



DEEOIC's Proposed Rules Changes: Additional Facts

§30.5(x)(2)(iii) would cut off compensation and medical care for sick workers who delivered and removed materials at DOE facilities:

- **1080** claimants have already filed claims
- **347** sick workers have already been compensated and received medical benefits for delivering and removing the same materials

§30.205(j) and 30.206(a) changes the definition of a beryllium vendor site and would:

- Remove **80%** of the beryllium vendor sites from EEOICPA
 - There are currently **75** beryllium vendor sites
 - Only **15** of them fit into the new definition

§30.230 and §30.5(w) establish a start date before which sick workers could not file claims:

- More than **251** claims have already been filed before either of DOL's proposed start dates
 - **124** of those claims were approved and paid
- There is no start date in the statute

§30.232(b) requires a "fully rationalized medical report" from a sick workers' doctor

- These reports take between **6-10 hours** to write
- Most treating physicians are not capable, nor have the time, to write such a report
- Of over 200 Parkinson's disease claims from June 27, 2006-February 5, 2014 **0%** treating physicians' reports were deemed probative enough to be used to approve a claim



Proposed Rules Changes

I was very happy to see that the Board will be reviewing DEEOIC's proposed rules changes. I suggest that more time will be needed than until early May. A lot of the implications of the changes are not immediately obvious and it will take a lot of work to truly understand how these changes will impact the sick workers. I encourage the Board to review the rules, line by line, and consult with the advocate community on the potential problems they see with the changes.

DOL published two documents on what the Board can and cannot weigh in on. That DOL would try to control a non-independent Board was one of the advocates' main concerns and part of why we advocated for an independent board. I do not feel that it is appropriate for DOL to dictate what the board can and cannot review. The Board needs the flexibility to investigate what they feel is relevant and the legislation which established the board allows for this.

EECAP has already made detailed public comments on the rules changes but here is some additional information on several sections.

- §30.5(x)(2)(iii) restricts the definition of who is eligible for EEOICPA by removing workers who provided "delivery or removal of goods from the premises of a DOE facility". A look at previous claims shows that around **1080** claims filed for people "delivering or removing goods" have been adjudicated with 347 of those claims being approved and 589 being denied. These previously approved claims have paid \$77,739,510 in compensation and \$14,058,821 in medical benefits to these sick workers. It seems arbitrary and capricious to restrict eligibility for workers transporting goods so late in the program's history, especially when so many of the claims were approved and paid.
- §30.205(j) and 30.206(a) redefine who is covered for beryllium claims by removing the phrase, "or a facility owned, operated, or occupied by a beryllium vendor" and changing it to "a facility owned **and** operated by a beryllium vendor". A review of current beryllium vendors shows that this wording will remove 80% of them from EEOICPA. Of the current 75 beryllium vendor sites only 15 of them are "a facility owned and operated by a beryllium vendor".
- §30.230 and §30.5(w) offer two different dates (August 13 and January 1, 1942) to be used as the earliest any claimant can claim coverage under EEOICPA. The Einstein/Szilard letter to President Roosevelt recommending the US begin the nuclear program was dated August 2, 1939. According to *DOE's Manhattan*

District History, Book 1, Vol 11, a memo, dated February 20, 1940, discussed the first transfer of funds for the Manhattan Project. I suggest that either of those dates would be better than DOL's suggested dates, **if** it is appropriate to dictate a start date to eligibility.

- In reviewing DOL's data, there have been **251** claims filed with employment dates between January 1, 1939 and August 1, 1942. Of those claims 124 were approved and 96 were denied. Setting a 1942 employment start date is inequitable for any claimants with work in the early years who have not yet filed claims.
- §30.232(b) requires a "fully rationalized medical report". Doctors who have written these reports say such a report takes between 6-10 hours to write. However most doctors do not have the experience, let along the time, to provide a report which meets DEEOIC's requirements. This means many valid claims are denied. This is a major stumbling block for most claimants. EECAP investigated Parkinson's disease claims² from June 27, 2006 to February 5, 2014 and found that NO personal physicians' reports led to any claims' approvals.
 - In October 2014 DEEOIC finally approved **one** Parkinson's claim based on a non-DOL physician's letter³. This claim is especially interesting because DEEOIC had previously denied it numerous times based on D/CMCs' reports.
 - One in 2008 from Dr. Hunt⁴
 - Two in 2009 from Dr. Orgel⁵, which needed a further clarification⁶
 - One in 2013 from Dr. Gresch⁷
 - Between the letters from Dr. Orgel and Dr. Gresh an independent physician provided a report⁸ recommending the claim be approved which DEEOIC found not to be "probative" enough, partly because of spelling and cut and paste errors. Unlike the letter from Dr. Orgel the claims examiner did not ask this doctor for clarification. In many ways this letter was more detailed than the D/CMC reports.
- DOL's document, *Recommendation: proposed changes not within the scope of the Advisory Board*, discusses changes in sections §30.700 to 30.726. OWCP states these changes are being made to conform to existing FECA regulatory schemes.

¹ http://www.osti.gov/includes/opennet/includes/MED_scans/Book%20%20-%20General%20-%20Volume%201%20-%20General.pdf

² http://www.eecap.org/PDF_Files/EECAP/2014-10-27_pd_fd_report.pdf

³ http://www.eecap.org/PDF_Files/Claim_Examp/2014-10-15_dr_letter_red.pdf

⁴ http://www.eecap.org/PDF_Files/Claim_Examp/2008-12-27_Hunt_Report_Redacted.pdf

⁵ http://www.eecap.org/PDF_Files/Claim_Examp/2009-7-13_Orgel_DMC_report_Redacted.pdf

⁶ http://www.eecap.org/PDF_Files/Claim_Examp/2009-8-7_Orgel_DMC_report_Redacted.pdf

⁷ http://www.eecap.org/PDF_Files/Claim_Examp/2013-6-14_cmc_report_red.pdf

⁸ http://www.eecap.org/PDF_Files/Claim_Examp/2009-3-18_UC_Freeman_report_Redacted.pdf

EEOICPA and FECA are very different programs. EEOICPA is a remedial statute and must be interpreted more liberally than FECA, which is not remedial. While I know it is a pain for OWCP to have to administer the two programs differently it is improper to cut claimants' benefits and increase claimants' burden of proof for their administrative convenience.

For additional EECAP comments on DOL's proposed rules changes:

http://www.eecap.org/EECAP_blog.htm *Understanding DOL's Rules Changes, Parts 1-*

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