hourly job titles; but no professional titles. A 30-year-long professional researcher will, most assuredly, have done many of the specific job titles on DOL's list. The EEOICPA intends, I point out, that one is compensated for the injuries incurred on the (nuclear) job and not for one's job's title.

I was required to do the work with ototoxic solvents that have led to my hearing loss; and that fact has been abundantly proven to DOL at every level. Still, DOL adheres rigidly to their (incomplete, I claim) list and denies my claim solely because of my job title. This error needs to be rectified.

I propose a simple fix to this oversight: Add one more job title to the existing list: "Any job title that is shown to have included any of the job titles in this list."

Accusation #4 (Personal)

Using the Wrong Job Title

Still another error by DOL is that they fail to recognize that I did not even hold that job title used by DOL to deny my claim at the time of my exposure to ototoxic chemicals contributing to my hearing loss. My self-perceived job title held throughout my entire 30-years at RFP was "experimental nuclear physicist." Every researcher's professional career was the culmination of many minor promotions; and that is true in my case. I was not an Associate Research Scientist at the time I performed the work with ototoxic solvents which caused or exacerbated my hearing loss. DOL's denial is based on the wrong job title!

Now retired for almost 3 decades, I can no longer recall accurately what job titles (increasingly flowery and, at the same time, decreasingly descriptive) I held during my advancement to Associate Research Scientist. The following may be incomplete and/or inaccurate; but it is what I *think* I held:

MY COMPANY-DESIGNATED JOB TITLES

RFP Job Title (or titles)	*approximate* date of promotion
DOE Contractor Employee (just hired)	August 10, 1964
senior development specialist	April 19, 1965
research physicist, senior research physicist	July 2, 1973

research specialist, senior research specialist II, research specialist II	10/10/82
associate research scientist	About 1989
Research Scientist (at retirement)	March 19, 1994

The FBI raided RFP claiming environmental crimes on June 6th, 1989. My company's response was to cease to perform any work involving fissile materials that could, in any way, be construed as "production". Thus, from then until retirement, I did only paperwork – no hands on with fissile material, no exposure to TCE or MEK, no further contribution to hearing loss.

Therefore, DOL is wrong to deny my claim because Associate Research scientist is not on their list.

Accusation #5 (General)

Use of a single PFT

This discussion pertains to my specific case (pulmonary dysfunctions). DOL fails to recognize the variability of human parameters. A person's blood pressure, heart rate, temperature, and oxygen saturation, and several other human parameters vary widely with time, activity, wellness, etc. That is why these important vital signs are frequently measured by medical professionals. My conjecture here is that a client's PFT test *may* also vary so much that relying on a single measurement – and considering it "representative" – is probably unjustified.

> One resolution would be for DOL to require multiple EFT measurements under a variety of conditions by a variety of doctors when evaluating an impairment. Another simple test to support my conjecture or prove me wrong would be to subject a statistically significant number of pulmonary clients to 3 to 10 PFTs using those results to prove my accusation incorrect. If so, I withdraw this portion of my accusations ; but I doubt that would be the case.

Accusation #6 (General)

DOL's entire Procedure Manual

If and when the DEEOIC Advisory Board sees the merit to my accusations – which. I believe, some (maybe most) will – I suggest just they will recognize that

just about every portion of DOL's EEOICPA procedure manual needs to be peer-reviewed by knowledgeable independent persons. The logical assumption is that if these few accusations are found to have merit, DOL's entire functioning (and DOL's clients!) might benefit from such a top-to-bottom cleansing of unsound non-scientific procedures.

Observation #1 (General)

DOL's Professionalism

For decades, I have been treated with disrespect, insults, and derogatory language by DOL representatives at various levels. Happily, two exceptions to this observation exist. My Case Examiner for monetary payouts (name withheld) and one person from the DEEOIC's office in Washington (name withheld) have been helpful, courteous, and understanding. My major Case Examiner (name withheld) has never been civil with me, expects me to know DOL procedures she assumes I should know, and is unwilling to explain – in any understandable fashion – what I might need to do to complete some needed step. This woman has never been helpful in any manner whatsoever. In fact, I am afraid to communicate with her.

On another occasion, a top representative of the DEEOIC (name withheld) vented her hostility when I balked at FAB's final rejection of my hearing loss claim saying angrily on the telephone to me (and therefore paraphrased): "Dr. Rothe, don't ever try to reopen this case! It will never be reconsidered!"

Way back in about 2010 and during my 3 years of fighting for CBD – eventually accepted by DOL but only because of the intervention of a representative of the DEEOIC (name withheld) directly to DOL's DDO, one written comment by a DOL representative abusively scoffed at a doctor's use of the word "probably" He insultingly derided the doctor's word implying that the doctor's word was somehow <u>less probable</u> than DOL's much advertised requirement that a claim be "as likely as not to have been caused by, contributed to, or exacerbated by …" I suggest the reverse is linguistically true.

I contend that EEOICPA recipients deserve to be treated with respect and patience.

My Gratitude

Thank you, Madam Chairman, for allowing me to share hopefully helpful comments for DOL/DEEOIC to streamline and improve their operations.

Please recall that I have requested a reply to the preceding 8 pages.

Respectfully Submitted

BOB ROTHE