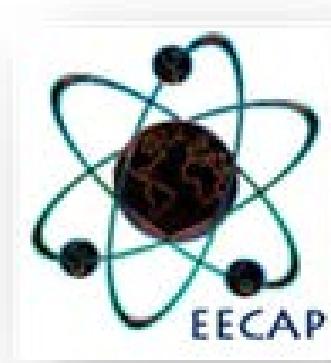


# A Review of DEEOIC's Parkinsonism Final Decisions: Observations, Problems and Solutions

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*Prepared by*  
**Energy Employees Claimant Assistance Project**

*October 27, 2014*

## Executive Summary

This report provides an analysis and evaluation of all Division of Energy Employees Occupational Illness Compensation (DEEOIC) final decisions for Parkinsonism claims from June 27, 2006 to February 5, 2014. Methods of analysis include content and quantitative analysis. In this report the term Parkinsonism includes Parkinson's disease and all other aliases. Results show approval rates well below the national average for Part E claims for all illnesses, with some district offices performing consistently below others. Living workers' approval rates lag far behind those for survivors.

Because this report is based on the entirety of Parkinsonism claims filed through DEEOIC for a set time period it gives a picture of how all claims, not just the Parkinsonism claims, are developed and adjudicated.

Some of the major findings are:

- Parkinsonism claims are approved less often than Part E claims as a whole.
- Approval and denial rates vary dramatically among district offices.
- Claims sent to a District Medical Consultant (DMC) were approved more often than those not sent to a DMC.
- Claims sent to an Industrial Hygienist (IH) were almost never approved.
- Survivor claims were approved much more often than living worker claims.
- No claim was approved based on toxic substance information provided by claimants. Only toxic substances listed in the Site Exposure Matrix (SEM) led to approvals.
- There is a troubling discrepancy of facts in the different DMC reports which leads to inconsistency in the final decisions.
- No claim was approved based on a claimant's physician report. DMC reports were always given probative value.
- Nearly one in five denied Parkinsonism claims was denied in violation of Final Bulletin 08-15.

This report finds that prospects for claimants filing Parkinsonism claims are not positive. There are major areas of weakness which require further investigation and remedial action:

- Claimants need additional help to provide sufficient medical evidence.
- Determine why there is such a large disparity between living worker and survivor claims and make corrections.
- Some claims were denied because supporting information was absent from the SEM. Such claims should be reopened when information beneficial to the claim has been added.
- Provide better oversight of Contract Medical Consultants (CMCs) to ensure final decisions are factually consistent.
- Assure that all CMCs, IHs, or Toxicologists consistently follow FB 08-15.
- Provide external independent review of Industrial Hygienist reports.

- Reopen all claims denied because a DMC, Claims Examiner (CE), IH, or Toxicologist failed to follow the Procedure Manual, Final Bulletins or SEM.
- Reconsider changing the policy of assuming that a review of the written record is desired when a claimant presents objections to a recommended decision but does not specifically use the word “Hearing”. Make a phone call to the claimant to ask whether a hearing or review of the written record is needed.
- Obtain an independent external determination of whether lower level carbon monoxide exposure can cause, contribute to or aggravate Parkinsonism.
- Provide additional training to CEs, CMCs, IHs, Toxicologists and other necessary staff on use of FB 08-15, the SEM and the Procedure Manual.
- Obtain an independent external determination of the latency period for the development of Parkinsonism from the time of occupational exposure.
- Some CMC, IH or Toxicologists’ reports have failed to treat “Parkinson’s disease” as synonymous with “Parkinsonism”. Return such reports for amendment, with instructions to follow FB 08-15.

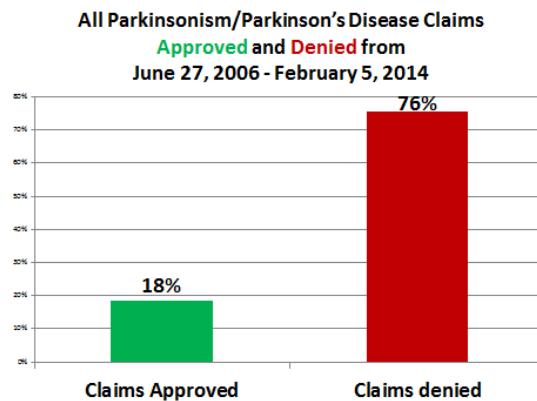
Please note:

- Only final decisions were analyzed. Statements of Accepted Facts (SOAFs), DMC, IH reports, and personal physician opinion letters were not available for analysis.
- Remanded or deferred claims were not analyzed. Because of this percentages will not always add up to 100%.

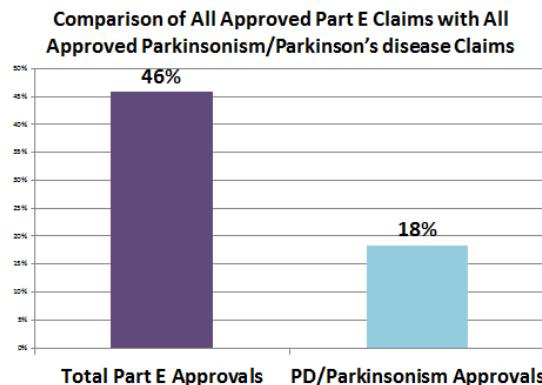
This analysis raises some important questions. EECAP has filed three additional Freedom of Information Act (FOIA) requests for additional information to answer these questions.

## Approval and Denial Rates

Parkinson's disease claims were approved 18% of the time and denied 76% of the time.

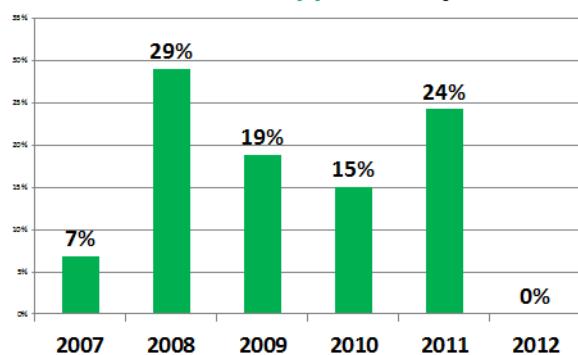


Parkinsonism is a disease covered under Part E of EEOICPA. When compared to the [DEEOIC statistics for all approved Part E claims](#) the approval rate for Parkinsonism is extremely low.

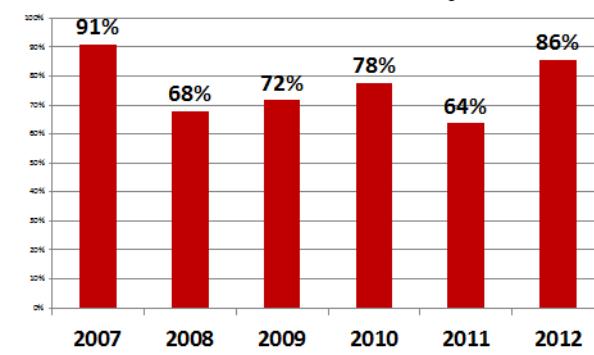


The rates at which these claims have been approved and denied since the program's inception do not show any distinct pattern.

### 2007-2012 Parkinsonism/Parkinson's Disease Claims **Approved** by Year



### 2007-2012 Parkinsonism/Parkinson's Disease Claims **Denied** by Year



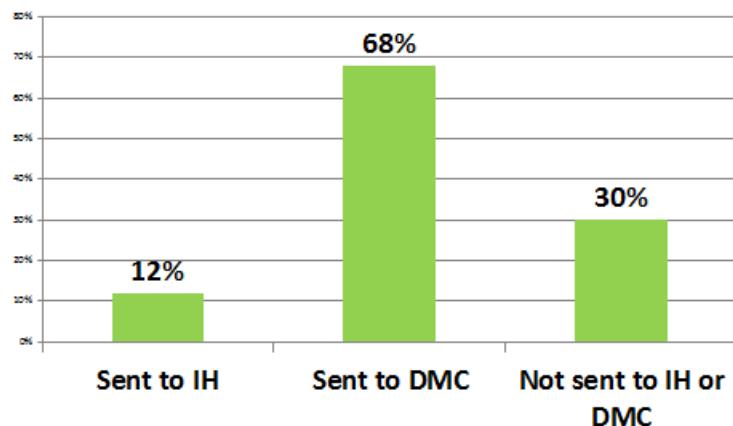
## **Development of Parkinsonism Claims**

After a claim is received at a district office the Claim Examiner (CE) requests the employee's records from Department of Energy (DOE) through a Document Acquisition Request (DAR). Next the CE checks Site Exposure Matrix (SEM) to see if the employee's job title and work process at the specific DOE facility have any information which would apply to the claim. The SEM was also searched to see what chemicals the worker might have been exposed to which could cause Parkinsonism.

Once the SEM was searched one of three things happened.

1. The claim was sent to an Industrial Hygienist (IH) for an opinion on how or if the worker might have been exposed to a toxic substance. This happened 27 times or in 12% of the claims.
2. The claim was sent to a District Medical Consultant (DMC) for an opinion on whether the exposure to a toxic substance would have caused Parkinsonism. This happened 148 times or in 68% of the claims.
3. The claim progressed directly to the recommended decision. This happened 66 times or in 30% of the claims.

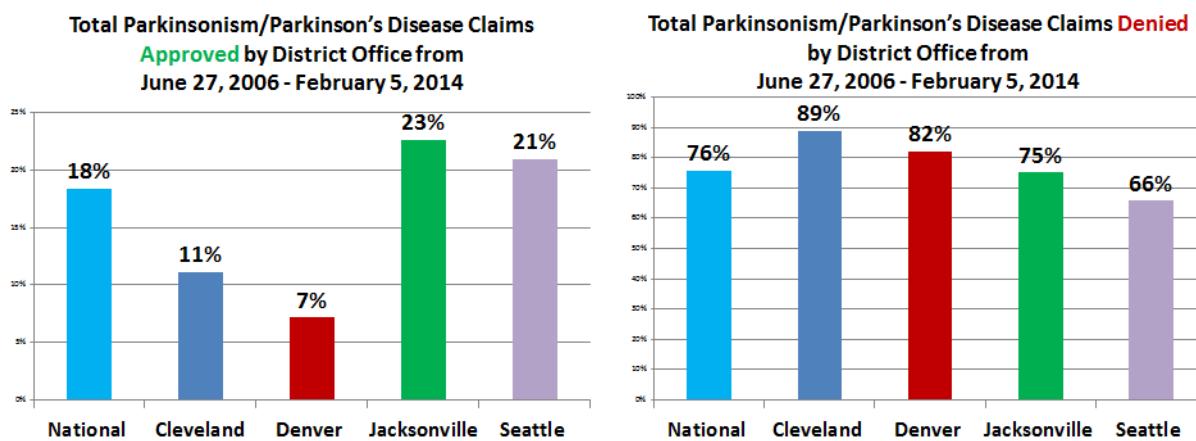
**After the Claims Examiner searches  
the SEM**



## Differences in Approval and Denial Rates at Different District Offices

The rate at which claims were approved and denied varied widely between the different district offices. Claims at Seattle and Jacksonville were approved at a slightly higher rate than the national average for all Parkinsonism claims. Claims at Cleveland were approved at a much lower rate than the national average and claims at Denver were approved at less than half the rate of the national average.

The claim denials from the district offices show the same trend with Jacksonville being equivalent to the national average. Seattle denied fewer claims than the national average. Both Cleveland and Denver denied more claims than the national average. The reasons for this are not obvious.



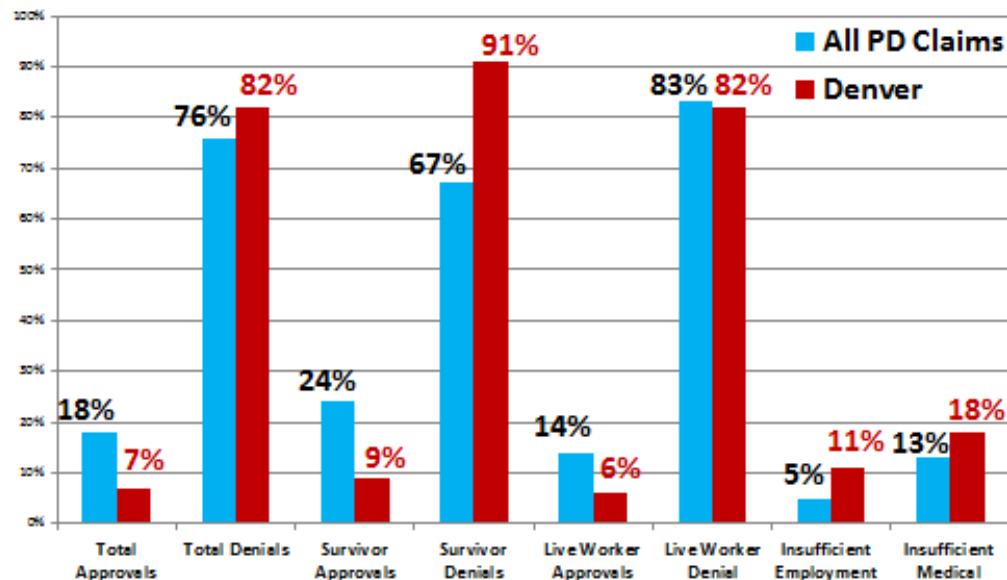
There is a lot of variation in how the different district offices are adjudicating these claims. In this report EECAP evaluated how all the district offices did on 8 points:

1. Total approval rating compared to the average of total Parkinsonism claims.
2. Total denial rating compared to the average of total Parkinsonism claims.
3. Survivor claim approvals rating compared to the average of total Parkinsonism claims.
4. Survivor claim denial rating compared to the average of total Parkinsonism claims.
5. Live worker approval rating compared to the average of total Parkinsonism claims.
6. Live worker denial rating compared to the average of total Parkinsonism claims.
7. Denial rating based on insufficient employment evidence compared to the average of total Parkinsonism claims.
8. Denial rating based on insufficient medical evidence compared to the average of total Parkinsonism claims.

The following graphs show how each district office compared with the national average. If a result is worse than the percentage it is in **red**. If a result is better than the national average it is in **green**.

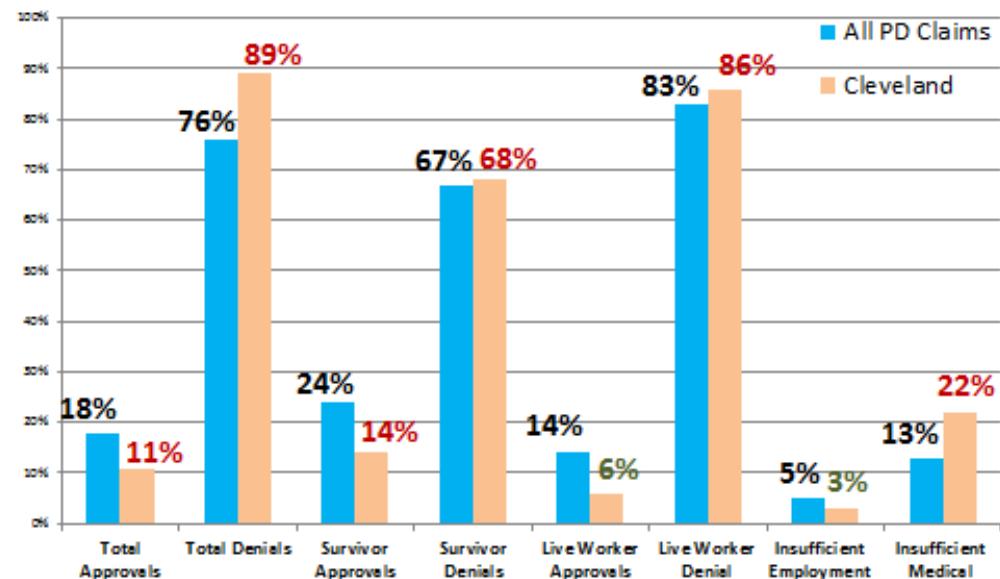
The Denver district office had the worst record of all the district offices with all 8 measures being below the national average.

### Comparison of All Parkinsonism Claims to Denver Parkinsonism Claims



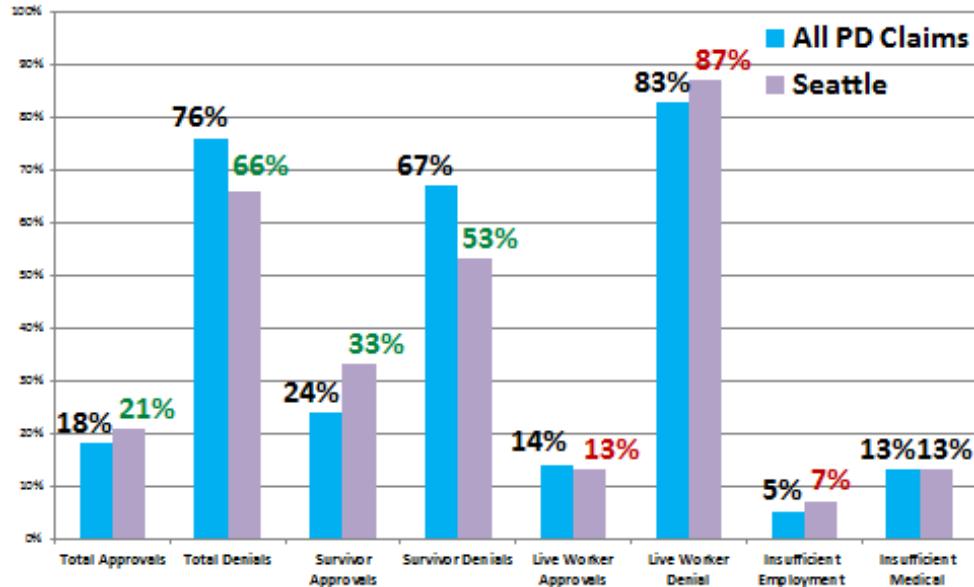
Cleveland district office was largely below the national average with 6 of the 8 points measured.

### Comparison of All Parkinsonism Claims vs. Cleveland Parkinsonism Claims



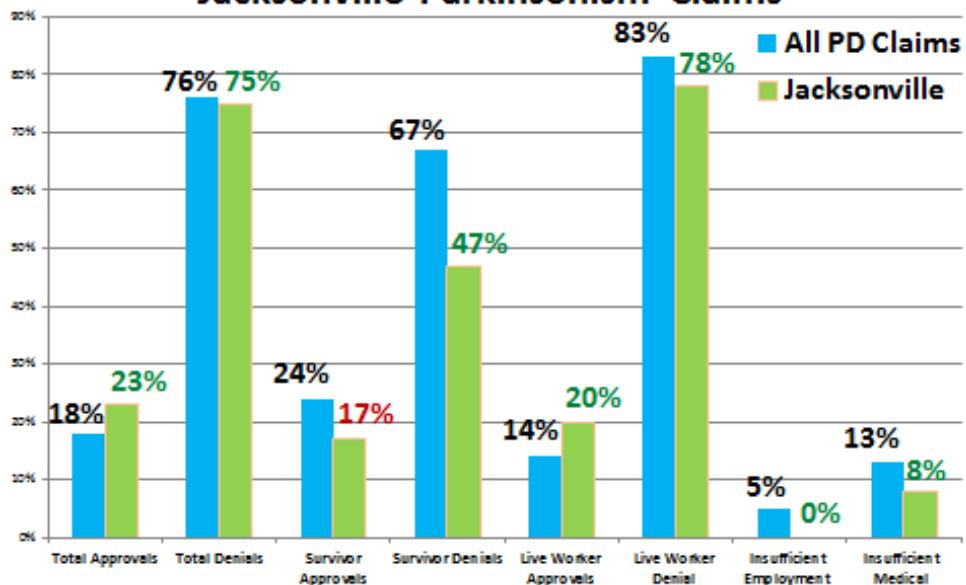
Seattle did better than the national average in 4 of the measures, was equivalent in one and was worse than average in 3.

### Comparison of All Parkinsonism Claims to Seattle Parkinsonism Claims



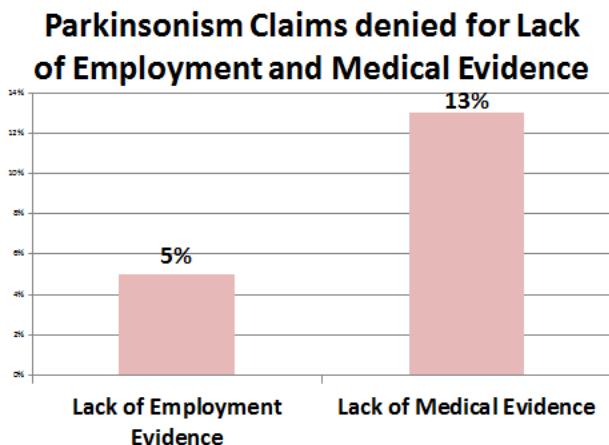
Jacksonville had the best results with only one measure being below the national average.

### Comparison of All Parkinsonism Claims to Jacksonville Parkinsonism Claims

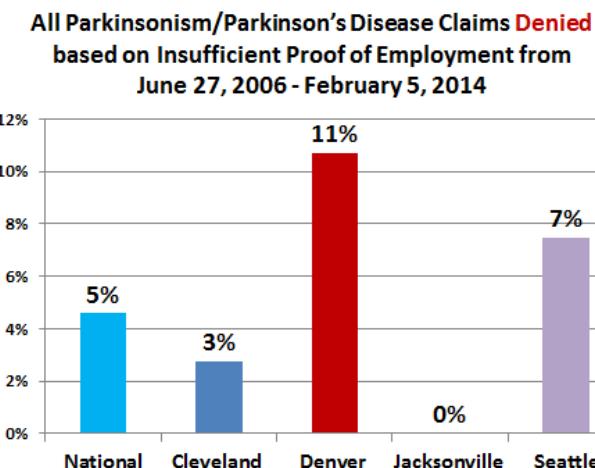


## Denials for Insufficient Evidence

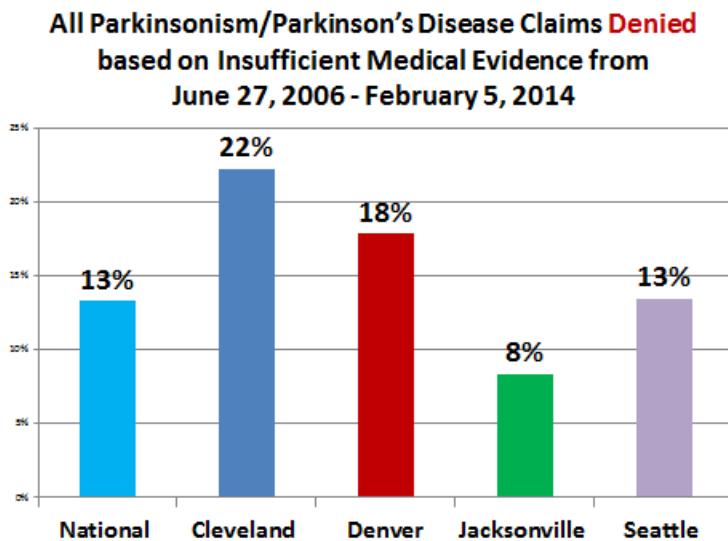
Two of the determining factors for claim denials are lack of proof of employment and lack of sufficient medical evidence. While only 5% of the Parkinsonism claims were denied due to lack of employment proof, 13% of these claims were denied based for lack of medical documentation. The different district offices had distinctly different records on both factors.



Proving employment for subcontractors has long been a difficult issue for claimants, DOE, and DEEOIC. Over the years DEEOIC has put in place different strategies to assist claimants with this. In most of the district offices these efforts seem to be working. Cleveland was well below the 5% average and Jacksonville denied no claims for insufficient employment proof. Seattle was slightly above the average while Denver had a more than double rate of denials.



Claimants have substantial problems providing sufficient medical evidence to DEEOIC. Almost a quarter of Cleveland's claims were denied based on lack of medical evidence with Denver slightly above the national average. Seattle is roughly equivalent to the national average with Jacksonville well below. What causes this difference is not apparent. Perhaps the Jacksonville office, due to its terrific record on verifying employment and medical evidence, could hold a training to help the other offices improve their performance.

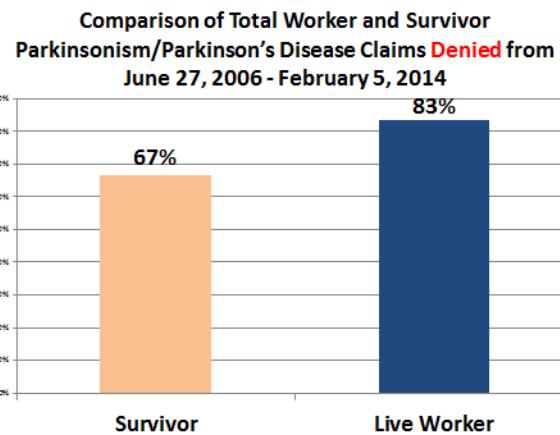
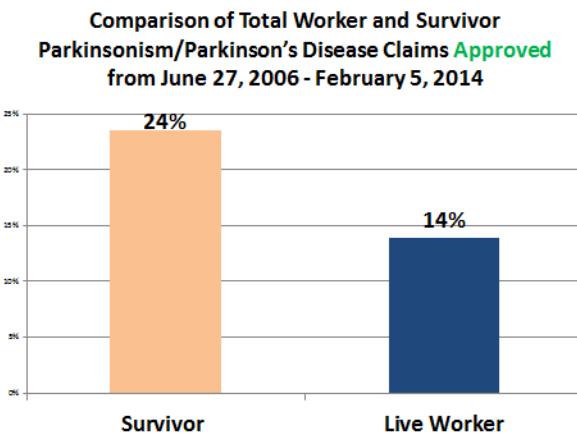


**EECAP Recommends:**

- Provide claimants with additional help in the gathering of medical evidence.
- Determine why Jacksonville's rates are so much better than the other district offices and use this information to train the other district offices.

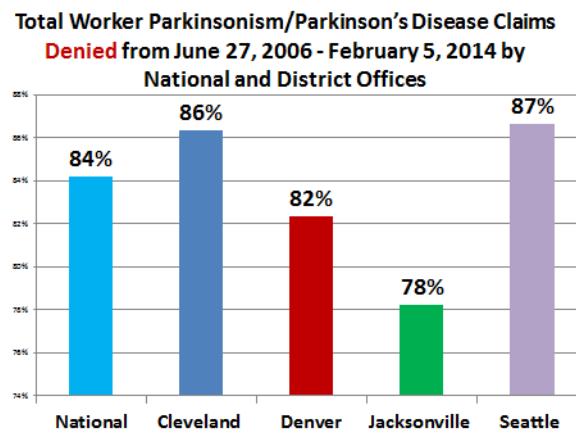
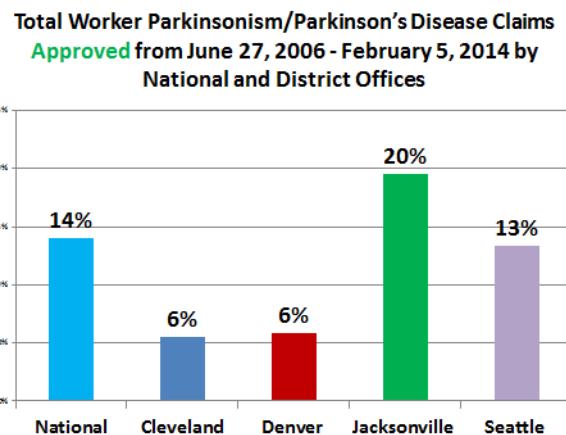
## Survivor and Living Worker Claims

An interesting fact emerged when comparing the survivor claims with the living worker claims. Survivor claims are approved more often than living worker claims and denied less often. Only 14% of claims by a living worker were approved while 24% of claims by a survivor were approved. Conversely 83% of all living worker claims were denied compared to 67% of survivor claims. It's not clear why this is. It could be a cost saving measure or there could be another less readily apparent reason.



When the approved and denied living worker claims are broken down by district offices there are again sharp differences.

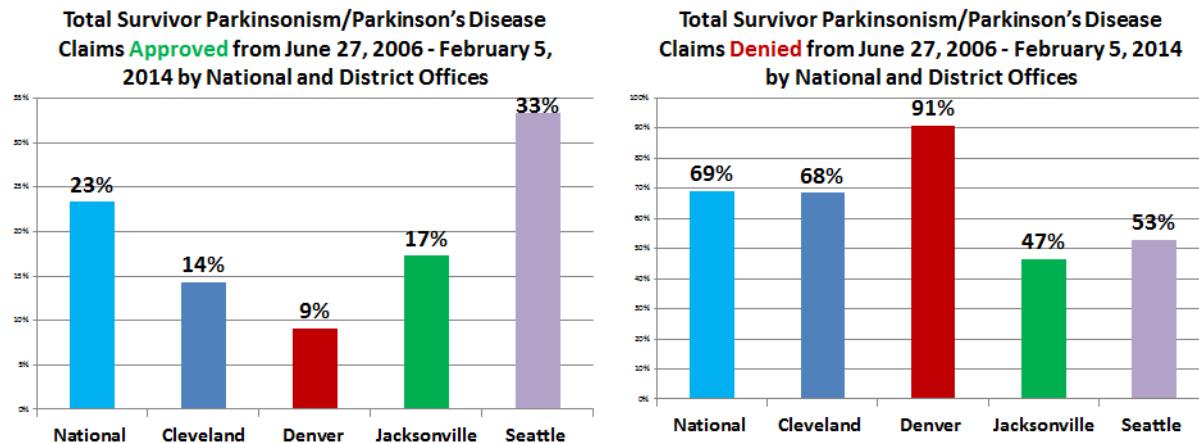
With the approved living worker claims Seattle is roughly equivalent to the national average. Jacksonville is well above the national average. Cleveland and Denver are well below the national average for approvals.



With the denied living worker claims Cleveland, Seattle and Denver are all within a few points of the national average while Jacksonville is well below.

It seems clear that living workers filing claims with the Jacksonville office have a much better chance of having their claims approved than at the other district offices.

The approved and denied survivor claims tell a different story.



Again, the survivor claims are being approved very differently at different district offices. Seattle is approving these claims well above the national average. Cleveland and Jacksonville are approving the claims at a lower rate. Denver's rate of approval is well below all the others.

The denial of survival claims shows Cleveland denied claims at about the national average. Jacksonville and Seattle denied these claims at a lower level than the national average. Denver denied the claims at a much higher level. A survivor will do much better filing a survivor claim at Jacksonville than he would at Denver.

#### **EECAP Recommends:**

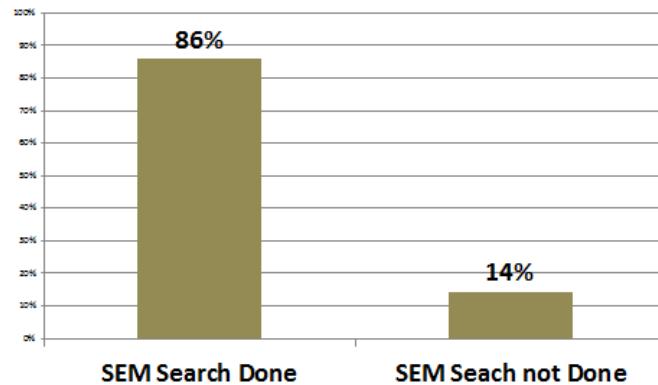
- Determine why the approval and denial rates between survivor and live worker claims are so large. The reasons for the disparity must be understood before corrective action can be taken.
- Once the reasons are understood the solutions can be determined.

## Site Exposure Matrix (SEM)

The SEM was developed to provide claimants and claim examiners with assistance in providing evidence for claims. The SEM provides information on many of the DOE facilities and contains some information on toxins. SEM contains some potential exposure information that workers would have experienced while working in different jobs or processes. The SEM also links some toxic substances to illnesses.

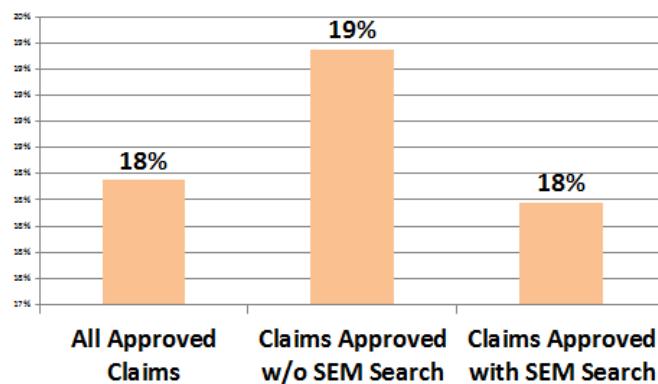
86% of all Parkinsonism claims had a SEM search done in which information was found. 31 or 14% of the claims did not have SEM information available. EECAP found several claims where no information had been available in the SEM when the final decision was written but now had SEM information which might be useful to the claim.

Percentage of Parkinsonism/Parkinson's disease claims with & without SEM Search from May 31, 2008 to February 5, 2014



Claims were approved at roughly an equivalent rate with the national average whether a SEM search was done or not.

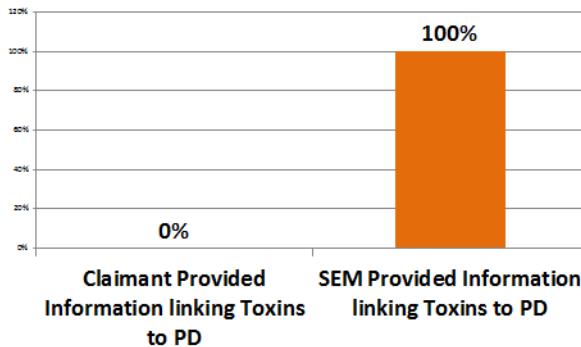
Parkinsonism/Parkinson's Disease Claims Approved with and without a SEM Search from June 27, 2006 - February 5, 2014



Unless a chemical was listed in the SEM it was not judged to have a causal link. No claims were approved based on any claimant provided evidence. Only chemicals in the SEM were judged to have a link to Parkinsonism.

#### Toxic Substances accepted as Causal

#### Links to Parkinsonism



Of the chemicals listed in the SEM the following were used to approve claims:

1. Manganese, used 21 times
2. Carbon Steel, used 15 times
3. Carbon monoxide, used 14 times (All claims were after the release of FB 08-15.  
None had a record of the worker losing consciousness)
4. Potassium permanganate used 8 times
5. Welding fumes, used 6 times
6. Engine, diesel and maintenance exhaust fumes, used 5 times
7. Monel, used 3 times
8. Manganese dioxide, used 3 times
9. Inconel, used 3 times
10. Bronze, used 3 times
11. Manganese II sulfate, used twice
12. Hastelloy, used once
13. manganese II nitrate, used once
14. manganese II oxide, used once
15. manganese phosphine, used once

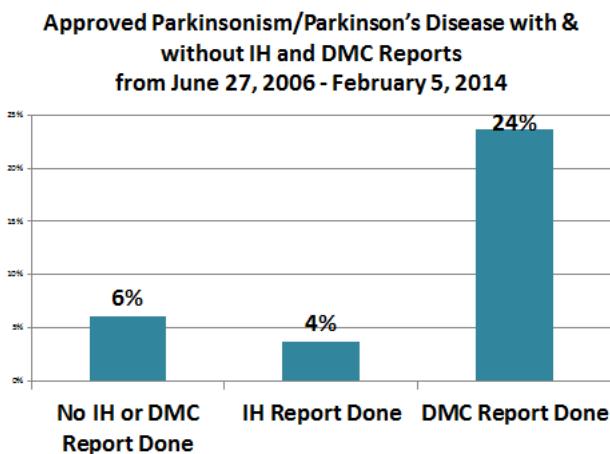
Not only were no chemicals not listed in the SEM used to approve claims, no studies or other information provided by claimants which linked toxic substances to the development of Parkinsonism were used to approve claims. If the substance was not in the SEM it was not acknowledged as having a causal effect on Parkinsonism. This includes peer reviewed scientific studies. Often these appeared to have been ignored.

#### EECAP Recommends:

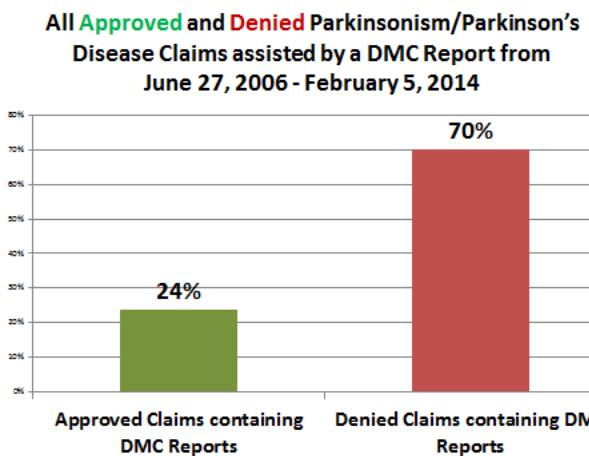
- Denied claims identified for which there had been no SEM information should be reviewed to see if this situation has changed. If so the claim should be reopened.
- Studies and other information provided by claimants should be reviewed to see if there is a causal link.

## DMC/CMC and IH Reports

DEEOIC has stated that District/Contracting Medical Consultants and Industrial Hygienists were hired to help claimants with the burden of proof for their claims. EECAP examined how this works in reality. Claims sent to DMCs were approved at a slightly higher level than those which were not sent to a DMC for an opinion report. However, claims sent to an IH were approved at a much lower rate.

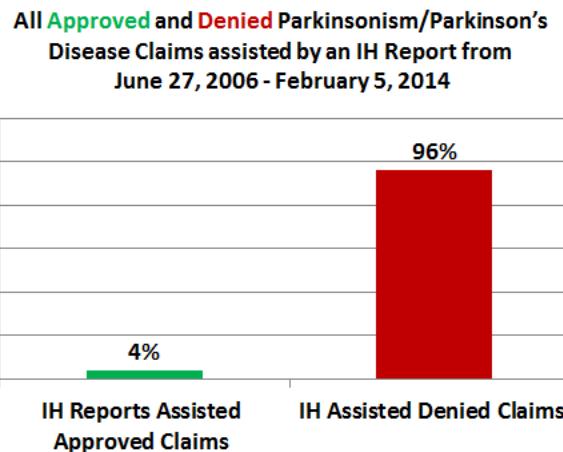


148 or 68% of all Parkinsonism claims were referred to District/Contract Medical Consultants for an opinion on whether their illness was caused, contributed to, or aggravated by their toxic exposure at a DOE facility. While the average claims were approved 18% of the time, claims assisted by a DMC report were approved 24% of the time. The same 6% difference shows up in the denied claims with the average of denied claims being 76% while the claims assisted by DMC reports were denied only 70% of the time.



However, IH reports have a distinctly damaging effect on claims. 27 or 12% of the Parkinsonism claims reviewed for this report were sent to an IH for an opinion on

whether the worker would have been exposed to enough toxin to result in damage. Of these 27 referrals only one of these reports was positive for toxic exposure. The other 26 found that the exposure would not have been enough to cause damage. This is well below the average approval rate of 18% for Parkinsonism claims. EECAP has submitted a Freedom of Information Act (FOIA) request with DEEOIC for these 27 IH reports to try to determine why this rate is so low.



The national average for claim approval is 18%. The claims where an IH assisted has a 4% approval percentage. Where the national average for claim denial is 76% the IH assisted claims had a denial percentage of 96%. These are shocking differences. If the Parkinsonism claims are anything to judge by DEEOIC's Industrial Hygienists' assistance should be avoided whenever possible.

There were some troubling facts within the Parkinsonism Final Decisions with the consistency of DMC reports. To evaluate this further EECAP has submitted a FOIA with DEEOIC for most of the DMC reports used in these Final Decisions. Hopefully these will shed more light on the reasons for the inconsistencies.

When looking at the inconsistencies it is important to remember the standard of causation is "at least as likely as not that toxic substance exposure incurred at a covered DOE facility was a significant factor in aggravating, contributing to, or causing the employee's Parkinsonism".

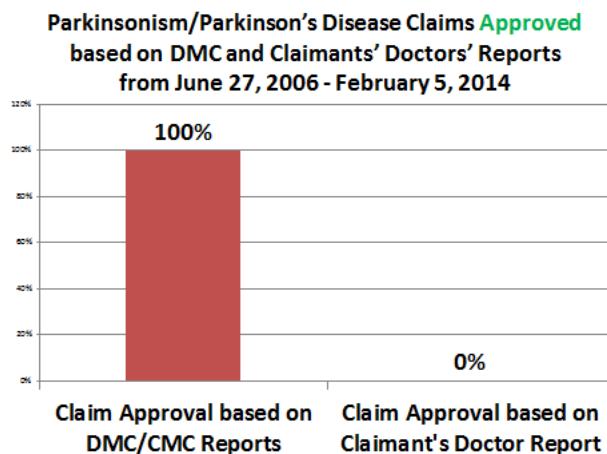
#### Inconsistencies noted:

- Some DMCs stated that Parkinson's disease cannot be caused by occupational exposures which contradicts Final Bulletin 08-15 which says Parkinson's disease must be considered synonymous with Parkinsonism and instructions that DEEOIC staff must acknowledge the causal links in the SEM.
- Several doctors' letters split Parkinson's disease from Parkinsonism despite FB 08-15 stating no distinction can be made.
- There seems to be a dispute between the DMC/CMCs over what the latency is between a toxic exposure and the development of the disease. Some final

decisions approved claims with a longer latency period. Others used a shorter latency period to deny claims.

- There also seems to be a discrepancy over whether Lewy body or dementia can be part of Parkinsonism. Different doctors ruled differently on this.
- Some doctors approved claims based on exposure to carbon monoxide without the loss of consciousness while others stated that carbon monoxide could not be considered causal without loss of consciousness as FB 08-15 states.
- Some DMCs disputed the toxic substances in the SEM could cause Parkinsonism while others accepted the SEM information as factual.
- Some claims were found non-compensable because the worker was older than the age when idiopathic Parkinson's disease usually develops while others of that age were approved. While numerous DMC opinions stated that occupational Parkinsonism usually occurs at a young age, this was not mentioned in any of the younger workers claims. It was only raised for the older workers as part of the explanation for the denial.

No claims were approved based on a claimant's doctor report. The DME/CMC reports were always ruled more probative than the claimants' doctors reports.



The DMC's reports vary widely on the above issues. A basic unfairness is built into the system when different doctors rule on the same facts differently.

#### **EECAP Recommends:**

- Additional training of DMC/CMCs and IHs.
- Independent oversight for consistency of reports of Contracting Medical Consultants.
- A determination made by an external independent agency on the latency of Parkinsonism.
- Exclusion of CMCs who do not accept the information in the Procedure Manual, Final Bulletins and SEM.
- An independent external review and determination on how to handle the extreme denial rate of the Industrial Hygienists.

## Requesting Hearings

42 people or 19% of claimants presented objections to their Parkinsonism recommended decisions. Of those 42, 22 were given a hearing, and 20 received a review of the written record. EECAP suspects some of the 20 who received a review of the written record actually thought they were requesting a hearing but didn't use the exact language that DEEOIC requires. EECAP has heard complaints from claimants in the past from claimants thinking they requested a hearing only to receive a review of the written record instead.

The Procedure Manual addresses this in Chapter 2-1700 2: "If a claimant requests a hearing within the 60 day time period, a FAB Hearing Representative (HR) will conduct a hearing, pursuant to 20 C.F.R. § 30.314. Otherwise, the objections will be responded to by a review of the written record, pursuant to 20 C.F.R. § 30.312." The rule itself says, "If the claimant files a written statement that objects to the recommended decision within the period of time allotted in § 30.310 but does not request a hearing, the FAB will consider any objections by means of a review of the written record."

### EECAP Recommends:

- DEEOIC might want to change this regulation and direct Claims Examiners to phone a claimant when the claimant's objections to a recommended decision do not make it clear whether a hearing or a review of the written record is desired.

## Final Bulletin 08-15

[Final Bulletin 08-15](#), which became active on May 30, 2008, instructs all DEEOIC staff that Parkinson's disease must be considered synonymous with Parkinsonism. According to DEEOIC Final Bulletins have the same weight as the Federal EEOICPA Procedure Manual. This means the Final Bulletins provide "informational guidance on the application of program policy" which must be followed.

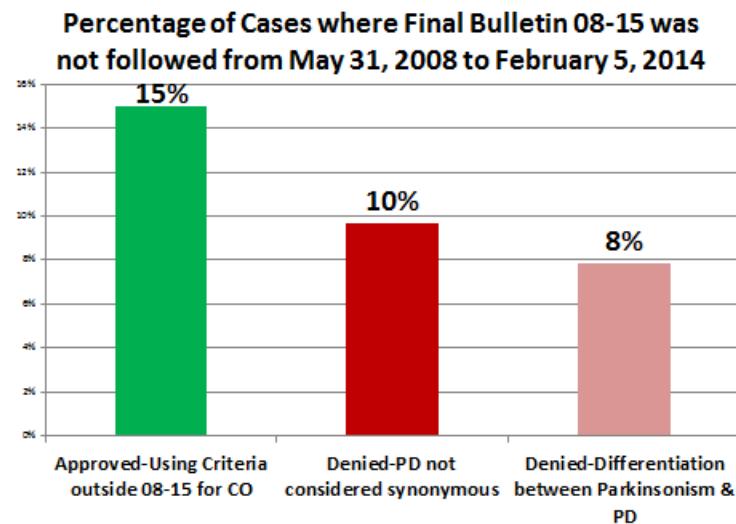
Final Bulletin 08-15 states, "There is no clinical test or method for distinguishing parkinsonism from PD and the two terms are often used interchangeably since the symptoms are the same." Because of this it instructs DEEOIC staff that:

1. Parkinson's disease, parkinsonism, or any reasonable alias, are to be considered synonymous.
2. Claims examiners are to use "Parkinsonism" to review the SEM for causal agents.
3. For carbon monoxide to be considered a causal agent the worker must have evidence of acute occupational exposure preceding onset of Parkinsonism including one of the following:
  - a. Loss of consciousness at time of exposure.
  - b. Documentation of significant CO levels.
  - c. Clinical records or lab tests showing reduction of oxygen severe enough to cause injury to the brain.
4. CEs are to follow Federal EEOICPA Procedure Manual Chapter E-5002(c) requiring a review of all evidence.
5. If there is evidence of exposure to a toxic substance linked to Parkinsonism and the medical evidence links it the claim can be accepted. If not the CE is to:
  - a. Contact the treating doctor or,
  - b. Refer the claim to a DMC/CMC
6. CE is to prepare a Statement of Accepted Facts (SOAF) and questions for the medical expert revolving around
  - a. Was the toxic substance "*a significant factor in aggravating, contributing to, or causing the employee's illness or death*"?
  - b. The physician is NOT to differentiate between Parkinsonism and Parkinson's disease.
7. District Directors may reopen these claims which occurred before this bulletin.
8. For all reopenings medical evidence must be reviewed for claims with:
  - a. Denial based on Parkinson's disease
  - b. Denial based on an alias of Parkinsonism
  - c. Denial based on a finding of Parkinson's disease

EECAP found that many DMCs, IHs, and CEs did not follow FB 08-15 to the detriment of the claimants. In reviewing the final decisions EECAP found substantial deviation from the directions given in Final Bulletin 08-15.

18 % of the denied Parkinsonism cases were denied because Final Bulletin 08-15 was not followed. This means that 29 people may have lost medical care and compensation

improperly. 10% of the claims were denied when a DMC and CE did not consider Parkinson's disease or another alias synonymous with Parkinsonism. 8% of the claims were denied when a DMC and CE differentiated between Parkinsonism and Parkinson's disease. 15% of the final decisions deviated from instructions in FB 08-15 when the DMCs and CEs cited carbon monoxide as a causal agent without the loss of consciousness.



In reviewing the Parkinsonism final decisions it became apparent that there is a wide variation in what different DMC/CMCs accept as fact. Some of the issues that they could not agree on are:

- Whether Parkinson's disease/Parkinsonism can be caused by occupational exposures.
- Whether being over the age when Parkinson's disease usually presents is a reason to rule out whether the worker's Parkinsonism was caused, aggravated, or contributed to by occupational exposures.
- The latency period between the occupational exposure and the development of Parkinsonism.
- Whether Parkinsonism can be caused by carbon monoxide at lower levels than described in FB 08-15.

Note: These results should be considered preliminary as the data was gathered only from the final decisions rather than from the DMC/CMC reports. EECAP requested all the DMC/CMC reports involved in this report from DEEOIC in FOIA # 760971 to better determine how often these deviations from FB 08-15 occurred. When these materials are received EECAP will evaluate them and issue a new report if new facts are found.

**EECAP Recommends:**

1. An external independent review of the science to determine whether DEEOIC is correct in asserting that low level carbon monoxide exposure cannot cause, contribute to, or aggravate Parkinsonism.
2. Additional training of claims examiners, Contract Medical Consultants, Industrial Hygienists, Toxicologists, and other necessary staff members on FB 08-15.
3. An external independent determination of the possible latency period for the development of Parkinsonism from the time of occupational exposure.
4. If a CMC, IH, or Toxicology report does not recognize Parkinson's disease or other aliases as synonymous with Parkinsonism the report should be returned with instructions to follow FB 08-15 and prepare an amended report.
5. In a CMC, IH, or Toxicology report differentiates between Parkinson's disease and Parkinsonism the report should be returned with instructions to follow FB 08-15 and prepare an amended report.
6. CMCs, IHs, or Toxicologists who consistently do not follow FB 08-15 should be banned from evaluation of Parkinsonism claims.
7. DEEOIC should revise FB 08-15 to reflect that exposure to the toxic substances listed in the bulletin also may contribute to or aggravate the development of Parkinsonism.