



March 21, 2024

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

Dear Dr. Markowitz:

Thank you for your letter dated February 1, 2024, transmitting a third recommendation adopted by the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) during its meeting on November 15-16, 2023. On behalf of Acting Secretary of Labor Julie A. Su, to whom you addressed your letter, the Office of Workers' Compensation Programs (OWCP) responds to the recommendations herein.

The Board adopted the following recommendation regarding Exposure Assessment and Industrial Hygiene (IH) in Claims Evaluation in the Division of Energy Employees Occupational Illness Compensation (DEEOIC).

The ABTSWH recommends that the Department of Labor [DOL or Department] modify its exposure assessment and communication procedures as follows:

1. *Require that the IH consultant:*
 - a. *Explicitly address in the IH report all reported exposures in the Occupational History Questionnaire (OHQ).*
 - b. *Describe what exposure-relevant information was found in each of the data sources reviewed (including DAR [Document Acquisition Request]). If none, this should be explicitly stated.*
2. *Share the OHQ with any physician asked to use the IH report for causation analysis.*

Supporting its request, the Board provided the following rationale.

Referral of a case for industrial hygiene (IH) review and evaluation of potential exposure is a critically important part of the claim adjudication process, with many stakeholders relying on this evaluation for their next decisions. These include the claims examiner [CE], the treating physician, the contract medical consultant [CMC] and the claimant. The importance of this report in subsequent decision-making, especially causation analysis, is fundamental.

The usual DEEOIC IH report template describes the sources of information reviewed to reach their conclusions. For example, the following statement was made in the model IH report shared by OWCP Director Godfrey in the Department's response to the Board's previous recommendation to implement a new report form:

"The following information, which was included with the IH referral, was reviewed: e.g., OHQ, EE-3, Site Exposure Matrices (SEM) reports, physician's letter."

Statements such as this, which is, in the Board's experience, representative of what is found in a typical IH report, frequently proceed to provide details only about what is contained in the SEM. Little or no information, either in the affirmative or the negative, from the non-SEM exposure information sources is provided in the IH report. The SEM effectively becomes the dominant or sometimes the only source of information on which the conclusions reached in the IH report and ultimately in the CMC report as well.

The Board believes, as a matter of fairness and transparency, that IH consultants should be instructed to affirmatively include in their reports a description of all information (regarding facility, work area, job tasks or personal monitoring records) that was available for the IH review. The claimant's specific information from the OHQ, and interview if performed, should be included in the report, as should any exposure-related information shared by the physician. This is especially true if the claimant cited any potential exposure that is linked to the claimed condition. If no specific information is available from non-SEM sources, or no monitoring data are available, the IH report should so state. The IH report can then explicitly address the significance of the non-SEM exposure information.

This envisioned more inclusive IH report would be beneficial in multiple respects. Claimants and their representatives would better understand that the claimant-supplied information was specifically considered as part of the claims evaluation process. Secondly, the CMC or other physicians involved in claims development and evaluation would gain a more well-rounded and informative understanding of the claimant's exposures, which would result in improved CMC reports. This would also be aided by the routine provision of the OHQ to the CMC when they are asked to evaluate claims.

The Department recognizes the need to ensure that each claim filed under Part E of the Energy Employees Occupational Illness Compensation Program Act receives careful and thorough consideration about the levels of exposure to toxic substances that the claimant encountered at work, and that can reasonably be established as having a potential linkage to a claimed medical condition. DOL agrees that acknowledging relevant exposure information communicated by the claimant within the OHQ or referenced in case referral documents will improve the quality of the IH exposure characterization reports. DOL agrees to work with its IH contractor to develop feasible changes to IH reports to better communicate the examination of case-specific exposure data.

Regarding the second recommendation, DOL does not agree that it is appropriate for the CE to provide the OHQ to a physician who is assessing causation. The purpose of the OHQ is to allow the claimant an opportunity to communicate their personal knowledge about potential toxic

substance exposure. Their personal knowledge must, however, be weighed along with all available evidence. A claimant's assertion of exposure within the OHQ, or referenced within other occupational records, are weighed by the CE, and considered by the DEEOIC IH, in arriving at an accurate characterization of exposure to share with the evaluating physician. While the information provided in the OHQ is important for contributing to an understanding of the employee's perspective about exposure, it is necessary to consider the totality of available evidence to reach reliable and credible findings of exposure. Providing unvalidated OHQ information to a physician would invite the physician to rely on unproven or inaccurate exposure data to inform their opinion which could result in the need for clarification of an opinion and thus unnecessary delay. DOL considers the DEEOIC IH-produced exposure characterization to represent the best, most accurate information about the nature, extent and frequency of occupational exposure to toxic substances. It is this document that a physician must reference to inform a credible opinion about causation.

On behalf of the Department, OWCP, the Division of Energy Employees Occupational Illness Compensation, and the communities we serve, I look forward to the Board's continued efforts.

Sincerely,



Christopher J. Godfrey
Director, Office of Workers' Compensation Programs